

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

CHAPTER VI

Independent supervisory authorities

Section 1

Independent status

Article 41

Supervisory authority

1 Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Directive, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union ('supervisory authority').

2 Each supervisory authority shall contribute to the consistent application of this Directive throughout the Union. For that purpose, the supervisory authorities shall cooperate with each other and with the Commission in accordance with Chapter VII.

3 Member States may provide for a supervisory authority established under Regulation (EU) 2016/679 to be the supervisory authority referred to in this Directive and to assume responsibility for the tasks of the supervisory authority to be established under paragraph 1 of this Article.

4 Where more than one supervisory authority is established in a Member State, that Member State shall designate the supervisory authority which are to represent those authorities in the Board referred to in Article 51.

Article 42

Independence

1 Each Member State shall provide for each supervisory authority to act with complete independence in performing its tasks and exercising its powers in accordance with this Directive.

2 Member States shall provide for the member or members of their supervisory authorities in the performance of their tasks and exercise of their powers in accordance with this Directive, to remain free from external influence, whether direct or indirect, and that they shall neither seek nor take instructions from anybody.

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3 Members of Member States' supervisory authorities shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

4 Each Member State shall ensure that each supervisory authority is provided with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board.

5 Each Member State shall ensure that each supervisory authority chooses and has its own staff which shall be subject to the exclusive direction of the member or members of the supervisory authority concerned.

6 Each Member State shall ensure that each supervisory authority is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget.

Article 43

General conditions for the members of the supervisory authority

1 Member States shall provide for each member of their supervisory authorities to be appointed by means of a transparent procedure by:

- their parliament;
- their government;
- their head of State; or
- an independent body entrusted with the appointment under Member State law.

2 Each member shall have the qualifications, experience and skills, in particular in the area of the protection of personal data, required to perform their duties and exercise their powers.

3 The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement, in accordance with the law of the Member State concerned.

4 A member shall be dismissed only in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.

Article 44

Rules on the establishment of the supervisory authority

1 Each Member State shall provide by law for all of the following:

- a the establishment of each supervisory authority;
- b the qualifications and eligibility conditions required to be appointed as a member of each supervisory authority;
- c the rules and procedures for the appointment of the member or members of each supervisory authority;
- d the duration of the term of the member or members of each supervisory authority of not less than four years, except for the first appointment after 6 May 2016, part of which may take place for a shorter period where that is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure;

- e whether and, if so, for how many terms the member or members of each supervisory authority is eligible for reappointment;
- f the conditions governing the obligations of the member or members and staff of each supervisory authority, prohibitions on actions, occupations and benefits incompatible therewith during and after the term of office and rules governing the cessation of employment.

2 The member or members and the staff of each supervisory authority shall, in accordance with Union or Member State law, be subject to a duty of professional secrecy both during and after their term of office, with regard to any confidential information which has come to their knowledge in the course of the performance of their tasks or the exercise of their powers. During their term of office, that duty of professional secrecy shall in particular apply to reporting by natural persons of infringements of this Directive.

Section 2

Competence, tasks and powers

Article 45

Competence

1 Each Member State shall provide for each supervisory authority to be competent for the performance of the tasks assigned to, and for the exercise of the powers conferred on, it in accordance with this Directive on the territory of its own Member State.

2 Each Member State shall provide for each supervisory authority not to be competent for the supervision of processing operations of courts when acting in their judicial capacity. Member States may provide for their supervisory authority not to be competent to supervise processing operations of other independent judicial authorities when acting in their judicial capacity.

Article 46

Tasks

- 1 Each Member State shall provide, on its territory, for each supervisory authority to:
- a monitor and enforce the application of the provisions adopted pursuant to this Directive and its implementing measures;
 - b promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing;
 - c advise, in accordance with Member State law, the national parliament, the government and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing;
 - d promote the awareness of controllers and processors of their obligations under this Directive;
 - e upon request, provide information to any data subject concerning the exercise of their rights under this Directive and, if appropriate, cooperate with the supervisory authorities in other Member States to that end;

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- f deal with complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 55, and investigate, to the extent appropriate, the subject-matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;
 - g check the lawfulness of processing pursuant to Article 17, and inform the data subject within a reasonable period of the outcome of the check pursuant to paragraph 3 of that Article or of the reasons why the check has not been carried out;
 - h cooperate with, including by sharing information, and provide mutual assistance to other supervisory authorities, with a view to ensuring the consistency of application and enforcement of this Directive;
 - i conduct investigations on the application of this Directive, including on the basis of information received from another supervisory authority or other public authority;
 - j monitor relevant developments insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;
 - k provide advice on the processing operations referred to in Article 28; and
 - l contribute to the activities of the Board.
- 2 Each supervisory authority shall facilitate the submission of complaints referred to in point (f) of paragraph 1 by measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.
- 3 The performance of the tasks of each supervisory authority shall be free of charge for the data subject and for the data protection officer.
- 4 Where a request is manifestly unfounded or excessive, in particular because it is repetitive, the supervisory authority may charge a reasonable fee based on its administrative costs, or may refuse to act on the request. The supervisory authority shall bear the burden of demonstrating that the request is manifestly unfounded or excessive.

Article 47

Powers

- 1 Each Member State shall provide by law for each supervisory authority to have effective investigative powers. Those powers shall include at least the power to obtain from the controller and the processor access to all personal data that are being processed and to all information necessary for the performance of its tasks.
- 2 Each Member State shall provide by law for each supervisory authority to have effective corrective powers such as, for example:
- a to issue warnings to a controller or processor that intended processing operations are likely to infringe the provisions adopted pursuant to this Directive;
 - b to order the controller or processor to bring processing operations into compliance with the provisions adopted pursuant to this Directive, where appropriate, in a specified manner and within a specified period, in particular by ordering the rectification or erasure of personal data or restriction of processing pursuant to Article 16;
 - c to impose a temporary or definitive limitation, including a ban, on processing.
- 3 Each Member State shall provide by law for each supervisory authority to have effective advisory powers to advise the controller in accordance with the prior consultation

procedure referred to in Article 28 and to issue, on its own initiative or on request, opinions to its national parliament and its government or, in accordance with its national law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data.

4 The exercise of the powers conferred on the supervisory authority pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedy and due process, as set out in Union and Member State law in accordance with the Charter.

5 Each Member State shall provide by law for each supervisory authority to have the power to bring infringements of provisions adopted pursuant to this Directive to the attention of judicial authorities and, where appropriate, to commence or otherwise engage in legal proceedings, in order to enforce the provisions adopted pursuant to this Directive.

Article 48

Reporting of infringements

Member States shall provide for competent authorities to put in place effective mechanisms to encourage confidential reporting of infringements of this Directive.

Article 49

Activity reports

Each supervisory authority shall draw up an annual report on its activities, which may include a list of types of infringement notified and types of penalties imposed. Those reports shall be transmitted to the national parliament, the government and other authorities as designated by Member State law. They shall be made available to the public, the Commission and the Board.