

Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (repealed)

CHAPTER II

GENERAL RULES ON THE LAWFULNESS OF THE PROCESSING OF PERSONAL DATA

SECTION 1

PRINCIPLES RELATING TO DATA QUALITY

Article 4

Data quality

- 1 Personal data must be:
 - a processed fairly and lawfully;
 - b collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of personal data for historical, statistical or scientific purposes shall not be considered incompatible provided that the controller provides appropriate safeguards, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual;
 - c adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;
 - d accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
 - e kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. The Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes.
- 2 It shall be for the controller to ensure that paragraph 1 is complied with.

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SECTION 2

CRITERIA FOR MAKING DATA PROCESSING LEGITIMATE

Article 5

Lawfulness of processing

Personal data may be processed only if:

- (a) processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed, or
- (b) processing is necessary for compliance with a legal obligation to which the controller is subject, or
- (c) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, or
- (d) the data subject has unambiguously given his or her consent, or
- (e) processing is necessary in order to protect the vital interests of the data subject.

Article 6

Change of purpose

Without prejudice to Articles 4, 5 and 10:

- 1. Personal data shall only be processed for purposes other than those for which they have been collected if the change of purpose is expressly permitted by the internal rules of the Community institution or body.
- 2. Personal data collected exclusively for ensuring the security or the control of the processing systems or operations shall not be used for any other purpose, with the exception of the prevention, investigation, detection and prosecution of serious criminal offences.

Article 7

Transfer of personal data within or between Community institutions or bodies

Without prejudice to Articles 4, 5, 6 and 10:

- 1. Personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient.

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2. Where the data are transferred following a request from the recipient, both the controller and the recipient shall bear the responsibility for the legitimacy of this transfer.

The controller shall be required to verify the competence of the recipient and to make a provisional evaluation of the necessity for the transfer of the data. If doubts arise as to this necessity, the controller shall seek further information from the recipient.

The recipient shall ensure that the necessity for the transfer of the data can be subsequently verified.

3. The recipient shall process the personal data only for the purposes for which they were transmitted.

Article 8

Transfer of personal data to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC

Without prejudice to Articles 4, 5, 6 and 10, personal data shall only be transferred to recipients subject to the national law adopted for the implementation of Directive 95/46/EC,

- (a) if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority, or
- (b) if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.

Article 9

Transfer of personal data to recipients, other than Community institutions and bodies, which are not subject to Directive 95/46/EC

1 Personal data shall only be transferred to recipients, other than Community institutions and bodies, which are not subject to national law adopted pursuant to Directive 95/46/EC, if an adequate level of protection is ensured in the country of the recipient or within the recipient international organisation and the data are transferred solely to allow tasks covered by the competence of the controller to be carried out.

2 The adequacy of the level of protection afforded by the third country or international organisation in question shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the recipient third country or recipient international organisation, the rules of law, both general and sectoral, in force in the third country or international organisation in question and the professional rules and security measures which are complied with in that third country or international organisation.

3 The Community institutions and bodies shall inform the Commission and the European Data Protection Supervisor of cases where they consider the third country or international organisation in question does not ensure an adequate level of protection within the meaning of paragraph 2.

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4 The Commission shall inform the Member States of any cases as referred to in paragraph 3.

5 The Community institutions and bodies shall take the necessary measures to comply with decisions taken by the Commission when it establishes, pursuant to Article 25(4) and (6) of Directive 95/46/EC, that a third country or an international organisation ensures or does not ensure an adequate level of protection.

6 By way of derogation from paragraphs 1 and 2, the Community institution or body may transfer personal data if:

- a the data subject has given his or her consent unambiguously to the proposed transfer; or
- b the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken in response to the data subject's request; or
- c the transfer is necessary for the conclusion or performance of a contract entered into in the interest of the data subject between the controller and a third party; or
- d the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims; or
- e the transfer is necessary in order to protect the vital interests of the data subject; or
- f the transfer is made from a register which, according to Community law, is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, to the extent that the conditions laid down in Community law for consultation are fulfilled in the particular case.

7 Without prejudice to paragraph 6, the European Data Protection Supervisor may authorise a transfer or a set of transfers of personal data to a third country or international organisation which does not ensure an adequate level of protection within the meaning of paragraphs 1 and 2, where the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.

8 The Community institutions and bodies shall inform the European Data Protection Supervisor of categories of cases where they have applied paragraphs 6 and 7.

SECTION 3

SPECIAL CATEGORIES OF PROCESSING

Article 10

The processing of special categories of data

1 The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited.

2 Paragraph 1 shall not apply where:

- a the data subject has given his or her express consent to the processing of those data, except where the internal rules of the Community institution or body provide that the

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prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his or her consent, or

- b processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of employment law insofar as it is authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof, or, if necessary, insofar as it is agreed upon by the European Data Protection Supervisor, subject to adequate safeguards, or
- c processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his or her consent, or
- d processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims, or
- e processing is carried out in the course of its legitimate activities with appropriate safeguards by a non-profit-seeking body which constitutes an entity integrated in a Community institution or body, not subject to national data protection law by virtue of Article 4 of Directive 95/46/EC, and with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of this body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects.

3 Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.

4 Subject to the provision of appropriate safeguards, and for reasons of substantial public interest, exemptions in addition to those laid down in paragraph 2 may be laid down by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or, if necessary, by decision of the European Data Protection Supervisor.

5 Processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or, if necessary, by the European Data Protection Supervisor, subject to appropriate specific safeguards.

6 The European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body.

SECTION 4

INFORMATION TO BE GIVEN TO THE DATA SUBJECT

Article 11

Information to be supplied where the data have been obtained from the data subject

1 The controller shall provide a data subject from whom data relating to himself/herself are collected with at least the following information, except where he or she already has it:

- a the identity of the controller;
- b the purposes of the processing operation for which the data are intended;

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- c the recipients or categories of recipients of the data;
- d whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply;
- e the existence of the right of access to, and the right to rectify, the data concerning him or her;
- f any further information such as:
 - (i) the legal basis of the processing operation for which the data are intended,
 - (ii) the time-limits for storing the data,
 - (iii) the right to have recourse at any time to the European Data Protection Supervisor,

insofar as such further information is necessary, having regard to the specific circumstances in which the data are collected, to guarantee fair processing in respect of the data subject.

2 By way of derogation from paragraph 1, the provision of information or part of it, except for the information referred to in paragraph 1(a), (b) and (d), may be deferred as long as this is necessary for statistical purposes. The information must be provided as soon as the reason for which the information is withheld ceases to exist.

Article 12

Information to be supplied where the data have not been obtained from the data subject

1 Where the data have not been obtained from the data subject, the controller shall at the time of undertaking the recording of personal data or, if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed, provide the data subject with at least the following information, except where he or she already has it:

- a the identity of the controller;
- b the purposes of the processing operation;
- c the categories of data concerned;
- d the recipients or categories of recipients;
- e the existence of the right of access to, and the right to rectify, the data concerning him or her;
- f any further information such as:
 - (i) the legal basis of the processing operation for which the data are intended,
 - (ii) the time-limits for storing the data,
 - (iii) the right to have recourse at any time to the European Data Protection Supervisor,
 - (iv) the origin of the data, except where the controller cannot disclose this information for reasons of professional secrecy,

insofar as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.

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2 Paragraph 1 shall not apply where, in particular for processing for statistical purposes or for the purposes of historical or scientific research, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by Community law. In these cases the Community institution or body shall provide for appropriate safeguards after consulting the European Data Protection Supervisor.

SECTION 5

RIGHTS OF THE DATA SUBJECT

Article 13

Right of access

The data subject shall have the right to obtain, without constraint, at any time within three months from the receipt of the request and free of charge from the controller:

- (a) confirmation as to whether or not data related to him or her are being processed;
- (b) information at least as to the purposes of the processing operation, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed;
- (c) communication in an intelligible form of the data undergoing processing and of any available information as to their source;
- (d) knowledge of the logic involved in any automated decision process concerning him or her.

Article 14

Rectification

The data subject shall have the right to obtain from the controller the rectification without delay of inaccurate or incomplete personal data.

Article 15

Blocking

1 The data subject shall have the right to obtain from the controller the blocking of data where:

- a their accuracy is contested by the data subject, for a period enabling the controller to verify the accuracy, including the completeness, of the data, or;
- b the controller no longer needs them for the accomplishment of its tasks but they have to be maintained for purposes of proof, or;
- c the processing is unlawful and the data subject opposes their erasure and demands their blocking instead.

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2 In automated filing systems blocking shall in principle be ensured by technical means. The fact that the personal data are blocked shall be indicated in the system in such a way that it becomes clear that the personal data may not be used.

3 Personal data blocked pursuant to this Article shall, with the exception of their storage, only be processed for purposes of proof, or with the data subject's consent, or for the protection of the rights of a third party.

4 The data subject who requested and obtained the blocking of his or her data shall be informed by the controller before the data are unblocked.

Article 16

Erasure

The data subject shall have the right to obtain from the controller the erasure of data if their processing is unlawful, particularly where the provisions of Sections 1, 2 and 3 of Chapter II have been infringed.

Article 17

Notification to third parties

The data subject shall have the right to obtain from the controller the notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking pursuant to Articles 13 to 16 unless this proves impossible or involves a disproportionate effort.

Article 18

The data subject's right to object

The data subject shall have the right:

- (a) to object at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of data relating to him or her, except in the cases covered by Article 5(b), (c) and (d). Where there is a justified objection, the processing in question may no longer involve those data;
- (b) to be informed before personal data are disclosed for the first time to third parties or before they are used on their behalf for the purposes of direct marketing, and to be expressly offered the right to object free of charge to such disclosure or use.

Article 19

Automated individual decisions

The data subject shall have the right not to be subject to a decision which produces legal effects concerning him or her or significantly affects him or her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him or her, such as his or her performance at work, reliability or conduct, unless the decision is expressly authorised pursuant to national or Community legislation or,

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if necessary, by the European Data Protection Supervisor. In either case, measures to safeguard the data subject's legitimate interests, such as arrangements allowing him or her to put his or her point of view, must be taken.

SECTION 6

EXEMPTIONS AND RESTRICTIONS

Article 20

Exemptions and restrictions

1 The Community institutions and bodies may restrict the application of Article 4(1), Article 11, Article 12(1), Articles 13 to 17 and Article 37(1) where such restriction constitutes a necessary measure to safeguard:

- a the prevention, investigation, detection and prosecution of criminal offences;
- b an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters;
- c the protection of the data subject or of the rights and freedoms of others;
- d the national security, public security or defence of the Member States;
- e a monitoring, inspection or regulatory task connected, even occasionally, with the exercise of official authority in the cases referred to in (a) and (b).

2 Articles 13 to 16 shall not apply when data are processed solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that there is clearly no risk of breaching the privacy of the data subject and that the controller provides adequate legal safeguards, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

3 If a restriction provided for by paragraph 1 is imposed, the data subject shall be informed, in accordance with Community law, of the principal reasons on which the application of the restriction is based and of his or her right to have recourse to the European Data Protection Supervisor.

4 If a restriction provided for by paragraph 1 is relied upon to deny access to the data subject, the European Data Protection Supervisor shall, when investigating the complaint, only inform him or her of whether the data have been processed correctly and, if not, whether any necessary corrections have been made.

5 Provision of the information referred to under paragraphs 3 and 4 may be deferred for as long as such information would deprive the restriction imposed by paragraph 1 of its effect.

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SECTION 7

CONFIDENTIALITY AND SECURITY OF PROCESSING

Article 21

Confidentiality of processing

A person employed with a Community institution or body and any Community institution or body itself acting as processor, with access to personal data, shall not process them except on instructions from the controller, unless required to do so by national or Community law.

Article 22

Security of processing

1 Having regard to the state of the art and the cost of their implementation, the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected.

Such measures shall be taken in particular to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing.

2 Where personal data are processed by automated means, measures shall be taken as appropriate in view of the risks in particular with the aim of:

- a preventing any unauthorised person from gaining access to computer systems processing personal data;
- b preventing any unauthorised reading, copying, alteration or removal of storage media;
- c preventing any unauthorised memory inputs as well as any unauthorised disclosure, alteration or erasure of stored personal data;
- d preventing unauthorised persons from using data-processing systems by means of data transmission facilities;
- e ensuring that authorised users of a data-processing system can access no personal data other than those to which their access right refers;
- f recording which personal data have been communicated, at what times and to whom;
- g ensuring that it will subsequently be possible to check which personal data have been processed, at what times and by whom;
- h ensuring that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- i ensuring that, during communication of personal data and during transport of storage media, the data cannot be read, copied or erased without authorisation;
- j designing the organisational structure within an institution or body in such a way that it will meet the special requirements of data protection.

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Article 23

Processing of personal data on behalf of controllers

- 1 Where a processing operation is carried out on its behalf, the controller shall choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by Article 22 and ensure compliance with those measures.
- 2 The carrying out of a processing operation by way of a processor shall be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:
 - a the processor shall act only on instructions from the controller;
 - b the obligations set out in Articles 21 and 22 shall also be incumbent on the processor unless, by virtue of Article 16 or Article 17(3), second indent, of Directive 95/46/EC, the processor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.
- 3 For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to the measures referred to in Article 22 shall be in writing or in another equivalent form.

SECTION 8

DATA PROTECTION OFFICER

Article 24

Appointment and tasks of the Data Protection Officer

- 1 Each Community institution and Community body shall appoint at least one person as data protection officer. That person shall have the task of:
 - a ensuring that controllers and data subjects are informed of their rights and obligations pursuant to this Regulation;
 - b responding to requests from the European Data Protection Supervisor and, within the sphere of his or her competence, cooperating with the European Data Protection Supervisor at the latter's request or on his or her own initiative;
 - c ensuring in an independent manner the internal application of the provisions of this Regulation;
 - d keeping a register of the processing operations carried out by the controller, containing the items of information referred to in Article 25(2);
 - e notifying the European Data Protection Supervisor of the processing operations likely to present specific risks within the meaning of Article 27.

That person shall thus ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations.

- 2 The Data Protection Officer shall be selected on the basis of his or her personal and professional qualities and, in particular, his or her expert knowledge of data protection.

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3 The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between his or her duty as Data Protection Officer and any other official duties, in particular in relation to the application of the provisions of this Regulation.

4 The Data Protection Officer shall be appointed for a term of between two and five years. He or she shall be eligible for reappointment up to a maximum total term of ten years. He or she may be dismissed from the post of Data Protection Officer by the Community institution or body which appointed him or her only with the consent of the European Data Protection Supervisor, if he or she no longer fulfils the conditions required for the performance of his or her duties.

5 After his or her appointment the Data Protection Officer shall be registered with the European Data Protection Supervisor by the institution or body which appointed him or her.

6 The Community institution or body which appointed the Data Protection Officer shall provide him or her with the staff and resources necessary to carry out his or her duties.

7 With respect to the performance of his or her duties, the Data Protection Officer may not receive any instructions.

8 Further implementing rules concerning the Data Protection Officer shall be adopted by each Community institution or body in accordance with the provisions in the Annex. The implementing rules shall in particular concern the tasks, duties and powers of the Data Protection Officer.

Article 25

Notification to the Data Protection Officer

1 The controller shall give prior notice to the Data Protection Officer of any processing operation or set of such operations intended to serve a single purpose or several related purposes.

2 The information to be given shall include:

- a the name and address of the controller and an indication of the organisational parts of an institution or body entrusted with the processing of personal data for a particular purpose;
- b the purpose or purposes of the processing;
- c a description of the category or categories of data subjects and of the data or categories of data relating to them;
- d the legal basis of the processing operation for which the data are intended;
- e the recipients or categories of recipient to whom the data might be disclosed;
- f a general indication of the time limits for blocking and erasure of the different categories of data;
- g proposed transfers of data to third countries or international organisations;
- h a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to Article 22 to ensure security of processing.

3 Any change affecting information referred to in paragraph 2 shall be notified promptly to the Data Protection Officer.

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Article 26

Register

A register of processing operations notified in accordance with Article 25 shall be kept by each Data Protection Officer.

The registers shall contain at least the information referred to in Article 25(2)(a) to (g). ^[X1]The registers may be inspected by any person directly or indirectly through the European Data Protection Supervisor.]

Editorial Information

- X1** Substituted by [Corrigendum to Regulation \(EC\) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data \(Official Journal of the European Union L 8 of 12 January 2001\)](#).

SECTION 9

PRIOR CHECKING BY THE EUROPEAN DATA PROTECTION SUPERVISOR AND OBLIGATION TO COOPERATE

Article 27

Prior checking

1 Processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes shall be subject to prior checking by the European Data Protection Supervisor.

- 2 The following processing operations are likely to present such risks:
- processing of data relating to health and to suspected offences, offences, criminal convictions or security measures;
 - processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct;
 - processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes;
 - processing operations for the purpose of excluding individuals from a right, benefit or contract.

3 The prior checks shall be carried out by the European Data Protection Supervisor following receipt of a notification from the Data Protection Officer who, in case of doubt as to the need for prior checking, shall consult the European Data Protection Supervisor.

4 The European Data Protection Supervisor shall deliver his or her opinion within two months following receipt of the notification. This period may be suspended until the European Data Protection Supervisor has obtained any further information that he or she may have requested. When the complexity of the matter so requires, this period may also be extended for

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a further two months, by decision of the European Data Protection Supervisor. This decision shall be notified to the controller prior to expiry of the initial two-month period.

If the opinion has not been delivered by the end of the two-month period, or any extension thereof, it shall be deemed to be favourable.

If the opinion of the European Data Protection Supervisor is that the notified processing may involve a breach of any provision of this Regulation, he or she shall where appropriate make proposals to avoid such breach. Where the controller does not modify the processing operation accordingly, the European Data Protection Supervisor may exercise the powers granted to him or her under Article 47(1).

5 The European Data Protection Supervisor shall keep a register of all processing operations that have been notified to him or her pursuant to paragraph 2. The register shall contain the information referred to in Article 25 and shall be open to public inspection.

Article 28

Consultation

1 The Community institutions and bodies shall inform the European Data Protection Supervisor when drawing up administrative measures relating to the processing of personal data involving a Community institution or body alone or jointly with others.

2 When it adopts a legislative proposal relating to the protection of individuals' rights and freedoms with regard to the processing of personal data, the Commission shall consult the European Data Protection Supervisor.

Article 29

Obligation to provide information

The Community institutions and bodies shall inform the European Data Protection Supervisor of the measures taken further to his or her decisions or authorisations as referred to in Article 46(h).

Article 30

Obligation to cooperate

At his or her request, controllers shall assist the European Data Protection Supervisor in the performance of his or her duties, in particular by providing the information referred to in Article 47(2)(a) and by granting access as provided in Article 47(2)(b).

Article 31

Obligation to react to allegations

In response to the European Data Protection Supervisor's exercise of his or her powers under Article 47(1)(b), the controller concerned shall inform the Supervisor of its views within a reasonable period to be specified by the Supervisor. The reply shall also include

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a description of the measures taken, if any, in response to the remarks of the European Data Protection Supervisor.

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