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THE EUROPEAN UNION**

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**NOTE**

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from: Presidency

to: Working Group on Information Exchange and Data Protection (DAPIX)  
5882/3/14 REV 3 DATAPROTECT 16 JAI 49 MI 94 DRS 17 DAPIX 10  
FREMP 15 COMIX 71 CODEC 233

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Subject: Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)  
- One-stop-shop mechanism

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Delegations find attached a revised Presidency proposal on the above.

The latest changes are marked in **bold underlining**.

16a) While this Regulation applies also to the activities of courts and other judicial authorities, Union or Member State law could, within the limits of this Regulation, specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of their judicial tasks. **Supervision of such data processing operations should be entrusted to specific bodies within the judicial system of the Member State, which should in particular control compliance with the rules of this Regulation, promote the awareness of the judiciary of their obligations under this Regulation and deal with complaints in relation to such processing.**

27) The main establishment of a controller in the Union should be the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union. In this case the latter should be considered as the main establishment. The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes (...) and means of processing through stable arrangements. This criterion should not depend on whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore not determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union and, if it has no central administration in the Union, the place where the main processing activities take place in the Union.

Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered as the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking.

- 95a) Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the duties conferred on it in accordance with this Regulation. This should cover in particular the processing in the context of the activities of an establishment of the controller or processor on the territory of its own Member State, processing affecting data subjects on its territory or processing carried out by a controller not established in the European Union when targeting data subjects residing in its territory. This should include dealing with complaints lodged by a data subject, conducting investigations on the application of the Regulation, promoting public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data.
- 96) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For that purpose, **this Regulation should oblige and empower** the supervisory authorities **to** co-operate with each other and the Commission, **without the need for any agreement between Member States on the provision of mutual assistance or on such cooperation.**
- 96a) Where the processing of personal data takes place in the context of the activities of an establishment of a controller or processor in the Union and the controller or processor is established in more than one Member State, or where the processing substantially affects or is likely to affect substantially data subjects in more than one Member State, one single supervisory should act as lead authority. Within its tasks to issue guidelines on any question covering the application of this Regulation, the European Data Protection Board may issue guidelines in particular on the criteria to be taken into account in order to ascertain whether the processing in question substantially affects data subjects in more than one Member State.
- A supervisory authority should not act as lead supervisory authority in local cases where the **controller or processor is established in more than one Member State, but the** subject matter **of the specific processing** concerns only processing carried out in a single Member State and involving only data subjects in that **single Member State, for example, where the subject matter concerns the processing of employees data in the specific employment context of a Member State.**

**The rules on the lead supervisory authority and the one-stop-shop mechanism should not apply** where the processing is carried out by public authorities and bodies of a Member State. In such cases the only supervisory authority competent to exercise the powers conferred to **it in accordance with this Regulation** should be the supervisory authority of **the Member State where the public authority or body is established.**

96b) **The lead authority should be competent to decide on measures applying the powers conferred on it in accordance with the provisions of this Regulation. In its capacity as lead authority, the supervisory authority should cooperate with the supervisory authorities concerned.**

96c) **The decision of the lead authority should be directed towards the main establishment of the controller or processor. The controller or processor should take the necessary measures to ensure the compliance with this Regulation and the implementation of the decision notified by the lead supervisory authority to the main establishment of the controller or processor as regards the processing activities in the context of all its establishments in the Union.**

97) In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have in each Member State the same duties and effective powers, including powers of investigation, **corrective powers** and sanctions, **and authorisation and advisory powers**, particularly in cases of complaints from individuals, **and to bring infringements of this Regulation to the attention of the judicial authorities** and/or engage in legal proceedings. Member States may specify other duties related to the protection of personal data under this Regulation. The powers of supervisory authorities (...) should be exercised in conformity with appropriate procedural safeguards set out in Union law and national law, **impartially, fairly and within a reasonable time. In particular each measure should be appropriate, necessary and proportionate in view of ensuring compliance with this Regulation, taking into account the circumstances of each individual case, respect the right of every person to be heard before any individual measure which would affect him or her adversely is taken and avoid superfluous costs and excessive inconveniences for the persons concerned. In particular, investigatory powers as regards access to premises should be exercised in accordance with specific requirements in national procedural law, such as the requirement to obtain a prior judicial authorisation.**

**Each legally binding measure of the supervisory authority should be in writing, be clear and unambiguous, indicate the supervisory authority which has issued the measure, the date of issue of the measure, bear the signature of the head or a member of the supervisory authority of a person authorised by him or her, give the reasons for the measure, and refer to the right of an effective remedy. This should not preclude additional requirements pursuant to national procedural law.**

97a) **Each supervisory authority should be competent to perform the duties and exercise the powers conferred to it on the territory of its own Member State, including in situations where the processing of a controller not established in the Union affects, within the scope of this Regulation, data subjects in that Member State. Without prejudice to the performance of the duties and exercise of the powers on the territory of its own Member, the supervisory authority should cooperate with each other in the cooperation and consistency mechanisms set out in this Regulation.**

98) **Every data subject should have the right to lodge a complaint with a single supervisory authority.** Each supervisory authority **to which a complaint has been lodged** should deal with **the** complaint and should investigate the matter **to the extent appropriate. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can be completed also electronically, without excluding other means of communication.**

The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject.

Where the supervisory authority to which the complaint has been lodged is not the competent supervisory authority, the competent supervisory authority should closely co-operate with the supervisory authority to which the complaint has been lodged according to the provisions on co-operation and consistency laid down in this Regulation. In such cases, the competent supervisory authority should, when taking measures intended to produce legal effects, including the imposition of administrative fines, take utmost account of the view of the supervisory authority to which the complaint has been lodged and which should remain competent to carry out any investigation on the territory of its own Member State in liaison with the competent supervisory authority.

**98a) The supervisory authority to which a complaint has been lodged should have the possibility to seek an amicable settlement also in cases where the controller or processor is established in more than one Member State and the processing as such does not only concern a single Member State, but the subject matter of the complaint concerns only processing activities of an establishment of the controller or processor in one single Member State and the matter does not affect other data subjects.**  
**Where a complaint is considered inadmissible or unfounded by the supervisory to which the complaint has been lodged and, where applicable, by the lead supervisory authority, the supervisory to which the complaint has been lodged should reject or dismiss the complaint and notify that decision to the complainant. A legal remedy of the complainant against such rejection or dismissal of his/her complaint should be directed against the supervisory authority to which the complaint has been lodged in the courts of the same Member State where that supervisory authority is established.[...]**

102) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This mechanism should in particular apply where a supervisory authority intends to adopt measure intended to produce legal effects as regards processing operations which substantially affect a significant number of data subjects in several Member States (...). It should also apply where any supervisory authority concerned or the Commission requests that such matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

- 106) The application of this mechanism should be a condition for the (...) lawfulness of a (...) measure intended to produce legal effects by a supervisory authority in those cases where its application is mandatory. In other cases of cross-border relevance, the consultation mechanism between the lead supervisory authority and supervisory authorities concerned should be applied and mutual assistance and joint operations might be carried out between the supervisory authorities concerned on a bilateral or multilateral basis without triggering the consistency mechanism.
- 113) Each natural or legal person should have the right to an effective judicial remedy against a decision of a supervisory authority which produces legal effects concerning this person. Such decisions concern in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, this right does not encompass other measures of supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established and shall be conducted in accordance with the national procedural law of that Member State. Those courts should exercise full jurisdiction which should include jurisdiction to examine all questions of fact and law relevant to the dispute before it. Where a complaint has been rejected or dismissed by a supervisory authority, the complainant may bring proceedings to the courts in the same Member State.
- 114) (...)
- 115) (...)
- 116) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where the data subject resides, unless the controller is a public authority acting in the exercise of its public powers.
- 117) (...).

## Article 4

### Definitions

For the purposes of this Regulation: [...]

(13) ‘main establishment’ means<sup>1</sup>

- as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes (...) and means of the processing of personal data are taken in **another** establishment of the controller in **another Member State**. In this case the latter shall be considered as the main establishment. If no decisions as to the purposes (...) and means of the processing of personal data are taken in the Union, (...) the establishment of the controller in the Union where the main processing activities (...) take place ;
- as regards a processor with establishments in more than one Member State, the place of its central administration in the Union and, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place;
- Where the controller exercises also activities as a processor, (...) the main establishment of the controller shall be considered as the main establishment for the supervision of processing activities;
- Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking shall be considered as the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking;

[...]

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<sup>1</sup> DE, supported by AT, remarked that, in view technological developments, it was very difficult to pinpoint the place of processing and that it was very tricky to establish a main establishment with far-reaching legal consequences. EE also thought more clarity was required. DE, CZ, SI and PL expressed a preference for a formal criterion, which referred to the incorporation of the controller.



**(19a) ‘supervisory authority concerned’ means a supervisory authority which is concerned by the processing, because the controller or processor is established on the territory of the Member State of that supervisory authority or because data subjects residing in this Member State are likely to be substantially affected by the processing.**

*Article 51*

**Competence**<sup>2 3</sup>

1. Each supervisory authority shall (...) be competent on the territory of its own Member State to (...) perform the duties and to exercise the powers conferred on it in accordance with this Regulation (...)<sup>4</sup>
  - a) (...)
  - b) (...)
  - c) (...)
- 1a. (...)
- 1b. (...)

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<sup>2</sup> COM reservation. Scrutiny reservation on the one-stop-shop mechanism by DE, DK, EE, FR, MT, NL, PT, RO and UK. Some delegations (BG, CY, DE, GR, NL and LU) supported one-stop-shop principle, but had many questions of understanding as to its practical implementation. Other delegations (BE, CZ, ES, FR, HU, IT, AT, PT, RO and SI) had a more critical attitude and entered a reservation. Several referred to the problem of proximity. One of the main questions was whether the allocation of competence to the DPA of the main establishment was exclusive and whether it also implied a rule of applicable law (DE, ES). In this regard the issue of divergent MS case law was mentioned. A practical question was that of the language regime which would govern the co-operation between the DPAs and the communication with the controllers and the data protection. All delegations seemed to agree that at any rate the establishment of such a rule could not lead to the exercise of investigative powers by the DPA of one authority in the territory of another Member State.

<sup>3</sup> NL thought all jurisdiction rules should be set out in this article, covering both domestic and cross-border cases and private as well as public controllers (and processors). At the request of several delegations, COM indicated that the main-establishment rule under this paragraph would not apply to controllers established outside the EU. In the view of the Commission, this constituted an incentive for non-EU controllers to establish themselves in the EU in order to avail themselves of the benefit of the main establishment rule.

<sup>4</sup> DK, DE and EE queried whether the decisions of this DPA would also be binding on controllers outside that MS. Constitutional reservation by DK.

- 1c. (...)
- 2. (...)
- 2a. (...)
- 2b. (...)
- 3. Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity<sup>5</sup>. **Supervision of such processing operations shall be entrusted to specific bodies, which form part of the judiciary and are designated by the law of the Member State.**

*Article 51a*

***Competence of the lead supervisory authority***

- 1. **Without prejudice to Article 51, where the processing of personal data takes place in the context of the activities of an establishment of a controller or processor in the Union and the controller or processor is established in more than one Member State, the supervisory authority for the main establishment of the controller or the processor shall act as lead supervisory authority and shall be competent to decide on measures applying the powers<sup>6</sup> referred to in paragraphs 1, 1b and 1c of Article 53 in accordance with the cooperation procedure foreseen in Articles 54a and 54b.**

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<sup>5</sup> FR, HU, NL, RO and UK scrutiny reservation. DE suggested adding " other matters assigned to courts for independent performance. The same shall apply insofar as judicially independent processing has been ordered, approved or declared admissible", as the derogation must apply whenever courts' work falls within the scope of their institutional independence, which is not only the case in the core area of judicial activity but also in areas where courts are assigned tasks specifically for independent performance.

<sup>6</sup> NL scrutiny reservation.

2. Without prejudice to Article 51, where the processing of personal data takes place in the context of the activities of one establishment of a controller or processor in the Union and the processing substantially affects<sup>7</sup> or is likely to affect substantially data subjects residing in more than one Member State, the supervisory authority of that establishment shall act as lead authority and shall be competent to decide on measures applying the powers referred to in paragraphs 1, 1b and 1c of Article 53 in accordance with Articles 54a and 54b.
3. Paragraph 1 shall not apply where the processing is carried out in a single Member State and involves only data subjects in that single Member State.
4. This article shall not apply where the processing is carried out by public authorities and bodies of a Member State.

### *Article 51b*

#### *Identification of the supervisory authority competent for the main establishment*

1. Any controller or processor which carries out processing of personal data in the context of the activities of an establishment in the Union and is established in more than one Member State shall indicate to the supervisory authority of the Member State where its main establishment is located and the scope of its processing activities in relation to which the decisions on the purposes and means of the processing of personal data are taken at the main establishment. The supervisory authority shall communicate this information to the European Data Protection Board.
- 1a. When indicating its main establishment pursuant to paragraph 1a, the controller or processor shall list distinctly all its establishments in the Union for which the decisions on the purposes and means of processing are taken at the main establishment and shall, on the request of the supervisory authority (of 51b (1) ), provide evidence of the existence of the main establishment in the place specified.

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<sup>7</sup> MT and SE thought this criterion was difficult (too subjective) to apply in practice.

- 1b. The **supervisory** authority shall **verify the existence of the main establishment in the place specified and notify the outcome of its verification to the controller or processor,** to the other supervisory authorities concerned **and to the European Data Protection Board.**
2. Where there are conflicting views between the supervisory authorities concerned on which supervisory authority is(...) **that for the main establishment,** any of the supervisory authorities concerned may **refer** the matter to the European Data Protection Board. The European Data Protection Board shall issue an opinion on the identification of the supervisory authority **for** the main establishment in accordance with Article 58.

*Article 51c*

**One-stop shop register**<sup>8</sup>

1. **The European Data Protection Board shall keep a public register for consultation on confirmed main establishments, which shall be electronically accessible to anyone free of charge.**
2. **The European Data Protection Board shall indicate in this public register the main establishment of the controller or processor and the establishments in the Union for which the decisions on the purposes and means of processing are taken.**

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<sup>8</sup> ES remarked that this would be very costly

*Article 52*

*Duties*<sup>9</sup>

1. Without prejudice to other duties set out under this Regulation<sup>10</sup>, each supervisory authority shall on its territory<sup>11</sup>:
  - (a) monitor and enforce the application of this Regulation;
  - (aa) promote public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention;
  - (ab) **advise the national parliament, the government, or, in accordance with national law, other institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data**<sup>12</sup>;
  - (ac) promote the awareness of controllers and processors of their obligations under this Regulation;
  - (ad) upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end;.

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<sup>9</sup> DE, IT, AT, PT and SE scrutiny reservation. UK thinks the term 'functions' rather than 'duties' should be used.

<sup>10</sup> New text as paragraphs (f) to (i) have been deleted as these duties were already laid down elsewhere in the Regulation.

<sup>11</sup> A recital should be drafted in order to clarify that Member States may allocate other tasks to DPAs. DE thought it preferable to use the words 'at least' in the chapeau. See also new point (g) in paragraph 1.

<sup>12</sup> NL reservation.

- (b) deal with complaints<sup>13</sup> lodged by a data subject, or body, organisation or association representing a data subject in accordance with Article 73<sup>14</sup>, and investigate, to the extent appropriate, the subject matter of the complaint and inform the data subject or the body, organisation or association of the progress and the outcome of the investigation within a reasonable period<sup>15</sup>, in particular if further investigation or coordination with another supervisory authority is necessary;
- (c) **cooperate** with, **including sharing information**, and provide mutual assistance to other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation;
- (d) conduct investigations on the application of this Regulation either on its own initiative, **in response to a complaint** or on the basis of a information received from another supervisory authority or other public authority;
- (e) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;
- (f) **adopt standard contractual clauses referred to in Article 26(2c)**;
- (fa) **establish and make a list in relation to the requirement for data protection impact assessment pursuant to Article 33(2a)**;
- (g) **give advice on the processing operations referred to in Article 34(3) and authorise processing referred to in Article 34(7a)**;
- (ga) **encourage the drawing up of codes of conduct pursuant to Article 38**;
- (gb) **promote the establishment of data protection certification mechanisms and of data protection seals and marks**;

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<sup>13</sup> IT scrutiny reservation on the term complaint; UK thought the emphasis should be on complaint-resolution.

<sup>14</sup> BE suggested limiting this to the data subject itself.

<sup>15</sup> IT suggested fixing a 10-weeks period for dealing with the complaint.

- (gc) **carry out a periodic review of certifications issued in accordance with Article 39(4);**
  - (gd) (...);
  - (h) **give an opinion on draft codes of conduct pursuant to Article 39a;**
  - (ha) **conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 38a and of a certification body pursuant to Article 39a;**
  - (hb) **authorise contractual clauses referred to in Article 42(2)(d);**
  - (i) **approve binding corporate rules pursuant to Article 43;**
  - (j) contribute to the activities of the European Data Protection Board;
  - (k) fulfil any other duties related to the protection of personal data.
2. (...).
3. (...).
4. Each supervisory authority shall facilitate the submission of complaints referred to in point (b) of paragraph 1, by measures such as providing a complaint submission form which can be completed **also** electronically, without excluding other means of communication.
5. The performance of the duties of each supervisory authority shall be free of charge for the data subject and for the data protection officer.
6. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may refuse to act on the request<sup>16</sup>. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request<sup>17</sup>.

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<sup>16</sup> EE pointed out that under its constitution this required an act of parliament. NL and RO also thought this should be left to Member States.

<sup>17</sup> DE, NL and SE reservation: this could be left to general rules.

## Article 53

### Powers<sup>18 19</sup>

1. Each Member State shall provide by law that its supervisory authority shall have at least<sup>20</sup> the following investigative powers:
  - (a) to order the controller and the processor<sup>21</sup>, and, where applicable, the **controller's** representative to provide any information it requires for the performance of its duties;
  - (aa) to carry out **systematic investigations in the form of** data protection audits<sup>22</sup>;

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<sup>18</sup> DE, NL, RO, PT and SE scrutiny reservation; SE thought this list was too broad. Some Member States were uncertain (CZ, RO and UK) or opposed (DE, DK, NL and IE) to categorising the DPA powers according to their nature. DK has raised serious constitutional concerns -based on the understanding that a decision by a “lead authority” in one Member State would be directly binding for the concerned establishments in all Member States. There is no problem if there were to be no doubt that a decision by the “lead authority” should be directed towards the “main establishment” and should only be binding for this establishment. It would then be for the “main establishment” – e.g. through internal business/cooperation rules – to implement the decision in subsidiaries in other Member States. If it is the case that a decision by a “lead authority” in another Member State is not to be binding for e.g. an establishment in Denmark, Denmark will not have a constitutional problem with the one-stop-shop principle. In this case the principle would not entail the transfer of powers from Danish authorities to authorities in other Member States.

<sup>19</sup> Several Member States (DE, FR, SI) stated that it was unacceptable that the supervisory authority would be able to exercise these powers vis-à-vis public authorities. DE thought a distinction should be drawn between powers with regard to public and non-public bodies. Direct powers of instruction in respect of public bodies subject to supervisory and judicial control, which might therefore lead to conflicts, would be problematic for Germany. Moreover, consideration also needs to be given to the delimitation between this proposal and the proposal for a Directive on police and judicial affairs, which accords fewer powers to the supervisory authorities in some respects.

<sup>20</sup> Further to BG suggestion, supported by EE, IT, NL, to make this an indicative list. RO argued in favour of the inclusion of an explicit reference to the power of DPAs to issue administrative orders regarding the uniform application of certain data protection rules. COM and ES scrutiny reservation on 'at least' in paragraphs 1 and 1a.

<sup>21</sup> NL thought that all the powers listed in para. 1 should also be available vis-à-vis others than controllers and processors.

<sup>22</sup> CZ, IT, PL and SK scrutiny reservation. CZ and PL pleaded for a recital explaining that audit could be understood as inspection. NL indicated that such audits could also be carried out by an external office, but the current drafting does not preclude this.



- (ab) to carry out a periodic review on certifications issued pursuant to Article 39(4);**
  - (b) (...)
  - (c) (...)
  - (d) to notify the controller or the processor of an alleged infringement of this Regulation<sup>23</sup> (...);
  - (da) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its duties;
  - (db) to obtain access to any premises of the controller and the processor , including to any data processing equipment and means, **in conformity with Union law or Member State procedural law.**
- 1a. (...).
- 1b. Each Member State shall provide by law that its supervisory authority shall have the following corrective powers:
- (a) to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;
  - (b) to issue reprimands<sup>24</sup> to a controller or processor where processing operations have infringed provisions of this Regulation<sup>25</sup>;
  - (c) (...);
  - (ca) to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation<sup>26</sup>;

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<sup>23</sup> BE suggested adding the power to oblige the controller to communicate the personal data breach to the data subject.

<sup>24</sup> EE, IT, PL, SE and SK scrutiny reservation.

<sup>25</sup> PL scrutiny reservation on points (a) and (b).

<sup>26</sup> NL queried whether it would possible to impose penalties in case of non-compliance (*astreinte/dwangsom*)

- (d) to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period; **in particular** by ordering the rectification, restriction or erasure of data pursuant to Articles 16, **17 and 17a** and the notification of such actions to recipients to whom the data have been disclosed pursuant to Articles 17(2a) and 17b;
  - (e) to impose a temporary or definitive limitation on processing<sup>27</sup>;
  - (f) to order the suspension of data flows to a recipient in a third country or to an international organisation<sup>28</sup>;
  - (g) to impose an administrative fine pursuant to Articles 79 and 79a, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case.
- 1c. Each Member State shall provide by law that its supervisory authority shall have the following authorisation **and advisory** powers:
- (a) to advise the controller in accordance with the prior consultation procedure referred to in Article 34<sup>29</sup>,
  - (aa) to issue opinions to the national parliament, the Member State government or, in accordance with Member State law, or, in accordance with national law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data;**
  - (ab) to authorise processing referred to in Article 34(7a);**
  - (ac) to issue an opinion on the draft codes of conduct pursuant to Article 38(2);**
  - (b) authorise standard data protection clauses referred to in point (c) of Article 42(2);

<sup>27</sup> NL scrutiny reservation. The word 'limitation' may accommodate concerns relating to the compatibility with the freedom of expression.

<sup>28</sup> SK reservation.

<sup>29</sup> NL scrutiny reservation. This was placed in the wrong category.

- (c) authorise contractual clauses referred to in point (d) of Article 42(2);
- (d) approve binding corporate rules pursuant to Article 43.
- 2. The procedure for exercising the powers referred to in paragraphs 1, 1b and 1c shall be laid down in Member State law. (...)
- 3. Each Member State shall provide by law that its supervisory authority shall have the power to bring infringements of this Regulation to the attention of the judicial authorities **and/or, where appropriate, to commence or engage otherwise** in legal proceedings<sup>30</sup>, in order to enforce the provisions of this Regulation<sup>31</sup>.
- 4. (...)
- 5. (...)

*Article 53a*

**Exercise of powers by the supervisory authority**

The exercise of the powers conferred on the supervisory authority pursuant to Article 53 shall be subject to appropriate safeguards, including effective judicial remedy and due process, set out in Union and Member State law **in accordance with the Charter of Fundamental Rights of the European Union.**<sup>32</sup>

- 2. (...)
- 3. (...)

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<sup>30</sup> DE, FR and RO reservation on proposed DPA power to engage in legal proceedings. UK scrutiny reservation. CZ reservation on the power to bring this to the attention of the judicial authorities.

<sup>31</sup> DE thought para. 3 and 4 should be deleted.

<sup>32</sup> CY, ES, FR, IT and RO thought this could be put in a recital as these obligations were binding upon the Member States at any rate. COM could accept this.

## CHAPTER VII<sup>33</sup>

### CO-OPERATION AND CONSISTENCY

#### SECTION 1

#### CO-OPERATION

##### *Article 54a*

##### **Cooperation between the lead supervisory authority and other supervisory authorities concerned**<sup>34</sup>

1. In the cases referred to in paragraphs 1 and 2 of Article 51a, (...) the lead supervisory authority (...) shall cooperate with the supervisory authorities concerned by the processing in question in accordance with this article and with Article 54b in an endeavour to reach consensus (...). (...)
- 1a. **Each supervisory authority concerned shall inform the lead supervisory authority on a case related to processing referred to in paragraph 1 or 2 of Article 51a. Where the supervisory authority concerned considers a measure intended to produce legal effects pursuant to paragraphs 1, 1b and 1c of Article 53 as appropriate in view of the processing in question, it shall refer the matter to the lead supervisory authority.**
2. (...) The lead supervisory authority shall, without delay, **further investigate the subject matter and** communicate the relevant information on the matter to the supervisory authorities concerned and shall, **where it considers a measure referred to in paragraph 1a as appropriate, draw a draft decision on such measure and submit it to all supervisory authorities concerned for their opinion and take due account of the views of those supervisory authorities.**

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<sup>33</sup> AT and FR scrutiny reservation on Chapter VII.

<sup>34</sup> BE, CZ, CY, DE, EE, FR, FI, IE, LU, RO, PT and NL scrutiny reservation. IE pointed out that in the case of personal data processed by social media or other internet platforms, all 28 MS DPAs would be 'concerned'. LU and NL doubted that one DPA concerned would be sufficient to trigger the consistency mechanisms. BE, FR, PL and LU expressed a preference for amicable settlements.

- a) (...)
  - b) (...)
  - c) (...)
- 2a. **The lead supervisory authority shall adopt and serve the decision to the main establishment or single establishment of the controller or processor on the territory of its Member State. The controller or processor shall take the necessary measures to ensure the compliance with this Regulation and the implementation of the decision served by the lead supervisory authority pursuant to paragraph 1a as regards the processing activities in the context of all its establishments in the Union. The controller or processor shall notify such measures to the lead authority.**
- 2b. The lead supervisory authority may request at any time other concerned supervisory authorities to provide mutual assistance pursuant to Article 55, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.
3. Where any of the supervisory authorities concerned **expresses a reasoned objection [and]** within a period of four weeks after having been consulted **in accordance with** paragraph 2 the draft measure **the lead supervisory** authority shall submit the matter to the consistency mechanism referred to in Article 57. Where a supervisory authority concerned has not objected within this period, it is deemed to be in agreement with the draft **decision**.
4. (...)
- 4a. (...)
- 4b. **Where, in exceptional circumstances,** a concerned supervisory authority **has reasons to consider** that there is an urgent need to act in order to protect the interests of data subjects, the urgency procedure referred to in Article 61 shall apply.
5. The **lead** supervisory authority and the supervisory authorities concerned shall supply the information required under this Article **and under Article 54b** to each other by electronic means, using a standardised format.

*Article 54b*

*Cooperation on complaints lodged to a supervisory authority*

1. Where, in a case referred to in paragraph 1 or 2 of Article 51a, a complaint has been lodged in accordance with Article 73(1) to a supervisory authority other than the lead supervisory authority, the supervisory authority to which the complaint has been lodged shall, without prejudice to point (b) of Article 52(1), refer the matter to the lead supervisory authority.
  
2. Where paragraph 1 or 2 of Article 51a applies, but the subject matter of the complaint concerns only processing activities of an establishment of the controller or processor in one single Member State and the matter does not affect other data subjects (...) the supervisory authority to which the complaint has been lodged may, where appropriate, seek an amicable settlement of the complaint between the data subject and the controller or processor and inform the lead supervisory authority thereof. Where such amicable settlement cannot be reached or where such an amicable settlement would not be appropriate, the supervisory authority to which the complaint has been lodged shall refer the matter and the result of its related investigations to the lead supervisory authority, which shall act pursuant to paragraph 2 of Article 54a. 3. When referring the matter pursuant to paragraph 1 or 2 to the lead supervisory authority, the supervisory authority to which the complaint has been lodged may submit a draft decision to the lead supervisory authority. Where the lead supervisory authority does not act on expresses its reasoned objection with the draft decision within a period of four weeks after having received the draft decision, the supervisory authority, to which the complaint has been lodged shall submit the matter to European Data Protection Board under the consistency mechanism referred to in Article 57, and, in case of disagreement with the lead supervisory authority, give reasons why not following the opinion of the lead supervisory authority.

4. Where the supervisory authority to which the complaint has been lodged considers the complaint as **inadmissible or unfounded**, it shall notify this to the lead supervisory authority. Where the lead supervisory authority objects to such finding, it **shall** refer the case to the consistency mechanism within two weeks after having received the notification, **giving reasons why not following the opinion of the supervisory authority to which the complaint has been lodged**. Where **the lead** supervisory authority concerned has not objected within this period, it is deemed to be in agreement with the **finding that the complaint is considered inadmissible or unfounded**.
5. Where the lead supervisory authority and the supervisory **authority** to which the complaint has been lodged, have reached agreement that the complaint is **inadmissible or unfounded**, the supervisory authority to which the complaint has been lodged, shall **reject or dismiss** the complaint and notify the **decision on the rejection or the dismissal** to the complainant. **In such case, the complainant shall have a legal remedy against that decision pursuant to paragraphs 1 and 3 of Article 74 before the courts of the same Member State where the supervisory authority is located to which the complaint has been lodged**.
6. **Where the lead supervisory authority acts on the complaint and takes a decision referred to in paragraph 1a of Article 54a against the controller or processor**, the supervisory authority to which a complaint has been lodged shall inform the data subject of **that decision**.

Article 55

***Mutual assistance***<sup>35</sup>

1. Supervisory authorities shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and investigations. (...)
2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without undue delay and no later than **four weeks**<sup>36</sup> after having received the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation (...).
3. The request for assistance shall contain all the necessary information<sup>37</sup>, including the purpose of the request and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.
4. <sup>38</sup>A supervisory authority to which a request for assistance is addressed may not refuse to comply with it unless:

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<sup>35</sup> DE, NL SE and UK scrutiny reservation. Several other delegations indicated that further clarity was required on this fundamental Article and the concept of mutual assistance, and announced text proposals: EE pleaded for much more detailed rules on mutual assistance, as is already the case in civil and criminal law. AT, supported by DE, declared that it had no specific problem with this Article, but that, in general, there was a need to follow developments in relation to CoE Convention No. 108.

<sup>36</sup> ES had suggested reducing it to 15 days. PT supported the suggestion of two weeks, with a possibility of adding more time, if needed. RO, on the other hand, found one month too short, and requested SE remarked that this timeline might be unrealistic in some cases. COM indicated that it was only a deadline for replying, but that paragraph 5 allowed longer periods for executing the assistance requested. UK requested a timetable, indicating deadlines.

<sup>37</sup> EE and SE scrutiny reservation.

<sup>38</sup> SE indicated further scrutiny was required as to whether other grounds of refusal were required. UK thought that this paragraph was drafted in much too absolute a fashion.



- (a) it is not competent for the subject-matter of the request or for the measures it is requested to execute<sup>39</sup>; or
- (b) compliance with the request would be incompatible with the provisions of this Regulation or with Union or Member State law to which the supervisory authority receiving the request is subject.
5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress or the measures taken in order to respond to the request. In cases of a refusal under paragraph 4, it shall explain its reasons for refusing the request<sup>40</sup>.
6. Supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means<sup>41</sup>, using a standardised format.
7. No fee shall be charged for any action taken following a request for mutual assistance. Supervisory authorities may agree with other supervisory authorities rules for indemnification by other supervisory authorities for specific expenditure arising from the provision of mutual assistance in exceptional circumstances<sup>42</sup>.
8. Where a supervisory authority does not provide the information referred to in paragraph 5 within four weeks of receiving the request of another supervisory authority, the requesting supervisory authority may adopt a provisional measure<sup>43</sup> on the territory of its Member State in accordance with Article 51(1) and shall submit the matter to the European Data Protection Board and the Commission in accordance with the consistency mechanism referred to in Article 57<sup>44</sup>.

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<sup>39</sup> Several delegations stressed the importance of establishing which is the competent DPA: DE, EE, SE, SI, NL and IT asked for further clarification.

<sup>40</sup> RO scrutiny reservation.

<sup>41</sup> PT (supported by RO) suggested adding "or other means if for some reason, electronic means are not available, and the communication is urgent".

<sup>42</sup> PT, UK and DE asked for clarification in relation to the resources needed / and estimate of costs.

<sup>43</sup> LU requested more clarification with regard to what would happen if this provisional measure were not confirmed.

<sup>44</sup> EE, FR, RO, and UK reservation. DE scrutiny. UK did not find the drafting sufficiently clear, for instance regarding which authority would be competent and action on other Member States territory. COM specified that this Article would apply specifically in bilateral relations (whereas Article 56 would cover joint operations), the underlying philosophy being to avoid extraterritorial activity.

9. The supervisory authority shall specify the period of validity of such a provisional measure which shall not exceed three months<sup>45</sup>. The supervisory authority shall, without delay, communicate such a measure, together with its reasons for adopting it, to the European Data Protection Board and to the Commission in accordance with the consistency mechanism referred to in Article 57.
10. The Commission may specify the format and procedures for mutual assistance referred to in this article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2)<sup>46</sup>.

#### *Article 56*

#### ***Joint operations of supervisory authorities***<sup>47</sup>

1. The supervisory authorities may, where appropriate, conduct joint operations, including joint investigations and joint enforcement measures in which members or staff from other Member States' supervisory authorities are involved.

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<sup>45</sup> DE asked for deletion of this deadline; the measure should be withdrawn if the conditions for imposing it were no longer fulfilled.

<sup>46</sup> DE, IT, EE, CZ and NL reservation. EE questioned whether implementing acts were necessary for this purpose. ES reminded about its proposal for an Article 55a.

<sup>47</sup> IT requested a specification in this Article that this was also about multilateral cooperation. FR asked for a clearer distinction between Articles 55 and 56. DE, EE, PT and UK scrutiny reservation. Several delegations (DE, LV, NL, SE, IT, UK) supported the idea of joint operations, but thought more details needed to be clarified. DE and EE referred to a criminal law model of a joint investigation team. LU indicated it was not convinced of the added value of joint investigations. UK requested to make sure that these mechanisms would work in practice and drew the attention to the fact that paragraphs 1 and 3 were discretionary, whereas paragraph 2 was binding, and that this was confusing and potentially contradictory.

2. In cases where the controller or processor has establishments in several Member States or where [a significant number of <sup>48</sup>] data subjects in more than one Member State are likely to be substantially affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in the joint operations, as appropriate. The competent supervisory<sup>49</sup> authority shall invite the supervisory authority of each of those Member States to take part in the joint operations concerned and respond **without delay** to the request of a supervisory authority to participate<sup>50</sup>.
3. A supervisory authority may, in compliance with its own Member State law, and with the seconding supervisory authority's authorisation, confer powers, including investigative powers on the seconding supervisory authority's members or staff involved in joint operations or, in so far as the **law of the Member State of the** host supervisory authority permits, allow the seconding supervisory authority's members or staff to exercise their investigative powers in accordance with the **law of the Member State of the** seconding supervisory authority. Such investigative powers may be exercised only under the guidance and in the presence of members or staff of the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the host supervisory authority's national law. (...) <sup>51</sup>
- 3a. Where, in accordance with paragraph 1, staff of a **seconding** supervisory authority are operating in another Member State, the Member State of the **host** supervisory authority shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.

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<sup>48</sup> COM reservation; more criteria should be added IT, supported by FR, BE and CZ suggested stressing the multilateral aspect by adding text.

<sup>49</sup> LU asked for a clarification of who would be the lead authority. UK stated that it seemed like a mix of Art. 51(1) and 51(2) competences.

<sup>50</sup> SE entered a favourable scrutiny reservation on this paragraph.

<sup>51</sup> DE, LU, PT and COM scrutiny reservation on the deletion of this last phrase.

- 3b. The Member State in whose territory the damage was caused shall make good such damage under the conditions applicable to damage caused by its own staff. The Member State of the **seconding** supervisory authority whose staff **has** caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
- 3c. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3b, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement of damages [it has sustained] from another Member State<sup>52</sup>.
4. (...)
5. <sup>53</sup>Where a joint operation is intended and a supervisory authority does not comply within one month with the obligation laid down in the second sentence of paragraph 2, the other supervisory authorities may adopt a provisional measure on the territory of its Member State in accordance with Article 51(1).
6. The supervisory authority shall specify the period of validity of a provisional measure referred to in paragraph 5, which shall not exceed three months. The supervisory authority shall, without delay, communicate such a measure, together with its reasons for adopting it, to the European Data Protection Board and to the Commission in accordance with the consistency mechanism referred to in Article 57.

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<sup>52</sup> Inspired by Article 3 of the Council Framework Decision of 13 June 2002 on joint investigation teams. UK reservation on paras. 3a, 3b and 3c.

<sup>53</sup> NL asked whether the measures of paragraphs 5 and 6 were really necessary. EE suggested a merger of the two paragraphs.

**SECTION 2**  
**CONSISTENCY<sup>54</sup>**

*Article 57*

***Consistency mechanism<sup>55</sup>***

1. For the purpose set out in Article 46(1a), the supervisory authorities shall co-operate with each other through the consistency mechanism as set out in this section<sup>56</sup>.
  - 1a. (...)
  - 1b. (...)
2. The **competent** supervisory authority which intends to adopt a measure aimed at producing effects in more than one Member State, shall communicate the draft measure to the European Data Protection Board and the Commission, when the measure:
  - (a) (...);
  - (b) (...);
  - (c) aims at adopting a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 33(2b); or
  - (ca) concerns a matter pursuant to Article 38(2b) whether a draft code of conduct or an amendment or extension to a code of conduct is in compliance with this Regulation;

or

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<sup>54</sup> BE, IT, SK and SI scrutiny reservation. BE reservation on the time required for a consistency mechanism procedure. DE parliamentary reservation and BE and UK reservation on the role of COM in the consistency mechanism.

<sup>55</sup> EE, FI, LU, NL and UK scrutiny reservation.

<sup>56</sup> CZ, DE, ES thought that supervisory authorities of third countries for which there is an adequacy decision should be involved in the consistency mechanism; if third countries participated in the consistency mechanism, they would be bound by uniform implementation and interpretation.

- (cb) aims to approve the criteria for accreditation of a body pursuant to paragraph 3 of Article 38a or a certification body pursuant to paragraph 3 of Article 39a;
- (d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or
- (e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or
- (f) aims to approve binding corporate rules within the meaning of Article 43.

**2a. Where, in a case referred to in paragraph 3 of Article 54a, expresses a reasoned objection to a draft decision by a supervisory authority concerned pursuant to, the lead supervisory authority shall communicate the matter to the European Data Protection Board and to the Commission.**

**2b. Where, in a case referred to in paragraphs 3 or 4 of Article 54b, the lead supervisory authority does not act or not agree on a draft decision or objects the finding that a complaint is considered inadmissible or unfounded, the supervisory authority to which the complaint has been lodged shall communicate the matter to the European Data Protection Board and to the Commission.**

**2c. Where, in a case referred to in paragraph 2 of Article 51b, there are conflicting views on the competence of the supervisory authority for the main establishment, any of the supervisory authorities concerned may shall communicate the matter to the European Data Protection Board and to the Commission.**

3. Where the competent supervisory authority does not submit a draft measure referred to in paragraphs 2, 2a, 2b and 2c to the Board or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56, any supervisory authority concerned<sup>57</sup>, the European Data Protection Board or the Commission may request that such matter shall be communicated to the European Data Protection Board<sup>58</sup>.
4. (...)
5. Supervisory authorities and the Commission shall electronically communicate to the European Data Protection Board, using a standardised format any relevant information, including as the case may be a summary of the facts, the draft measure, the grounds which make the enactment of such measure necessary, and the views of other supervisory authorities concerned.
6. The chair of the European Data Protection Board shall without undue delay electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it using a standardised format. The secretariat of the European Data Protection Board shall, where necessary, provide translations of relevant information.

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<sup>57</sup> BE, IT, SE, SI, SK and PL thought the scope of this paragraph should be limited so as to limit the number of cases.

<sup>58</sup> LU proposed restricting this to cases where the coordination mechanism implemented by the competent authority did not allow for a solution to be reached; ES referred to cases where the other authorities did not agree with the proposal of the competent(/lead) authority.

*Opinion by the European Data Protection Board*<sup>59</sup>

1. (...)
2. (...)
3. (...)
4. (...)
5. (...)
6. (...)
- 6a. (...)
7. In the cases referred to in paragraphs 1a and 2 of Article 57, the European Data Protection Board shall issue an opinion on the subject- matter submitted to it in provided it has not already issued an opinion on the same matter<sup>60</sup>. This opinion shall be adopted within **four weeks** by simple majority of the members of the European Data Protection Board. **This period may be extended for further four weeks, taking into account the complexity of the subject matter.** Regarding the draft measure circulated to the members of the Board in accordance with paragraph 6 of Article 57, a member which has not objected within the period indicated by the Chair, shall be deemed to be in agreement with the draft measure.
- 7a. Within the period referred to in paragraph 7 the supervisory authority competent for the supervision of the main establishment shall not adopt its draft measure.
- 7b. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1a and 2 of Article 57 and the Commission of the opinion and make it public.

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<sup>59</sup> NL and UK scrutiny reservation.

<sup>60</sup> ES suggested keeping the possibility for one DPA requesting an opinion from the EDPB.



8. The supervisory authority referred to in paragraphs 1a and 2 of Article 57 shall take utmost account of the opinion of the European Data Protection Board and shall within two weeks after receiving the opinion, electronically communicate to the chair of the European Data Protection Board whether it maintains or will amend its draft measure and, if any, the amended draft measure, using a standardised format.
9. Where the supervisory authority concerned does not intend to follow the opinion, it shall inform the chair of the European Data Protection Board and the Commission within the period referred to in paragraph 8 and shall explain its refusal to follow the opinion.
10. (...)
11. (...)

#### *Article 59*

##### *Opinion by the Commission<sup>61</sup>*

(...)

#### *Article 60*

##### *Suspension of a draft measure<sup>62</sup>*

(...)

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<sup>61</sup> Deleted in accordance with the request from BE, CZ, DE, ES, SE and UK. COM and FR reservation on deletion.

<sup>62</sup> Deleted at the suggestion of BE, CZ, DE, ES, IT, SE and UK. PT scrutiny reservation. COM and FR reservation on deletion.

## Article 61

### *Urgency procedure*<sup>63</sup>

1. In exceptional circumstances, where the competent supervisory authority considers that there is an urgent need to act in order to protect rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Article 57 or the procedure referred to in Article 54a, immediately adopt provisional measures intended to produce legal effects (...) for the territory of its own Member State<sup>64</sup>, with a specified period of validity. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them, to the European Data Protection Board and to the Commission<sup>65</sup>.
2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion of the European Data Protection Board, giving reasons for requesting such opinion.
3. Any supervisory authority may request an urgent opinion where the competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the rights and freedoms of data subjects, giving reasons for requesting such opinion, including for the urgent need to act.
4. By derogation from paragraph 7a of Article 58, an urgent opinion referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the European Data Protection Board.

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<sup>63</sup> DE scrutiny reservation. COM explained that the urgency procedure was an essential part of the consistency mechanism. The existence of an urgency procedure was welcomed by several delegations (DE, ES, IT, NL), but also gave rise to many questions. There was lack of clarity surrounding the criteria which could warrant the taking of provisional measures (DE, FR, PT), in particular by another DPA. The need to respect certain procedural guarantees (e.g. giving notice to the data controller) prior to the taking of provisional measures was emphasised by FR.

<sup>64</sup> COM scrutiny reservation.

<sup>65</sup> The conditions under which the EDPB needed to be informed also gave rise to questions (ES). COM stated the obligation only existed in cross-border one-stop-shop mechanism cases.

## *Article 62*

### *Implementing acts*

1. The Commission may adopt implementing acts of general scope for:
  - (a) (...) the correct application of the Regulation **in future cases, arising from a matter referred to in point (a) of Article 57(1a), in relation to which the lead supervisory authority did not follow an opinion of the European Data Protection Board<sup>66</sup>**;
  - (b) (...);
  - (c) (...);
  - (d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 57(5) and (6) and in Article 58(8).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

2. (...)
3. (...)

---

<sup>66</sup> Reservation by CZ, DE, DK, ES, IE, HU, SE and UK.

## *Article 63*

### **Notification of measures adopted by the competent supervisory authority**<sup>67</sup>

- 1.
- 1b. (...)
1. (...)
2. (...)

## *Article 66*

### ***Tasks of the European Data Protection Board***

1. The European Data Protection Board shall promote the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or at the request of the Commission, in particular:
  - (a) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;
  - (b) examine, on its own initiative or on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation;
  - (ba) draw up guidelines for supervisory authorities concerning the application of measures referred to in point (c) of paragraph 1 of Article 53 and in paragraph 1b of Article 53 and the fixing of administrative fines pursuant to Articles 79 and 79a;
  - (c) review the practical application of the guidelines, recommendations and best practices referred to in points (b) and (ba);
  - (ca) encourage the drawing-up of codes of conduct and the establishment of data protection certification mechanisms and data protection seals and marks pursuant to Articles 38 and 39;

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<sup>67</sup> Deleted further to EE and SI reservation and DE and DK scrutiny reservation.

- (cb) give the Commission an opinion on the level of protection in third countries or international organisations, in particular in the cases referred to in Article 41;
  - (d) issue opinions on draft measures of supervisory authorities pursuant to the consistency mechanism referred to in Article 57;
  - (e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities;
  - (f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;
  - (g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide;
  - (h) **maintain an electronically accessible electronic register for consultation on confirmed main establishments referred to in Article 51c;**
  - (i) **maintain a publicly accessible electronic register of decisions taken by supervisory authorities and courts on issues dealt with in the consistency mechanism.**
2. Where the Commission requests advice from the European Data Protection Board, it may indicate a time limit, taking into account the urgency of the matter.
3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 87 and make them public.

**CHAPTER VIII**  
**REMEDIES, LIABILITY AND SANCTIONS<sup>68</sup>**

*Article 73*

***Right to lodge a complaint with a supervisory authority<sup>69</sup>***

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a **single supervisory authority, in particular<sup>70</sup> in the Member State of his or her habitual residence, place of work or place of the alleged infringement,** if the data subject considers that the processing of personal data relating to him or her does not comply with this Regulation<sup>71</sup>.
  - 1a. (...)
  2. (...)
  3. (...)
  4. (...)

---

<sup>68</sup> AT, FR, EE, ES and RO scrutiny reservation.

<sup>69</sup> BE, CY CZ, EE, IE, LY, PT and SI scrutiny reservation.

<sup>70</sup> COM , BG, IT and LU though that the data subject should be able to lodge a complaint with any DPA without limitation since the protection of personal data was a fundamental right.

<sup>71</sup> DE, supported by NL, suggested adding "when its rights are not being respected".

5. Without prejudice to its duties under paragraph (b) of Article 52(1)<sup>72</sup> and to the cooperation on complaints pursuant to Article 54b, the supervisory authority to which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint. Where the competent<sup>73</sup> supervisory authority finds the complaint inadmissible or unfounded, the supervisory authority to which the complaint has been lodged shall reject or dismiss the complaint and notify the rejection or the dismissal to the complainant and inform him of the reasons for the rejection or the dismissal and of the possibility of a judicial remedy pursuant Article 74<sup>74</sup>.

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<sup>72</sup> This reference is intended to address concerns raised by BG, CZ, HU that the DPA should not be a mere post box but it should decide when to forward the complaint or when to undertake measures. DK thought that the non-competent DPA could verify the complaint and see if there were some misunderstandings.

<sup>73</sup> ES, FR and IT reservation. Recital 111 clarifies that DPA to which the complaint was lodged and that is not the competent authority should not be a pure letter box but should at least take a preliminary look at the complaint.

<sup>74</sup> NL and FR scrutiny reservation. Article 54c (2) already provides for a general duty for the supervisory authority with which a complaint has been lodged to notify the data subject of any measures taken (i.e. the scenario of a 'positive' reply by the DPA).

## Article 74

### *Right to a judicial remedy against a supervisory authority*<sup>75</sup>

1. Without prejudice to any other administrative or non-judicial remedy, each natural or legal person shall have the right to an effective judicial remedy against a **legally binding** decision of a supervisory authority concerning them, including when the complaint has been rejected, in part or wholly<sup>76</sup>.
2. Without prejudice to any other administrative or non-judicial remedy, each data subject shall have the right to a judicial remedy where the supervisory authority competent in accordance with Article 51<sup>77</sup> does not deal with a complaint or does not inform the data subject within three months or any shorter period provided under Union or Member State law<sup>78</sup> on the progress or outcome of the complaint lodged under Article 73<sup>79</sup>.
3. Proceedings against a (...) supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established<sup>80</sup>.
- 3a. **Where proceedings are brought against a decision of a supervisory authority which was preceded by an opinion of the European Data Protection Board in the consistency mechanism, the supervisory authority shall forward that opinion to the court.**
4. (...)
5. (...)<sup>81</sup>

---

<sup>75</sup> ES, PT and SI reservation. EE, IT and UK scrutiny reservation.

<sup>76</sup> DE, supported by SE, suggested adding: 'by which it is adversely affected'.

<sup>77</sup> COM reservation.

<sup>78</sup> SI indicated that under its law the DPA was obliged to reply within two months.

<sup>79</sup> SE scrutiny reservation. BE reservation. BE said that there was a link to Article 53 and the main establishment and the DPA of the habitual residence. Support from NL. IT thought that paragraphs 1 and 2 overlapped. NO wanted to delete paragraph 2 since a court review would endanger the independency of the DPA.

<sup>80</sup> IT suggests stating that proceedings may be brought before the courts of the Member state where the natural or legal person has his/her habitual residence or is established.

<sup>81</sup> COM reservation on deletion of paragraphs 4 and 5. DE scrutiny reservation on deletion of paragraphs 4 and 5.



*Article 75*

***Right to a judicial remedy against a controller or processor***<sup>82</sup>

1. Without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority under Article 73, a data subject shall have the right to an effective judicial remedy<sup>83</sup> if they consider that their rights under this Regulation have been infringed as a result of the processing of their personal data in non-compliance with this Regulation.
2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment (...) <sup>84</sup>. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his or her habitual residence, unless the controller **or processor** is a public authority acting in the exercise of its public powers.
3. (...)
4. (...)

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<sup>82</sup> DE, EE, PL, PT, SI and SK scrutiny reservation. ES, IT reservation.

<sup>83</sup> ES asked how judicial remedy would be interpreted and how a missed deadline or that there will be no judicial review would be considered.

<sup>84</sup> In view of the concerns raised, the reference to national law has been kept only in recital 113.