

**REGULATION (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 23 October 2018****on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the 'Charter') and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her. This right is also guaranteed under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (2) Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(3)</sup> provides natural persons with legally enforceable rights, specifies the data processing obligations of controllers within the Community institutions and bodies, and creates an independent supervisory authority, the European Data Protection Supervisor, responsible for monitoring the processing of personal data by the Union institutions and bodies. However, it does not apply to the processing of personal data in the course of an activity of Union institutions and bodies which fall outside the scope of Union law.
- (3) Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(4)</sup> and Directive (EU) 2016/680 of the European Parliament and of the Council <sup>(5)</sup> were adopted on 27 April 2016. While the Regulation lays down general rules to protect natural persons with regard to the processing of personal data and to ensure the free movement of personal data within the Union, the Directive lays down the specific rules to protect natural persons with regard to the processing of personal data and to ensure the free movement of personal data within the Union in the fields of judicial cooperation in criminal matters and police cooperation.
- (4) Regulation (EU) 2016/679 provides for the adaptation of Regulation (EC) No 45/2001 in order to ensure a strong and coherent data protection framework in the Union and to allow its application in parallel with Regulation (EU) 2016/679.
- (5) It is in the interest of a coherent approach to personal data protection throughout the Union, and of the free movement of personal data within the Union, to align as far as possible the data protection rules for Union institutions, bodies, offices and agencies with the data protection rules adopted for the public sector in the Member States. Whenever the provisions of this Regulation follow the same principles as the provisions of Regulation (EU)

<sup>(1)</sup> OJ C 288, 31.8.2017, p. 107.

<sup>(2)</sup> Position of the European Parliament of 13 September 2018 (not yet published in the Official Journal) and decision of the Council of 11 October 2018.

<sup>(3)</sup> Regulation (EC) No 45/2001 of the European Parliament and 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 (OJ L 8, 12.1.2001, p. 1).

<sup>(4)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(5)</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

2016/679, those two sets of provisions should, under the case law of the Court of Justice of the European Union (the 'Court of Justice'), be interpreted homogeneously, in particular because the scheme of this Regulation should be understood as equivalent to the scheme of Regulation (EU) 2016/679.

- (6) Persons whose personal data are processed by Union institutions and bodies in any context whatsoever, for example, because they are employed by those institutions and bodies, should be protected. This Regulation should not apply to the processing of personal data of deceased persons. This Regulation does not cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person.
- (7) In order to prevent creating a serious risk of circumvention, the protection of natural persons should be technologically neutral and should not depend on the techniques used.
- (8) This Regulation should apply to the processing of personal data by all Union institutions, bodies, offices and agencies. It should apply to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. Files or sets of files, as well as their cover pages, which are not structured according to specific criteria should not fall within the scope of this Regulation.
- (9) In Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the conference acknowledged that specific rules on the protection of personal data and on the free movement of personal data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 TFEU could prove necessary because of the specific nature of those fields. A distinct Chapter of this Regulation containing general rules should therefore apply to the processing of operational personal data, such as personal data processed for the purposes of a criminal investigation by Union bodies, offices or agencies when carrying out activities in the fields of judicial cooperation in criminal matters and police cooperation.
- (10) Directive (EU) 2016/680 sets out harmonised rules for the protection and the free movement of personal data processed for the purposes of the prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. In order to ensure the same level of protection for natural persons through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between Union bodies, offices or agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU and competent authorities, the rules for the protection and the free movement of operational personal data processed by such Union bodies, offices or agencies should be consistent with Directive (EU) 2016/680.
- (11) The general rules of the Chapter of this Regulation on the processing of operational personal data should apply without prejudice to the specific rules applicable to the processing of operational personal data by Union bodies, offices and agencies when carrying out activities falling within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU. Such specific rules should be regarded as *lex specialis* to the provisions in the Chapter of this Regulation on the processing of operational personal data (*lex specialis derogat legi generali*). In order to reduce legal fragmentation, specific data protection rules applicable to the processing of operational personal data by Union bodies, offices or agencies when carrying out activities falling within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU should be consistent with the principles underpinning the Chapter of this Regulation on the processing of operational personal data, as well as with the provisions of this Regulation relating to independent supervision, remedies, liability and penalties.
- (12) The Chapter of this Regulation on the processing of operational personal data should apply to Union bodies, offices and agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU, whether they exercise such activities as their main or ancillary tasks, for the purposes of the prevention, detection, investigation or prosecution of criminal offences. However, it should not apply to Europol or to the European Public Prosecutor's Office until the legal acts establishing Europol and the European Public Prosecutor's Office are amended with a view to rendering the Chapter of this Regulation on the processing of operational personal data, as adapted, applicable to them.
- (13) The Commission should conduct a review of this Regulation, in particular the Chapter of this Regulation on the processing of operational personal data. The Commission should also conduct a review of other legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or

agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU. After such a review, in order to ensure uniform and consistent protection of natural persons with regard to the processing of personal data, the Commission should be able to make any appropriate legislative proposals, including any necessary adaptations of the Chapter of this Regulation on the processing of operational personal data, with a view to applying it to Europol and to the European Public Prosecutor's Office. The adaptations should take into account provisions relating to independent supervision, remedies, liability and penalties.

- (14) The processing of administrative personal data, such as staff data, by Union bodies, offices or agencies carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU should be covered by this Regulation.
- (15) This Regulation should apply to the processing of personal data by Union institutions, bodies, offices or agencies carrying out activities which fall within the scope of Chapter 2 of Title V of the Treaty on European Union (TEU). This Regulation should not apply to the processing of personal data by missions referred to in Articles 42(1), 43 and 44 TEU, which implement the common security and defence policy. Where appropriate, relevant proposals should be put forward to further regulate the processing of personal data in the field of the common security and defence policy.
- (16) The principles of data protection should apply to any information concerning an identified or identifiable natural person. Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information, should be considered to be information on an identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person, to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments. The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.
- (17) The application of pseudonymisation to personal data can reduce the risks to the data subjects concerned and help controllers and processors to meet their data protection obligations. The explicit introduction of 'pseudonymisation' in this Regulation is not intended to preclude any other measures of data protection.
- (18) Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.
- (19) Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided. At the same time, the data subject should have the right to withdraw consent at any time without affecting the lawfulness of processing based on consent before its withdrawal. In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller and it is therefore unlikely that consent was freely given

in all the circumstances of that specific situation. It is often not possible to fully identify the purpose of personal data processing for scientific research purposes at the time of data collection. Therefore, data subjects should be allowed to give their consent to certain areas of scientific research when in keeping with recognised ethical standards for scientific research. Data subjects should have an opportunity to give their consent only to certain areas of research or parts of research projects to the extent allowed by the intended purpose.

- (20) Any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. That principle concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed. Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or use of personal data and the equipment used for the processing and for preventing its unauthorised disclosure when it is transmitted.
- (21) In accordance with the principle of accountability, where Union institutions and bodies transmit personal data within the same Union institution or body and the recipient is not part of the controller, or to other Union institutions or bodies, they should verify whether such personal data are required for the legitimate performance of tasks within the competence of the recipient. In particular, following a recipient's request for transmission of personal data, the controller should verify the existence of a relevant ground for lawfully processing personal data and the competence of the recipient. The controller should also make a provisional evaluation of the necessity of the transmission of the data. If doubts arise as to this necessity, the controller should seek further information from the recipient. The recipient should ensure that the necessity of the transmission of the data can be subsequently verified.
- (22) In order for processing to be lawful, personal data should be processed on the basis of the necessity for the performance of a task carried out in the public interest by Union institutions and bodies or in the exercise of their official authority, the necessity for compliance with a legal obligation to which the controller is subject or some other legitimate basis under this Regulation, including the consent of the data subject concerned, the necessity 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. Processing of personal data for the performance of tasks carried out in the public interest by the Union institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies. The processing of personal data should also be regarded to be lawful where it is necessary to protect an interest which is essential for the life of the data subject or that of another natural person. Processing of personal data based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis. Some types of processing may serve both important grounds of public interest and the vital interests of the data subject, as for instance when processing is necessary for humanitarian purposes, including for monitoring epidemics and their spread, or in situations of humanitarian emergencies, in particular in situations of natural and man-made disasters.

- (23) The Union law referred to in this Regulation should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the requirements set out in the Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (24) The internal rules referred to in this Regulation should be clear and precise acts of general application intended to produce legal effects vis-à-vis data subjects. They should be adopted at the highest level of management of the Union institutions and bodies, within their competencies and in matters relating to their operation. They should be published in the *Official Journal of the European Union*. The application of those rules should be foreseeable to persons subject to them in accordance with the requirements set out in the Charter and the European Convention for the Protection of Human Rights and Freedoms. Internal rules may take the form of decisions, in particular when adopted by Union institutions.
- (25) The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations. The legal basis provided by Union law for the processing of personal data may also provide a legal basis for further processing. In order to ascertain whether a purpose of further processing is compatible with the purpose for which the personal data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account, inter alia: any link between those purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of data subjects based on their relationship with the controller as to their further use; the nature of the personal data; the consequences of the intended further processing for data subjects; and the existence of appropriate safeguards in both the original and intended further processing operations.
- (26) Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware of the fact that and the extent to which consent is given. In accordance with Council Directive 93/13/EEC <sup>(1)</sup>, a declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.
- (27) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to creating personality profiles and to the collection of personal data with regard to children when services are offered directly to a child on websites of Union institutions and bodies, such as interpersonal communication services or online selling of tickets, and the processing of personal data is based on consent.
- (28) When recipients established in the Union other than Union institutions and bodies would like to have personal data transmitted to them by Union institutions and bodies, those recipients should demonstrate that it is necessary to have the data transmitted to these recipients either for the performance of their task carried out in the public interest or in the exercise of official authority vested in them. Alternatively, those recipients should demonstrate that the transmission is necessary for a specific purpose in the public interest and the controller should establish whether there is any reason to assume that the data subject's legitimate interests might be prejudiced. In such cases, the controller should demonstrably weigh the various competing interests in order to assess the proportionality of the

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<sup>(1)</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

requested transmission of personal data. The specific purpose in the public interest could relate to the transparency of Union institutions and bodies. Furthermore, Union institutions and bodies should demonstrate such necessity when they themselves initiate a transmission, in compliance with the principle of transparency and good administration. The requirements laid down in this Regulation for transmissions to recipients established in the Union other than Union institutions and bodies should be understood as supplementary to the conditions for lawful processing.

- (29) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection, as the context of their processing could create significant risks to the fundamental rights and freedoms. Such personal data should not be processed unless the specific conditions set out in this Regulation are met. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. In addition to the specific requirements for processing of sensitive data, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, *inter alia*, where the data subject gives his or her explicit consent or in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.
- (30) Special categories of personal data which merit higher protection should be processed for health-related purposes only where necessary to achieve those purposes for the benefit of natural persons and society as a whole, in particular in the context of the management of health or social care services and systems. Therefore, this Regulation should provide for harmonised conditions for the processing of special categories of personal data concerning health, in respect of specific needs, in particular where the processing of such data is carried out for certain health-related purposes by persons subject to a legal obligation of professional secrecy. Union law should provide for specific and suitable measures so as to protect fundamental rights and the personal data of natural persons.
- (31) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. Such processing should be subject to suitable and specific measures so as to protect the rights and freedoms of natural persons. In that context, 'public health' should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council <sup>(1)</sup>, namely all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, healthcare needs, resources allocated to healthcare, the provision of, and universal access to, healthcare as well as healthcare expenditure and financing, and the causes of mortality. Such processing of data concerning health for reasons of public interest should not result in personal data being processed for other purposes.
- (32) If the personal data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. However, the controller should not refuse to take additional information provided by the data subject in order to support the exercise of his or her rights. Identification should include the digital identification of a data subject, for example through an authentication mechanism such as the same credentials, used by the data subject to log in to the online service offered by the data controller.
- (33) The processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be subject to appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation. Those safeguards should ensure that technical and organisational measures are in place in order to ensure, in particular, the principle of data minimisation. The further processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is to be

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<sup>(1)</sup> Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70).

carried out when the controller has assessed the feasibility to fulfil those purposes by processing data which do not permit or no longer permit the identification of data subjects, provided that appropriate safeguards exist (such as, for instance, pseudonymisation of the data). Union institutions and bodies should provide for appropriate safeguards for the processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in Union law, which may include internal rules adopted by Union institutions and bodies in matters relating to their operation.

- (34) Modalities should be provided for facilitating the exercise of the data subject's rights under this Regulation, including mechanisms to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and the exercise of the right to object. The controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means. The controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests.
- (35) The principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes. The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed. Furthermore, the data subject should be informed of the existence of profiling and the consequences of such profiling. Where the personal data are collected from the data subject, the data subject should also be informed whether he or she is obliged to provide the personal data and of the consequences, where he or she does not provide such data. That information may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner, a meaningful overview of the intended processing. Where the icons are presented electronically, they should be machine-readable.
- (36) The information in relation to the processing of personal data relating to the data subject should be given to him or her at the time of collection from the data subject, or, where the personal data are obtained from another source, within a reasonable period, depending on the circumstances of the case. Where personal data can be legitimately disclosed to another recipient, the data subject should be informed when the personal data are first disclosed to the recipient. Where the controller intends to process the personal data for a purpose other than that for which they were collected, the controller should provide the data subject prior to that further processing with information on that other purpose and other necessary information. Where the origin of the personal data cannot be provided to the data subject because various sources have been used, general information should be provided.
- (37) A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals, in order to be aware of, and verify, the lawfulness of the processing. This includes the right for data subjects to have access to data concerning their health, for example the data in their medical records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided. Every data subject should therefore have the right to know and obtain communication in particular with regard to the purposes for which the personal data are processed, where possible the period for which the personal data are processed, the recipients of the personal data, the logic involved in any automatic personal data processing and, at least when based on profiling, the consequences of such processing. That right should not adversely affect the rights or freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of those considerations should not be a refusal to provide all information to the data subject. Where the controller processes a large quantity of information concerning the data subject, the controller should be able to request that, before the information is delivered, the data subject specify the information or processing activities to which the request relates.
- (38) A data subject should have the right to have personal data concerning him or her rectified and a 'right to be forgotten' where the retention of such data infringes this Regulation or Union law to which the controller is subject. A data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That right is relevant in particular where the data subject has given his or her consent as a child and is

not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims.

- (39) To strengthen the right to be forgotten in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such personal data to erase any links to, or copies or replications of those personal data. In doing so, that controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the controllers which are processing the personal data of the data subject's request.
- (40) Methods by which to restrict the processing of personal data could include, inter alia, temporarily moving the selected data to another processing system, making the selected personal data unavailable to users, or temporarily removing published data from a website. In automated filing systems, the restriction of processing should in principle be ensured by technical means in such a manner that the personal data are not subject to further processing operations and cannot be changed. The fact that the processing of personal data is restricted should be clearly indicated in the system.
- (41) To further strengthen the control over his or her own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to receive personal data concerning him or her which he or she has provided to a controller in a structured, commonly used, machine-readable and interoperable format, and to transmit it to another controller. Data controllers should be encouraged to develop interoperable formats that enable data portability. That right should apply where the data subject provided the personal data on the basis of his or her consent or the processing is necessary for the performance of a contract. It should therefore not apply where the processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller. The data subject's right to transmit or receive personal data concerning him or her should not create an obligation for the controllers to adopt or maintain processing systems which are technically compatible. Where, in a certain set of personal data, more than one data subject is concerned, the right to receive the personal data should be without prejudice to the rights and freedoms of other data subjects in accordance with this Regulation. Furthermore, that right should not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should, in particular, not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract to the extent that and for as long as the personal data are necessary for the performance of that contract. Where technically feasible, the data subject should have the right to have the personal data transmitted directly from one controller to another.
- (42) Where personal data might lawfully be processed because processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, a data subject should, nevertheless, be entitled to object to the processing of any personal data relating to his or her particular situation. It should be for the controller to demonstrate that its compelling legitimate interest overrides the interests or the fundamental rights and freedoms of the data subject.
- (43) The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her, such as e-recruiting practices without any human intervention. Such processing includes 'profiling' that consists of any form of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects



concerning the data subject's performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her.

However, decision-making based on such processing, including profiling, should be allowed where expressly authorised by Union law. In any case, such processing should be subject to suitable safeguards, which should include specific information to the data subject and the right to obtain human intervention, to express his or her point of view, to obtain an explanation of the decision reached after such assessment and to challenge the decision. Such measure should not concern a child. In order to ensure fair and transparent processing in respect of the data subject, taking into account the specific circumstances and context in which the personal data are processed, the controller should use appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, in particular, that factors which result in inaccuracies in personal data are corrected and the risk of errors is minimised, secure personal data in a manner that takes account of the potential risks involved for the interests and rights of the data subject. and prevent, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or processing that results in measures having such an effect. Automated decision-making and profiling based on special categories of personal data should be allowed only under specific conditions.

- (44) Legal acts adopted on the basis of the Treaties or internal rules adopted by Union institutions and bodies in matters relating to their operation may impose restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, confidentiality of electronic communications data as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers, as far as necessary and proportionate in a democratic society to safeguard public security and for the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties. This includes safeguarding against and the prevention of threats to public security, protection of human life especially in response to natural or manmade disasters, internal security of Union institutions and bodies, other important objectives of general public interest of the Union or of a Member State, in particular the objectives of the Common Foreign and Security Policy of the Union or an important economic or financial interest of the Union or of a Member State, and keeping of public registers for reasons of general public interest or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes.
- (45) The responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should be obliged to implement appropriate and effective measures and be able to demonstrate the compliance of processing activities with this Regulation, including the effectiveness of the measures. Those measures should take into account the nature, scope, context and purposes of the processing and the risk to the rights and freedoms of natural persons.
- (46) The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of personal data protected by professional secrecy, unauthorised reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or prevented from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, in particular analysing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.
- (47) The likelihood and severity of the risk to the rights and freedoms of the data subject should be determined by reference to the nature, scope, context and purposes of the processing. Risk should be evaluated on the basis of an objective assessment, by which it is established whether data processing operations involve a risk or a high risk.

- (48) The protection of the rights and freedoms of natural persons with regard to the processing of personal data require that appropriate technical and organisational measures be taken to ensure that the requirements of this Regulation are met. In order to be able to demonstrate compliance with this Regulation, the controller should adopt internal policies and implement measures which meet in particular the principles of data protection by design and data protection by default. Such measures could consist, inter alia, of minimising the processing of personal data, pseudonymising personal data as soon as possible, transparency with regard to the functions and processing of personal data, enabling the data subject to monitor the data processing, enabling the controller to create and improve security features. The principles of data protection by design and by default should also be taken into consideration in the context of public tenders.
- (49) Regulation (EU) 2016/679 provides for controllers to demonstrate compliance by adherence to approved certification mechanisms. Likewise, Union institutions and bodies should be able to demonstrate compliance with this Regulation by obtaining certification in accordance with Article 42 of Regulation (EU) 2016/679.
- (50) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors requires a clear allocation of the responsibilities under this Regulation, including where a controller determines the purposes and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.
- (51) To ensure compliance with the requirements of this Regulation in respect of the processing to be carried out by the processor on behalf of the controller, when entrusting a processor with processing activities, the controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which meet the requirements of this Regulation, including for the security of processing. The adherence of processors other than Union institutions and bodies to an approved code of conduct or an approved certification mechanism can be used as an element to demonstrate compliance with the obligations of the controller. The carrying-out of processing by a processor other than a Union institution or body should be governed by a contract, or, in case of Union institutions and bodies acting as processors, by a contract or other legal act under Union law, binding the processor to the controller, setting out the subject matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects, taking into account the specific tasks and responsibilities of the processor in the context of the processing to be carried out and the risk to the rights and freedoms of the data subject. The controller and processor should be able to choose to use an individual contract or standard contractual clauses which are adopted either directly by the Commission or by the European Data Protection Supervisor and then adopted by the Commission. After the completion of the processing on behalf of the controller, the processor should, at the choice of the controller, return or delete the personal data, unless there is a requirement to store that personal data under Union or Member State law to which the processor is subject.
- (52) In order to demonstrate compliance with this Regulation, controllers should maintain records of processing activities under their responsibility and processors should maintain records of categories of processing activities under their responsibility. Union institutions and bodies should be obliged to cooperate with the European Data Protection Supervisor and make their records available to it on request, so that they might serve for monitoring those processing operations. Unless it is not appropriate taking into account the size of a Union institution or body, Union institutions and bodies should be able to establish a central register of records of their processing activities. For reasons of transparency, they should also be able to make such a register public.
- (53) In order to maintain security and to prevent processing in infringement of this Regulation, the controller or processor should evaluate the risks inherent in the processing and implement measures to mitigate those risks, such as encryption. Those measures should ensure an appropriate level of security, including confidentiality, taking into account the state of the art and the costs of implementation in relation to the risks and the nature of the personal

data to be protected. In assessing data security risk, consideration should be given to the risks that are presented by personal data processing, such as accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed which may in particular lead to physical, material or non-material damage.

- (54) Union institutions and bodies should ensure the confidentiality of electronic communications provided for by Article 7 of the Charter. In particular, Union institutions and bodies should ensure the security of their electronic communications networks. They should protect the information related to the terminal equipment of users accessing their publicly available websites and mobile applications, in accordance with the Directive 2002/58/EC of the European Parliament and of the Council <sup>(1)</sup>. They should also protect the personal data stored in directories of users.
- (55) A personal data breach could, if not addressed in an appropriate and timely manner, result in physical, material or non-material damage to natural persons. Therefore, as soon as the controller becomes aware that a personal data breach has occurred, the controller should notify that personal data breach to the European Data Protection Supervisor without undue delay and, where feasible, not later than 72 hours after having become aware of it, unless the controller is able to demonstrate, in accordance with the accountability principle, that the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where such notification cannot be achieved within 72 hours, it should be accompanied by the reasons for the delay and information can be provided in phases without further undue delay. Where such delay is justified, less sensitive or less specific information on the breach should be released as early as possible, rather than fully resolving the underlying incident before notifying.
- (56) The controller should communicate to the data subject a personal data breach, without undue delay, where that personal data breach is likely to result in a high risk to the rights and freedoms of the natural person in order to allow him or her to take the necessary precautions. The communication should describe the nature of the personal data breach as well as recommendations for the natural person concerned to mitigate potential adverse effects. Such communications to data subjects should be made as soon as reasonably feasible and in close cooperation with the European Data Protection Supervisor, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities.
- (57) Regulation (EC) No 45/2001 provides for a general obligation on a controller to notify the processing of personal data to the data protection officer. Unless it is not appropriate taking into account the size of the Union institution or body, the data protection officer is to keep a register of notified processing operations. Besides this general obligation, effective procedures and mechanisms should be put in place to monitor processing operations that are likely to result in a high risk to the rights and freedoms of natural persons by virtue of their nature, scope, context and purposes. Such procedures should, in particular, also be in place where types of processing operations involve using new technologies, or are of a new kind in relation to which no data protection impact assessment has been carried out before by the controller, or where they become necessary in the light of the time that has elapsed since the initial processing. In such cases, a data protection impact assessment should be carried out by the controller prior to the processing in order to assess the particular likelihood and severity of the high risk, taking into account the nature, scope, context and purposes of the processing and the sources of the risk. That impact assessment should include, in particular, the measures, safeguards and mechanisms envisaged for mitigating that risk, ensuring the protection of personal data and demonstrating compliance with this Regulation.
- (58) Where a data protection impact assessment indicates that the processing would, in the absence of safeguards, security measures and mechanisms to mitigate the risk, result in a high risk to the rights and freedoms of natural persons and the controller is of the opinion that the risk cannot be mitigated by reasonable means in terms of available technologies and costs of implementation, the European Data Protection Supervisor should be consulted prior to the start of processing activities. Such high risk is likely to result from certain types of processing and the extent and frequency of processing, which could result also in a realisation of damage or interference with the rights and freedoms of the natural person. The European Data Protection Supervisor should respond to the request for consultation within a specified period. However, the absence of a reaction of the European Data Protection

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<sup>(1)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

Supervisor within that period should be without prejudice to any intervention of the European Data Protection Supervisor in accordance with his or her tasks and powers laid down in this Regulation, including the power to prohibit processing operations. As part of that consultation process, it should be possible to submit the outcome of a data protection impact assessment carried out with regard to the processing at issue to the European Data Protection Supervisor, in particular the measures envisaged to mitigate the risk to the rights and freedoms of natural persons.

- (59) The European Data Protection Supervisor should be informed of administrative measures and consulted on internal rules adopted by Union institutions and bodies in matters relating to their operation when they provide for the processing of personal data, lay down conditions for restricting the rights of data subjects or provide appropriate safeguards for data subject rights, in order to ensure that the intended processing complies with this Regulation, in particular as regards mitigating the risks involved for the data subject.
- (60) Regulation (EU) 2016/679 established the European Data Protection Board as an independent body of the Union with legal personality. The Board should contribute to the consistent application of Regulation (EU) 2016/679 and Directive (EU) 2016/680 throughout the Union, including by advising the Commission. At the same time, the European Data Protection Supervisor should continue to exercise his or her supervisory and advisory functions in respect of all Union institutions and bodies, on his or her own initiative or upon request. In order to ensure consistency of data protection rules throughout the Union, when preparing proposals or recommendations, the Commission should endeavour to consult the European Data Protection Supervisor. A consultation by the Commission should be obligatory following the adoption of legislative acts or during the preparation of delegated acts and implementing acts as defined in Article 289, 290 and 291 TFEU and following the adoption of recommendations and proposals relating to agreements with third countries and international organisations as provided for in Article 218 TFEU which have an impact on the right to protection of personal data. In such cases, the Commission should be obliged to consult the European Data Protection Supervisor, except where the Regulation (EU) 2016/679 provides for mandatory consultation of the European Data Protection Board, for example on adequacy decisions or delegated acts on standardised icons and requirements for certification mechanisms. Where the act in question is of particular importance for the protection of rights and freedoms of natural persons with regard to the processing of personal data, the Commission should be able, in addition, to consult the European Data Protection Board. In those cases, the European Data Protection Supervisor should, as a member of the European Data Protection Board, coordinate his or her work with the latter with a view to issuing a joint opinion. The European Data Protection Supervisor, and where applicable, the European Data Protection Board should provide their written advice within eight weeks. That time-frame should be shorter in urgent cases or where otherwise appropriate, for example when the Commission is preparing delegated and implementing acts.
- (61) In accordance with Article 75 of Regulation (EU) 2016/679, the European Data Protection Supervisor should provide the secretariat of the European Data Protection Board.
- (62) In all Union institutions and bodies a data protection officer should ensure that the provisions of this Regulation are applied and should advise controllers and processors on fulfilling their obligations. That officer should be a person with expert knowledge of data protection law and practices, which should be determined in particular according to the data processing operations carried out by the controller or the processor and the protection required for the personal data involved. Such data protection officers should be in a position to perform their duties and tasks in an independent manner.
- (63) When personal data are transferred from the Union institutions and bodies to controllers, processors or other recipients in third countries or to international organisations, the level of protection of natural persons ensured in the Union by this Regulation should be guaranteed. The same guarantees should apply in cases of onward transfers of personal data from the third country or international organisation to controllers, processors in the same or another third country or international organisation. In any event, transfers to third countries and international organisations may only be carried out in full compliance with this Regulation and respecting the fundamental rights and freedoms enshrined in the Charter. A transfer could take place only if, subject to the other provisions of this Regulation, the conditions laid down in the provisions of this Regulation relating to the transfer of personal data to third countries or international organisations are complied with by the controller or processor.

- (64) The Commission can decide, under Article 45 of Regulation (EU) 2016/679 or under Article 36 of Directive (EU) 2016/680, that a third country, a territory or specified sector within a third country or an international organisation offers an adequate level of data protection. In such cases, transfers of personal data to that third country or international organisation by a Union institution or body can take place without the need to obtain any further authorisation.
- (65) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards can consist of making use of standard data protection clauses adopted by the Commission, standard data protection clauses adopted by the European Data Protection Supervisor or contractual clauses authorised by the European Data Protection Supervisor. Where the processor is not a Union institution or body those appropriate safeguards can also consist of binding corporate rules, codes of conduct and certification mechanisms used for international transfers under Regulation (EU) 2016/679. Those safeguards should ensure compliance with data protection requirements and the rights of the data subjects appropriate to processing within the Union, including the availability of enforceable data subject rights and of effective legal remedies, including to obtain effective administrative or judicial redress and to claim compensation, in the Union or in a third country. They should relate in particular to compliance with the general principles relating to personal data processing, the principles of data protection by design and by default. Transfers may also be carried out by Union institutions and bodies to public authorities or bodies in third countries or to international organisations with corresponding duties or functions, including on the basis of provisions to be inserted into administrative arrangements, such as a memorandum of understanding, providing for enforceable and effective rights for data subjects. Authorisation by the European Data Protection Supervisor should be obtained when the safeguards are provided for in administrative arrangements that are not legally binding.
- (66) The possibility for the controller or processor to use standard data-protection clauses adopted by the Commission or by the European Data Protection Supervisor should prevent controllers or processors neither from including the standard data-protection clauses in a wider contract, such as a contract between the processor and another processor, nor from adding other clauses or additional safeguards provided that they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by the European Data Protection Supervisor or prejudice the fundamental rights or freedoms of the data subjects. Controllers and processors should be encouraged to provide additional safeguards via contractual commitments that supplement standard data-protection clauses.
- (67) Some third countries adopt laws, regulations and other legal acts which purport to directly regulate the processing activities of Union institutions and bodies. This may include judgments of courts or tribunals or decisions of administrative authorities in third countries requiring a controller or processor to transfer or disclose personal data, and which are not based on an international agreement in force between the requesting third country and the Union. The extraterritorial application of those laws, regulations and other legal acts may be in breach of international law and may impede the attainment of the protection of natural persons ensured in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may be the case, inter alia, where disclosure is necessary for an important ground of public interest recognised in Union law.
- (68) Provision should be made in specific situations for the possibility for transfers in certain circumstances where the data subject has given his or her explicit consent, where the transfer is occasional and necessary in relation to a contract or a legal claim, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure, including procedures before regulatory bodies. Provision should also be made for the possibility for transfers where important grounds of public interest laid down by Union law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In the latter case, such a transfer should not involve the entirety of the personal data or entire categories of the data contained in the register, unless authorised by Union law, and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or, if they are to be the recipients, taking into full account the interests and fundamental rights of the data subject.
- (69) Those derogations should in particular apply to data transfers required and necessary for important reasons of public interest, for example in cases of international data exchange between Union institutions and bodies and competition authorities, tax or customs administrations, financial supervisory authorities and services competent for social security matters or for public health, for example in the case of contact tracing for contagious diseases or in order to reduce and/or eliminate doping in sport. A transfer of personal data should also be regarded as lawful where it is

necessary to protect an interest which is essential for the data subject's or another person's vital interests, including physical integrity or life, if the data subject is incapable of giving consent. In the absence of an adequacy decision, Union law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of data to a third country or an international organisation. Any transfer to an international humanitarian organisation of personal data of a data subject who is physically or legally incapable of giving consent, with a view to accomplishing a task incumbent under the Geneva Conventions or to complying with international humanitarian law applicable in armed conflicts, could be considered to be necessary for an important reason of public interest or because it is in the vital interest of the data subject.

- (70) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with enforceable and effective rights as regards the processing of their data in the Union once those data have been transferred so that they will continue to benefit from fundamental rights and safeguards.
- (71) When personal data moves across borders outside the Union it may put at increased risk the ability of natural persons to exercise data protection rights, in particular to protect themselves from the unlawful use or disclosure of that information. At the same time, national supervisory authorities and the European Data Protection Supervisor can be unable to pursue complaints or conduct investigations relating to the activities outside their jurisdiction. Their efforts to work together in the cross-border context can also be hampered by insufficient preventive or remedial powers, inconsistent legal regimes, and practical obstacles like resource constraints. Therefore, closer cooperation between the European Data Protection Supervisor and national supervisory authorities should be promoted to help the exchange of information with their international counterparts.
- (72) The establishment in Regulation (EC) No 45/2001 of the European Data Protection Supervisor, who is empowered to perform his or her tasks and exercise his or her powers with complete independence, is an essential component of the protection of natural persons with regard to the processing of their personal data. This Regulation should further strengthen and clarify his or her role and independence. The European Data Protection Supervisor should be a person whose independence is beyond doubt and who is acknowledged as having the experience and skills required to perform the duties of European Data Protection Supervisor, for example because he or she has belonged to one of the supervisory authorities established under Article 51 of Regulation (EU) 2016/679.
- (73) In order to ensure consistent monitoring and enforcement of data protection rules throughout the Union, the European Data Protection Supervisor should have the same tasks and effective powers as the national supervisory authorities, including powers of investigation, corrective powers and sanctions, and authorisation and advisory powers, in particular in cases of complaints from natural persons, powers to bring infringements of this Regulation to the attention of the Court of Justice and powers to engage in legal proceedings in accordance with the primary law. Such powers should also include the power to impose a temporary or definitive limitation, including a ban, on processing. In order to avoid superfluous costs and excessive inconveniences for the persons concerned who might be adversely affected, each measure of the European Data Protection Supervisor should be appropriate, necessary and proportionate in view of ensuring compliance with this Regulation, should take into account the circumstances of each individual case and respect the right of every person to be heard before any individual measure concerned is taken. Each legally binding measure of the European Data Protection Supervisor should be in writing, be clear and unambiguous, indicate the date of issue of the measure, bear the signature of the European Data Protection Supervisor, give the reasons for the measure, and refer to the right to an effective remedy.
- (74) The supervisory competence of the European Data Protection Supervisor should not cover the processing of personal data by the Court of Justice when acting in its judicial capacity, in order to safeguard the independence of the Court in the performance of its judicial tasks, including decision-making. For such processing operations, the Court should establish independent supervision, in accordance with Article 8(3) of the Charter, for example through an internal mechanism.
- (75) The decisions of the European Data Protection Supervisor regarding exemptions, guarantees, authorisations and conditions relating to data processing operations, as defined in this Regulation, should be published in the activities report. Independently of the publication of an annual activities report, the European Data Protection Supervisor can publish reports on specific subjects.

- (76) The European Data Protection Supervisor should comply with Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>(1)</sup>.
- (77) The national supervisory authorities monitor the application of Regulation (EU) 2016/679 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. In order to increase consistency in the application of data protection rules applicable in Member States and of data protection rules applicable to Union institutions and bodies, the European Data Protection Supervisor should cooperate effectively with the national supervisory authorities.
- (78) In certain instances, Union law provides for a model of coordinated supervision, shared between the European Data Protection Supervisor and the national supervisory authorities. The European Data Protection Supervisor is also the supervisory authority of Europol and for these purposes, a specific model of cooperation with the national supervisory authorities has been established through a cooperation board with an advisory function. In order to improve the effective supervision and enforcement of substantive data protection rules, a single, coherent model of coordinated supervision should be introduced in the Union. The Commission should therefore make legislative proposals where appropriate with a view to amending Union legal acts providing for a model of coordinated supervision, in order to align them with the coordinated supervision model of this Regulation. The European Data Protection Board should serve as a single forum for ensuring effective coordinated supervision in all areas.
- (79) Every data subject should have the right to lodge a complaint with the European Data Protection Supervisor, and the right to an effective judicial remedy before the Court of Justice in accordance with the Treaties, if the data subject considers that his or her rights under this Regulation are infringed or where the European Data Protection Supervisor does not act on a complaint, partially or wholly rejects or dismisses a complaint or does not act where such action is necessary to protect the rights of the data subject. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The European Data Protection Supervisor should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further coordination with a national supervisory authority, intermediate information should be given to the data subject. In order to facilitate the submission of complaints, the European Data Protection Supervisor should take measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.
- (80) Any person who has suffered material or non-material damage as a result of an infringement of this Regulation should have the right to receive compensation from the controller or processor for the damage suffered, subject to the conditions provided for in the Treaties.
- (81) In order to strengthen the supervisory role of the European Data Protection Supervisor and the effective enforcement of this Regulation, the European Data Protection Supervisor should, as a sanction of last resort, have the power to impose administrative fines. The fines should aim at sanctioning the Union institution or body — rather than individuals — for non-compliance with this Regulation, to deter future violations of this Regulation and to foster a culture of personal data protection within the Union institutions and bodies. This Regulation should indicate the infringements subject to administrative fines and the upper limits and criteria for setting the associated fines. The European Data Protection Supervisor should determine the amount of the fine in each individual case, by taking into account all relevant circumstances of the specific situation, with due regard to the nature, gravity and duration of the infringement, its consequences and the measures taken to ensure compliance with the obligations under this Regulation and to prevent or mitigate the consequences of the infringement. When imposing an administrative fine on a Union institution or body, the European Data Protection Supervisor should consider the proportionality of amount of the fine. The administrative procedure for the imposition of fines on Union institutions and bodies should respect the general principles of Union law as interpreted by the Court of Justice.
- (82) Where a data subject considers that his or her rights under this Regulation are infringed, he or she should have the right to mandate a not-for-profit body, organisation or association which is constituted in accordance with Union law or the law of a Member State, has statutory objectives which are in the public interest and is active in the field of

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<sup>(1)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

the protection of personal data to lodge a complaint on his or her behalf with the European Data Protection Supervisor. Such a body, organisation or association should also be able to exercise the right to a judicial remedy on behalf of data subjects or exercise the right to receive compensation on behalf of data subjects.

- (83) An official or other servant of the Union who fails to comply with the obligations in this Regulation should be liable to disciplinary or other action, in accordance with the rules and procedures laid down in the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 <sup>(1)</sup> ('Staff Regulations').
- (84) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council <sup>(2)</sup>. The examination procedure should be used for the adoption of standard contractual clauses between controllers and processors and between processors, for the adoption of a list of processing operations requiring prior consultation of the European Data Protection Supervisor by controllers processing personal data for the performance of a task carried out in the public interest, and for the adoption of standard contractual clauses providing appropriate safeguards for international transfers.
- (85) The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in accordance with the statistical principles set out in Article 338(2) TFEU. Regulation (EC) No 223/2009 of the European Parliament and of the Council <sup>(3)</sup> provides further specifications on statistical confidentiality for European statistics.
- (86) Regulation (EC) No 45/2001 and Decision No 1247/2002/EC of the European Parliament, of the Council and of the Commission <sup>(4)</sup> should be repealed. The references to the repealed Regulation and Decision should be construed as references to this Regulation.
- (87) In order to safeguard the full independence of the members of the independent supervisory authority, the terms of office of the current European Data Protection Supervisor and the current Assistant Supervisor should not be affected by this Regulation. The current Assistant Supervisor should remain in place until the end of his term of office, unless one of the conditions for the premature end of term of the European Data Protection Supervisor laid down in this Regulation is met. The relevant provisions of this Regulation should apply to the Assistant Supervisor until the end of his term of office.
- (88) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring an equivalent level of protection of natural persons with regard to the processing of personal data and the free flow of personal data throughout the Union to lay down rules on processing of personal data in Union institutions and bodies. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the TEU.
- (89) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 15 March 2017 <sup>(5)</sup>,

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<sup>(1)</sup> OJ L 56, 4.3.1968, p. 1.

<sup>(2)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(3)</sup> Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

<sup>(4)</sup> Decision No 1247/2002/EC of the European Parliament, of the Council and of the Commission of 1 July 2002 on the regulations and general conditions governing the performance of the European Data protection Supervisor's duties (OJ L 183, 12.7.2002, p. 1).

<sup>(5)</sup> OJ C 164, 24.5.2017, p. 2.



HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

#### **Subject matter and objectives**

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data by the Union institutions and bodies and rules relating to the free movement of personal data between them or to other recipients established in the Union.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The European Data Protection Supervisor shall monitor the application of the provisions of this Regulation to all processing operations carried out by a Union institution or body.

#### Article 2

#### **Scope**

1. This Regulation applies to the processing of personal data by all Union institutions and bodies.
2. Only Article 3 and Chapter IX of this Regulation shall apply to the processing of operational personal data by Union bodies, offices and agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU.
3. This Regulation shall not apply to the processing of operational personal data by Europol and the European Public Prosecutor's Office, until Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>(1)</sup> and Council Regulation (EU) 2017/1939<sup>(2)</sup> are adapted in accordance with Article 98 of this Regulation.
4. This Regulation shall not apply to the processing of personal data by missions referred to in Articles 42(1), 43 and 44 TEU.
5. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

#### Article 3

#### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (2) 'operational personal data' means all personal data processed by Union bodies, offices or agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU to meet the objectives and tasks laid down in the legal acts establishing those bodies, offices or agencies;

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<sup>(1)</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

<sup>(2)</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

- (3) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (4) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;
- (5) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
- (6) 'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
- (7) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (8) 'controller' means the Union institution or body or the directorate-general or any other organisational entity which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by a specific Union act, the controller or the specific criteria for its nomination can be provided for by Union law;
- (9) 'controllers other than Union institutions and bodies' means controllers within the meaning of point (7) of Article 4 of Regulation (EU) 2016/679 and controllers within the meaning of point (8) of Article 3 of Directive (EU) 2016/680;
- (10) 'Union institutions and bodies' means the Union institutions, bodies, offices and agencies set up by, or on the basis of, the TEU, the TFEU or the Euratom Treaty;
- (11) 'competent authority' means any public authority in a Member State competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
- (12) 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (13) 'recipient' means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;
- (14) 'third party' means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data;
- (15) 'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;
- (16) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (17) 'genetic data' means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;

- (18) 'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (19) 'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of healthcare services, which reveal information about his or her health status;
- (20) 'information society service' means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council<sup>(1)</sup>;
- (21) 'international organisation' means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;
- (22) 'national supervisory authority' means an independent public authority which is established by a Member State pursuant to Article 51 of Regulation (EU) 2016/679 or pursuant to Article 41 of Directive (EU) 2016/680;
- (23) 'user' means any natural person using a network or terminal equipment operated under the control of a Union institution or body;
- (24) 'directory' means a publicly available directory of users or an internal directory of users available within a Union institution or body or shared between Union institutions and bodies, whether in printed or electronic form;
- (25) 'electronic communications network' means a transmission system, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched including internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;
- (26) 'terminal equipment' means terminal equipment as defined in point (1) of Article 1 of Commission Directive 2008/63/EC<sup>(2)</sup>.

## CHAPTER II

### GENERAL PRINCIPLES

#### *Article 4*

#### **Principles relating to processing of personal data**

1. Personal data shall be:
  - (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
  - (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 13, not be considered to be incompatible with the initial purposes ('purpose limitation');
  - (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
  - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');

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<sup>(1)</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

<sup>(2)</sup> Commission Directive 2008/63/EC of 20 June 2008 on competition in the markets in telecommunications terminal equipment (OJ L 162, 21.6.2008, p. 20).

- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 13 subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
  - (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').
2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

#### Article 5

### Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:
- (a) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body;
  - (b) processing is necessary for compliance with a legal obligation to which the controller is subject;
  - (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;
  - (d) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
  - (e) processing is necessary in order to protect the vital interests of the data subject or of another natural person.
2. The basis for the processing referred to in points (a) and (b) of paragraph 1 shall be laid down in Union law.

#### Article 6

### Processing for another compatible purpose

Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on Union law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 25(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account, *inter alia*:

- (a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;
- (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
- (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 10, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 11;
- (d) the possible consequences of the intended further processing for data subjects;
- (e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

#### Article 7

### Conditions for consent

1. Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.
2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw as to give consent.

4. When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

#### Article 8

##### **Conditions applicable to a child's consent in relation to information society services**

1. Where point (d) of Article 5(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 13 years old. Where the child is below the age of 13 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

#### Article 9

##### **Transmissions of personal data to recipients established in the Union other than Union institutions and bodies**

1. Without prejudice to Articles 4 to 6 and 10, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if:

- (a) the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the recipient; or
- (b) the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.

2. Where the controller initiates the transmission under this Article, it shall demonstrate that the transmission of personal data is necessary for and proportionate to the purposes of the transmission by applying the criteria laid down in points (a) or (b) of paragraph 1.

3. Union institutions and bodies shall reconcile the right to the protection of personal data with the right of access to documents in accordance with Union law.

#### Article 10

##### **Processing of special categories of personal data**

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

2. Paragraph 1 shall not apply if one of the following applies:

- (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union law provides that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
- (b) the processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law insofar as it is authorised by Union law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
- (c) the 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 consent;

- (d) the 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 Union institution or body and with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former 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 outside that body without the consent of the data subjects;
- (e) the processing relates to personal data which are manifestly made public by the data subject;
- (f) the processing is necessary for the establishment, exercise or defence of legal claims or whenever the Court of Justice is acting in its judicial capacity;
- (g) the processing is necessary for reasons of substantial public interest, on the basis of Union law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
- (h) the processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;
- (i) the processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and of medicinal products or medical devices, on the basis of Union law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy; or
- (j) the processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes based on Union law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by, or under the responsibility of, a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies, or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.

#### *Article 11*

### **Processing of personal data relating to criminal convictions and offences**

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 5(1) shall be carried out only under control of official authority or when the processing is authorised by Union law providing for appropriate safeguards for the rights and freedoms of data subjects.

#### *Article 12*

### **Processing which does not require identification**

1. If the purposes for which a controller processes personal data do not or do no longer require the identification of a data subject by the controller, the controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with this Regulation.

2. Where, in cases referred to in paragraph 1 of this Article, the controller is able to demonstrate that it is not in a position to identify the data subject, the controller shall inform the data subject accordingly, if possible. In such cases, Articles 17 to 22 shall not apply except where the data subject, for the purpose of exercising his or her rights under those articles, provides additional information enabling his or her identification.

*Article 13***Safeguards relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes**

Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

## CHAPTER III

**RIGHTS OF THE DATA SUBJECT**

## SECTION 1

***Transparency and modalities****Article 14***Transparent information, communication and modalities for the exercise of the rights of the data subject**

1. The controller shall take appropriate measures to provide any information referred to in Articles 15 and 16 and any communication under Articles 17 to 24 and 35 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.
2. The controller shall facilitate the exercise of data subject rights under Articles 17 to 24. In the cases referred to in Article 12(2), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 17 to 24, unless the controller demonstrates that it is not in a position to identify the data subject.
3. The controller shall provide information on action taken on a request under Articles 17 to 24 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.
4. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with the European Data Protection Supervisor and seeking a judicial remedy.
5. Information provided under Articles 15 and 16 and any communication and any actions taken under Articles 17 to 24 and 35 shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may refuse to act on the request. The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.
6. Without prejudice to Article 12, where the controller has reasonable doubts concerning the identity of the natural person making the request referred to in Articles 17 to 23, the controller may request the provision of additional information necessary to confirm the identity of the data subject.
7. The information to be provided to data subjects pursuant to Articles 15 and 16 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.

8. Where the Commission adopts delegated acts pursuant to Article 12(8) of Regulation (EU) 2016/679 determining the information to be presented by the icons and the procedures for providing standardised icons, Union institutions and bodies shall, where appropriate, provide the information pursuant to Articles 15 and 16 of this Regulation in combination with such standardised icons.

## SECTION 2

### **Information and access to personal data**

#### Article 15

#### **Information to be provided where personal data are collected from the data subject**

1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:

- (a) the identity and the contact details of the controller;
- (b) the contact details of the data protection officer;
- (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
- (d) the recipients or categories of recipients of the personal data, if any;
- (e) where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 48, reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:

- (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
- (b) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or, where applicable, the right to object to processing or the right to data portability;
- (c) where the processing is based on point (d) of Article 5(1) or point (a) of Article 10(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
- (d) the right to lodge a complaint with the European Data Protection Supervisor;
- (e) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and of the possible consequences of failure to provide such data;
- (f) the existence of automated decision-making, including profiling, referred to in Article 24(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

3. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.

4. Paragraphs 1, 2 and 3 shall not apply where and insofar as the data subject already has the information.



*Article 16***Information to be provided where personal data have not been obtained from the data subject**

1. Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:

- (a) the identity and the contact details of the controller;
- (b) the contact details of the data protection officer;
- (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
- (d) the categories of personal data concerned;
- (e) the recipients or categories of recipients of the personal data, if any;
- (f) where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 48, reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following further information necessary to ensure fair and transparent processing in respect of the data subject:

- (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
- (b) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or, where applicable, the right to object to processing or the right to data portability;
- (c) where the processing is based on point (d) of Article 5(1) or point (a) of Article 10(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
- (d) the right to lodge a complaint with the European Data Protection Supervisor;
- (e) from which source the personal data originate, and if applicable, whether it came from publicly accessible sources;
- (f) the existence of automated decision-making, including profiling, referred to in Article 24(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

3. The controller shall provide the information referred to in paragraphs 1 and 2:

- (a) within a reasonable period after obtaining the personal data, but at the latest within one month, having regard to the specific circumstances in which the personal data are processed;
- (b) if the personal data are to be used for communication with the data subject, at the latest at the time of the first communication to that data subject; or
- (c) if a disclosure to another recipient is envisaged, at the latest when the personal data are first disclosed.

4. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.

5. Paragraphs 1 to 4 shall not apply where and insofar as:

- (a) the data subject already has the information;

- (b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing;
  - (c) obtaining or disclosure is expressly laid down by Union law, which provides appropriate measures to protect the data subject's legitimate interests; or
  - (d) where the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union law, including a statutory obligation of secrecy.
6. In the cases referred to in point (b) of paragraph 5 the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available.

#### Article 17

### **Right of access by the data subject**

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:
- (a) the purposes of the processing;
  - (b) the categories of personal data concerned;
  - (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
  - (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
  - (e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
  - (f) the right to lodge a complaint with the European Data Protection Supervisor;
  - (g) where the personal data are not collected from the data subject, any available information as to their source;
  - (h) the existence of automated decision-making, including profiling, referred to in Article 24(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
2. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 48 relating to the transfer.
3. The controller shall provide a copy of the personal data undergoing processing. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

#### SECTION 3

### **Rectification and erasure**

#### Article 18

### **Right to rectification**

The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

*Article 19***Right to erasure ('right to be forgotten')**

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

- (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (d) of Article 5(1), or point (a) of Article 10(2), and where there is no other legal ground for the processing;
- (c) the data subject objects to the processing pursuant to Article 23(1) and there are no overriding legitimate grounds for the processing;
- (d) the personal data have been unlawfully processed;
- (e) the personal data have to be erased for compliance with a legal obligation to which the controller is subject;
- (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers, or controllers other than Union institutions and bodies, which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:

- (a) for exercising the right of freedom of expression and information;
- (b) for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 10(2) as well as Article 10(3);
- (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
- (e) for the establishment, exercise or defence of legal claims.

*Article 20***Right to restriction of processing**

1. The data subject shall have the right to obtain from the controller restriction of processing where one of the following applies:

- (a) the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy, including the completeness, of the personal data;
- (b) the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
- (c) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;
- (d) the data subject has objected to processing pursuant to Article 23(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.

2. Where processing has been restricted under paragraph 1, such personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

3. A data subject who has obtained restriction of processing pursuant to paragraph 1 shall be informed by the controller before the restriction of processing is lifted.

4. In automated filing systems restriction of processing shall in principle be ensured by technical means. The fact that the personal data are restricted shall be indicated in the system in such a way that it becomes clear that the personal data may not be used.

#### *Article 21*

### **Notification obligation regarding rectification or erasure of personal data or restriction of processing**

The controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 18, Article 19(1) and Article 20 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

#### *Article 22*

### **Right to data portability**

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:

- (a) the processing is based on consent pursuant to point (d) of Article 5(1) or point (a) of Article 10(2) or on a contract pursuant to point (c) of Article 5(1); and
- (b) the processing is carried out by automated means.

2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one controller to another or to controllers other than Union institutions and bodies, where technically feasible.

3. The exercise of the right referred to in paragraph 1 of this Article shall be without prejudice to Article 19. That right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.

#### *SECTION 4*

### ***Right to object and automated individual decision-making***

#### *Article 23*

### **Right to object**

1. The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (a) of Article 5(1), including profiling based on that provision. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.

2. At the latest at the time of the first communication with the data subject, the right referred to in paragraph 1 shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.

3. Without prejudice to Articles 36 and 37, in the context of the use of information society services the data subject may exercise his or her right to object by automated means using technical specifications.

4. Where personal data are processed for scientific or historical research purposes or statistical purposes, the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.

#### Article 24

##### **Automated individual decision-making, including profiling**

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.
2. Paragraph 1 shall not apply if the decision:
  - (a) is necessary for entering into, or performance of, a contract between the data subject and the controller;
  - (b) is authorised by Union law, which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
  - (c) is based on the data subject's explicit consent.
3. In the cases referred to in points (a) and (c) of paragraph 2, the controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.
4. Decisions referred to in paragraph 2 of this Article shall not be based on special categories of personal data referred to in Article 10(1), unless point (a) or (g) of Article 10(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

#### SECTION 5

##### **Restrictions**

#### Article 25

##### **Restrictions**

1. Legal acts adopted on the basis of the Treaties or, in matters relating to the operation of the Union institutions and bodies, internal rules laid down by the latter may restrict the application of Articles 14 to 22, 35, and 36, as well as Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:
  - (a) the national security, public security or defence of the Member States;
  - (b) the prevention, investigation, detection and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
  - (c) other important objectives of general public interest of the Union or of a Member State, in particular the objectives of the common foreign and security policy of the Union or an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
  - (d) the internal security of Union institutions and bodies, including of their electronic communications networks;
  - (e) the protection of judicial independence and judicial proceedings;
  - (f) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
  - (g) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (c);
  - (h) the protection of the data subject or the rights and freedoms of others;

- (i) the enforcement of civil law claims.
2. In particular, any legal act or internal rule referred to in paragraph 1 shall contain specific provisions, where relevant, as to:
- (a) the purposes of the processing or categories of processing;
  - (b) the categories of personal data;
  - (c) the scope of the restrictions introduced;
  - (d) the safeguards to prevent abuse or unlawful access or transfer;
  - (e) the specification of the controller or categories of controllers;
  - (f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing; and
  - (g) the risks to the rights and freedoms of data subjects.
3. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union law, which may include internal rules adopted by Union institutions and bodies in matters relating to their operation, may provide for derogations from the rights referred to in Articles 17, 18, 20 and 23 subject to the conditions and safeguards referred to in Article 13 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.
4. Where personal data are processed for archiving purposes in the public interest, Union law, which may include internal rules adopted by Union institutions and bodies in matters relating to their operation, may provide for derogations from the rights referred to in Articles 17, 18, 20, 21, 22 and 23 subject to the conditions and safeguards referred to in Article 13 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.
5. Internal rules referred to in paragraphs 1, 3 and 4 shall be clear and precise acts of general application, intended to produce legal effects vis-à-vis data subjects, adopted at the highest level of management of the Union institutions and bodies and subject to publication in the *Official Journal of the European Union*.
6. If a restriction is imposed pursuant to paragraph 1, the data subject shall be informed in accordance with Union law of the principal reasons on which the application of the restriction is based and of his or her right to lodge a complaint with the European Data Protection Supervisor.
7. If a restriction imposed pursuant to 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.
8. Provision of the information referred to in paragraphs 6 and 7 of this Article and in Article 45(2) may be deferred, omitted or denied if it would cancel the effect of the restriction imposed pursuant to paragraph 1 of this Article.

#### CHAPTER IV

### CONTROLLER AND PROCESSOR

#### SECTION 1

### *General obligations*

#### *Article 26*

### **Responsibility of the controller**

1. Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation. Those measures shall be reviewed and updated where necessary.

2. Where proportionate in relation to processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the controller.

3. Adherence to approved certification mechanisms as referred to in Article 42 of Regulation (EU) 2016/679 may be used as an element by which to demonstrate compliance with the obligations of the controller.

#### *Article 27*

### **Data protection by design and by default**

1. Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.

2. The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.

3. An approved certification mechanism pursuant to Article 42 of Regulation (EU) 2016/679 may be used as an element to demonstrate compliance with the requirements set out in paragraphs 1 and 2 of this Article.

#### *Article 28*

### **Joint controllers**

1. Where two or more controllers or one or more controllers together with one or more controllers other than Union institutions and bodies jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 15 and 16, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the joint controllers are determined by Union or Member State law to which the joint controllers are subject. The arrangement may designate a contact point for data subjects.

2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.

3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.

#### *Article 29*

### **Processor**

1. Where processing is to be carried out on behalf of a controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.

2. The processor shall not engage another processor without prior specific or general written authorisation of the controller. In the case of general written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.

3. Processing by a processor shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the controller and that sets out the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller. That contract or other legal act shall stipulate, in particular, that the processor:

- (a) processes the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- (b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) takes all measures required pursuant to Article 33;
- (d) respects the conditions referred to in paragraphs 2 and 4 for engaging another processor;
- (e) taking into account the nature of the processing, assists the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;
- (f) assists the controller in ensuring compliance with the obligations pursuant to Articles 33 to 41 taking into account the nature of processing and the information available to the processor;
- (g) at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data;
- (h) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

With regard to point (h) of the first subparagraph, the processor shall immediately inform the controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.

4. Where a processor engages another processor for carrying out specific processing activities on behalf of the controller, the same data protection obligations as set out in the contract or other legal act between the controller and the processor as referred to in paragraph 3 shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this Regulation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.

5. When a processor is not a Union institution or body, its adherence to an approved code of conduct referred to in Article 40(5) of Regulation (EU) 2016/679 or an approved certification mechanism referred to in Article 42 of Regulation (EU) 2016/679 may be used as an element by which to demonstrate sufficient guarantees as referred to in paragraphs 1 and 4 of this Article.

6. Without prejudice to any individual contract between the controller and the processor, the contract or the other legal act referred to in paragraphs 3 and 4 of this Article may be based, in whole or in part, on standard contractual clauses referred to in paragraphs 7 and 8 of this Article, including when they are part of a certification granted to the processor other than a Union institution or body pursuant to Article 42 of Regulation (EU) 2016/679.

7. The Commission may lay down standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the examination procedure referred to in Article 96(2).

8. The European Data Protection Supervisor may adopt standard contractual clauses for the matters referred to in paragraphs 3 and 4.

9. The contract or the other legal act referred to in paragraphs 3 and 4 shall be in writing, including in electronic form.



10. Without prejudice to Articles 65 and 66, if a processor infringes this Regulation by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

*Article 30*

**Processing under the authority of the controller or processor**

The processor and any person acting under the authority of the controller or of the processor, who has access to personal data, shall not process those data except on instructions from the controller, unless required to do so by Union or Member State law.

*Article 31*

**Records of processing activities**

1. Each controller shall maintain a record of processing activities under its responsibility. That record shall contain all of the following information:

- (a) the name and contact details of the controller, the data protection officer and, where applicable, the processor and the joint controller;
- (b) the purposes of the processing;
- (c) a description of the categories of data subjects and of the categories of personal data;
- (d) the categories of recipients to whom the personal data have been or will be disclosed including recipients in Member States, third countries or international organisations;
- (e) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and the documentation of suitable safeguards;
- (f) where possible, the envisaged time limits for erasure of the different categories of data;
- (g) where possible, a general description of the technical and organisational security measures referred to in Article 33.

2. Each processor shall maintain a record of all categories of processing activities carried out on behalf of a controller, containing:

- (a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting, and of the data protection officer;
- (b) the categories of processing carried out on behalf of each controller;
- (c) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and the documentation of suitable safeguards;
- (d) where possible, a general description of the technical and organisational security measures referred to in Article 33.

3. The records referred to in paragraphs 1 and 2 shall be in writing, including in electronic form.

4. Union institutions and bodies shall make the record available to the European Data Protection Supervisor on request.

5. Unless it is not appropriate taking into account the size of the Union institution or body, Union institutions and bodies shall keep their records of processing activities in a central register. They shall make the register publicly accessible.

*Article 32***Cooperation with the European Data Protection Supervisor**

Union institutions and bodies shall cooperate, on request, with the European Data Protection Supervisor in the performance of his or her tasks.

*SECTION 2****Security of personal data****Article 33***Security of processing**

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, inter alia, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

2. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

3. The controller and processor shall take steps to ensure that any natural person acting under the authority of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union law.

4. Adherence to an approved certification mechanism as referred to in Article 42 of Regulation (EU) 2016/679 may be used as an element by which to demonstrate compliance with the requirements set out in paragraph 1 of this Article.

*Article 34***Notification of a personal data breach to the European Data Protection Supervisor**

1. In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the European Data Protection Supervisor, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the European Data Protection Supervisor is not made within 72 hours, it shall be accompanied by reasons for the delay.

2. The processor shall notify the controller without undue delay after becoming aware of a personal data breach.

3. The notification referred to in paragraph 1 shall at least:

- (a) describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) communicate the name and contact details of the data protection officer;
- (c) describe the likely consequences of the personal data breach;
- (d) describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

4. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.
5. The controller shall inform the data protection officer about the personal data breach.
6. The controller shall document any personal data breaches, comprising the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the European Data Protection Supervisor to verify compliance with this Article.

#### *Article 35*

### **Communication of a personal data breach to the data subject**

1. When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 of this Article shall describe in clear and plain language the nature of the personal data breach and contain at least the information and measures referred to in points (b), (c) and (d) of Article 34(3).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:
  - (a) the controller has implemented appropriate technical and organisational protection measures, and those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
  - (b) the controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;
  - (c) it would involve disproportionate effort. In such a case, there shall instead be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.
4. If the controller has not already communicated the personal data breach to the data subject, the European Data Protection Supervisor, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so or may decide that any of the conditions referred to in paragraph 3 are met.

#### *SECTION 3*

### ***Confidentiality of electronic communications***

#### *Article 36*

### **Confidentiality of electronic communications**

Union institutions and bodies shall ensure the confidentiality of electronic communications, in particular by securing their electronic communications networks.

#### *Article 37*

### **Protection of information transmitted to, stored in, related to, processed by and collected from users' terminal equipment**

Union institutions and bodies shall protect the information transmitted to, stored in, related to, processed by and collected from the terminal equipment of users accessing their publicly available websites and mobile applications, in accordance with Article 5(3) of Directive 2002/58/EC.

*Article 38***Directories of users**

1. Personal data contained in directories of users and access to such directories shall be limited to what is strictly necessary for the specific purposes of the directory.
2. Union institutions and bodies shall take all the necessary measures to prevent personal data contained in those directories from being used for direct marketing purposes regardless of whether they are accessible to the public or not.

## SECTION 4

**Data protection impact assessment and prior consultation***Article 39***Data protection impact assessment**

1. Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.
2. The controller shall seek the advice of the data protection officer when carrying out a data protection impact assessment.
3. A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:
  - (a) a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;
  - (b) processing on a large scale of special categories of data referred to in Article 10, or of personal data relating to criminal convictions and offences referred to in Article 11; or
  - (c) a systematic monitoring of a publicly accessible area on a large scale.
4. The European Data Protection Supervisor shall establish and make public a list of the kind of processing operations which are subject to the requirement for a data protection impact assessment pursuant to paragraph 1.
5. The European Data Protection Supervisor may also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required.
6. Prior to the adoption of the lists referred to in paragraphs 4 and 5 of this Article, the European Data Protection Supervisor shall request that the European Data Protection Board set up by Article 68 of Regulation (EU) 2016/679 examine such lists in accordance with point (e) of Article 70(1) of that Regulation where they refer to processing operations by a controller acting jointly with one or more controllers other than Union institutions and bodies.
7. The assessment shall contain at least:
  - (a) a systematic description of the envisaged processing operations and the purposes of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
  - (c) an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.

8. Compliance with approved codes of conduct referred to in Article 40 of the Regulation (EU) 2016/679 by the relevant processors other than Union institutions and bodies shall be taken into due account in assessing the impact of the processing operations performed by such processors, in particular for the purposes of a data protection impact assessment.

9. Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of public interests or the security of processing operations.

10. Where processing pursuant to point (a) or (b) of Article 5(1) has a legal basis in a legal act adopted on the basis of the Treaties, which regulates the specific processing operation or set of operations in question, and where a data protection impact assessment has already been carried out as part of a general impact assessment preceding the adoption of that legal act, paragraphs 1 to 6 of this Article shall not apply unless that legal act provides otherwise.

11. Where necessary, the controller shall carry out a review to assess if processing is performed in accordance with the data protection impact assessment at least when there is a change of the risk represented by processing operations.

#### *Article 40*

#### **Prior consultation**

1. The controller shall consult the European Data Protection Supervisor prior to processing where a data protection impact assessment under Article 39 indicates that the processing would, in the absence of safeguards, security measures and mechanisms to mitigate the risk, result in a high risk to the rights and freedoms of natural persons and the controller is of the opinion that the risk cannot be mitigated by reasonable means in view of the available technologies and costs of implementation. The controller shall seek the advice of the data protection officer on the need for prior consultation.

2. Where the European Data Protection Supervisor is of the opinion that the intended processing referred to in paragraph 1 would infringe this Regulation, in particular where the controller has insufficiently identified or mitigated the risk, the European Data Protection Supervisor shall, within period of up to eight weeks of receipt of the request for consultation, provide written advice to the controller and, where applicable to the processor, and may use any of his or her powers referred to in Article 58. That period may be extended by six weeks, taking into account the complexity of the intended processing. The European Data Protection Supervisor shall inform the controller and, where applicable, the processor, of any such extension within one month of receipt of the request for consultation together with the reasons for the delay. Those periods may be suspended until the European Data Protection Supervisor has obtained information it has requested for the purposes of the consultation.

3. When consulting the European Data Protection Supervisor pursuant to paragraph 1, the controller shall provide the European Data Protection Supervisor with:

- (a) where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the processing;
- (b) the purposes and means of the intended processing;
- (c) the measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to this Regulation;
- (d) the contact details of the data protection officer;
- (e) the data protection impact assessment provided for in Article 39; and
- (f) any other information requested by the European Data Protection Supervisor.

4. The Commission may, by means of an implementing act, determine a list of cases in which the controllers shall consult with, and obtain prior authorisation from, the European Data Protection Supervisor in relation to processing of personal data for the performance of a task carried out by the controller in the public interest, including the processing of such data in relation to social protection and public health.

## SECTION 5

**Information and legislative consultation**

## Article 41

**Information and consultation**

1. The Union institutions and bodies shall inform the European Data Protection Supervisor when drawing up administrative measures and internal rules relating to the processing of personal data by a Union institution or body, whether alone or jointly with others.
2. The Union institutions and bodies shall consult the European Data Protection Supervisor when drawing up the internal rules referred to in Article 25.

## Article 42

**Legislative consultation**

1. The Commission shall, following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the European Data Protection Supervisor where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data.
2. Where an act referred to in paragraph 1 is of particular importance for the protection of individuals' rights and freedoms with regard to the processing of personal data, the Commission may also consult the European Data Protection Board. In such cases the European Data Protection Supervisor and the European Data Protection Board shall coordinate their work with a view to issuing a joint opinion.
3. The advice referred to in paragraphs 1 and 2 shall be provided in writing within a period of up to eight weeks of receipt of the request for consultation referred to in paragraphs 1 and 2. In urgent cases, or if otherwise appropriate, the Commission may shorten the deadline.
4. This Article shall not apply where the Commission is required, pursuant to Regulation (EU) 2016/679, to consult the European Data Protection Board.

## SECTION 6

**Data protection officer**

## Article 43

**Designation of the data protection officer**

1. Each Union institution or body shall designate a data protection officer.
2. Union institutions and bodies may designate a single data protection officer for several of them, taking into account their organisational structure and size.
3. The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 45.
4. The data protection officer shall be a staff member of the Union institution or body. Taking into account their size and if the option under paragraph 2 is not exercised, Union institutions and bodies may designate a data protection officer who fulfils his or her tasks on the basis of a service contract.
5. The Union institutions and bodies shall publish the contact details of the data protection officer and communicate them to the European Data Protection Supervisor.

## Article 44

**Position of the data protection officer**

1. The Union institutions and bodies shall ensure that the data protection officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.
2. The Union institutions and bodies shall support the data protection officer in performing the tasks referred to in Article 45 by providing resources necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge.

3. The Union institutions and bodies shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by the controller or the processor for performing his or her tasks. The data protection officer shall directly report to the highest management level of the controller or the processor.
4. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation.
5. The data protection officer and his or her staff shall be bound by secrecy or confidentiality concerning the performance of their tasks, in accordance with Union law.
6. The data protection officer may fulfil other tasks and duties. The controller or processor shall ensure that any such tasks and duties do not result in a conflict of interests.
7. The data protection officer may be consulted by the controller and the processor, by the staff committee concerned and by any individual on any matter concerning the interpretation or application of this Regulation, without them going through the official channels. No one shall suffer prejudice on account of a matter brought to the attention of the competent data protection officer alleging that a breach of the provisions of this Regulation has taken place.
8. The data protection officer shall be designated for a term of three to five years and shall be eligible for reappointment. The data protection officer may be dismissed from the post by the Union institution or body which designated him or her if he or she no longer fulfils the conditions required for the performance of his or her duties and only with the consent of the European Data Protection Supervisor.
9. After his or her designation the data protection officer shall be registered with the European Data Protection Supervisor by the Union institution or body which designated him or her.

#### Article 45

#### **Tasks of the data protection officer**

1. The data protection officer shall have the following tasks:
  - (a) to inform and advise the controller or the processor and the employees who carry out processing of their obligations pursuant to this Regulation and to other Union data protection provisions;
  - (b) to ensure in an independent manner the internal application of this Regulation; to monitor compliance with this Regulation, with other applicable Union law containing data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, the raising of awareness and training of staff involved in processing operations, and the related audits;
  - (c) to ensure that data subjects are informed of their rights and obligations pursuant to this Regulation;
  - (d) to provide advice where requested as regards the necessity for a notification or a communication of a personal data breach pursuant to Articles 34 and 35;
  - (e) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 39 and to consult the European Data Protection Supervisor in case of doubt as to the need for a data protection impact assessment;
  - (f) to provide advice where requested as regards the need for prior consultation of the European Data Protection Supervisor pursuant to Article 40; to consult the European Data Protection Supervisor in case of doubt as to the need for a prior consultation;
  - (g) to respond to requests from the European Data Protection Supervisor; within the sphere of his or her competence, to cooperate and consult with the European Data Protection Supervisor at the latter's request or on his or her own initiative;
  - (h) to ensure that the rights and freedoms of data subjects are not adversely affected by processing operations.

2. The data protection officer may make recommendations to the controller and the processor for the practical improvement of data protection and advise them on matters concerning the application of data protection provisions. Furthermore he or she may, on his or her own initiative or at the request of the controller or the processor, the staff committee concerned or any individual, investigate matters and occurrences directly relating to his or her tasks which come to his or her notice, and report back to the person who commissioned the investigation or to the controller or the processor.

3. Further implementing rules concerning the data protection officer shall be adopted by each Union institution or body. The implementing rules shall in particular concern the tasks, duties and powers of the data protection officer.

#### CHAPTER V

### TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

#### Article 46

##### General principle for transfers

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation shall take place only if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions in this Chapter shall be applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined.

#### Article 47

##### Transfers on the basis of an adequacy decision

1. A transfer of personal data to a third country or international organisation may take place where the Commission has decided pursuant to Article 45(3) of Regulation (EU) 2016/679 or to Article 36(3) of Directive (EU) 2016/680 that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection and where the personal data are transferred solely to allow tasks within the competence of the controller to be carried out.

2. The Union institutions and bodies shall inform the Commission and the European Data Protection Supervisor of cases where they consider that a third country, a territory or one or more specified sectors within a third country, or an international organisation in question does not ensure an adequate level of protection within the meaning of paragraph 1.

3. The Union institutions and bodies shall take the necessary measures to comply with decisions taken by the Commission where it establishes, pursuant to Article 45(3) or (5) of Regulation (EU) 2016/679 or to Article 36(3) or (5) of Directive (EU) 2016/680, that a third country, a territory or one or more specified sectors within a third country, or an international organisation ensures or no longer ensures an adequate level of protection.

#### Article 48

##### Transfers subject to appropriate safeguards

1. In the absence of a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 or to Article 36(3) of Directive (EU) 2016/680, a controller or processor may transfer personal data to a third country or to an international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

2. The appropriate safeguards referred to in paragraph 1 may be provided for, without requiring any specific authorisation from the European Data Protection Supervisor, by:

- (a) a legally binding and enforceable instrument between public authorities or bodies;
- (b) standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 96(2);
- (c) standard data protection clauses adopted by the European Data Protection Supervisor and approved by the Commission pursuant to the examination procedure referred to in Article 96(2);



- (d) where the processor is not a Union institution or body, binding corporate rules, codes of conduct or certification mechanisms pursuant to points (b), (e) and (f) of Article 46(2) of Regulation (EU) 2016/679.
3. Subject to the authorisation from the European Data Protection Supervisor, the appropriate safeguards referred to in paragraph 1 may also be provided for, in particular, by:
- (a) contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation; or
- (b) provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.
4. Authorisations by the European Data Protection Supervisor on the basis of Article 9(7) of Regulation (EC) No 45/2001 shall remain valid until amended, replaced or repealed, if necessary, by the European Data Protection Supervisor.
5. The Union institutions and bodies shall inform the European Data Protection Supervisor of the categories of cases in which this Article has been applied.

#### *Article 49*

### **Transfers or disclosures not authorised by Union law**

Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union, without prejudice to other grounds for transfer pursuant to this Chapter.

#### *Article 50*

### **Derogations for specific situations**

1. In the absence of an adequacy decision pursuant to Article 45(3) of Regulation (EU) 2016/679 or to Article 36(3) of Directive (EU) 2016/680, or of appropriate safeguards pursuant to Article 48 of this Regulation, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions:
- (a) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;
- (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 at the data subject's request;
- (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;
- (d) the transfer is necessary for important reasons of public interest;
- (e) the transfer is necessary for the establishment, exercise or defence of legal claims;
- (f) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; or
- (g) the transfer is made from a register which, according to Union 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, but only to the extent that the conditions laid down in Union law for consultation are fulfilled in the particular case.
2. Points (a), (b) and (c) of paragraph 1 shall not apply to activities carried out by Union institutions and bodies in the exercise of their public powers.
3. The public interest referred to in point (d) of paragraph 1 shall be recognised in Union law.
4. A transfer pursuant to point (g) of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register, unless authorised by Union law. Where the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

5. In the absence of an adequacy decision, Union law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of personal data to a third country or an international organisation.
6. The Union institutions and bodies shall inform the European Data Protection Supervisor of the categories of cases in which this Article has been applied.

#### *Article 51*

### **International cooperation for the protection of personal data**

In relation to third countries and international organisations, the European Data Protection Supervisor, in cooperation with the Commission and the European Data Protection Board, shall take appropriate steps to:

- (a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
- (b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;
- (c) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data;
- (d) promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

#### CHAPTER VI

### **EUROPEAN DATA PROTECTION SUPERVISOR**

#### *Article 52*

### **European Data Protection Supervisor**

1. The European Data Protection Supervisor is hereby established.
2. With respect to the processing of personal data, the European Data Protection Supervisor shall be responsible for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies.
3. The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of this Regulation and of any other Union act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a Union institution or body, and for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data. To those ends, the European Data Protection Supervisor shall fulfil the tasks set out in Article 57 and exercise the powers granted in Article 58.
4. Regulation (EC) No 1049/2001 shall apply to documents held by the European Data Protection Supervisor. The European Data Protection Supervisor shall adopt detailed rules for applying Regulation (EC) No 1049/2001 with regard to those documents.

#### *Article 53*

### **Appointment of the European Data Protection Supervisor**

1. The European Parliament and the Council shall appoint the European Data Protection Supervisor by common accord for a term of five years, on the basis of a list drawn up by the Commission following a public call for candidates. The call for candidates shall enable all interested parties throughout the Union to submit their applications. The list of candidates drawn up by the Commission shall be public and shall consist of at least three candidates. On the basis of the list drawn up by the Commission, the competent committee of the European Parliament may decide to hold a hearing in order to enable it to express a preference.
2. The list of candidates referred to in paragraph 1 shall be made up of persons whose independence is beyond doubt and who are acknowledged as having expert knowledge in data protection as well as the experience and skills required to perform the duties of European Data Protection Supervisor.

3. The term of office of the European Data Protection Supervisor shall be renewable once.
4. The duties of the European Data Protection Supervisor shall cease in the following circumstances:
  - (a) if the European Data Protection Supervisor is replaced;
  - (b) if the European Data Protection Supervisor resigns;
  - (c) if the European Data Protection Supervisor is dismissed or required to take compulsory retirement.
5. The European Data Protection Supervisor may be dismissed or deprived of his or her right to a pension or other benefits in his or her stead by the Court of Justice at the request of the European Parliament, the Council or the Commission, if he or she no longer fulfils the conditions required for the performance of his or her duties or if he or she is guilty of serious misconduct.
6. In the event of normal replacement or voluntary resignation, the European Data Protection Supervisor shall nevertheless remain in office until he or she has been replaced.
7. Articles 11 to 14 and 17 of the Protocol on the Privileges and Immunities of the European Union shall apply to the European Data Protection Supervisor.

#### *Article 54*

### **Regulations and general conditions governing the performance of the European Data Protection Supervisor's duties, staff and financial resources**

1. The European Data Protection Supervisor shall be considered equivalent to a judge of the Court of Justice as regards the determination of remuneration, allowances, retirement pension and any other benefit in lieu of remuneration.
2. The budgetary authority shall ensure that the European Data Protection Supervisor is provided with the human and financial resources necessary for the performance of his or her tasks.
3. The budget of the European Data Protection Supervisor shall be shown in a separate budgetary heading in the section related to administrative expenditure of the general budget of the Union.
4. The European Data Protection Supervisor shall be assisted by a secretariat. The officials and other staff members of the secretariat shall be appointed by the European Data Protection Supervisor and their superior shall be the European Data Protection Supervisor. They shall be subject exclusively to his or her direction. Their numbers shall be decided each year as part of the budgetary procedure. Article 75(2) of Regulation (EU) 2016/679 shall apply to the staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the European Data Protection Board by Union law.
5. The officials and the other staff members of the secretariat of the European Data Protection Supervisor shall be subject to the rules and regulations applicable to officials and other servants of the Union.
6. The seat of the European Data Protection Supervisor shall be in Brussels.

#### *Article 55*

### **Independence**

1. The European Data Protection Supervisor shall act with complete independence in performing his or her tasks and exercising his or her powers in accordance with this Regulation.
2. The European Data Protection Supervisor shall, in the performance of his or her tasks and exercise of his or her powers in accordance with this Regulation, remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from anybody.
3. The European Data Protection Supervisor shall refrain from any action incompatible with his or her duties and shall not, during his or her term of office, engage in any other occupation, whether gainful or not.
4. After his or her term of office, the European Data Protection Supervisor shall behave with integrity and discretion as regards the acceptance of appointments and benefits.

#### *Article 56*

### **Professional secrecy**

The European Data Protection Supervisor and his or her staff shall, both during and after their term of office, be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

*Article 57***Tasks**

1. Without prejudice to other tasks set out under this Regulation, the European Data Protection Supervisor shall:
  - (a) monitor and enforce the application of this Regulation by Union institutions and bodies, with the exception of the processing of personal data by the Court of Justice acting in its judicial capacity;
  - (b) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing. Activities addressed specifically to children shall receive specific attention;
  - (c) promote the awareness of controllers and processors of their obligations under this Regulation;
  - (d) upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, cooperate with the national supervisory authorities to that end;
  - (e) handle complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 67, and investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;
  - (f) conduct investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or other public authority;
  - (g) advise, on his or her own initiative or on request, all Union institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data;
  - (h) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies;
  - (i) adopt standard contractual clauses referred to in Article 29(8) and in point (c) of Article 48(2);
  - (j) establish and maintain a list in relation to the requirement for data protection impact assessment pursuant to Article 39(4);
  - (k) participate in the activities of the European Data Protection Board;
  - (l) provide the secretariat for the European Data Protection Board, in accordance with Article 75 of Regulation (EU) 2016/679;
  - (m) give advice on the processing referred to in Article 40(2);
  - (n) authorise contractual clauses and provisions referred to in Article 48(3);
  - (o) keep internal records of infringements of this Regulation and of measures taken in accordance with Article 58(2);
  - (p) fulfil any other tasks related to the protection of personal data; and
  - (q) establish his or her Rules of Procedure.
2. The European Data Protection Supervisor shall facilitate the submission of complaints referred to in point (e) of paragraph 1 by a complaint submission form which can also be completed electronically, without excluding other means of communication.
3. The performance of the tasks of the European Data Protection Supervisor shall be free of charge for the data subject.
4. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the European Data Protection Supervisor may refuse to act on the request. The European Data Protection Supervisor shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

*Article 58***Powers**

1. The European Data Protection Supervisor shall have the following investigative powers:
  - (a) to order the controller and the processor to provide any information it requires for the performance of his or her tasks;
  - (b) to carry out investigations in the form of data protection audits;
  - (c) to notify the controller or the processor of an alleged infringement of this Regulation;
  - (d) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of his or her tasks;
  - (e) to obtain access to any premises of the controller and the processor, including to any data processing equipment and means, in accordance with Union law.
2. The European Data Protection Supervisor 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 to a controller or a processor where processing operations have infringed provisions of this Regulation;
  - (c) to refer matters to the controller or processor concerned and, if necessary, to the European Parliament, the Council and the Commission;
  - (d) 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;
  - (e) 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;
  - (f) to order the controller to communicate a personal data breach to the data subject;
  - (g) to impose a temporary or definitive limitation including a ban on processing;
  - (h) to order the rectification or erasure of personal data or restriction of processing pursuant to Articles 18, 19 and 20 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 19(2) and Article 21;
  - (i) to impose an administrative fine pursuant to Article 66 in the case of non-compliance by a Union institution or body with one of the measures referred to in points (d) to (h) and (j) of this paragraph, depending on the circumstances of each individual case;
  - (j) to order the suspension of data flows to a recipient in a Member State, a third country or to an international organisation.
3. The European Data Protection Supervisor shall have the following authorisation and advisory powers:
  - (a) to advise data subjects in the exercise of their rights;
  - (b) to advise the controller in accordance with the prior consultation procedure referred to in Article 40, and in accordance with Article 41(2);
  - (c) to issue, on his or her own initiative or on request, opinions to Union institutions and bodies and to the public on any issue related to the protection of personal data;
  - (d) to adopt standard data protection clauses referred to in Article 29(8) and in point (c) of Article 48(2);
  - (e) to authorise contractual clauses referred to in point (a) of Article 48(3);
  - (f) to authorise administrative arrangements referred to in point (b) of Article 48(3);
  - (g) to authorise processing operations pursuant to implementing acts adopted under Article 40(4).

4. The European Data Protection Supervisor shall have the power to refer the matter to the Court of Justice under the conditions provided for in the Treaties and to intervene in actions brought before the Court of Justice.
5. The exercise of the powers conferred on the European Data Protection Supervisor pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedies and due process, set out in Union law.

*Article 59*

**Obligation of controllers and processors to react to allegations**

Where the European Data Protection Supervisor exercises the powers provided for in points (a), (b) and (c) of Article 58(2), the controller or processor concerned shall inform the European Data Protection Supervisor of its views within a reasonable period to be specified by the European Data Protection Supervisor, taking into account the circumstances of each case. The reply shall also include a description of the measures taken, if any, in response to the remarks of the European Data Protection Supervisor.

*Article 60*

**Activities report**

1. The European Data Protection Supervisor shall submit an annual report on his or her activities to the European Parliament, to the Council and to the Commission and at the same time make it public.
2. The European Data Protection Supervisor shall forward the report referred to in paragraph 1 to the other Union institutions and bodies, which may submit comments with a view to possible examination of the report by the European Parliament.

CHAPTER VII

**COOPERATION AND CONSISTENCY**

*Article 61*

**Cooperation between the European Data Protection Supervisor and national supervisory authorities**

The European Data Protection Supervisor shall cooperate with national supervisory authorities and with the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA<sup>(1)</sup> to the extent necessary for the performance of their respective duties, in particular by providing each other with relevant information, asking each other to exercise their powers and responding to each other's requests.

*Article 62*

**Coordinated supervision by the European Data Protection Supervisor and national supervisory authorities**

1. Where a Union act refers to this Article, the European Data Protection Supervisor and the national supervisory authorities, each acting within the scope of their respective competences, shall cooperate actively within the framework of their responsibilities to ensure effective supervision of large-scale IT systems and of Union bodies, offices and agencies.
2. They shall, as necessary, each acting within the scope of their respective competences and within the framework of their responsibilities, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation and other applicable Union acts, study problems with the exercise of independent supervision or with the exercise of the rights of data subjects, draw up harmonised proposals for solutions to any problems and promote awareness of data protection rights.
3. For the purposes laid down in paragraph 2, the European Data Protection Supervisor and the national supervisory authorities shall meet at least twice a year within the framework of the European Data Protection Board. For these purposes, the European Data Protection Board may develop further working methods as necessary.
4. The European Data Protection Board shall submit a joint report of coordinated supervision activities to the European Parliament, to the Council, and to the Commission every two years.

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<sup>(1)</sup> Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20).

## CHAPTER VIII

## REMEDIES, LIABILITY AND PENALTIES

*Article 63***Right to lodge a complaint with the European Data Protection Supervisor**

1. Without prejudice to any judicial, administrative or non-judicial remedy, every data subject shall have the right to lodge a complaint with the European Data Protection Supervisor if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.
2. The European Data Protection Supervisor shall inform the complainant of the progress and the outcome of the complaint, including of the possibility of a judicial remedy pursuant to Article 64.
3. If the European Data Protection Supervisor does not handle the complaint or does not inform the data subject within three months on the progress or outcome of the complaint, the European Data Protection Supervisor shall be deemed to have adopted a negative decision.

*Article 64***Right to an effective judicial remedy**

1. The Court of Justice shall have jurisdiction to hear all disputes relating to the provisions of this Regulation, including claims for damages.
2. Actions against decisions of the European Data Protection Supervisor, including decisions under Article 63(3), shall be brought before the Court of Justice.
3. The Court of Justice shall have unlimited jurisdiction to review administrative fines referred to in Article 66. It may cancel, reduce or increase those fines within the limits of Article 66.

*Article 65***Right to compensation**

Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the Union institution or body for the damage suffered, subject to the conditions provided for in the Treaties.

*Article 66***Administrative fines**

1. The European Data Protection Supervisor may impose administrative fines on Union institutions and bodies, depending on the circumstances of each individual case, where a Union institution or body fails to comply with an order by the European Data Protection Supervisor pursuant to points (d) to (h) and (j) of Article 58(2). When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case, due regard shall be given to the following:
  - (a) the nature, gravity and duration of the infringement, taking into account the nature, scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them;
  - (b) any action taken by the Union institution or body to mitigate the damage suffered by data subjects;
  - (c) the degree of responsibility of the Union institution or body, taking into account technical and organisational measures implemented by them pursuant to Articles 27 and 33;
  - (d) any similar previous infringements by the Union institution or body;
  - (e) the degree of cooperation with the European Data Protection Supervisor in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
  - (f) the categories of personal data affected by the infringement;
  - (g) the manner in which the infringement became known to the European Data Protection Supervisor, in particular whether, and if so to what extent, the Union institution or body notified the infringement;

- (h) compliance with any of the measures referred to in Article 58 previously ordered against the Union institution or body concerned with regard to the same subject matter. The proceedings leading to the imposition of those fines shall be carried out in a reasonable timeframe according to the circumstances of the case and taking into account the relevant actions and proceedings referred to in Article 69.
2. Infringements of the obligations of the Union institution or body pursuant to Articles 8, 12, 27 to 35, 39, 40, 43, 44 and 45 shall, in accordance with paragraph 1 of this Article, be subject to administrative fines of up to 25 000 EUR per infringement and up to a total of 250 000 EUR per year.
3. Infringements of the following provisions by the Union institution or body shall, in accordance with paragraph 1, be subject to administrative fines of up to 50 000 EUR per infringement and up to a total of 500 000 EUR per year:
- (a) the basic principles for processing, including conditions for consent, pursuant to Articles 4, 5, 7 and 10;
- (b) the data subjects' rights pursuant to Articles 14 to 24;
- (c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 46 to 50.
4. If a Union institution or body, for the same or linked or continuous processing operations, infringes several provisions of this Regulation or the same provision of this Regulation several times, the total amount of the administrative fine shall not exceed the amount specified for the gravest infringement.
5. Before taking decisions pursuant to this Article, the European Data Protection Supervisor shall give the Union institution or body which is the subject of the proceedings conducted by the European Data Protection Supervisor the opportunity of being heard on the matters to which the European Data Protection Supervisor has taken objection. The European Data Protection Supervisor shall base his or her decisions only on objections on which the parties concerned have been able to comment. Complainants shall be associated closely with the proceedings.
6. The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the European Data Protection Supervisor's file, subject to the legitimate interest of individuals or undertakings in the protection of their personal data or business secrets.
7. Funds collected by imposition of fines in this Article shall be the income of the general budget of the Union.

#### *Article 67*

### **Representation of data subjects**

The data subject shall have the right to mandate a not-for-profit body, organisation or association which has been properly constituted in accordance with Union law or the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data to lodge the complaint with the European Data Protection Supervisor on his or her behalf, to exercise the rights referred to in Articles 63 and 64 on his or her behalf, and to exercise the right to receive compensation referred to in Article 65 on his or her behalf.

#### *Article 68*

### **Complaints by Union staff**

Any person employed by a Union institution or body may lodge a complaint with the European Data Protection Supervisor regarding an alleged infringement of the provisions of this Regulation, including without acting through official channels. No one shall suffer prejudice by reason of having submitted a complaint with the European Data Protection Supervisor alleging such an infringement.

#### *Article 69*

### **Sanctions**

Where an official or other servant of the Union fails to comply with the obligations laid down in this Regulation, whether intentionally or through negligence on his or her part, the official or other servant concerned shall be liable to disciplinary or other action, in accordance with the rules and procedures laid down in the Staff Regulations.



## CHAPTER IX

**PROCESSING OF OPERATIONAL PERSONAL DATA BY UNION BODIES, OFFICES AND AGENCIES WHEN CARRYING OUT ACTIVITIES WHICH FALL WITHIN THE SCOPE OF CHAPTER 4 OR CHAPTER 5 OF TITLE V OF PART THREE TFEU***Article 70***Scope of the Chapter**

This Chapter applies only to the processing of operational personal data by Union bodies, offices and agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU, without prejudice to specific data protection rules applicable to such a Union body, office or agency.

*Article 71***Principles relating to processing of operational personal data**

1. Operational personal data shall be:
  - (a) processed lawfully and fairly ('lawfulness and fairness');
  - (b) collected for specified, explicit and legitimate purposes and not processed in a manner that is incompatible with those purposes ('purpose limitation');
  - (c) adequate, relevant, and not excessive in relation to the purposes for which they are processed ('data minimisation');
  - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that operational personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
  - (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the operational personal data are processed ('storage limitation');
  - (f) processed in a manner that ensures appropriate security of the operational personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').
2. Processing by the same or another controller for any of the purposes set out in the legal act establishing the Union body, office or agency other than that for which the operational personal data are collected shall be permitted in so far as:
  - (a) the controller is authorised to process such operational personal data for such a purpose in accordance with Union law; and
  - (b) processing is necessary and proportionate to that other purpose in accordance with Union law.
3. Processing by the same or another controller may include archiving in the public interest, scientific, statistical or historical use, for the purposes set out in the legal act establishing the Union body, office or agency, subject to appropriate safeguards for the rights and freedoms of data subjects.
4. The controller shall be responsible for, and be able to demonstrate compliance with, paragraphs 1, 2 and 3.

*Article 72***Lawfulness of processing of operational personal data**

1. Processing of operational personal data shall be lawful only if and to the extent that processing is necessary for the performance of a task carried out by Union bodies, offices and agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU and that it is based on Union law.

2. Specific Union legal acts regulating processing within the scope of this Chapter shall specify at least the objectives of processing, the operational personal data to be processed, the purposes of the processing and the time limits for storage of the operational personal data or for periodic review of the need for further storage of the operational personal data.

#### *Article 73*

### **Distinction between different categories of data subjects**

The controller shall, where applicable and as far as possible, make a clear distinction between the operational personal data of different categories of data subjects, such as the categories listed in the legal acts establishing Union bodies, offices and agencies.

#### *Article 74*

### **Distinction between operational personal data and verification of the quality of operational personal data**

1. The controller shall distinguish, as far as possible, operational personal data based on facts from operational personal data based on personal assessments.

2. The controller shall take all reasonable steps to ensure that operational personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available. To that end, the controller shall, as far as practicable and where relevant, verify the quality of operational personal data before they are transmitted or made available, for example by consulting the competent authority from which the data originates. As far as possible, in all transmissions of operational personal data, the controller shall add the necessary information enabling the recipient to assess the degree to which the operational personal data are accurate, complete and reliable, and the extent to which they are up to date.

3. If it emerges that incorrect operational personal data have been transmitted or that operational personal data have been unlawfully transmitted, the recipient shall be notified without delay. In such a case, the operational personal data concerned shall be rectified or erased or their processing shall be restricted in accordance with Article 82.

#### *Article 75*

### **Specific processing conditions**

1. When Union law applicable to the transmitting controller provides for specific conditions for processing, the controller shall inform the recipient of the operational personal data of those conditions and the requirement to comply with them.

2. The controller shall comply with specific processing conditions for processing provided by a transmitting competent authority in accordance with Article 9(3) and (4) of Directive (EU) 2016/680.

#### *Article 76*

### **Processing of special categories of operational personal data**

1. Processing of operational personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, operational personal data concerning health or concerning a natural person's sex life or sexual orientation shall be allowed only where strictly necessary for operational purposes, within the mandate of the Union body, office or agency concerned and subject to appropriate safeguards for the rights and freedoms of the data subject. Discrimination against natural persons on the basis of such personal data shall be prohibited.

2. The data protection officer shall be informed without undue delay of recourse to this Article.

#### *Article 77*

### **Automated individual decision-making, including profiling**

1. A decision based solely on automated processing, including profiling, which produces an adverse legal effect concerning the data subject or significantly affects him or her shall be prohibited unless authorised by Union law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller.

2. Decisions referred to in paragraph 1 of this Article shall not be based on the special categories of personal data referred to in Article 76 unless suitable measures to safeguard the data subject's rights, freedoms and legitimate interests are in place.

3. Profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 76 shall be prohibited, in accordance with Union law.

#### Article 78

### Communication and modalities for exercising the rights of the data subject

1. The controller shall take reasonable steps to provide any information referred to in Article 79 and make any communication with regard to Articles 80 to 84 and 92 relating to processing to the data subject in a concise, intelligible and easily accessible form, using clear and plain language. The information shall be provided by any appropriate means, including by electronic means. As a general rule, the controller shall provide the information in the same form as the request.

2. The controller shall facilitate the exercise of the rights of the data subject under Articles 79 to 84.

3. The controller shall inform the data subject in writing about the follow-up to his or her request without undue delay and in any case at the latest within three months after receipt of the request by the data subject.

4. The controller shall provide the information under Article 79 and any communication made or action taken pursuant to Articles 80 to 84 and 92 free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may refuse to act on the request. The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

5. Where the controller has reasonable doubts concerning the identity of the natural person making a request referred to in Article 80 or 82, the controller may request the provision of additional information necessary to confirm the identity of the data subject.

#### Article 79

### Information to be made available or given to the data subject

1. The controller shall make available to the data subject at least the following information:

- (a) the identity and the contact details of the Union body, office or agency;
- (b) the contact details of the data protection officer;
- (c) the purposes of the processing for which the operational personal data are intended;
- (d) the right to lodge a complaint with the European Data Protection Supervisor and his or her contact details;
- (e) the existence of the right to request from the controller access to and rectification or erasure of operational personal data and restriction of processing of the operational personal data concerning the data subject.

2. In addition to the information referred to in paragraph 1, the controller shall give to the data subject, in the specific cases foreseen by Union law, the following further information to enable the exercise of his or her rights:

- (a) the legal basis for the processing;
- (b) the period for which the operational personal data will be stored, or, where that is not possible, the criteria used to determine that period;
- (c) where applicable, the categories of recipients of the operational personal data, including in third countries or international organisations;
- (d) where necessary, further information, in particular where the operational personal data are collected without the knowledge of the data subject.

3. The controller may delay, restrict or omit the provision of the information to the data subject pursuant to paragraph 2 to the extent that, and for as long as, such a measure constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and the legitimate interests of the natural person concerned, in order to:

- (a) avoid obstructing official or legal inquiries, investigations or procedures;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- (c) protect the public security of Member States;
- (d) protect the national security of Member States;
- (e) protect the rights and freedoms of others, such as victims and witnesses.

#### Article 80

### Right of access by the data subject

The data subject shall have the right to obtain from the controller confirmation as to whether or not operational personal data concerning him or her are processed, and where that is the case, have the right to access operational personal data and the following information:

- (a) the purposes of and legal basis for the processing;
- (b) the categories of operational personal data concerned;
- (c) the recipients or categories of recipients to whom the operational personal data have been disclosed, in particular recipients in third countries or international organisations;
- (d) where possible, the envisaged period for which the operational personal data will be stored, or, if not possible, the criteria used to determine that period;
- (e) the existence of the right to request from the controller rectification or erasure of operational personal data or restriction of processing of operational personal data concerning the data subject;
- (f) the right to lodge a complaint with the European Data Protection Supervisor and his or her contact details;
- (g) communication of the operational personal data undergoing processing and of any available information as to their origin.

#### Article 81

### Limitations to the right of access

1. The controller may restrict, wholly or partly, the data subject's right of access to the extent that, and for as long as, such a partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned, in order to:

- (a) avoid obstructing official or legal inquiries, investigations or procedures;
- (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
- (c) protect the public security of Member States;
- (d) protect the national security of Member States;
- (e) protect the rights and freedoms of others, such as victims and witnesses.

2. In the cases referred to in paragraph 1, the controller shall inform the data subject, without undue delay, in writing of any refusal or restriction of access and of the reasons for the refusal or the restriction. Such information may be omitted where the provision thereof would undermine a purpose under paragraph 1. The controller shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy before the Court of Justice. The controller shall document the factual or legal reasons on which the decision is based. That information shall be made available to the European Data Protection Supervisor on request.

*Article 82***Right to rectification or erasure of operational personal data and restriction of processing**

1. Any data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate operational personal data relating to him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete operational personal data completed, including by means of providing a supplementary statement.
2. The controller shall erase operational personal data without undue delay and the data subject shall have the right to obtain from the controller the erasure of operational personal data concerning him or her without undue delay where processing infringes Articles 71, 72(1) or 76, or where operational personal data must be erased in order to comply with a legal obligation to which the controller is subject.
3. Instead of erasure, the controller shall restrict processing where:
  - (a) the accuracy of the personal data is contested by the data subject and their accuracy or inaccuracy cannot be ascertained; or
  - (b) the personal data must be maintained for the purposes of evidence.

Where processing is restricted pursuant to point (a) of the first subparagraph, the controller shall inform the data subject before lifting the restriction of processing.

Restricted data shall be processed only for the purpose that prevented their erasure.

4. The controller shall inform the data subject in writing of any refusal of rectification or erasure of operational personal data or restrict processing and of the reasons for the refusal. The controller may restrict, wholly or partly, the provision of such information to the extent that such a restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the natural person concerned in order to:
  - (a) avoid obstructing official or legal inquiries, investigations or procedures;
  - (b) avoid prejudicing the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;
  - (c) protect the public security of Member States;
  - (d) protect the national security of Member States;
  - (e) protect the rights and freedoms of others, such as victims and witnesses.

The controller shall inform the data subject of the possibility of lodging a complaint with the European Data Protection Supervisor or seeking a judicial remedy from the Court of Justice.

5. The controller shall communicate the rectification of inaccurate operational personal data to the competent authority from which the inaccurate operational personal data originate.
6. The controller shall, where operational personal data has been rectified or erased or processing has been restricted pursuant to paragraphs 1, 2 or 3, notify the recipients and inform them that they have to rectify or erase the operational personal data or restrict processing of the operational personal data under their responsibility.

*Article 83***Right of access in criminal investigations and proceedings**

Where operational personal data originates from a competent authority, Union bodies, offices and agencies shall, prior to deciding on a data subject's right of access, verify with the competent authority concerned whether such personal data are contained in a judicial decision or record or a case file processed in the course of criminal investigations and proceedings in the Member State of that competent authority. Where this is the case, a decision on the right of access shall be taken in consultation and in close cooperation with the competent authority concerned.

*Article 84***Exercise of rights by the data subject and verification by the European Data Protection Supervisor**

1. In the cases referred to in Articles 79(3), 81 and 82(4), the rights of the data subject may also be exercised through the European Data Protection Supervisor.
2. The controller shall inform the data subject of the possibility of exercising his or her rights through the European Data Protection Supervisor pursuant to paragraph 1.
3. Where the right referred to in paragraph 1 is exercised, the European Data Protection Supervisor shall at least inform the data subject that all necessary verifications or a review by him or her have taken place. The European Data Protection Supervisor shall also inform the data subject of his or her right to seek a judicial remedy before the Court of Justice.

*Article 85***Data protection by design and by default**

1. Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing, in order to meet the requirements of this Regulation and the legal act establishing it, and protect the rights of the data subjects.
2. The controller shall implement appropriate technical and organisational measures ensuring that, by default, only operational personal data which are adequate, relevant and not excessive in relation to the purpose of the processing are processed. That obligation applies to the amount of operational personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default operational personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.

*Article 86***Joint controllers**

1. Where two or more controllers or one or more controllers together with one or more controllers other than Union institutions and bodies jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercise of the rights of the data subject and their respective duties to provide the information referred to in Article 79, by means of an arrangement between them, unless and in so far as the respective responsibilities of the joint controllers are determined by Union or Member State law to which the joint controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subject. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.

*Article 87***Processor**

1. Where processing is to be carried out on behalf of a controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and the legal act establishing the controller and ensure the protection of the rights of the data subject.
2. The processor shall not engage another processor without prior specific or general written authorisation by the controller. In the case of general written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.

3. Processing by a processor shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the controller and that sets out the subject matter and duration of the processing, the nature and purpose of the processing, the type of operational personal data and categories of data subjects and the obligations and rights of the controller. That contract or other legal act shall stipulate, in particular, that the processor:

- (a) acts only on instructions from the controller;
- (b) ensures that persons authorised to process the operational personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) assists the controller by any appropriate means to ensure compliance with the provisions on the data subject's rights;
- (d) at the choice of the controller, deletes or returns all the operational personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union law or Member State law requires storage of the operational personal data;
- (e) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article;
- (f) complies with the conditions referred to in paragraph 2 and in this paragraph for engaging another processor.

4. The contract or the other legal act referred to in paragraph 3 shall be in writing, including in electronic form.

5. If a processor infringes this Regulation or the legal act establishing the controller by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

#### *Article 88*

##### **Logging**

1. The controller shall keep logs for any of the following processing operations in automated processing systems: the collection, alteration, access, consultation, disclosure, including transfers, combination and erasure of operational personal data. The logs of consultation and disclosure shall make it possible to establish the justification for, and the date and time of, such operations, the identification of the person who consulted or disclosed operational personal data, and, as far as possible, the identity of the recipients of such operational personal data.

2. The logs shall be used solely for verification of the lawfulness of processing, self-monitoring, ensuring the integrity and security of the operational personal data, and for criminal proceedings. Such logs shall be deleted after three years, unless they are required for ongoing control.

3. The controller shall make the logs available to its data protection officer and to the European Data Protection Supervisor on request.

#### *Article 89*

##### **Data protection impact assessment**

1. Where a type of processing, in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall carry out, prior to the processing, an assessment of the impact of the envisaged processing operations on the protection of operational personal data.

2. The assessment referred to in paragraph 1 shall contain at least a general description of the envisaged processing operations, an assessment of the risks to the rights and freedoms of data subjects, the measures envisaged to address those risks, safeguards, security measures and mechanisms to ensure the protection of operational personal data and to demonstrate compliance with data protection rules, taking into account the rights and legitimate interests of the data subjects and other persons concerned.

*Article 90***Prior consultation of the European Data Protection Supervisor**

1. The controller shall consult the European Data Protection Supervisor prior to processing which will form part of a new filing system to be created, where:
  - (a) a data protection impact assessment under Article 89 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk; or
  - (b) the type of processing, in particular, where using new technologies, mechanisms or procedures, involves a high risk to the rights and freedoms of data subjects.
2. The European Data Protection Supervisor may establish a list of the processing operations which are subject to prior consultation pursuant to paragraph 1.
3. The controller shall provide the European Data Protection Supervisor with the data protection impact assessment referred to Article 89 and, on request, with any other information to allow the European Data Protection Supervisor to make an assessment of the compliance of the processing and in particular of the risks for the protection of operational personal data of the data subject and of the related safeguards.
4. Where the European Data Protection Supervisor is of the opinion that the intended processing referred to in paragraph 1 would infringe this Regulation or the legal act establishing the Union body, office or agency, in particular where the controller has insufficiently identified or mitigated the risk, the European Data Protection Supervisor shall provide written advice to the controller within a period of up to six weeks of receipt of the request for consultation. That period may be extended by a month, taking into account the complexity of the intended processing. The European Data Protection Supervisor shall inform the controller of any such extension within one month of receipt of the request for consultation, together with the reasons for the delay.

*Article 91***Security of processing of operational personal data**

1. The controller and the processor shall, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks, in particular as regards the processing of special categories of operational personal data.
2. In respect of automated processing, the controller and the processor shall, following an evaluation of the risks, implement measures designed to:
  - (a) deny unauthorised persons access to data processing equipment used for processing ('equipment access control');
  - (b) prevent the unauthorised reading, copying, modification or removal of data media ('data media control');
  - (c) prevent the unauthorised input of operational personal data and the unauthorised inspection, modification or deletion of stored operational personal data ('storage control');
  - (d) prevent the use of automated processing systems by unauthorised persons using data communication equipment ('user control');
  - (e) ensure that persons authorised to use an automated processing system have access only to the operational personal data covered by their access authorisation ('data access control');
  - (f) ensure that it is possible to verify and establish the bodies to which operational personal data have been or may be transmitted or made available using data communication ('communication control');
  - (g) ensure that it is subsequently possible to verify and establish which operational personal data have been input into automated data processing systems, and when and by whom the operational personal data were input ('input control');



- (h) prevent unauthorised reading, copying, modification or deletion of operational personal data during transfers of operational personal data or during transportation of data media ('transport control');
- (i) ensure that installed systems may, in the case of interruption, be restored ('recovery');
- (j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported ('reliability') and that stored operational personal data cannot be corrupted by means of a malfunctioning of the system ('integrity').

#### Article 92

### Notification of a personal data breach to the European Data Protection Supervisor

1. In the case of a personal data breach, the controller shall notify without undue delay and, where feasible, not later than 72 hours after having become aware of it, the personal data breach to the European Data Protection Supervisor, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the European Data Protection Supervisor is not made within 72 hours, it shall be accompanied by reasons for the delay.
2. The notification referred to in paragraph 1 shall at least:
  - (a) describe the nature of the personal data breach including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of operational personal data records concerned;
  - (b) communicate the name and contact details of the Data Protection Officer;
  - (c) describe the likely consequences of the personal data breach;
  - (d) describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
3. Where, and in so far as, it is not possible to provide the information referred to in paragraph 2 at the same time, the information may be provided in phases without undue further delay.
4. The controller shall document any personal data breaches referred to in paragraph 1, comprising the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the European Data Protection Supervisor to verify compliance with this Article.
5. Where the personal data breach involves operational personal data that have been transmitted by or to the competent authorities, the controller shall communicate the information referred to in paragraph 2 to the competent authorities concerned without undue delay.

#### Article 93

### Communication of a personal data breach to the data subject

1. Where the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 of this Article shall describe in clear and plain language the nature of the personal data breach and shall contain at least the information and the recommendations provided for in points (b), (c) and (d) of Article 92(2).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:
  - (a) the controller has implemented appropriate technological and organisational protection measures, and those measures were applied to the operational personal data affected by the personal data breach, in particular those that render the operational personal data unintelligible to any person who is not authorised to access it, such as encryption;

- (b) the controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;
  - (c) it would involve a disproportionate effort. In such a case, there shall instead be a public communication or a similar measure whereby the data subjects are informed in an equally effective manner.
4. If the controller has not already communicated the personal data breach to the data subject, the European Data Protection Supervisor, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so, or may decide that any of the conditions referred to in paragraph 3 are met.
5. The communication to the data subject referred to in paragraph 1 of this Article may be delayed, restricted or omitted subject to the conditions and on the grounds referred to in Article 79(3).

#### Article 94

### **Transfer of operational personal data to third countries and international organisations**

1. Subject to restrictions and conditions laid down in the legal acts establishing the Union body, office or agency, the controller may transfer operational personal data to an authority of a third country or to an international organisation insofar as such transfer is necessary for the performance of controller's tasks and only where the conditions laid down in this Article are met, namely:
- (a) the Commission has adopted an adequacy decision in accordance with Article 36(3) of Directive (EU) 2016/680, finding that the third country or a territory or a processing sector within that third country or the international organisation in question ensures an adequate level of protection;
  - (b) in the absence of a Commission adequacy decision under point (a), an international agreement has been concluded between the Union and that third country or international organisation pursuant to Article 218 TFEU adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals;
  - (c) in the absence of a Commission adequacy decision under point (a) or an international agreement under point (b), a cooperation agreement has been concluded allowing for the exchange of operational personal data before the date of application of the legal act establishing the Union body, office or agency concerned, between that Union body, office or agency and the third country in question.
2. The legal acts establishing the Union bodies, offices and agencies may maintain or introduce more specific provisions on the conditions for international transfers of operational personal data, in particular on the transfers by way of appropriate safeguards and derogations for specific situations..
3. The controller shall publish on its website and keep up to date a list of adequacy decisions referred to in point (a) of paragraph 1, agreements, administrative arrangements and other instruments relating to the transfer of operational personal data in accordance with paragraph 1.
4. The controller shall keep detailed records of all transfers made pursuant to this Article.

#### Article 95

### **Secrecy of judicial inquiries and criminal proceedings**

The legal acts establishing the Union bodies, offices or agencies carrying out the activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU may oblige the European Data Protection Supervisor, in the exercise of his or her supervision powers, to take utmost account of the secrecy of judicial inquiries and criminal proceedings, in accordance with Union or Member State law.

CHAPTER X  
**IMPLEMENTING ACTS**

*Article 96*

**Committee procedure**

1. The Commission shall be assisted by the committee established by Article 93 of Regulation (EU) 2016/679. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER XI  
**REVIEW**

*Article 97*

**Review clause**

No later than 30 April 2022, and every five years thereafter, the Commission shall present to the European Parliament and to the Council a report on the application of this Regulation, accompanied, if necessary, by appropriate legislative proposals.

*Article 98*

**Review of Union legal acts**

1. By 30 April 2022, the Commission shall review legal acts adopted on the basis of the Treaties which regulate the processing of operational personal data by Union bodies, offices or agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU, in order to:
  - (a) assess their consistency with Directive (EU) 2016/680 and Chapter IX of this Regulation;
  - (b) identify any divergences that may hamper the exchange of operational personal data between Union bodies, offices or agencies when carrying out activities in those fields and competent authorities; and
  - (c) identify any divergences that may create legal fragmentation of the data protection legislation in the Union.
2. On the basis of the review, in order to ensure uniform and consistent protection of natural persons with regard to processing, the Commission may submit appropriate legislative proposals, in particular with a view to applying Chapter IX of this Regulation to Europol and the European Public Prosecutor's Office and including adaptations of Chapter IX of this Regulation, if necessary.

CHAPTER XII  
**FINAL PROVISIONS**

*Article 99*

**Repeal of Regulation (EC) No 45/2001 and of Decision No 1247/2002/EC**

Regulation (EC) No 45/2001 and Decision No 1247/2002/EC are repealed with effect from 11 December 2018. References to the repealed Regulation and Decision shall be construed as references to this Regulation.

*Article 100*

**Transitional measures**

1. The Decision 2014/886/EU of the European Parliament and of the Council<sup>(1)</sup> and the current terms of office of the European Data Protection Supervisor and the Assistant Supervisor shall not be affected by this Regulation.

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<sup>(1)</sup> Decision 2014/886/EU of the European Parliament and of the Council of 4 December 2014 appointing the European Data Protection Supervisor and the Assistant Supervisor (OJ L 351, 9.12.2014, p. 9).

2. The Assistant Supervisor shall be considered equivalent to the Registrar of the Court of Justice as regards the determination of remuneration, allowances, retirement pension and any other benefit in lieu of remuneration.
3. Article 53(4), (5) and (7), and Articles 55 and 56 of this Regulation shall apply to the current Assistant Supervisor until the end of his term of office.
4. The Assistant Supervisor shall assist the European Data Protection Supervisor in fulfilling the latter's duties and act as a replacement when the European Data Protection Supervisor is absent or prevented from attending to those duties until the end of the current Assistant Supervisor's term of office.

*Article 101*

**Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. However, this Regulation shall apply to processing of personal data by Eurojust from 12 December 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 October 2018.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

K. EDTSTADLER

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