

COMP Article 34

7.10.2012

Article 34

~~Prior authorisation and p~~Prior consultation

~~1. The controller or the processor as the case may be shall obtain an authorisation from the supervisory authority prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where a controller or processor adopts contractual clauses as provided for in point (d) of Article 42(2) or does not provide for the appropriate safeguards in a legally binding instrument as referred to in Article 42(5) for the transfer of personal data personal data to a third country or an international organisation.~~

2. The controller or processor acting on the controller's behalf shall consult the *data protection officer, or in case a data protection officer has not been appointed, the supervisory authority* prior to the processing of personal data in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects where:

(a) a data protection impact assessment as provided for in Article 33 indicates that processing operations are by virtue of their nature, their scope or their purposes, likely to present a high degree of specific risks; or

(b) *the data protection officer or the supervisory authority* deems it necessary to carry out a prior consultation on processing operations that are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope and/or their purposes, and specified according to paragraph 4.

3. Where the *competent* supervisory authority *determines in accordance with its power is of the opinion* that the intended processing does not comply with this Regulation, in particular where risks are insufficiently identified or mitigated, it shall prohibit the intended processing and make appropriate proposals to remedy such non-compliance.

4. The *European Data Protection Board supervisory authority* shall establish and make public a list of the processing operations which are subject to prior consultation pursuant to *point (b) of* paragraph 2. ~~The supervisory authority shall communicate those lists to the European Data Protection Board.~~

~~5. Where the list provided for in paragraph 4 involves processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour, or may substantially affect the free movement of personal data within the Union, the supervisory authority shall apply the consistency mechanism referred to in Article 57 prior to the adoption of the list.~~

6. The controller or processor shall provide the supervisory authority, *on request*, with the data protection impact assessment ~~*pursuant to provided for in*~~ Article 33 and, on request, with any other information to allow the supervisory authority to make an assessment of the compliance of the processing and in particular of the risks for the protection of personal data of the data subject and of the related safeguards.

7. Member States shall consult the supervisory authority in the preparation of a legislative measure to be adopted by the national parliament or of a measure based on such a legislative measure, which defines the nature of the processing, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risks involved for the data subjects.

~~*8. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and requirements for determining the high degree of specific risk referred to in point (a) of paragraph 2.*~~

~~*9. The Commission may set out standard forms and procedures for prior authorizations and consultations referred to in paragraphs 1 and 2, and standard forms and procedures for informing the supervisory authorities pursuant to paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).*~~

Recitals

(74) Where a data protection impact assessment indicates that processing operations involve a high degree of specific risks to the rights and freedoms of data subjects, such as excluding individuals from their right, or by the use of specific new technologies, *the data protection officer or the supervisory authority* should be consulted, prior to the start of operations, on a risky processing which might not be in compliance with this Regulation, and to make proposals to remedy such situation. *Such A consultation of the supervisory authority* should equally take place in the course of the preparation either of a measure by the national parliament or of a measure based on such legislative measure which defines the nature of the processing and lays down appropriate safeguards.

(74a) Impact assessments can only be of help if controllers make sure that they comply with the promises originally laid down in them. Data controllers should therefore conduct periodic data protection compliance reviews demonstrating that the data processing mechanisms in place comply with assurances made in the data protection impact assessment. It should further demonstrate the ability of the data controller to comply with the autonomous choices of data subjects. In addition, in case the review finds compliance inconsistencies, it should highlight these and present recommendations on how to achieve full compliance.