

COMP AM Article 58

14.10.2013

Article 58

Consistency on matters of general application Opinion by the European Data Protection Board

1. Before a supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

2. The obligation set out in paragraph 1 shall apply to a measure intended to produce legal effects and which:

~~(a) relates to 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~~

~~(b) may substantially affect the free movement of personal data within the Union; or~~

~~(c) aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5); or~~

(d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or

(e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or

(f) aims to approve binding corporate rules within the meaning of Article 43.

3. Any supervisory authority or the European Data Protection Board may request that any matter ***of general application*** shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter ***of general application*** shall be dealt with in the consistency mechanism.

5. Supervisory authorities and the Commission shall ***without undue delay immediately*** electronically communicate any relevant information, including as the case may be a summary of the facts, the draft measure, and the grounds which make the enactment of such measure necessary, using a standardised format.

6. The chair of the European Data Protection Board shall ***without undue delay immediately*** electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it, using a standardised format. The secretariat of the European Data Protection Board shall provide translations of relevant information, where necessary.

6a. The European Data Protection Board shall adopt an opinion on matters referred to it under paragraph 2.

7. The European Data Protection Board shall may decide by simple majority whether to adopt an opinion on any the matter submitted under paragraphs 3 and 4 taking into account if the European Data Protection Board so decides by simple majority of its members or any supervisory authority or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within one month by simple majority of the members of the European Data Protection Board. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 1 and 3, the Commission and the supervisory authority competent under Article 51 of the opinion and make it public.:

(a) whether the matter presents elements of novelty, taking account of legal or factual developments, in particular in information technology and in the light of the state of progress in the information society; and

(b) whether the European Data Protection Board has already issued an opinion on the same matter.

8. The European Data Protection Board shall adopt opinions pursuant to paragraphs 6a and 7 by a simple majority of its members. These opinions shall be made public. The supervisory authority referred to in paragraph 1 and the supervisory authority competent under Article 51 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Recitals

(106) In application of the consistency mechanism, the European Data Protection Board should, within a determined period of time, issue an opinion, if a simple majority of its members so decides or if so requested by any supervisory authority or the Commission.