



29 January 2021

Record no. 572/117/20

Decision of the Data Protection Ombudsman

Matter

Accreditation requirements of a monitoring body of code of conduct (accreditation requirements) in accordance with Article 41 of the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR).

Concerning the conditions of the accreditation requirements

Article 40 of the GDPR provides for codes of conduct intended to contribute to the proper application of the GDPR, taking account of the specific features of the various processing sectors and the specific needs of micro, small and medium-sized enterprises.

Article 41 of the GDPR provides for the monitoring of compliance with a code of conduct with regard to codes of conduct followed by parties other than public authorities and bodies. According to said article, the monitoring of compliance with a code of conduct may be carried out by a body accredited for that purpose by the competent supervisory authority.

Article 41(2) of the GDPR specifies the general requirements for the accreditation of a monitoring body. The code owner must explain and demonstrate how the monitoring body they propose meets the requirements presented in Article 41(2) in order to receive accreditation. The monitoring body is specified as a part of the code of conduct, and the competent supervisory authority must accredit the monitoring body on the basis that they are able to monitor compliance with the code of conduct effectively.

According to Article 57(1)(p) of the GDPR, each supervisory authority shall draft and publish the criteria applied to the accreditation of a body for monitoring codes of conduct by the competent supervisory authority.

Even though the GDPR does not directly set any detailed requirements for accreditation, it nevertheless promotes consistency in the accreditation of monitoring bodies. In order to ensure the consistent application of the GDPR, the European Data Protection Board (EDPB) has adopted the document 'Guidelines 1/2019 on Codes of Conduct and Monitoring Bodies under Regulation 2016/679'; section 12 of the guidelines specifies the requirements set out in Article 41(2) of the GDPR in more detail. The EDPB aims to promote consistency in the accreditation of monitoring bodies by requesting the competent supervisory authorities to draft accreditation requirements based on Article 41(2) of the GDPR and the requirements provided in the guidelines.

The consistency mechanism in accordance with Article 63 of the GDPR is also applied to drawing up accreditation requirements in order to promote the consistent application of the GDPR within the European Economic Area. The competent supervisory authority shall submit the draft requirements for accreditation of a monitoring body to the EDPB. Once the requirements have been handled in the consistency



mechanism in accordance with Article 64, the supervisory authority can apply them to the accreditation of monitoring bodies.

Handling the matter in the consistency mechanism

According to Article 64(1)(c) of the GDPR, the EDPB shall issue an opinion when the supervisory authority aims to approve the criteria for accreditation of a body pursuant to Article 41(3).

According to Article 64(7) of the GDPR, the supervisory authority shall take utmost account of the opinion of the EDPB and shall, within two weeks after receiving the opinion, communicate to the Chair of the Board by electronic means whether it will maintain or amend its draft decision and, if any, the amended draft decision, using a standardised format.

According to Article 10(8) of the seventh version of the EDPB Rules of Procedure (EDPB Rules of Procedure), when the supervisory authority declares that it would, in whole or in part, follow the opinion of the Board, and consequently either maintains or amends its draft decision, the rapporteur, the expert subgroup members and the Secretariat who prepared the opinion of the Board should where relevant inform the Board as soon as possible on how in their view the amended decision by this supervisory authority takes into account the opinion of the Board. The supervisory authority concerned should be given the opportunity to provide information in this respect.

On 24 January 2020, the Office of the Data Protection Ombudsman submitted a proposal for accreditation requirements to the EDPB. On 17 February 2020, the Secretariat of the EDPB issued a notification that it had received the proposal of the Office of the Data Protection Ombudsman for accreditation requirements. On 28 May 2020, the EDPB issued an opinion on the proposal in accordance with Article 64(1)(c) (Opinion 12/2020). In accordance with Article 64(7), the Office of the Data Protection Ombudsman notified the Chair of the Board that it would amend the accreditation requirements to comply with the opinion issued by the EDPB. On 22 September 2020, the Secretariat of the Board issued a notification in accordance with the EDPB Rules of Procedure stating that it considers that the amended accreditation requirements of the Office of the Data Protection Ombudsman to be consistent with the opinion issued by the EDPB.

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Based on what has been presented above, the Data Protection Ombudsman finds that the accreditation requirements attached to this decision (Attachments 1) meet the requirements of the GDPR, and with this decision, adopts the requirements as the accreditation requirements of a monitoring body for the Code of Conduct of the Office of the Data Protection Ombudsman.

Applicable legal provisions

Article 40, Article 41, Article 57(1)(p), Article 63 and Article 64(1)(c) as well as Article 64(7).



Data Protection Ombudsman

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Appendices

Attachment 1: The FI SA accreditation requirements for a GDPR code of conduct monitoring bodies

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