

Supervision of the data protection adviser's tasks in Vejle Municipality

Date: 17-03-2021

Decision

Public authorities

On the basis of the circumstances examined, the Danish Data Protection Agency finds that Vejle Municipality's use of an external data protection adviser is within the framework of the Data Protection Ordinance.

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Summary

In the first half of 2019, the Danish Data Protection Agency decided to supervise various topics concerning the municipalities' data protection advisers (also often called DPO after the English term Data Protection Officer), including the data protection adviser's tasks, resources, professional qualifications and data subjects' access to the data protection adviser.

One group of supervisors focused on municipalities that shared data protection adviser with other municipalities. The second group of supervisors focused on municipalities that had purchased the service from a law firm, including Vejle Municipality, which the decision below concerns.

The Danish Data Protection Agency found that the municipalities' solutions for the use of data protection advisers were within the framework of the Data Protection Ordinance.

It is the Data Inspectorate's opinion that the data controller and the data processor themselves are closest to assessing how the practical part of the collaboration with the data protection adviser should be implemented, so that the collaboration can take place most efficiently and appropriately in the organization. The data controller and the data processor can therefore to a large extent organize the practical part of the cooperation with the data protection adviser, as long as this takes place within the framework of Chapter 4 of the Data Protection Regulation.

Decision

Vejle Municipality was among the authorities that the Danish Data Protection Agency had selected for supervision in 2019. The Data Inspectorate's planned audit focused in particular on the data protection adviser's tasks, including the question of whether the data protection adviser is available to employees in the municipality and registered regarding data protection issues, and whether the data protection adviser carries out the necessary control of the municipality's processing activities. In this

connection, the Danish Data Protection Agency notes that data protection advisers are not personally liable in the event of non-compliance with the Data Protection Regulation [1]. The responsibility for compliance with the data protection provisions - including the provisions regarding requirements for data protection advisers - rests with the data controller and the data processor (in the present case, Vejle Municipality).

In accordance with the obligation laid down in Article 37 (2) of the Data Protection Regulation 7, Vejle Municipality has prior to the audit notified the Danish Data Protection Agency that Bech-Bruun is handling the role of data protection adviser for the municipality. Bech-Bruun also handles the role of data protection advisor for e.g. Næstved Municipality, Roskilde Municipality and Vordingborg Municipality. The Danish Data Protection Agency has also supervised the function of the data protection adviser in these municipalities.

For the purpose of the inspection on 10 July 2019, Vejle Municipality has sent a completed questionnaire, the municipality's contract with Bech-Bruun and other relevant appendices. Furthermore, on 13 November 2019, the municipality sent a supplementary statement to the Danish Data Protection Agency.

On the basis of the circumstances examined, the Danish Data Protection Agency finds that Vejle Municipality's use of an external data protection adviser is within the framework of the Data Protection Ordinance. In this connection, the Danish Data Protection Agency has noted the following:

That Vejle Municipality has appointed a law firm - Bech-Bruun - as data protection adviser for the municipality, and the municipality has been assigned a primary contact person at the law firm.

That Vejle Municipality's data protection adviser has the necessary professional qualifications to handle the role, cf. Article 37 (1) of the Data Protection Ordinance. 5.

That Vejle Municipality in accordance with Article 38 (1) of the Data Protection Regulation 1, has ensured that the data protection adviser is adequately and timely involved in all matters concerning the protection of personal data.

To be registered in Vejle Municipality in accordance with Article 38 (1) of the Data Protection Ordinance. 4, may contact the Data Protection Adviser regarding any questions concerning the processing of their information and the exercise of their rights under the Data Protection Regulation.

That Vejle Municipality's data protection adviser in accordance with the Data Protection Ordinance, Article 39, para. 1, letter a notifies and advises the municipality and employees in the municipality about their data protection law obligations.

That Vejle Municipality in accordance with the Data Protection Ordinance Article 39, paragraph. 1, letter b, has ensured that the data protection adviser monitors the municipality's compliance with the data protection law rules.

Below is a more detailed review of the Danish Data Protection Agency's conclusions.

1. Position of the Data Protection Adviser

It is clear from Article 37 (1) of the Data Protection Regulation 6, that the data protection adviser may be the data controller's or data processor's employee or perform the task on the basis of a service contract.

Data controllers and data processors, including public authorities, thus have the option - instead of having an internal employee to take on the role of data protection adviser - of choosing to have the data protection adviser's function exercised on the basis of a service contract concluded with a person or organization outside the data controller. or the data processor's organization.

When choosing an organization as a data protection consultant, it is possible, among other things, to combine individual skills and strengths so that more people working in a team can more effectively assist the data controller or data processor. For the sake of good organization, the Danish Data Protection Agency recommends that it is ensured that the data protection adviser's team has a clear distribution of tasks, and that a single person is appointed as the overall contact and responsible. These points can advantageously be stated in the service contract.

However, when the data protection adviser function is performed by a multi-person team, it is important that each member of the organization performing the functions of data protection adviser meets all the applicable requirements of the Data Protection Regulation.

It appears from the case that Bech-Bruun handles the role of data protection adviser for the municipality, and that the municipality has been assigned a primary contact person at the law firm. The primary contact person is supplemented by Bech-Bruun's "DPO team", which consists of more than 15 employees with data protection law experience and an administrative employee. The team also has the opportunity to draw on other resources and competencies in Bech-Bruun, if the task solution necessitates this.

It is against this background that the Danish Data Protection Agency is of the opinion that the construction is in accordance with the rules on the appointment of a data protection adviser in Article 37 of the Data Protection Regulation.

It is also the Data Inspectorate's opinion that the data controller and the data processor himself are closest to assessing how

the practical part of the collaboration with the data protection adviser should be implemented so that the collaboration can take place most efficiently and appropriately in the organization. The data controller and the data processor can therefore to a large extent organize the practical part of the cooperation with the data protection adviser, as long as this takes place within the framework of Chapter 4 of the Data Protection Regulation. the data processor's organization and should, as a minimum, assist in the implementation of key elements of the Data Protection Regulation. This can be done, for example, in the form of concrete advice from a selected group of employees in the data controller's or data processor's organization, who is subsequently responsible for the practical implementation provided that the data protection consultant exercises the necessary control over the organization's compliance.

The expertise and professional qualifications of the Data Protection Advisor

According to Article 37 (1) of the Data Protection Regulation 5, the data protection adviser shall be appointed on the basis of his professional qualifications, in particular expertise in data protection law and practice, as well as his ability to perform the tasks referred to in Article 39.

It appears from the four inspections in question on the function of the data protection adviser that Bech-Bruun's DPO team has legal and technical competencies in data protection law, information technology, IT law, administrative law and health law, and that the team has experience with information technology and data security.

It also appears from the case that it is the municipality's assessment that Bech-Bruun has a solid knowledge of the organizational structure, the municipal rules and procedures, and the treatment activities that are generally in a municipality, as Bech-Bruun has for many years advised several municipalities.

Furthermore, it appears that Bech Bruun has advised the municipality during the implementation of the data protection regulation and in this connection has acquired insight into the processing activities carried out by the municipality.

The municipality has also stated that prior to the appointment, Bech-Bruun has advised the municipality in various contexts, whereby Bech-Bruun has acquired knowledge of administrative rules and procedures in the municipality.

The municipality has also stated that the municipality has held several start-up meetings with Bech-Bruun in order to ensure and develop the data protection consultant's knowledge of the municipality's organization and processing activities. The data protection adviser is also kept regularly updated on these matters.

The Danish Data Protection Agency notes that the ability to perform the tasks incumbent on the data protection adviser must

be seen in the context of his or her personal qualifications and knowledge as well as his or her position in the data controller's or data processor's organization. With regard to the professional qualifications required by Article 37 (1) 5, the data protection adviser should, in addition to an in-depth understanding of the data protection law rules, also have knowledge of information technology and data security as well as the protection needs of the data controller and the data processor. Furthermore, the data protection consultant should have a solid knowledge of administrative rules and procedures in the organization. The requirements for the data protection adviser's professional qualifications must thus be seen in connection with the data protection adviser's ability to be able to promote a data protection culture within the organization [2].

On the basis of the information in the case, the Danish Data Protection Agency finds that the municipality's data protection adviser has the necessary professional qualifications to handle the role of data protection adviser for the municipality, and that the municipality thus complies with the requirement in Article 37 (1) of the Data Protection Regulation. 5.

In this connection, the Danish Data Protection Agency has emphasized that Bech-Bruun's team, consisting of several employees who are jointly responsible for the function of the data protection adviser, together have relevant educational and professional experience in the field of data protection law and information technology.

The Danish Data Protection Agency has also emphasized the fact that prior to the appointment, Bech-Bruun has advised the municipality in various contexts, whereby the data protection adviser has acquired knowledge of administrative rules and procedures in the municipality, that the municipality has held start-up meetings with the data protection adviser. develop the data protection adviser's knowledge of the municipality's organization and processing activities, and that Bech-Bruun in general - before joining - had a knowledge of the municipalities' organization and the administrative rules, procedures and processing activities that are the characteristics of municipalities.

Involvement of the Data Protection Advisor

Article 38 (1) of the Data Protection Regulation 1, requires that the data controller and the data processor ensure that the data protection adviser is adequately and timely involved in all matters concerning the protection of personal data.

It appears from the case that Vejle Municipality is obliged to involve Bech-Bruun in decisions and assessments regarding the municipality's processing of personal data 1) before decisions are made regarding Privacy By Design and Privacy By Default, 2) before issuing guidelines and procedures regarding processing of personal data, 3) before publication of tender material in a tender process, 4) before completion or purchase of an IT system in which personal data is processed, 5) before carrying out

impact assessments and 6) before major changes in the municipality's procedures for handling insight requests from registered.

The municipality has also stated that the collaboration with Bech-Bruun is anchored in an internal organization in the municipality, and that the procedure for the municipality's involvement of the data protection adviser is ensured in this way. In addition, it appears from the case that Bech-Bruun assists Vejle Municipality in the event of breaches of personal data security, and that this assistance includes assisting the municipality in assessing whether to report to the Danish Data Protection Agency and notify the data subject.

It is the Data Inspectorate's opinion that the data protection adviser must be involved in all the considerations and assessments that it is assumed that the data controller or data processor has made and made in order to comply with the data protection law rules. This implies, among other things, that the data protection adviser should be involved in considerations regarding compliance with the data subjects' rights and the determination of appropriate security measures. The data protection adviser must be involved in as good a time as possible and relevant, prior to initiating processing activities.

After a review of the case information, it is the Data Inspectorate's assessment that Vejle Municipality's data protection adviser is sufficiently and timely involved in all issues concerning data protection.

The Danish Data Protection Agency has emphasized that the collaboration with the data protection adviser and the municipality ensures the timely involvement of the data protection adviser, and that the municipality is otherwise obliged to involve the data protection adviser in a number of cases.

On the basis of the above, the Danish Data Protection Agency finds that Vejle Municipality complies with the requirement in Article 38 (1) of the Data Protection Ordinance. 1.

4. The data subject's contact to the data protection adviser

Article 38 (1) of the Data Protection Regulation 4, requires that data subjects be able to contact the Data Protection Adviser regarding all matters concerning the processing of their information and the exercise of their rights under the Data Protection Regulation.

It appears from the case that data subjects in the municipality have the opportunity to contact the data protection adviser regarding all questions about the processing of their information and about the exercise of their rights. The data protection adviser can be contacted by telephone, by physical mail, e-mail or via a secure messaging function on the municipality's

website. The inquiries are read and answered every weekday between 09:00 and 16:00, and the answer will usually be answered on the same or the following weekday.

On the basis of the information in the case, the Danish Data Protection Agency is of the opinion that the municipality complies with the requirement in Article 38 (1) of the Data Protection Regulation. 4.

5. Informing and advising the municipality and the municipality's employees

It follows from Article 39 (1) of the Data Protection Regulation Article 1 (1) (a) provides that the data protection adviser is responsible for informing and advising the controller or processor and the staff processing personal data of their obligations under the Data Protection Regulation and other Union or national law of the Member States on data protection. In doing so, the data protection adviser shall take due account of the risk associated with processing activities, taking into account the nature, scope, coherence and purpose of the processing in question, in accordance with Article 39 (2). 2.

Article 39 (1) of the Data Protection Regulation Article 38 (1) (a) must be read in conjunction with Article 38 (1). 1, according to which the data controller ensures that the data protection adviser is involved sufficiently and in a timely manner in all matters concerning the protection of personal data.

Article 39, para. 1, letter a, implies, in the opinion of the Danish Data Protection Agency, that the data protection adviser must to the necessary extent be available to the organization and the organisation's employees in order to be able to provide the necessary advice. Thus, the data protection adviser is required to be available to the organization and its employees.

In the case of external data protection advisers who also carry out other tasks in addition to the role of data protection adviser for a given organization, special consideration should be given to whether the data protection adviser is able to be available to that organization notwithstanding this.

As part of this supervision, the Danish Data Protection Agency has therefore also had a special focus on whether the data protection adviser is available to the municipality's employees (section 5.1) and the municipality (section 5.2), and whether the data protection adviser assists the municipality in implementing key elements in the data protection regulation. .

5.1. Municipal employees

Vejle Municipality has stated that the data protection adviser is generally available to employees in the municipality, and that the employees are not excluded from contacting the data protection adviser.

Furthermore, the municipality has stated that in order to escalate and qualify the inquiry, which if necessary is sent to the data

protection adviser, the municipality's employees have been informed that they should in principle contact the municipality's GDPR organization. If the GDPR organization can clarify the employee's question, for example because it is a recurring question, or if the question can be clarified with reference to the municipality's internal procedures and guidelines, the municipality does not involve the data protection adviser. The municipality has also stated that the purpose of this scheme is also to ensure the dissemination of experiences that are created in the individual departments in the municipality.

It is the Data Inspectorate's opinion that data controllers and data processors themselves are closest to assessing how the collaboration with the data protection adviser can be implemented most appropriately in the organization. It is possible and in some cases an advantage to have employees assist the data protection adviser. In relation to employee inquiries, for example, there may be cases where, for organizational reasons, it may be advantageous to have staff - who otherwise assist the data protection adviser - assist the data protection adviser, if the employees in question are qualified for this. However, there must be a real possibility that employees can contact the data protection adviser when the situation requires it.

The Danish Data Protection Agency finds that the municipality's organization in connection with the data protection adviser's handling of employee inquiries is in accordance with Article 39 (1) of the Data Protection Ordinance. 1, letter a, and that the data protection adviser is thus, to the extent necessary, available to the municipality's employees.

The Danish Data Protection Agency has hereby emphasized the information provided by Vejle Municipality that the GDPR organization involves the data protection adviser if the organization itself cannot respond to inquiries from employees, and that the employees actually have the opportunity to contact the data protection adviser directly.

5.2. The local authority

Vejle Municipality has stated that the data protection adviser advises on the implementation of key elements in the data protection ordinance, but that the data protection adviser is not responsible for the practical implementation. The purpose of this scheme is to ensure the independence of the data protection adviser so that the data protection adviser does not have to evaluate his own work.

It also appears from the submitted material that the data protection adviser and the municipality hold 6 annual meetings on data protection of two hours duration, where the data protection adviser provides specific advice on data protection, including in relation to the municipality's processing activities.

In addition, Vejle Municipality has stated that the data protection adviser supports the municipality in the preparation and

holding of departmental information campaigns and teaching sessions. The data protection adviser offers one semi-annual physical training course of 3 hours duration, where the municipality's employees have the opportunity to participate.

The Danish Data Protection Agency is of the opinion that the data protection adviser plays a central role in promoting a data protection culture within the data controller's and data processor's organization, but that it is only a requirement that the data protection adviser assists with the implementation of key elements in the data protection regulation. The concrete and practical task in connection with the implementation of the initiatives can thus be delegated to staff who are qualified for this. In this connection, the Danish Data Protection Agency must emphasize that the data controller and the data processor are closest to assessing how the practical part of the collaboration with the data protection consultant can take place most efficiently and appropriately in the organization. Data controllers and data processors can therefore to a large extent organize the practical part of the collaboration with their data protection adviser, as long as this takes place within the framework of Chapter 4 of the Data Protection Regulation. these employees pass on the content of the training to the other employees in the organization and carry out the practical preparation of guidelines, etc.

On the basis of the above, the Danish Data Protection Agency finds that the municipality's organization of the performance of the data protection adviser's task of providing assistance in the form of advising the municipality on the data protection law rules is in accordance with Article 39 (1) of the Data Protection Regulation. 1, letter a.

The Danish Data Protection Agency has emphasized that the data protection adviser advises on the implementation of key data protection law elements, after which the municipality is responsible for the practical implementation on the basis of the advice provided by the data protection adviser.

In relation to ensuring the independence of the Data Protection Adviser, in accordance with Article 38 (1) of the Data Protection Regulation. 3, the Danish Data Protection Agency notes that the data protection adviser - regardless of whether the data controller and the data processor can not decide how the data protection adviser should process a case and what result the data protection adviser must arrive at - is obliged to assist with advice need for this. The Data Protection Adviser's possible practical implementation of guidelines, etc. will not immediately conflict with Article 38 (1). 3, and there may be situations where this solution is most appropriate.

5.3. Summary

On the basis of the information provided by Vejle Municipality, it is the Data Inspectorate's opinion that the municipality's data

protection adviser fulfills the requirement in Article 39 (1) of the Data Protection Ordinance. 1, letter a.

6. Monitoring compliance with data protection law rules

It follows from Article 39 (1) of the Data Protection Regulation Article 1 (1) (b) states that the Data Protection Adviser is responsible for monitoring compliance with the Data Protection Regulation, other EU or national law of the Member States on data protection and the data controller's or data processor's policies on the protection of personal data, including responsibilities, information campaigns and training. staff involved in treatment activities and the associated audits. In doing so, the data protection adviser shall take due account of the risk associated with processing activities, taking into account the nature, scope, coherence and purpose of the processing in question, in accordance with Article 39 (2). 2.

The Danish Data Protection Agency notes that as part of the task of monitoring compliance with data protection law rules, the data protection adviser must in particular collect information that identifies data processing activities, analyze and control data processing activities' compliance with the regulations and inform, advise and correct recommendations to the data controller [or data controller] .

6.1.

The municipality has stated that the municipality has contractually taken into account that the data protection adviser fulfills the data protection adviser's task of controlling the municipality. However, the municipality has not drawn up fixed procedures and guidelines for the data protection adviser's control of the municipality's compliance with the data protection law rules, as the municipality does not believe that this will be compatible with Article 38 (1) of the Data Protection Regulation. 3, according to which the municipality is obliged to ensure that the data protection adviser does not receive instructions regarding the performance of its tasks.

Furthermore, the municipality has stated that the municipality has an internal controller team, which monitors the municipality's compliance with data protection legislation. The data protection adviser advises the controller team and is presented with the results of the municipality's internal controls, which are subsequently sanctioned through dialogue. The Danish Data Protection Agency has assumed that the sanctioning will take place by the controller team, as this is a supplementary control to the data protection adviser's control.

In addition, the information in the four inspections shows that the data protection adviser carries out planned inspections within a number of overall control themes selected by the data protection adviser. The planned checks are based on various

methods, including random checks of systems and processing activities, answering the data protection adviser's oral or written questions to the municipality and the municipality's documentation. On the basis of the chosen methodology, the data protection adviser prepares a written report, which forms the basis for reporting to the municipality's management.

It also appears that the data protection adviser's knowledge and insight into the municipality is included as part of the control carried out, including, for example, in connection with advising the municipality's employees and answering inquiries from data subjects. In addition, the data protection adviser will, in connection with security breaches, clarify the cause of the incident through follow-up questions and in this way control the municipality's internal guidelines and procedures, education and training of employees and awareness-raising activities. The municipality's unplanned inspections are thus carried out as a permanent part of the data protection adviser's tasks.

If, pursuant to its other tasks, the data protection adviser finds that the municipality's processing of personal data does not take place in accordance with the data protection law rules, the data protection adviser will react. The form of the reaction will depend on the specific situation.

6.2.

The Danish Data Protection Agency finds that the requirement to monitor compliance with data protection law rules in Article 39 (1) 1, letter b, must be seen in connection with the fact that the data protection adviser must have knowledge of the processing activities that take place in the organization. The data protection adviser may hereby notify the data controller or data processor in the event that the data protection adviser finds a non-compliance with the rules with a view to correcting the error. The data protection adviser can, among other things, ensure such lasting knowledge and overview of the data controller's or data processor's organization at regular meetings, quality checks of guidelines and standard templates, reporting, random checks, etc.

At the same time, the Data Inspectorate is of the opinion that the data protection adviser's contact with the data subjects and guidance generally support the data protection adviser's task of monitoring compliance with the data protection law rules, cf. Article 39 (1). 1, letter b. In contact with the data subjects, the data protection adviser may be made aware of treatments that do not comply with the rules or procedures that do not work as intended.

It is also the opinion of the Danish Data Protection Agency that the control that the data protection adviser must carry out by the data controller or data processor pursuant to Article 39 (1) of the Data Protection Regulation. 1, letter b, depends on the

internally chosen organization of the tasks of the data protection adviser. If the organization to a greater extent leaves the specific execution of tasks to employees other than the data protection adviser, the Data Inspectorate is of the opinion that the data protection adviser should in principle have a greater degree of control over how these tasks are designed and whether this is done in accordance with data protection law. rules.

In the event that the data controller or data processor, for example, to a significant extent assists himself in advising employees in relation to data protection law issues, it is thus the Data Inspectorate's view that there is a stricter requirement in relation to the other control measures that the data protection adviser must take. The data protection adviser must thus ensure that the control - which could have been carried out in connection with employee inquiries - is secured in another way.

After a review of the case information, however, it is the Data Inspectorate's assessment that the municipality's organization of the data protection adviser's obligation to monitor the municipality's compliance with the data protection law rules takes place within the framework of Article 39 (1) of the Data Protection Regulation. 1, letter b.

In this connection, the Danish Data Protection Agency has placed special emphasis on the information that the data protection adviser carries out planned inspections with the municipality on selected topics, and that the inspections form the basis for an inspection report, which then forms the basis for reporting to the municipality's management.

The Danish Data Protection Agency has also emphasized that the data protection adviser in his other tasks in the municipality, including in connection with involvement in meetings, answering inquiries from the registered and assistance in connection with training of employees in the municipality, has the opportunity to be made aware of data protection law issues and thereby to monitor the municipality's compliance with the rules, and that the data protection adviser, based on the information provided, reacts to the extent necessary if it finds a violation of the rules.

The Danish Data Protection Agency has also noted that the data protection adviser contributes to the inspections carried out internally by a group of employees in the municipality, and that this is a supplement to the data protection adviser's other supervision.

In conclusion, the Danish Data Protection Agency notes that this is not in itself in breach of the requirement of Article 38 (1) of the Data Protection Regulation. 3 to ensure the data protection adviser's independence, that the data controller or data processor prepares guidelines and guidelines to ensure that the data protection adviser complies with the requirement to monitor the municipality's compliance with the data protection law rules. The requirement in Article 38 (1) 3, on the other hand,

implies that the data protection adviser, in the performance of his duties under Article 39, may not receive instructions on how to deal with a case. This can be, for example, what result is to be achieved, how a case is to be investigated, etc. General guidelines and guidelines setting out the framework for ensuring that the data protection officer complies with the requirement of Article 39 (1) Article 38 (1) (a) will not be in breach of the requirement of Article 38 (1). 3. The Danish Data Protection Agency is also of the opinion that such guidelines can contribute to giving the data controller an overview of the extent to which the data protection adviser complies with the tasks in Article 39.

7. Conclusion

On the basis of the circumstances examined, the Danish Data Protection Agency finds that Vejle Municipality's use of an external data protection adviser is within the framework of the Data Protection Ordinance. In this connection, the Danish Data Protection Agency has noted the following:

That Vejle Municipality has appointed a law firm - Bech-Bruun - as data protection adviser for the municipality, and the municipality has been assigned a primary contact person at the law firm.

That Vejle Municipality's data protection adviser has the necessary professional qualifications to handle the role, cf. Article 37 (1) of the Data Protection Ordinance. 5.

That Vejle Municipality in accordance with Article 38 (1) of the Data Protection Regulation 1, has ensured that the data protection adviser is adequately and timely involved in all matters concerning the protection of personal data.

To be registered in Vejle Municipality in accordance with Article 38 (1) of the Data Protection Ordinance. 4, may contact the Data Protection Adviser regarding any questions concerning the processing of their information and the exercise of their rights under the Data Protection Regulation.

That Vejle Municipality's data protection adviser in accordance with Article 39 (1) of the Data Protection Regulation 1, letter a, notifies and advises the municipality and employees in the municipality about their data protection law obligations.

That Vejle Municipality in accordance with the Data Protection Ordinance Article 39, paragraph. 1, letter b, has ensured that the data protection adviser monitors the municipality's compliance with the data protection law rules.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals 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). [2] Article 29 Working Party Guidelines for Data Protection Advisers, adopted on 13

December 2016, last revised and adopted on 5 April 2017, p. 12. [3] Article 29 Working Party Guidelines on Data Protection Advisers, adopted on 13 December 2016, last revised and adopted on 5 April 2017, p. 18.

Annex: Relevant legal rules in Chapter 4 of the Data Protection Regulation

Article 37

Appointment of a data protection adviser

The Data Controller and Data Processor shall always appoint a Data Protection Adviser when:

- (a) proceedings are conducted by a public authority or body, with the exception of courts acting in their capacity as courts;
- (b) the core activities of the controller or processor consist of processing activities which, by virtue of their nature, scope and / or purpose, require regular and systematic monitoring of data subjects on a large scale; or
- (c) the core activities of the data controller or processor shall consist of a large - scale processing of specific categories of information referred to in Article 9 and personal data relating to criminal offenses and offenses referred to in Article 10.

A group may appoint a common data protection adviser, provided that all establishments have easy access to the data protection adviser.

If the controller or processor is a public authority or body, a joint data protection adviser may be appointed for several such authorities or bodies in accordance with their organizational structure and size.

4. In cases other than those in para. Or, where required by Union or national law of the Member States, the controller or processor or associations and other bodies representing categories of controllers or processors shall designate a data protection adviser. The Data Protection Adviser may act on behalf of such associations and other bodies representing data controllers or processors.

The Data Protection Adviser shall be appointed on the basis of his / her professional qualifications, in particular expertise in data protection law and practice, as well as his / her ability to carry out the tasks referred to in Article 39.

The data protection adviser may be the employee of the data controller or processor or may perform the task on the basis of a service contract.

7. The data controller or data processor shall publish the contact details of the data protection adviser and communicate them to the supervisory authority.

Article 38

The position of the Data Protection Adviser

The data controller and the data processor shall ensure that the data protection adviser is adequately and timely involved in all matters relating to the protection of personal data.

The Data Controller and the Data Processor shall assist the Data Protection Officer in carrying out the tasks referred to in Article 39 by providing the resources necessary for performing those tasks and maintaining the Data Protection Officer's expertise, as well as access to personal data and processing activities.

The data controller and the data processor shall ensure that the data protection adviser does not receive instructions regarding the performance of these tasks. The person in question must not be dismissed or punished by the data controller or the data processor for performing his tasks. The data protection adviser reports directly to the top management level of the data controller or data processor.

Data subjects may contact the data protection adviser on any matter concerning the processing of their data and the exercise of their rights under this Regulation.

5. The Data Protection Adviser shall be bound by professional secrecy or confidentiality in the performance of his / her duties in accordance with Union or national law.

6. The Data Protection Advisor may perform other tasks and have other duties. The data controller or data processor ensures that such tasks and duties do not lead to a conflict of interest.

Article 39

Tasks of the Data Protection Advisor

The data protection adviser has at least the following tasks:

(a) to inform and advise the controller or processor and the staff processing personal data of their obligations under this Regulation and other Union or national law of the Member States on data protection;

(b) to monitor compliance with this Regulation, with other Union or national law of the Member States on data protection and with the data controller's or data processor's policies on the protection of personal data, including the allocation of responsibilities, information campaigns and the training of staff involved in processing activities; and the associated audits

(c) to advise, when requested, on the impact assessment of data protection and to monitor its compliance in accordance with Article 35;

(d) to cooperate with the supervisory authority

(e) to act as the contact point of the supervisory authority in matters relating to processing, including the prior consultation referred to in Article 36, and to consult the supervisory authority, where appropriate, on any other matters.

2. In carrying out his duties, the Data Protection Adviser shall take due account of the risks associated with processing activities, taking into account the nature, scope, coherence and purpose of the processing in question.