

Decision of the General Secretariat nr. 01/2020

from September 24, 2020

Subject: Decision on accreditation criteria for supervisory bodies

responsible for monitoring compliance with codes of conduct (AH-2019-0106).

The General Secretariat of the Data Protection Authority (hereinafter "the General Secretariat");

Having regard to the law of December 3, 2017 establishing the Data Protection Authority, and in particular

article 20,§1,6° (hereinafter "LCA");

Having regard to 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 the

free movement of such data, and repealing Directive 95/46/EC (hereinafter "GDPR"), and in

particularly sections 41.3, 57.1(p), and 64.1(c);

Having regard to the law of July 30, 2018 relating to the protection of natural persons with regard to the processing

of personal data, and in particular Article 187 (hereinafter "LTD");

Having regard to the internal regulations of the Data Protection Authority (hereinafter "the Authority"), and in

particular Article 15;

Having regard to the guidelines 01/2019 on codes of conduct and supervisory bodies (hereafter

"Guidelines 01/2019") adopted on June 4, 2020 by the European Committee for the Protection of

data (hereinafter "EDPS").

Having regard to Opinion 02/2020 of the EDPS adopted on 28 January 2020 concerning the decision of the General Secretariat

laying down the criteria for the accreditation of supervisory bodies responsible for monitoring compliance

codes of conduct.

Adopts, on September 24, 2020, the Decision setting the criteria for the accreditation of certification bodies

supervisors responsible for monitoring compliance with the following codes of conduct:

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I.□

Introduction□

1. In compliance with article 41.1 of the GDPR and with the guidelines 01/2019, the codes of□

national and transnational conduct must be supervised by an oversight body□

accredited by the competent data protection authority. The only exception to this□

rule is provided for by Article 41.6 of the GDPR which stipulates that the designation of a□

supervision is not required for processing carried out by public authorities.□

2. In accordance with Guidelines 01/2019, §64 and §65, the supervisory body□

perhaps external or internal to the owner of the code of conduct<sup>1</sup>. For example, an organization□

internal oversight perhaps an ad hoc internal committee or a separate department within□

of the code owner.□

3. To be accredited by the Authority, an oversight body must fulfill all the criteria□

of accreditation listed by this Decision established on the basis of the requirements of Article 41.2□

of the GDPR and section 12 of the guidelines 01/2019. Oversight body□

maintains its accreditation as long as the Authority does not find that it no longer meets the criteria□

of accreditation.□

4. The Authority points out that in accordance with Article 41.1 of the GDPR and the guidelines□

01/2019, accreditation as an oversight body is only possible for a□

or more specific codes.□

5. By this Decision, the Authority encourages the development of codes of conduct for□

very small, small and medium-sized enterprises in order to promote a□

uniform and consistent application of the GDPR, in order to increase legal certainty for□

controllers and processors and to strengthen the trust of the people□

concerned. The requirement for codes of conduct to be overseen by a regulatory body.□

accredited supervision should not be an obstacle to the development of codes of conduct.□

Therefore, the application of the accreditation criteria for supervisory bodies must□

take into account the specific processing of each sector and must be as□

flexible as possible while complying with the legal framework imposed by the GDPR,□

Guidelines 01/2019 and EDPS Opinions.□

1 The code owner designates the association or other organization that develops and presents its code.□

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II.□

Accreditation criteria□

1. Independence and impartiality□

The oversight body must demonstrate its independence and impartiality. He must□

demonstrate how its organization and its formal rules of appointment ensure that it is in□

position to act without receiving instructions and being protected from any kind of interference or□

sanctions on the part of the members of the code or the owner of the code resulting from the exercise of its□

functions. This must be demonstrated through four main aspects: the legal aspect and□

relating to the decision-making procedures, the financial aspect, the organizational aspect and the□

accountability.□

Requirement 1.1□

The legal aspect and relating to decision-making procedures□

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the legal structure of the oversight body, including the composition of its capital,□

should protect the oversight body from external pressures. It can be demonstrated,□

for example, by submitting the following documents: the statutes of the supervising organization

or those of the code owner.

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the oversight body's decision-making procedures should ensure that

both the design and application of the decision-making process should protect the organization from

supervision of any pressure. The independence and impartiality of the decision-making process

can be demonstrated, for example, by submitting the organization chart of the

oversight and ownership of the code or a description of the decision-making process that puts

highlight the roles and prerogatives of all parties involved in the process

leading to decision making.

#### Requirement 1.2

The financial aspect

The oversight body should demonstrate that the rules governing its funding prevent

risk that a member of the code of conduct will end its financial contribution in order to

avoid corrective action imposed by the oversight body. This requirement can be

fulfilled, for example, by providing explanations of the financial arrangements between the organization

supervision and code members, including regarding the calculation of contributions, the frequency

at which contributions are paid and the financial arrangements in the event of a member's withdrawal

code.

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#### Requirement 1.3

The organizational aspect

The oversight body must demonstrate that it is free to choose, direct and manage its personnel

in order to accomplish the tasks assigned to it. That the choice of staff be made by  
the oversight body itself or an external service provider, the recruitment process, the management  
and dismissal of staff should not be influenced by the code owner or any  
code member. In order to fulfill this requirement, the oversight body may, for example, provide  
evidence including job descriptions, personnel files, resources devoted  
staff recruitment and reporting lines.

An internal oversight body should provide additional information about  
its relationship with the owner of the code in order to provide proof of its impartiality and  
independence. Proof of these can be provided, among other things, by proof of the elements  
following:

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information barriers;

separation of reporting lines;

separation of operational functions;

separation of management functions.

Requirement 1.4

Accountability

The oversight body should submit a document that explains its independence and  
impartiality towards:

members of the code;

the association or other body mentioned in recital 98 of the GDPR and article 40.2 of the  
GDPR, having submitted a code of conduct for approval.

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Accountability can be demonstrated by evidence that the oversight body has put in place□

a framework defining the attributions and procedures for deferral as well as the decision-making processes□

decision allowing his independence. Evidence of this may include, without limitation, the□

job descriptions, reporting lines and policies put in place to□

make staff aware of the governance structures and procedures in place (for example,□

professional training).□

The oversight body shall retain documentation and evidence of its compliance with all□

accreditation criteria and must make them available to the Authority upon request.□

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The oversight body should keep a record of actions taken in the performance of its duties, including□

including, where applicable, the dates, durations, types of actions taken, members of the code concerned,□

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reactions of the code member and consequences of the action taken.□

This register must be made available to the Authority upon request.□

## 2. Absence of conflict of interest□

### Requirement 2.1□

The oversight body must demonstrate the absence of any conflict of interest related to the personnel of the□

the oversight body and the oversight body itself.□

#### Staff Conflicts of Interest□

In order to avoid conflicts of interest relating to its staff, the oversight body must put in place□

documented procedures to prevent, detect and eliminate any potential conflict□

of interest that its employees and managerial functions may have.□

This procedure must ensure that the functions performed by employees and management personnel,□

past and present, do not interfere with their independence in the performance of their duties.□

The absence of conflict of interest on the part of employees and management functions may be□

demonstrated, for example, through recruitment procedures, remuneration, sanctions□

disciplinary measures, the duration of employment contracts, additional professional commitments,□

work regulations and provisions of employment contracts.□

Conflicts of interest related to the oversight body□

The supervisory body may not engage in any action incompatible with its functions and□

attributions and cannot receive instructions from any individual, organization or association.□

The oversight body should identify situations that may create a conflict of interest and should□

put in place internal rules to avoid conflicts of interest triggered by its□

activities, relationships, organization or procedures. This requirement can be fulfilled by□

providing, for example, evidence such as the organization's risk management strategy□

monitoring.□

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### 3. Expertise□

#### Requirement 3.1□

The oversight body must demonstrate that it has the skills required to exercise the□

oversight of the code of conduct it is responsible for overseeing.□

The oversight body must provide evidence of its competence in the following areas:□

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in-depth knowledge of data protection legislation and□

experience in putting this legislation into practice;□

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knowledge and experience of the sector or processing for which he will act as

as oversight body;

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knowledge and experience in auditing to establish its competence to supervise the

compliance of code members with the code of conduct.

The requirement for additional skills can be defined by the code of conduct. Skills

of each oversight body will be assessed against the specific expertise requested

by the supervised code of conduct.

Expertise can be demonstrated, for example, by providing sufficient proof of the level of

training, education and experience of staff in the above areas. For example, by

diplomas, certifications and proof of acquired experience.

#### Requirement 3.2

The oversight body must demonstrate that its level of competence is appropriate to the risks

created for the data subjects, the complexity and the level of risk presented by the

treatments covered by the code of conduct, the potential importance of the sector concerned, and the

projected number of code members.

#### Requirement 3.3

The oversight body must commit to maintaining a sufficient level of legal competence,

technical and auditing through continuous professional training of staff.

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#### 4. Procedure and structure of the oversight body

##### Requirement 4.1

The oversight body should demonstrate that it has a structure in place to assess and



check the eligibility of data controllers and/or processors who wish to become

members of the code of conduct.

#### Requirement 4.2

The oversight body should demonstrate that it has a structure in place to assess and

continuously monitoring the compliance of code members with the provisions of the code of conduct.

This control structure must at least provide for:

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an audit procedure to be carried out within a defined interval (recurring and ad hoc) determined in

based on criteria such as the risks created for the persons concerned, the complexity and

the level of risk presented by the processing covered by the code of conduct,

the potential importance of the sector concerned, the anticipated number of members of the code, the

geographical scope of the code and the number of complaints received;

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an audit methodology, which specifies the assessment criteria, the type of audit to be carried out and the

documentation of the findings established by the audit;

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a procedure for identifying, investigating and resolving breaches of the Code of

conduct;

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an obligation for members of the code to regularly report to the supervisory body

on their compliance with the code.

#### Requirement 4.3

The oversight body must demonstrate that it has sufficient staff to

perform its supervisory duties properly.

The number and type of employees required depends on criteria such as the risks created for

data subjects, the complexity and level of risk presented by the processing operations covered

by the code of conduct, the potential importance of the sector concerned, the anticipated number of code members. This requirement can be met, for example, by proof of an organizational chart of the oversight body describing the number and roles of employees assigned to each function.

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Requirement 4.4

The oversight body must demonstrate that its employees are bound by an obligation of confidentiality in the performance of their duties.

Requirement 4.5

The oversight body must demonstrate that it has the financial resources and stability sufficient financial resources to carry out its tasks (in accordance with criterion 8.4).

5. Complaints and penalties

Requirement 5.1

The oversight body should put in place a complaints procedure. This procedure must also be detailed in the supervised code of conduct.

The said procedure must provide for the handling of complaints lodged by the persons concerned, and by the bodies, organizations or associations mentioned in Article 80 of the GDPR against code members.

This procedure must specify the form the complaint takes (in writing or electronically), a point of contact in charge of handling the complaint, the procedure for handling the complaint, and the different resolution options provided for in the supervised code of conduct.

This procedure must be made public and be transparent.

Requirement 5.2

The oversight body must acknowledge receipt of the complaint received.□

The complainant must be informed of the progress or resolution of the complaint no later than three months□  
after receipt of the complaint.□

The period for resolving the complaint may be, if necessary, reasonably extended taking into account□  
the complexity of the complaint. The oversight body must inform the complainant of such□  
extension within three months of receipt of the complaint, as well as the reasons justifying this□  
extension.□

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Requirement 5.3□

The oversight body should maintain a record of all complaints received and should ensure that□  
the decisions taken by the organization are made public. In addition, the oversight body should□  
regularly publish statistical data, including, its supervision activity including the□  
number of complaints received, type of violations and corrective measures taken.□

Requirement 5.4□

The oversight body must provide evidence that it has adopted adequate corrective measures,□  
as defined in the code of conduct, in the event of violation of the code in order to put an end to the violation□  
and prevent a future occurrence of the breach. These sanctions may include, follow-up training,□  
a warning, a report of the member to the management committee, a formal notification, the suspension□  
or expulsion of the member.□

6.Communication□

Requirement 6.1□

The oversight body must submit an annual report to the Authority setting out its□  
activities and decisions.□

The supervisory body must also communicate to the Authority any action taken in the event of  
violation of the code of conduct and the reasons justifying this action. The frequency of this  
communication depends on criteria such as the risks created for the persons concerned, the  
complexity and level of risk presented by the processing operations covered by the code of conduct,  
the potential importance of the sector concerned, the anticipated number of members of the code, the seriousness  
and the frequency of violations and actions taken as defined in the code of conduct.

#### Requirement 6.2

The oversight body must put in place a procedure to communicate without delay to

the Authority :

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any substantial change in its organization and/or structure likely to affect its

ability to exercise its functions impartially, independently and effectively. These

changes can include :

- o an amendment of the legal, commercial and organizational;

- o a change in the organization of the key functions and at the head of the

conductor ;

- o a modification of the financial resources and the location of the body

supervision ;

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- o a significant change in the number of members of the code.

the suspension or exclusion of members of the code ;

a substantial violation of the code of conduct as well as detailed information

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violation and the actions prizes.□

### Exigence 6.3□

L'organisme de supervision doit mettre en place a procedure afin de rendre publiques les□

information suivantes :□

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a general description of the mechanisms of financement of the organization of supervision;□

des informations concernant les procedures de traitement des plaintes;□

des informations concernant le code de conduite supervised et les mécanismes de supervision□

(including les procedures mentioned aux critères 6.1, 6.2, 7.1, et 7.2, les règles et les□

procedures d'octroi, de maintien, de suspension, d'exclusion et de retrait du code) telles□

qu'établies dans les règles et procedures du code de conduite supervised ;□

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toutes les mesures correctrices conduisant à l'exclusion du code de conduite telles qu'établies□

dans les rules and procedures du code de conduite supervised.□

## 7. Revision mechanisms□

### Exigence 7.1□

L'organisme de supervision doit mettre en place des procédures permettant de prendre en compte□

une modification du cadre réglementaire affectant substantiellement les dispositions du code de□

conduite.□

### Exigence 7.2□

L'organisme de supervision se doit de contribuer à sa mesure à la révision du fonctionnement du code□

de conduite et de mettre en place des mecanismes permettant de consulter le propriétaire du code□

ainsi que toute other parties mentioned in the code de conduite. Par exemple, en mettant en place□

une obligation de report sur le fonctionnement du code auprès du propriétaire du code et de toute

Other parties mentioned in the code de conduite.

## 8. Statut juridique et structure organisationnelle

### Exigence 8.1

L'organe de supervision doit indiquer s'il agit en tant qu'organe de supervision interne ou

external vis-à-vis du propriétaire du code.

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### Exigence 8.2

Indépendamment de sa forme juridique, l'organe de supervision devra être constitué de manière

à ce qu'il puisse être tenu responsable, à ce qu'il puisse exercer son rôle en vertu de l'article 41(4) du

RGDP et à ce qu'il puisse se voir imposer une amende en vertu de l'article 83.4.c) du RGPD.

### Exigence 8.3

The organization that supervises it is up to date in the Espace Economique européen ("EEE").

### Exigence 8.4

The organization of supervision does not destroy the viability and the pérennité of ses activités de supervision

dans le temps, particulièrement eu égard au fait qu'il a mis en place des procédures permettant

d'assurer :

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des ressources financières suffisantes (conformément à l'exigence 4.5) ;

d'avoir suffisamment de personnel pour remplir ses fonctions (conformément à l'exigence

4.3)

### Exigence 8.5

L'organisme de supervision doit s'engager formellement à se conformer à la législation applicable et, en particulier, aux dispositions du RGPD.

#### Exigence 8.6

Lorsque des marques, signs or similar instruments that are used for reflecting the conformity with le code de conduite, l'organisme de supervision se doit de prendre les mesures nécessaires requises en cas d'usage frauduleux de ces instruments (par exemple, références incorrectes ou usage trompeur) de ces marques, signs ou instruments similaires.

### 9. Sous traitants

#### Exigence 9.1

Lorsque l'organisme de supervision recrute un sous-contractant pour exercer certaines de ses missions, l'organisme de supervision reste responsable pour toutes les missions sous-traitées.

#### Exigence 9.2

L'organisme de supervision se doit de préciser les tâches et rôles qu'exerceront les sous-contractants lors de la demande d'accreditation.

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#### Exigence 9.3

L'organisme de supervision doit démontrer que son sous-contractant remplit toutes les exigences

Listées dans la présente décision et en particulier les requirements 1,2,3,8.5.

L'organisme de supervision doit démontrer que le sous-contractant est tenu par ces exigences et peut s'y conformer en pratique.

#### Exigence 9.4

Sans préjudice de l'exigence 6.3, l'organisme de supervision doit mettre en place une procédure lui permettant de communiquer sans délai auprès de l'Autorité tous les changements substantiels liés à

un sous-contractant qui pourraient affecter l'organisation et/ou la structure de l'organisme de

supervision et pourrait affecter sa capacité à exercer sa fonction correctement. Ce's changements

substantial peuvent include :

la cessation de l'arrangement avec le sous-contractant ;

le remplacement du sous-contractant par un autre.

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## 10. Languages

### Exigence 10.1

Toute the documentation demonstrating the conformity with les présentes exigences doit être soumise en

néerlandais, français ou all other langue à l'appréciation de l'Autorité.

David Stevens

Directeur du Secetaire General

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