

## Supervision of the data protection adviser's tasks in Albertslund Municipality

Date: 16-03-2021

### Decision

### Public authorities

On the basis of the circumstances examined, the Danish Data Protection Agency finds that Albertslund 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, including Albertslund Municipality, which the decision below is about. The second group of supervisors focused on municipalities that had purchased the service from a law firm.

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

Albertslund Municipality was among the authorities that the Danish Data Protection Agency had selected for supervision in 2019. The Danish Data Protection Agency's planned audit focused on the data protection adviser's professional qualifications, resources and tasks. 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. The responsibility for compliance with the

data protection rules - including the rules regarding requirements for data protection advisers - lies with the data controller and the data processor (in the present case, Albertslund Municipality).

In accordance with Article 37 (1) of the Data Protection Ordinance, Albertslund Municipality has 7, prior to the audit, the Danish Data Protection Agency announced that an external person would take on the role of data protection adviser for the municipality.

The Danish Data Protection Agency has also noted that the person in question is affiliated with the Greater Copenhagen Digitization Association, which is a collaboration between Albertslund Municipality, Brøndby Municipality, Dragør Municipality, Glostrup Municipality, Herlev Municipality, Hvidovre Municipality, Høje-Taastrup Municipality, Ishøj Municipality, Rødovre Municipality, Solrød Municipality and Vallensbæk Municipality. Albertslund Municipality's external data protection adviser also handles the role of data protection adviser for Høje-Taastrup Municipality, Hvidovre Municipality and Dragør Municipality. For the purpose of the inspection on 9 September 2019, Albertslund Municipality has sent a completed questionnaire and the municipality's contract with the data protection adviser. Furthermore, on 6 December 2019, the municipality submitted a supplementary statement with relevant appendices.

On the basis of the circumstances examined, the Danish Data Protection Agency finds that Albertslund 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 Albertslund Municipality has appointed an external person to handle the role of data protection adviser, and that the function is performed on the basis of a service contract.

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

That Albertslund Municipality provides the resources necessary for the data protection adviser to carry out the tasks mentioned in Article 39, cf. Article 38 (1) of the Data Protection Ordinance. 2.

To be registered in Albertslund Municipality in accordance with Article 38 (1) of the Data Protection Ordinance. 4 may contact data protection advisers regarding any issues concerning the processing of their information and the exercise of their rights

under the Data Protection Regulation.

That Albertslund Municipality's data protection adviser in accordance with Article 39, para. 1, letter a to the extent necessary, informs and advises Albertslund Municipality and employees in the municipality about their obligations under the Data Protection Ordinance.

That Albertslund Municipality in accordance with the Data Protection Ordinance Article 39, para. 1, letter b has ensured that the data protection advisers monitor 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. organization.

From the submitted material in the Danish Data Protection Agency's inspection, it appears that the data protection adviser is assisted by a colleague from the association where she is established. This colleague handles the role of data protection advisor for the seven remaining municipalities in the association. The data protection adviser has the opportunity to spar with this colleague. The data protection adviser is also assisted by a selected employee in the municipality.

It is the Data Inspectorate's opinion that the data controller and data processors 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 data processors 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.

## 2. The expertise and professional qualifications of the Data Protection Advisor

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

It appears from the case that the data protection adviser is a trained lawyer. The data protection adviser has also completed the subject IT security at Copenhagen Business Academy and participated in courses focusing on data protection law, the role of the data protection adviser, technology understanding and cyber security. Furthermore, the data protection adviser has specific professional experience with data protection law from a previous position in a public authority and in this position has, among other things, been responsible for the implementation of the data protection law rules in the organization in question. Furthermore, it appears from the case that the data protection adviser was new to his position at the time of the inspection, and that the person in question did not have knowledge of the municipality's organization and the processing activities carried out by the municipality before being appointed data protection adviser.

In this connection, however, the Danish Data Protection Agency has noted what the municipality has stated that the municipality will ensure and develop the data protection adviser's knowledge of local administrative rules and procedures through close cooperation with the security coordinator.

Furthermore, the Danish Data Protection Agency has noted that it appears from the case that the data protection adviser has a general knowledge of administrative rules and procedures in municipalities from his previous position.

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) of the Data Protection Regulation 5, in addition to an in-depth understanding of the data protection law rules, the data protection adviser should 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 promote a data protection culture within the organization [1].

On the basis of the information in the case, it is the Data Inspectorate's assessment that the municipality's external 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). 5.

In this connection, the Danish Data Protection Agency has emphasized that the data protection adviser has relevant educational and professional experience with the data protection law and information technology area, that the municipality - as the data protection adviser had no knowledge of the municipality's organization, administrative rules, procedures and processing activities. the municipality - had intended to develop this knowledge, and that the data protection adviser in general - before joining and from a previous position - had a knowledge of the administrative rules and procedures that are the hallmarks 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 sufficiently and timely involved in all matters concerning the protection of personal data.

It appears from the case that the municipality has ensured the data protection adviser's involvement by regularly convening the data protection adviser to meetings with the municipality on data protection law matters.

The municipality has also referred to an internal guide on involving the data protection adviser in the municipality, which states that the municipality has a duty to involve the data protection adviser in a timely and sufficient manner so that the municipality can take into account the data protection adviser's advice or recommendations. As part of this, the municipality must involve the data protection adviser in the municipality's considerations as to whether the proposed treatments have a treatment authority and comply with basic treatment principles. The municipality is also obliged to involve the data protection adviser in the municipality's assessments and considerations in relation to the data subjects' rights.

In addition, the municipality has stated that the data protection adviser must be involved in the municipality's assessments and considerations regarding compliance with the obligations with regard to implementation of necessary security measures, conclusion of data processor agreements, preparation of treatment lists and impact assessments and handling of personal data breaches.

According to the municipality, the tasks are solved i.a. via concrete advice, guidance and monitoring at meetings and presence in the municipality.

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

In this connection, the Danish Data Protection Agency has emphasized that the municipality has written down internal guidelines, which state that the data protection adviser must be involved in meetings in a number of specific cases, through meetings and attendance in the municipality, for example. treatment principles.

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

#### 4. Resources of the Data Protection Advisor

Article 38 (1) of the Data Protection Regulation Article 2 (2) states that 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 provision implies that the data controller and the data processor must provide the necessary information facilities and work tools, financial resources, personnel resources and the like available to the data protection adviser. The data protection adviser must also have enough time for the tasks. If the data protection adviser also has other tasks and obligations, these tasks must not exceed the time required to perform the tasks as a data protection adviser.

The determination of the amount of resources required depends on the organizational conditions of the data controller and the data processor, including the size of the data controller's or data processor's organization, the number of processing activities, the scope of each processing activity, including the number of data subjects and categories. as well as the complexity of and the risks associated with these treatment activities.

It appears from the case that the data protection adviser has access to resources within the areas of HR, law and IT as well as general access to personal data and processing activities in the municipality. The data protection adviser also has the

opportunity to be assisted by an employee in the municipality to solve tasks where, for example, there is a need for a thorough knowledge of the organization. The necessary resources are allocated through sparring with the data protection adviser, and the municipality regularly assesses whether the data protection adviser has the necessary resources.

After a review of the case information, the Danish Data Protection Agency finds that Albertslund Municipality complies with the requirement in Article 38 (1) of the Data Protection Ordinance. 2.

The Danish Data Protection Agency has emphasized that the resources provided are suitable for supporting the data protection adviser in his work, that the data protection adviser has the opportunity to spar with staff in the municipality in connection with the performance of work, and that the municipality continuously assesses whether the data protection adviser has the necessary resources.

The Danish Data Protection Agency has also emphasized that the four municipalities - in which the data protection adviser performs the role - are part of the Greater Copenhagen Digitization Association, and that the tasks that the data protection adviser performs for the municipalities must thus be assumed to have significant comparability. The Data Protection Adviser must hereby be assumed to a not insignificant extent to have the opportunity - in the performance of the task in one co-operation municipality - to draw on his experience from the performance of a similar task in another co-operation municipality.

Against this background, the Danish Data Protection Agency in the present case cannot rule out that the municipalities and the data protection adviser have organized themselves in a way whereby the data protection advisers have sufficient time available to carry out their tasks in the individual cooperating municipalities.

Regardless of the fact that the data protection adviser thus handles the role in several different municipalities, it is thus the Data Inspectorate's assessment that the data protection adviser is provided with the necessary resources and otherwise has sufficient time to carry out his work at the individual municipality, cf. 2.

#### 5. 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 the municipality has confirmed that data subjects specifically 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 under the Data Protection Regulation. The contact is via e-mail and telephone. The registered person will, as a rule, have his inquiry answered the same day or the day after.

In case of possible peak situations, where many data subjects want to get in touch with the data protection adviser, the municipality has stated that in these situations a concrete agreement is made with the data protection adviser about the possibilities of contacting her.

It is the Data Inspectorate's opinion that the municipality should establish a set-up to the extent that the municipality has not already done so, to relieve the data protection adviser during peak periods. It can e.g. This can be done by having professional staff assist the data protection adviser, so that the data subjects can be guided within a reasonable time.

On the basis of the case information about the data subject's contact with the data protection adviser, the Danish Data Protection Agency can state that it is possible for data subjects in the municipality to contact the data protection advisers in accordance with Article 38 (1) of the Data Protection Regulation. 4.

#### 6. 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. It is thus required that the data protection adviser is available to the organization and the employees.

In the case of data protection advisers who play the role of several different organizations, special consideration should be given to the fact that the data protection adviser is able to be available to the individual organization despite the appointment of



several organizations.

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 and the municipality to the necessary extent, and whether the data protection adviser assists the municipality in implementing key elements in the data protection regulation.

The municipality has confirmed that the data protection adviser is generally available to the municipality's employees when questions arise in relation to the processing of personal data, and that all employees can contact the data protection adviser directly to clarify questions regarding data protection law.

On the basis of the information in the case, the Danish Data Protection Agency also assumes that the data protection adviser - based on the municipality's involvement of the data protection adviser in accordance with Article 38, subsection 1 - advises the municipality on compliance with the data protection law rules, among other things in connection with the meetings that are regularly held between the data protection adviser and the municipality, where the data protection adviser has the opportunity to provide input on data protection law issues.

Furthermore, on the basis of the information in the case, the Danish Data Protection Agency assumes that the data protection adviser contributes to a certain extent to the preparation of information campaigns and training of staff who participate in processing activities, but that the municipality itself plays the primary role for this task.

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. In this connection, the Danish Data Protection Agency has noted that the municipality has assessed that the information security coordinator is a professionally relevant employee, and the authority does not see any basis for overriding this assessment. The Danish Data Protection Agency has also noted that employees actually have the opportunity to contact the data protection advisers when the situation requires it.

Furthermore, 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. The data controller 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 is done within the framework of Chapter 4 of the Data Protection Regulation. that 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, it is the Danish Data Protection Agency's assessment that Albertslund Municipality complies with the requirement in Article 39 (1) of the Data Protection Ordinance. 1, letter a.

#### 7. 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 these tasks in monitoring compliance with data protection law rules, the data protection adviser must in particular collect information that identifies data processing activities, analyze and check data processing activities' compliance with the regulations and inform, advise and correct recommendations to the data controller [or data controller] .

##### 7.1.

It appears from the case that the data protection adviser performs three scheduled inspections per year. The data protection adviser also controls the preparation of "maturity measurements" in connection with the operation and implementation of the data protection law rules in the municipality and self-governing institutions. The data protection adviser also carries out ad-hoc

inspections in the form of inspections, which are initiated as a result of specific knowledge.

The three planned annual inspections are selected on the basis of, among other things, the results from the maturity measurements, risks for the data subjects and any results from previous audits, including the Danish Data Protection Agency's focus areas and supervisory practices.

The maturity measurement has previously - and by the former data protection adviser, who was also affiliated with the Greater Copenhagen Digitization Association - been conducted by interviewing selected employees in the municipality, where the data protection adviser has collected data on status regarding implementation and operation of data protection in the municipality. Based on the interview, the data protection adviser has prepared a report for the municipality with conclusions, recommendations and results.

The data protection adviser has also prepared a new "maturity measurement model", where the data protection adviser, based on questionnaire surveys of selected employees from the municipality, checks the municipality's compliance with the data protection law rules. The inspection was carried out in September 2019 and consists of an assessment of the municipality's compliance with the rules based on 40 criteria. The criteria mainly relate to requirements directly under the Data Protection Regulation as well as other matters of significant importance for the implementation and operation of the data protection law rules.

The survey consists of a number of questions divided into individual areas of data protection law, where the employee in question - based on a number of different options - must answer the extent to which the municipality complies with the areas. Thus, the employee must, for example in relation to storage limitation, based on 5 options state to what extent there is a procedure in the subject area that ensures that personal data is not stored for longer than necessary to fulfill the purpose for which the information was initially collected to.

The inspection is implemented in a report, which contains the results of the inspection, a management summary and recommendations to the municipality. The data protection adviser initially sends a preliminary report to the security officer in the municipality, after which the data protection adviser and the municipality hold a meeting to discuss the results of the measurement, where the municipality also explains the intended action in connection with the results and the data protection adviser's recommendations. The final report will then be sent to the municipal director and to the security officer in the municipality.

It appears from the case that the “maturity measurements” are carried out at least once a year in the departments in the municipality that are responsible for the goals, frameworks and measures covered by the Data Protection Ordinance, including in the municipality's professional centers, which have daily responsibility for compliance. of the provisions of the Data Protection Regulation. The survey is also conducted once a year by independent institutions, councils, boards and committees. In relation to unplanned checks performed, it appears from the case that the data protection adviser can, on the basis of specific knowledge, for example from complaints or results from maturity measurements, carry out ad hoc inspections if the data protection adviser deems this necessary.

With regard to the data protection adviser's reaction in case of established non-compliance with the data protection law rules, the municipality has stated that the data protection adviser in these cases will inform those responsible in the municipality (management) and the municipal council.

## 7.2.

The Danish Data Protection Agency considers that the requirement to monitor compliance with the data protection law rules in Article 39 (1) 1, letter b must be seen in connection with 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.

After a review of what is stated by the municipality, it is the Data Inspectorate's assessment that the municipality's data protection adviser carries out the necessary control of the municipality's processing activities in accordance with Article 39 (1) of the Data Protection Ordinance. 1, letter b.

In this connection, the Danish Data Protection Agency has emphasized the information that the data protection adviser is responsible for advising the data subjects, and thereby becomes aware of a possible non-compliance with the rules, and that the data protection advisers also have the opportunity to be made aware of the municipality's lack compliance with data protection law rules. The Danish Data Protection Agency has also emphasized the information about the data protection adviser's planned and unplanned checks.

## 8. Conclusion

On the basis of the conditions examined, the Danish Data Protection Agency finds that Albertslund Municipality's use of an external data protection adviser is within the scope of the data protection regulation. In this connection, the Danish Data Protection Agency has noted the following:

1. That Albertslund Municipality has appointed an external person to handle the role of data protection adviser, and that the function is performed on the basis of a service contract.
2. That Albertslund Municipality's data protection adviser has the necessary professional qualifications to carry out the role, cf. Article 37 (1) of the Data Protection Regulation. 5.

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

That Albertslund Municipality provides the resources necessary for the data protection adviser to carry out the tasks mentioned in Article 39, cf. Article 38 (1) of the Data Protection Ordinance. 2.

To be registered in Albertslund Municipality in accordance with Article 38 (1) of the Data Protection Regulation. 4 may contact data protection advisers regarding any issues concerning the processing of their information and the exercise of their rights under the Data Protection Regulation.

That Albertslund Municipality's data protection adviser in accordance with Article 39, para. 1, letter a to the extent necessary,

informs and advises Albertslund Municipality and employees in the municipality about their obligations under the Data Protection Ordinance.

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

[1] Article 29 Working Party Guidelines on Data Protection Advisers, adopted on 13 December 2016, last revised and adopted on 5 April 2017, pp. 12 and 24. [2] Article 29 Working Party Guidelines for Data Protection Advisers, adopted on 13 December 2016, last revised and adopted on 5 April 2017, p. 18

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

## Article 37

### Appointment of a data protection adviser

The data controller and the data processor 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 Data 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 data protection impact assessment 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.