

**MEMORANDUM OF UNDERSTANDING between the EFTA SURVEILLANCE  
AUTHORITY and the EUROPEAN DATA PROTECTION SUPERVISOR**

This Memorandum of Understanding (hereinafter "MoU") has been drawn up and signed,

**BETWEEN**

The EFTA Surveillance Authority  
(hereinafter "ESA")

with its headquarters at:  
Rue Belliard 35,  
B-1040 Brussels,  
Belgium

**AND**

The European Data Protection Supervisor  
(hereinafter "EDPS")

with its headquarters at  
Rue Wiertz 60,  
B-1047 Brussels,  
Belgium

(hereinafter jointly the "Parties" and individually, a "Party").

WHEREAS:

- (1) The EDPS is the independent supervisory body responsible for monitoring the processing of personal data by EU institutions and bodies set up pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>1</sup> (hereinafter "the Regulation");
- (2) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>2</sup> has been incorporated into the EEA Agreement pursuant to Decision No 154/2018 of the EEA Joint Committee<sup>3</sup> on 6 July 2018 and is applicable to the EEA States;
- (3) Article 1 of the EEA Joint Committee Decision made the necessary adaptations to the General Data Protection Regulation by which *inter alia*: ESA has the right of participation in the meetings of the European Data Protection Board (hereinafter "the EDPB") without voting right, including where it is relevant to the exercise of its functions under Article 109 of the EEA Agreement the right to request advice or opinions from, and to communicate matters to the EDPB in an equivalent manner to the European Commission; as well as the right, where it is relevant to the exercise of its functions under Article 109 of this Agreement, to receive information from a supervisory authority of one of EFTA States;
- (4) Considering ESA's role as an EDPB member and in the interest of ensuring a coherent approach to personal data protection throughout the EEA, ESA is determined to align as far as possible the data protection rules for ESA with the data protection rules adopted for the public sector in EEA states. To this end, ESA has adopted Decision No 100/19/COL on 18 December 2019, which provides for new Rules on Data Protection that are to enter into force on 1 January 2020 (hereinafter referred to as "the Rules").
- (5) Considering that the establishment of an independent supervisory authority is an essential element for the effective protection of personal data, ESA has sought to continue its on-going cooperation with the EDPS;
- (6) The EDPS, as reflected in Article 3(3) of Decision No 235/16/COL, has been monitoring the application of the provisions of that Decision by ESA, in accordance with a Memorandum of Understanding concluded between the Parties on 4 October 2017 and amended on 18 December 2018;

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<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001, OJ L 295, 21.11.18, p. 39-98.

<sup>2</sup> 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 on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1-88.

<sup>3</sup> Decision of the EEA Joint Committee No 154/2018 of 6 July 2018 amending Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 (containing the list provided for in Article 101) to the EEA Agreement, OJ L 183, 19.7.2018, p. 23.

- (7) Recognising that the respective tasks and responsibilities of the Parties are to be substantially revised, following the entry into force of the Rules, the Parties find a need to define through a new permanent working arrangement the EDPS tasks and powers in relation to his or her monitoring of the application of the Rules by ESA, as well as the modalities for the cooperation between ESA and the EDPS;
- (8) Acknowledging that access to documents drafted by or in the possession of the EDPS, including conditions for access to documents containing personal data, is governed by the rules adopted on the basis of Article 15 of the Treaty on the Functioning of the EU (and its former Article 255 TEC) and in particular Regulation 1049/2001,<sup>4</sup>

THE PARTIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

### **Paragraph 1 Purposes and key principles**

1.1 The purposes of this MoU are to establish (i) the tasks and powers of the EDPS as regards his or her supervision of personal data processing carried out by ESA, (ii) the general terms for the cooperation between ESA and the EDPS, including the exchange of information, (iii) the enforcement by ESA of decisions and recommendations adopted by the EDPS and any recourses available in that respect, and (iv) the remuneration for the tasks performed by the EDPS vis-à-vis ESA.

1.2 ESA will provide the EDPS with all information necessary for the performance of his or her tasks.

1.3 Pursuant to Article 55(1) and (2) of the Regulation, the EDPS shall act with complete independence in performing his or her tasks and exercising his or her powers, and neither seek nor take instructions from anybody. As an independent authority the EDPS will provide assistance to ESA on the application of the Rules to the extent compatible with his or her duties and priorities.

### **Paragraph 2 Definitions**

For the purpose of this MoU, the definitions set out in Article 3 of the Rules apply.

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<sup>4</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48.

### **Paragraph 3 EDPS tasks**

3.1 For the purpose of this MoU, the EDPS shall fulfil the following commitments towards ESA:

- (a) to monitor and ensure the application of the Rules by ESA;
- (b) to promote the awareness of controllers and processors of their obligations under the Rules;
- (c) upon request, to provide information to any data subject concerning the exercise of their rights under the Rules and, if appropriate, cooperate with the national supervisory authorities to that end;
- (d) to handle complaints lodged by a data subject, and investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;
- (e) to conduct investigations on the application of the Rules, including on the basis of information received from another supervisory authority or other public authority;
- (f) to advise ESA, either on his or her own initiative or in response to a consultation, on all matters concerning the processing of personal data, in particular before ESA draws up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of personal data;
- (g) to give advice on the processing referred to in Article 40 of the Rules;
- (h) to authorise contractual clauses and provisions referred to in Article 48(3) of the Rules.

3.2 The performance of the tasks of the EDPS shall be free of charge for the data subject.

3.3 Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the European Data Protection Supervisor may refuse to act on the request. The European Data Protection Supervisor shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

#### **Paragraph 4 EDPS powers**

4.1 For the purpose of this MoU, the European Data Protection Supervisor shall have the following investigative powers:

- (a) to obtain from ESA access to all personal data and to all information necessary for the performance of his or her tasks;
- (b) to carry out investigations in the form of data protection audits;
- (c) to notify ESA or the processor of an alleged infringement of the Rules;
- (d) to obtain access to any premises in which the ESA carries out its activities, including to any data processing equipment and means, in accordance with EEA law.

4.2 For the purpose of this MoU, the European Data Protection Supervisor shall have the following corrective powers:

- (a) to issue warnings to ESA that intended processing operations are likely to infringe provisions of the Rules;
- (b) to issue reprimands to ESA where processing operations have infringed provisions of the Rules;
- (c) to refer the matter to ESA in the event of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects
- (d) to request ESA to comply with the data subject's requests to exercise his or her rights pursuant to the Rules;
- (e) to request that ESA bring processing operations into compliance with the provisions of the Rules, where appropriate, in a specified manner and within a specified period;
- (f) to request ESA to communicate a personal data breach to the data subject;
- (g) to propose the rectification or erasure of personal data or restriction of processing pursuant to Articles 20, 21, and 22 of the Rules and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 21(2) and Article 23 of the Rules;
- (h) to propose a temporary or definitive limitation on processing;
- (i) to propose the suspension of data flows to a recipient in an EEA state, a third country or to an international organisation.

4.3. For the purpose of this MoU, the European Data Protection Supervisor shall have the following authorisation and advisory powers:

- (a) to advise data subjects in the exercise of their rights vis-à-vis ESA;
- (b) to advise ESA in accordance with the prior consultation procedure referred to in Article 40, and in accordance with Article 41(2) of the Rules;
- (c) to issue, on his or her own initiative or on request, opinions to ESA on any issue related to the protection of personal data;



- (d) to authorise contractual clauses referred to in point (a) of Article 48(3) of the Rules;
- (e) to authorise administrative arrangements referred to in point (b) of Article 48 (3) of the Rules;

**Paragraph 5**  
**Cooperation between ESA and the EDPS**

5.1 ESA shall inform the EDPS of the measures taken further to his or her decisions or authorisations as referred to in Paragraph 3 and in Article 42(2) of the Rules.

5.2 At his or her request, ESA shall assist the EDPS in the performance of his or her duties, in particular by providing the information referred to in Paragraph 4(1)(a) and by granting access as provided in Paragraph 4(1)(d).

5.3 In response to the EDPS's exercise of his or her powers under Paragraph 4 of this MoU, ESA shall inform the Supervisor of its views within a reasonable period to be specified by the Supervisor. The reply shall also include a description of the measures taken, if any, in response to the remarks of the EDPS.

5.4 Concerning materials written in Icelandic or Norwegian, ESA undertakes to provide any translation into English necessary for the fulfilment of the EDPS' obligations under this MoU.

**Paragraph 6**  
**Confidentiality**

In accordance with Article 56 of the Regulation, the EDPS and his or her staff are, both during and after their term of office, subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

**Paragraph 7**  
**Implementation of EDPS decisions and recommendations by ESA and  
recourses**

7.1 If the EDPS issues an opinion on ESA's processing of personal data, ESA shall take the utmost account of the opinion in its decision. In the event that ESA decides not to follow the opinion of the European Data Protection Supervisor, ESA shall state the reasons on which its Decision is based and inform the parties and the European Data Protection Supervisor thereof.

7.2 The EFTA Court shall have jurisdiction to hear all disputes, which relate to the provisions of the Decision, in accordance with Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

## **Paragraph 8 Financial conditions**

8.1. Given the nature of the tasks referred to in Paragraph 3, it is very difficult to bill for the services rendered by the EDPS on the basis of the actual cost. Therefore, the cost of the services shall be calculated on the basis of a forfeit.

8.2. The estimated forfeit to be applied shall be a half "full-time equivalent" (hereinafter "FTE").

8.3. The average cost of a FTE will be based on the generic profile with the minimum of expertise and seniority required to carry out the tasks described in paragraph 3. The generic profile shall be the equivalent of an administrator of grade 6 according to the Staff Regulations of officials and the Conditions of Employment of other servants of the European Union.

8.4. The specific pay components to calculate the FTE average cost shall be: basic salary of an AD6 step 1, married with two children, expatriation allowance, as at 1 January of the year of supervision. The final cost will be determined by the official pay calculator that the European Commission publishes every year.

8.5. The services shall be invoiced by debit note issued in the first quarter of each year of supervision. The debit note shall be paid within 30 days of receipt. Debit notes shall be sent to the contact person as defined in paragraph 8.7, by email and regular post.

8.6. The contact person for financial matters at the EDPS is [REDACTED]  
[REDACTED] [EDPS-Finance@edps.europa.eu](mailto:EDPS-Finance@edps.europa.eu).

8.7. The contact person for financial matters at the ESA is [REDACTED]  
[REDACTED]

## **Paragraph 9 Legal nature and settlement of disputes**

9.1 This MoU does not modify or supersede any Union law, EEA law, or any national laws nor does it affect any provisions under other multilateral or bilateral agreements in force and applicable to the Parties.

9.2 Any disagreement between the Parties concerning the interpretation or application of this MoU or its performance will be settled, if possible, in an amicable and equitable manner through direct negotiations between the relevant responsible persons. Therefore, the representatives appointed by the EDPS and ESA respectively will endeavour to resolve the outstanding disagreement.

9.3 If the negotiation stage mentioned in Paragraph 9.2 does not reach a satisfactory resolution, the Parties strive to solve the disagreement by mutual agreement by entertaining good faith negotiations between senior management, or

directly the President of ESA and the Supervisor who have authority to fully and finally resolve the disagreement.

9.4 The existence of a disagreement, its resolution as well as any information including documentation related to or disclosed in connection with it, will be treated as confidential information.

9.5 If any dispute arises between the parties, before any action is taken the parties shall seek in good faith to resolve the issues between them within 60 days. If no resolution is achieved within this time period, the dispute shall be referred to a single arbitrator appointed by agreement of the parties or failing agreement to an arbitrator appointed by the Belgian Institut d'Arbitrage. In the event that a disagreement cannot be resolved thus, the dispute may be brought by any party before the courts in Belgium where both parties have their place of establishment.

#### **Paragraph 10 Effect, amendment and termination**

10.1 The effective date of this MoU is 1 January 2020. It shall continue to have effect until terminated by either of the Parties.

10.2 Any amendment to this MoU requires the mutual consent of the Parties and must be made in writing.

10.3 Each Party may terminate this MoU by giving six months' prior written notice to the other Party at any time.



SIGNATURES:

Drawn up at Brussels on 18 December 2019 in two original copies each in the English language and signed by the duly authorised representatives of ESA and the EDPS.

For the EFTA Surveillance  
Authority



Bente ANGELL-HANSEN  
President

For the European Data  
Protection Supervisor



Wojciech WIEWIÓROWSKI  
Supervisor