

消費者法規翻譯叢書之二十四

外國消費者保護法

(第二十四輯)

行政院消費者保護處 編印
中華民國 107 年 12 月

序言

美國總統甘乃迪於 1962 年揭示消費者享有一講求安全、知道真相、選擇及表達意見四大權利；1963 年國際消費者組織聯盟（IOCU）再加入基本需求、請求賠償、消費教育及健康環境四大權利，宣示消費者應享有八大權利，並負五大義務—認知、行動、關懷、環保、團結義務；聯合國繼於 1985 年通過「保護消費者指導方針」。從以上之宣示，消費者保護事務已成為世界各國政府的共通關注之議題。

我國為更有效保護消費者權益，並順應世界潮流，於歷經個別立法保護時期及消費者保護方案時期後，終於民國(下同)83 年 1 月 11 日經總統公布施行消費者保護法，使我國正式進入消費者保護法時期，為我國消費者保護法制展開新紀元，嗣後並於 92 年、94 年、104 年修訂部分條文。

值此保障消費者之思想已蔚為世界潮流之際，為健全並周延我國有關消費者保護法制及充實消費者保護之新知，原行政院消費者保護委員會於 84 年起，即著手編印外國消費者保護法規選輯，自 84 年 6 月出版外國消費者保護法第 1 輯，而行政院消保處自 101 年 1 月 1 日改制後，仍承繼原行政院消費者保護委員會編印出版之初衷，賡續編印出版，截至 106 年止，共計出版 23 輯。選輯內容，則包括派員出國考察或開會時所蒐集，及經由國外政府機關、國際組織網站下載之消費者保護相關法規，並將之譯介，彙編成書，以供作該會及各界瞭解各國消費者保護相關法規及比較研究之參考。

本書為本處譯介外國消費者保護法第 24 輯，內容包括加拿大消費性商品包裝標示法、德國民法一般交易條款規定、美國兒童線上隱私保護法施行細則、美國消費者評論公平法、歐盟一般資料保護規則，本書採用中文翻譯及外文(英文、德文)左右對照方式印刷，俾供讀者閱讀之便利。

本選輯中譯文部分，前三篇，係由臺北大學法律系游進發教授負責翻譯，後二篇，係由政治大學法律系張冠群教授負責翻譯；謹此敘明，並表謝忱。

行政院消費者保護處 謹識

中華民國 107 年 12 月

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消費性商品包裝標示法

加拿大法規修訂彙編 1985 c. C-38

增訂至 2015 年 3 月 31 日

最近修訂日：2015 年 2 月 26 日

加拿大司法部公布

網址：<http://lois-laws.justice.gc.ca>

官方法典彙編

2009 年 6 月 1 日生效之立法修訂彙編法第 31 條第 1 項與第 2 項，有如下規定：

31. (1) 本部依本法公布之法律或法規彙編，不問其為紙本或電子格式，皆為各該法規及其內容之依據。表見為本部所公布，而無反證者，推定為本部所公布。

- (2) 本部依本法公布之法律彙編，與國會執行祕書依法規出版法認證之原典或修正不符者，以後者為準。

注意事項

本彙編收錄內容，至 2015 年 3 月 31 日止，修正條文之最近生效，為 2015 年 2 月 26 日。未於 2015 年 3 月 31 日前生效之條文，附於文末。

Consumer Packaging and Labelling Act

R.S.C., 1985, c. C-38

Current to March 31, 2015

Last amended on February 26, 2015

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the Legislation Revision and Consolidation Act, in force on June 1, 2009, provide as follows:

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.
- (2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the Publication of Statutes Act, the original statute or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to March 31, 2015. The last amendments came into force on February 26, 2015. Any amendments that were not in force as of March 31, 2015 are set out at the end of this document under the heading “Amendments Not in Force”.

加拿大法規修訂彙編 1985 c. C-38

本法規範消費性商品之包裝、標示、銷售、進口與定量包裝或其他特定商品之廣告。

法規名稱

1. 引用本法時，應稱「消費性商品包裝標示法」。

名詞釋義

2. (1) 本法適用之定義如下：

「廣告」，乃以直接或間接促進銷售為目的，對公眾所為關於商品之表述，不問手法為何。但商品標籤，不在此限。

「標示」，乃使標籤附著、銘刻、內含，或以其他方式與產品同在。

「局長」，指依競爭法任命之競爭局局長。

「包裝物」，指用以包覆待售商品之容器、包裝盒、包裝袋，或固定束帶。但緩衝包材、貨運箱籠、或其他非以出示於消費者之外層襯墊或紙箱，不在此限。

「商人」，指從事商品之零售、製造、加工，或生產之人。從事商品之進口、包裝、或銷售之人，亦同。

「檢查員」，指身負下列任務之人：

a) 依工業部法執行本法之人；

b) 凡與食品藥物法第2條所定義食品相關之事項，依加拿

R.S.C., 1985, c. C-38

An Act respecting the packaging, labelling, sale, importation and advertising of prepackaged and certain other products.

Short Title

1. This Act may be cited as the Consumer Packaging and Labelling Act.

Interpretation

2. (1) In this Act,

“advertise” means make any representation to the public by any means whatever, other than a label, for the purpose of promoting directly or indirectly the sale of a product;

“apply” means, in respect of a label, to attach to, imprint on, include in or cause to accompany in any other way a product;

“Commissioner” means the Commissioner of Competition appointed under the Competition Act;

“container” means a receptacle, package, wrapper or confining band in which a product is offered for sale but does not include package liners or shipping containers or any outer wrapping or box that is not customarily displayed to the consumer;

“dealer” means a person who is a retailer, manufacturer, processor or producer of a product, or a person who is engaged in the business of importing, packing or selling any product;

“inspector” means any person designated as an inspector

(a) for the enforcement of this Act under the Department of Industry Act, or

(b) for the enforcement of this Act as it relates to food, as defined

大食品檢驗局法，執行本法之人。

「標籤」，指任何標籤、標記、符號、紋章、銘刻、戳章、烙印、說明卡或吊牌。

「部長」，指工業部長。但於執行本法，而與食品藥物法第 2 條定義之食品相關之情形，指農業部長。

「定量包裝商品」，指以包裝物包覆、通常無須另行包裝，即可供消費者購買或使用之商品。

「指定」，指依相關法規指定。

「商品」，指可為交易或商業主體之物，但不包括土地與存在於土地之權益。

「出售」，包括：

a) 公開出售、陳列展售與持有待售；

b) 依物或商品之陳列方式，足認有出售意圖。

(2) 工業部長依本法所定之職務，除本法第 11 條第 1 項所規定之事項外，或於執行本法時，除與食品藥物法第 2 條所定義之食品相關之事項外，均得由競爭局局長代為行使。

in section 2 of the Food and Drugs Act, under the Canadian Food Inspection Agency Act;

“label” means any label, mark, sign, device, imprint, stamp, brand, ticket or tag;

“Minister” means the Minister of Industry and, for the enforcement of this Act as it relates to food, as defined in section 2 of the Food and Drugs Act, means the Minister of Agriculture and Agri-Food;

“prepackaged product” means any product that is packaged in a container in such a manner that it is ordinarily sold to or used or purchased by a consumer without being re-packaged;

“prescribed” means prescribed by the regulations;

“product” means any article that is or may be the subject of trade or commerce but does not include land or any interest or right in land;

“sell” includes

(a) offer for sale, expose for sale and have in possession for sale, and

(b) display in such manner as to lead to a reasonable belief that the substance or product so displayed is intended for sale.

(2) The functions of the Minister of Industry in relation to the administration of this Act except subsection 11(1), and in relation to the enforcement of this Act except as it relates to food, as that term is defined in section 2 of the Food and Drugs Act, may be exercised by the Commissioner on behalf of that Minister.

本法適用範圍

3. (1) 本法關於商品之規定，除有第 2 項所規定之情形外，應與其他法律併行適用。但依第 18 條授權訂定之相關法規，不適用之。
- (2) 本法於食品藥物法第 2 條所定義之設備或藥物商品，不適用之。

禁止事項

4. (1) 商人非依本法及相關法規規定之格式及方法，以表明淨含量之標籤標示於定量包裝商品，且若如法規已規定，並以下列方式擇一表明，不得出售、進口或為其廣告：
 - a) 數量；
 - b) 依度量衡法附表一規定之單位。
 - (2) 前項之淨含量，應突顯於標籤之主要位置，應易於辨識，且與其他訊息或陳述加以清楚區別。
5. 商人為定量包裝商品廣告，非依本法及相關法規規定，不得就淨含量而為陳述。
 6. 定量包裝商品之包裝方式，非依本法第 11 條第 1 項授權訂定之法規而各依其類為之，不得出售、進口或為其廣告。

Application of Act

3. (1) Subject to subsection (2) and any regulations made under section 18, the provisions of this Act that are applicable to any product apply notwithstanding any other Act of Parliament.
- (2) This Act does not apply to any product that is a device or drug within the meaning of the Food and Drugs Act.

Prohibitions

4. (1) No dealer shall sell, import into Canada or advertise any prepackaged product unless that product has applied to it a label containing a declaration of net quantity of the product in the form and manner required by this Act or prescribed and in terms of either
 - (a) numerical count, or
 - (b) a unit of measurement set out in Schedule I to the Weights and Measures Act,as may be prescribed.
- (2) A declaration of net quantity referred to in subsection (1) shall be located on the principal display panel of the label and shall be clearly and prominently displayed, easily legible and in distinct contrast to any other information or representation shown on the label.
5. No dealer shall, in advertising any prepackaged product, make any representation with respect to the net quantity of the product except in accordance with this Act and the regulations.
6. No dealer shall sell or import into Canada any prepackaged product that is packaged in such a manner that it does not meet the packaging requirements established in relation to that product by regulations made pursuant to subsection 11(1).

7. (1) 商人不得於定量包裝商品，以標籤標示有關該商品或足認有關該商品之虛偽不實陳述，且不得出售或進口該類商品或為其廣告。
- (2) 前項所稱虛偽不實陳述，包括：
- a) 利用或排列修辭、文字、數字、描述或符號，足認其欲保證定量包裝商品所表明之淨含量，或可使消費者誤信其淨含量之陳述；
 - b) 以修辭、文字、數字、描述或符號指涉，或足認其欲指涉定量包裝商品內含實際不存在之物，或不存在實際內含之物；
 - c) 以文字或圖象，呈現定量包裝商品之類型、品質、性能、功能、產地或製造生產方式，足認可使消費者誤信其圖文所示者。
- (3) 定量包裝商品之實際淨含量，不低於其所標示之表見淨含量，且在指定誤差範圍內，並符合本法及相關法規規定，該標示即非虛偽不實陳述。

7. (1) No dealer shall apply to any prepackaged product or sell, import into Canada or advertise any prepackaged product that has applied to it a label containing any false or misleading representation that relates to or may reasonably be regarded as relating to that product.
- (2) For the purposes of this section, false or misleading representation includes
- (a) any representation in which expressions, words, figures, depictions or symbols are used, arranged or shown in a manner that may reasonably be regarded as qualifying the declared net quantity of a prepackaged product or as likely to deceive a consumer with respect to the net quantity of a prepackaged product;
 - (b) any expression, word, figure, depiction or symbol that implies or may reasonably be regarded as implying that a prepackaged product contains any matter not contained in it or does not contain any matter in fact contained in it; and
 - (c) any description or illustration of the type, quality, performance, function, origin or method of manufacture or production of a prepackaged product that may reasonably be regarded as likely to deceive a consumer with respect to the matter so described or illustrated.
- (3) Where a declaration of net quantity shows the purported net quantity of the prepackaged product to which it is applied, that declaration shall be deemed not to be a false or misleading representation if the net quantity of the prepackaged product is, subject to the prescribed tolerance, not less than the declared net quantity of the prepackaged product and the declaration otherwise meets the requirements of this Act and the regulations.

8. 可供食用或飲用之定量包裝商品，非依指定之格式及方法，以表明單份淨含量之標籤標示之，且若法規已為指定，並以下列方式擇一表明，不得標示包裝物內含份數：

a) 數量；

b) 依度量衡法附表一規定之單位。

9. (1) 定量包裝商品之包裝物，因其製造、構成、填充或呈現方式，足使消費者誤解其品質或數量者，不得出售、進口或為其廣告。

(2) 定量包裝商品之包裝物，雖因其填充方式足使消費者誤解其品質或數量，但能證明該方式為眾所週知且合理必要之慣行者，即不因出售、進口或為其廣告而違法。

標籤

10. 標示定量包裝商品淨含量之標籤，應：

a) 依法律所規定之格式與方法，標示於定量包裝商品；

b) 依法律規定之格式、方法及實際情狀表明：

8. No dealer shall apply to any edible or potable prepackaged product a label that contains any representation with respect to the number of servings contained in the container of the prepackaged product unless that label contains a declaration of net quantity of each serving in the form and manner prescribed and in terms of either
- (a) numerical count, or
 - (b) a unit of measurement set out in Schedule I to the Weights and Measures Act,
- as may be prescribed.
9. (1) No dealer shall sell, import into Canada or advertise any prepackaged product that is packaged in a container that has been manufactured, constructed or filled or is displayed in such a manner that a consumer might reasonably be misled with respect to the quality or quantity of the product.
- (2) No dealer is guilty of the offence of selling, importing into Canada or advertising a prepackaged product that is packaged in a container that has been filled in such a manner that a consumer might reasonably be misled with respect to the quality or quantity of the product if the dealer establishes that the container was filled in accordance with a recognized and accepted production practice that is reasonably necessary for the purpose of packaging the product.

Labels

10. Each label containing a declaration of net quantity of the prepackaged product to which it is applied shall
- (a) be applied to the prepackaged product in such form and manner as may be prescribed; and
 - (b) show, in such form and manner and in such circumstances as may be prescribed,

- i) 定量包裝商品之製造商、生產商或委託人之身分與主要營業處所；
- ii) 定量包裝商品之通用名稱或其功能；
- iii) 定量包裝商品之性質、品質、年份、規格、原料、成分、地理來源、性能、使用方法或製造生產方式等訊息。

包裝物之標準化

11. (1) 總督會同內閣會議，認待售之定量包裝商品或其特定類別之包裝物，尺寸或形狀有不當擴張，足使消費者混淆或誤解其重量、規格或數量者，得依部長建議，制定相關法規加以限定。

- (2) 為定量包裝商品或其特定類別制定包裝標準，部長應至少諮詢國內消費者團體與相關商會各一，並得諮詢加拿大標準委員會或國內其他標準化團體。

- (i) the identity and principal place of business of the person by or for whom the prepackaged product was manufactured or produced for resale,
- (ii) the identity of the prepackaged product in terms of its common or generic name or in terms of its function, and
- (iii) such information respecting the nature, quality, age, size, material content, composition, geographic origin, performance, use or method of manufacture or production of the prepackaged product as may be prescribed.

Standardization of Containers

11. (1) Where the Governor in Council is of the opinion that there is an undue proliferation of sizes or shapes of containers in which any prepackaged product or class of prepackaged product is sold and that the effect of the undue proliferation of sizes or shapes is to confuse or mislead or be likely to confuse or mislead consumers with respect to the weight, measure or numerical count of a prepackaged product, the Governor in Council, on the recommendation of the Minister, may make regulations establishing packaging requirements that limit the sizes and shapes of containers in which that prepackaged product or class of prepackaged product may be sold.
- (2) For the purpose of establishing packaging requirements for any prepackaged product or class of prepackaged product, the Minister shall seek the advice of at least one organization in Canada of consumers and one organization of dealers in that prepackaged product or class of prepackaged product and may seek the advice of the Standards Council of Canada or any organization in Canada engaged in standards formulation.

相關研究

12. (1) 部長得主持有關定量包裝商品之包裝及標示研究，例如單價、日期、與儲存方式之標記，或包裝物之形狀及尺寸。

- (2) 部長依前項規定主持研究時，得諮詢政府部門機關、商人或商會組織、或國內消費者團體。

執法

13. (1) 檢查員應隨身攜帶勤務證明。於進入第 2 項之各類處所，應於必要時對負責人出示該證明。

- (2) 除有第 2.1 項之情狀外，檢查員得於合理時間進入商人之營業處所，或合理可信其中有商人所有之定量包裝商品之處所，並合理相信為執行本法，應進行下列行為：
 - a) 檢視其中發見之定量包裝商品；
 - b) 開拆並檢視其合理相信內有定量包裝商品之包裝；
 - c) 檢視包括書籍、報告、紀錄、裝貨清單與載貨證券等各類文件或紙本，由機械或電子數據處理系統輸入或紀錄

Research and Studies

12. (1) The Minister may conduct research and studies relating or incidental to the packaging and labelling of any prepackaged product, including matters relating or incidental to unit price marking, date and storage marking and the shapes and sizes of containers.
- (2) The Minister may, in conducting any research or studies pursuant to subsection (1), consult with or seek the advice of any department or agency of any government, any dealers or any organization of dealers or any organization in Canada of consumers.

Enforcement

13. (1) An inspector shall be furnished with a certificate of his designation as an inspector and on entering any place described in subsection (2) shall, if so required, produce the certificate to the person in charge of that place.
- (2) Subject to subsection (2.1), an inspector may at any reasonable time enter any premises of a dealer or any other place in which the inspector believes on reasonable grounds there is any prepackaged product that is owned by a dealer and may, where the inspector believes on reasonable grounds that, for any purpose relating to the enforcement of this Act, it is necessary to do so,
 - (a) examine any prepackaged product found therein;
 - (b) open and examine any package found therein that he believes on reasonable grounds contains any prepackaged product; and
 - (c) examine any documents or papers, including books, reports, records, shipping bills and bills of lading, or any data entered

之數據，合理相信存有與執行本法相關資訊之資料儲存裝置，並得製作複本或擷取所需片段。

(2.1) 第 2 項之處所為住宅時，檢查員未得占有人同意，不得進入。但依第 2.2 項取得搜索票者，不在此限。

(2.2) 地方保安官遇單方片面聲請搜索票時，應聽取如下誓詞：

a) 該住宅有第 2 項之情狀，應進入；

b) 為本法之目的或執行，應進入；

c) 檢查員請求進入遭拒，或合理相信其請求進入勢必遭拒；

地方保安官得以手書簽發搜索票，使具名之檢查員得依票面註明條件進入該住宅。

(2.3) 檢查員雖依前項取得搜索票，並於票面具名，仍不得使用武力。但於地方保安官隨行，且經搜索票特為授權者，不在此限。

or recorded by any system of mechanical or electronic data processing or by any other information storage device, that he believes on reasonable grounds contain any information relevant to the enforcement of this Act and make copies thereof or extracts therefrom.

(2.1) Where any premises or place referred to in subsection (2) is a dwelling-house, an inspector may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (2.2).

(2.2) Where on ex parte application a justice of the peace is satisfied by information on oath

(a) that the conditions for entry described in subsection (2) exist in relation to a dwelling-house,

(b) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

the justice of the peace may issue a warrant under his hand authorizing the inspector named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

(2.3) In executing a warrant issued under subsection (2.2), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

(3) 檢查員依第 2 項進入之處所，其所有人、負責人與受僱員工，皆應提供合理協助，以利檢查員行使本法所定職權，並應提供其依本法及相關法規合理要求之一切資訊。

14. (1) 檢查員依本法行使職權時，任何人不得加以妨害，或故意口說筆錄虛偽不實陳述。

(2) 非經檢查員授權，任何人不得以任何方式除去、變動或擾動依第 15 條第 1 項查扣之商品或其他之物。

(3) 檢查員得依遭查扣之人請求，許可其本人或其授權之人檢視遭查扣之商品或物，並於實際可行時為其提供樣本。

15. (1) 檢查員合理相信有違反本法及相關法規之情事者，得查扣任何合理可信其違法之商品、標籤、包裝材或廣告文宣。

(2) 檢查員除應取得商品、其他之物或樣品以為物證外，若衡諸公共利益而認非屬必要，不得依前項規定查扣任何商品或物。

- (3) The owner or the person in charge of a place entered by an inspector pursuant to subsection (2) and every person employed therein shall give the inspector all reasonable assistance to enable the inspector to carry out his duties and functions under this Act and shall furnish the inspector with any information he may reasonably require with respect to the administration of this Act and the regulations.
14. (1) No person shall obstruct or hinder, or knowingly make any false or misleading statements either orally or in writing to, an inspector engaged in carrying out his duties and functions under this Act.
- (2) Except with the authority of an inspector, no person shall remove, alter or interfere in any way with any product or other thing seized and detained by an inspector pursuant to subsection 15(1).
- (3) An inspector shall, at the request of the person from whom a product or other thing was seized, allow that person or any person authorized by that person to examine the product or other thing so seized and, where practicable, furnish a sample thereof to such person.
15. (1) Where an inspector believes on reasonable grounds that any provision of this Act or the regulations has been contravened, the inspector may seize and detain any product or any labelling, packaging or advertising material by means of or in relation to which the inspector believes on reasonable grounds the contravention was committed.
- (2) Except to the extent that the product or other thing, or a sample thereof, is required as evidence, an inspector shall not seize any product or other thing pursuant to subsection (1) where, in the

- (3) 檢查員依第 1 項查扣商品或物，應依實際可行情狀與其認知，及時諭知查扣時之持有人，其違反本法或相關法規之條款。
- (4) 依第 1 項查扣之商品或物，有下列情狀之一，不得扣押：
- a) 依檢查員認知，本法及相關法規適用於該商品或物之條款，已達其目的者；
 - b) 除必要取得商品、其他之物或樣品以為物證外，若衡諸公共利益而認非屬必要，得依所有人或持有人請求，不續行扣押；
 - c) 自查扣之日起算 60 日之期限屆至後。其為食品藥物法第 2 條所定義之食品，因違反本法遭查扣者，自查扣之日起算 180 日後。但於該期限屆至前有下列情狀之一，不在此限：
 - i) 依第 17 條沒收商品或物者；
 - ii) 查扣之商品或物所涉違法情事，已進入司法程序，非待其終結不得發還；

opinion of the inspector, the seizure of the product or other thing is not necessary in the public interest.

- (3) Where an inspector has seized and detained any product or other thing pursuant to subsection (1), he shall, as soon as practicable, advise the person in whose possession the product or other thing was at the time of seizure of the provision of this Act or the regulations that the inspector believes has been contravened.
- (4) Any product or other thing seized pursuant to subsection (1) shall not be detained
 - (a) after the provisions of this Act or any regulations that are applicable to the product or other thing have, in the opinion of an inspector, been complied with;
 - (b) except to the extent that the product or other thing, or a sample thereof, is required as evidence, after an inspector or the Minister is, on application made by the owner of the product or other thing or by the person in whose possession the product or other thing was at the time of seizure, satisfied that it is not necessary in the public interest to continue to detain the product or other thing; or
 - (c) after the expiration of sixty days after the day of seizure, or if the seizure is in respect of a contravention of the Act as it relates to food as defined in section 2 of the Food and Drugs Act, one hundred and eighty days after the day of seizure, unless, before that time,
 - (i) the product or other thing has been forfeited pursuant to section 17,
 - (ii) proceedings have been instituted in respect of the contravention in relation to which the product or other

iii) 聲請展延扣押期間之通知，已依第16條送達；

(5) 檢查員依第 1 項查扣之商品或物，非必要取為物證者，應留置或存放於原地。但持有人或該處所之占有人，請求移送其他適切場所者，得依檢查員指示或親臨現場指揮為之。其有樣品者，併同處理。

16. (1) 依第 15 條第 1 項查扣之商品或物，其所涉違法情事尚未進入司法程序，部長得於第 15 條第 4 項 C 款所規定之期限屆至前，依第 2 項規定，對商品或物之所有人或持有人送達預告通知，並於對查扣地點有管轄權之省級法院，聲請法官下達展延扣押期間之命令。

thing was seized, in which event the product or other thing may be detained until the proceedings are finally concluded, or

(iii) notice of an application for an order extending the time during which the product or other thing may be detained has been served in accordance with section 16.

(5) A product or other thing seized by an inspector pursuant to subsection (1) shall be kept or stored in the building or place where it was seized, except where the product or thing, or a sample thereof, is required as evidence or the person in whose possession the product or thing was at the time of seizure or the person entitled to possession of the building or place requests that it be removed to some other proper place, in which case the product or thing or the sample thereof, as the case may be, may be removed to and stored in any other proper place at the direction of or with the concurrence of an inspector.

16. (1) Where proceedings have not been instituted in respect of the contravention in relation to which any product or other thing was seized and detained pursuant to subsection 15(1), the Minister may, before the expiration of the period referred to in paragraph 15(4)(c) and on the serving of prior notice in accordance with subsection (2) on the owner of the product or other thing or on the person in whose possession the product or other thing was at the time of seizure, apply to a provincial court judge within whose territorial jurisdiction the seizure was made for an order extending the time during which the product or other thing may be detained.

(2) 前項之預告通知，面交送達者，應於聲請省級法院展期前至少五天前為之。掛號寄送之者，應於聲請前至少七天前為之。其中並應載明：

a) 欲聲請發給展期命令之省級法官姓名；

b) 聲請之聽證程序將於何時何地進行；

c) 聲請展期扣押之商品或物為何；

d) 聲請展期扣押之依據。

(3) 依第1項聲請展期之聽證程序，省級法院法官為回應許可，應明令：

a) 其所認為適切之得展延期間與條件；

b) 展延期限屆至後，該商品或物應發還原持有人或其他有權占有人；

但展延期限屆至前，有第 15 條第 4 項 C 款第 i 目或第 ii 目規定之適用者，不在此限。

- (2) The notice referred to in subsection (1) shall be served by personal service at least five clear days prior to the day on which the application is to be made to the provincial court judge or by registered mail at least seven clear days prior to that day and shall specify
- (a) the provincial court judge to whom the application is to be made;
 - (b) the place where and the time when the application is to be heard, which time shall be not later than ten days after service of the notice;
 - (c) the product or other thing in respect of which the application is to be made; and
 - (d) the evidence on which the Minister intends to rely to show why the time during which the product or other thing may be detained should be extended.
- (3) Where, on the hearing of an application made under subsection (1), the provincial court judge is satisfied that the product or other thing seized should continue to be detained, the provincial court judge shall order that
- (a) the product or other thing be detained for such additional period of time and on such conditions relating to the detention for that period as he deems proper, and
 - (b) on the expiration of that period, the product or other thing be restored to the person from whom it was seized or to any other person entitled to possession thereof,
- unless, before the expiration of that period, subparagraph 15(4)(c)(i) or (ii) applies.

(4) 依第 1 項規定而聲請展期之聽證程序，省級法院法官認無必要續行扣押者，應命該商品或物於第 15 條第 4 項 C 款所規定之期限屆至時，發還原持有人或其他有權占有人。但有下列情狀之一，不在此限：

- a) 於期限屆至前，有第 15 條第 4 項 C 款第 i 目或第 ii 目規定之適用；
- b) 進入聽證程序時已逾原扣押期限，省級法官應命立即發還原持有人或其他有權占有人。

17. (1) 檢查員依第 15 條第 1 項規定查扣之商品或物，經其所有人或查扣時合法持有人以書面同意沒收，該商品或物歸於女王陛下所有。

(2) 當事人依本法受有罪判決，則依第 15 條第 1 項規定扣押之涉案商品或物：

- a) 經法院判決沒收者，併同因其他罰則而上繳之金錢或物，歸於女王陛下所有；
- b) 於上訴期間屆至或判決確定時，法院命得出售或為其廣告，或認得使其免於觸犯本法規定之其他罪名者，應發還原持有人或其他有權占有人。

- (4) Where, on the hearing of an application made under subsection (1), the provincial court judge is not satisfied that the product or other thing seized should continue to be detained, the provincial court judge shall order that the product or other thing be restored to the person from whom it was seized or to any other person entitled to possession thereof on the expiration of the period referred to in paragraph 15(4)(c), unless
- (a) before the expiration of that period of time, subparagraph 15(4)(c)(i) or (ii) applies; or
 - (b) at the time of the hearing, that period has then expired, in which event the provincial court judge shall order the restoration thereof forthwith to the person from whom it was seized or to any other person entitled to possession thereof.
17. (1) Where an inspector has seized any product or other thing pursuant to subsection 15(1) and the owner thereof or the person in lawful possession thereof at the time of seizure consents in writing to the forfeiture of the product or other thing, the product or other thing is thereupon forfeited to Her Majesty.
- (2) Where a person is convicted of an offence under this Act and any product or other thing seized pursuant to subsection 15(1) by means of which or in relation to which the offence was committed is then being detained, the product or other thing
- (a) is, on that conviction, in addition to any punishment imposed for the offence, forfeited to Her Majesty if the forfeiture is directed by the court; or
 - (b) shall, on the expiration of the time for bringing an appeal from the conviction or on the final conclusion of the proceedings, as the case may be, be restored to the person

- (3) 依第 15 條第 4 項 a 款或 b 款發還之扣押商品或物，有第 2 項所規定之情形者，應視為未曾依第 15 條規定查扣。

相關法規

18. (1) 總督會同內閣會議，得就下列事項制定相關法規：

- a) 免除本法與相關法規於定量包裝商品或其特定類別之全部或一部適用，不問是否附有條件；
- b) 免除第 4 條就定量包裝商品或其特定類別之各類交易，所為之禁令，不問是否附有條件；
- c) 依本法目的定義所謂標籤之「主要位置」；
- d) 指定待售之定量包裝商品，於包裝物之零售價格下，應呈現何種訊息；
- e) 要求定量包裝商品之標籤，應就其包裝物說明之訊息或陳述為何，或該類資訊應於標籤呈現之位置；

from whom it was seized or to any other person entitled to possession thereof on such conditions, if any, relating to sale or advertising as may be imposed by order of the court and as, in the opinion of the court, are necessary to avoid the commission of any further offence under this Act.

- (3) For the purposes of subsection (2), any product or other thing released from detention pursuant to paragraph 15(4)(a) or (b) shall be deemed not to have been seized pursuant to section 15.

Regulations

18. (1) The Governor in Council may make regulations
- (a) exempting, conditionally or unconditionally, any prepackaged product or class of prepackaged product from any or all of the provisions of this Act or the regulations;
 - (b) exempting, conditionally or unconditionally, any type of transaction in relation to any prepackaged product or class of prepackaged product from the prohibition contained in section 4;
 - (c) defining the expression principal display panel for the purposes of this Act;
 - (d) prescribing the information that shall be shown on the container of a prepackaged product where any representation is made thereon that the prepackaged product is being offered for sale below the usual retail price;
 - (e) requiring the statement on the container of a prepackaged product of any information or representation required to be shown in a label, in addition to or in place of the statement of that information or representation in a label;

- f) 規定應表明於標籤、包裝物或廣告之訊息或陳述，應以何種格式、方法或以一種或多種語言為之；

- g) 規定定量包裝商品之修辭、文字、數字、描述或符號，於何種情況下，若無反證，即構成虛偽不實陳述；

- h) 不違反他法時，有關本法一部或全部，擴張或適用於其他法規所特定，且通常為供消費者購買之非定量包裝商品或其特定類別：
 - i) 用於轉售、營業或交易之商品，不在此限；

 - ii) 有標籤標示者，其標籤應否表明淨含量；

- i) 關於依第 15 條規定，查扣商品或物之扣押；

- j) 關於依第 17 條規定，沒收商品或物之處置；

- k) 規定適用本法之標的物；

- l) 與本法相關之一般事項。

- (f) prescribing the form and manner in which, including the language or languages in which, any information or representation required to be declared or shown in any label, on any container or in any advertisement shall be declared or shown;
- (g) prescribing any expressions, words, figures, depictions or symbols the use of which, in relation to a prepackaged product, shall be deemed, unless the contrary is proven, to constitute a false or misleading representation;
- (h) subject to any other Act of Parliament, extending or applying any provision of this Act to or in respect of any product or class of product specified in the regulations that is not a prepackaged product but is ordinarily sold to or purchased by a consumer
 - (i) otherwise than for resale or for use in the course of a business, trade or calling, or
 - (ii) with a label applied thereto, whether or not that label contains a declaration of net quantity;
- (i) respecting the detention of products and other things seized and detained under section 15;
- (j) respecting the disposition of products and other things forfeited under section 17;
- (k) prescribing any matter or thing that by this Act may be prescribed; and
- (l) generally for carrying out the purposes and provisions of this Act.

- (2) 法規規定定量包裝商品之訊息或陳述，應載於其包裝物而非標籤者，包裝物上之陳述，應視為標籤，且應標示於定量包裝商品。

修正草案之公告

19. 總督會同內閣會議，依第 11 條或第 18 條規定，提出法規命令或其修正之草案，其內容應公告於政府公報，並使消費者、商人或其他利害關係人，有合理機會就此陳述意見。

罰則

20. (1) 除有第 2.1 項規定情形外，商人違反第 4 條至第 9 條規定：
- a) 經簡易程序判決者，處加幣五千元以下罰鍰；
 - b) 經起訴判決者，處加幣一萬元以下罰鍰。
- (2) 除有第 2.1 項規定情形外，凡違反本法除第 4 條至第 9 條，以及依第 18 條第 1 項 d, e, h 三款授權訂定法規以外規定之人：
- a) 經簡易程序判決者，處加幣一千元以下罰鍰，或科或併科六個月以下徒刑；
 - b) 經起訴判決者，處加幣三千元以下罰鍰，或科或併科一年以下有期徒刑。

- (2) Where any information or representation is required by the regulations to be stated on the container of a prepackaged product in place of the statement of that information or representation in a label and is so stated, that statement on the container shall be deemed to be a label and to be applied to the prepackaged product.

Publication of Proposed Regulations

19. A copy of each regulation or amendment to a regulation that the Governor in Council proposes to make under section 11 or 18 shall be published in the Canada Gazette and a reasonable opportunity shall be afforded to consumers, dealers and other interested persons to make representations with respect thereto.

Offences and Punishment

20. (1) Subject to subsection (2.1), every dealer who contravenes any of sections 4 to 9 is guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding \$5,000; or
 - (b) on conviction on indictment, to a fine not exceeding \$10,000.
- (2) Subject to subsection (2.1), every person who contravenes any provision of this Act, other than any of sections 4 to 9, or any regulation made under paragraph 18(1)(d), (e) or (h), is guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months or to both; or
 - (b) on conviction on indictment, to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding one year or to both.

(2.1) 違反第 1 項或第 2 項規定，而與食品藥物法第 2 條定義之食品有關者：

a) 經簡易程序判決者，處加幣五萬元以下罰鍰，或科或併科六個月以下徒刑；

b) 經起訴判決者，處加幣二十五萬元以下罰鍰，或科或併科二年以下有期徒刑。

(3) 公司犯本法之罪，其高級職員、董事、代理人或受託人，不問係主導、授權、明示、默示或參與其事，皆為犯罪參與人，經判決確定者，即負有罪責，不問其公司受追訴或判決與否。

21. (1) 凡依本法起訴者，雖行為人為被告之僱員、代理人或受託人，已足成罪，不問其人是否可得特定或遭追訴。但被告能證明犯罪事實為其所不知，或非經其同意，且已善盡注意義務加以防免者，得免於罪。

(2) 犯第 20 條第 1 項或第 2 項之罪，而適用簡易程序者，其起訴不得晚於訴訟事由發生之 12 個月後。

- (2.1) Every person who contravenes a provision referred to in subsection (1) or (2) as that provision relates to food, as defined in section 2 of the Food and Drugs Act, is guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months or to both; or
 - (b) on conviction on indictment, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding two years or to both.
- (3) If a corporation commits an offence under this Act, any officer, director or agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.
21. (1) In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or an agent or mandatary of the accused, whether or not the employee or agent or mandatary is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without their knowledge or consent and that they exercised all due diligence to prevent its commission.
- (2) Any proceedings by way of summary conviction for an offence referred to in subsection 20(1) or (2) may be instituted within but not later than twelve months after the time when the subject-matter of the proceedings arose.

(2.1) 犯第 20 條第 2.1 項之罪，而適用簡易程序者，其起訴應於訴訟事由為部長知悉後兩年內為之。

(2.2) 表見為部長發布之文件，且證明部長知有訴訟事由之日期，應認其有證據能力，無須證明署名者之簽名或官銜，即可為內文所述之佐證。

(3) 依本法所為之申訴或告發，得由被告之住居所或營業活動範圍所在之管轄法院審理裁判，不問事件發生地是否為該管所轄。

22. (1) 凡依本法起訴者，因標示於商品之標籤已載明表見之製造商、生產商或委託人，以無反證者為限，標籤所載之人，推定為該產品之製造商、生產商或委託人，應為標籤所載訊息及陳述負責。

(2) 凡依本法起訴者，於應載製造商、生產商或委託人之標籤未為標示於商品之情形，包裝物所載之製造商、生產商或委託人，以無反證者為限，推定為該商品之製造商、生產商或委託人，應為包裝物所載訊息與陳述負責。

- (2.1) Any proceedings by way of summary conviction for an offence referred to in subsection 20(2.1) may be instituted within two years after the time when the subject-matter of the proceedings becomes known to the Minister.
- (2.2) A document purporting to have been issued by the Minister, certifying the day on which the subject-matter of any proceedings became known to the Minister, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is evidence of the matters asserted in it.
- (3) A complaint or an information in respect of an offence under this Act may be heard, tried or determined by a court if the accused is resident or carrying on business within the territorial jurisdiction of that court although the matter of the complaint or information did not arise in that territorial jurisdiction.
22. (1) In any prosecution for an offence under this Act, evidence that a label applied to a product bore identification purporting to identify the person by or for whom the product was manufactured or produced is, in the absence of evidence to the contrary, proof that the person whose identification appeared in the label is the person by or for whom the product was manufactured or produced and the person responsible for the information and representations in the label.
- (2) In any prosecution for an offence under this Act in relation to a product to which a label purporting to identify the person by or for whom the product was manufactured or produced is not applied, evidence that a container of the product bore identification purporting to identify the person by or for whom

23. (1) 凡能證明其出售、進口或為廣告之商品，於其所違反之規定生效前，即得自於商人或已在途，即非本法認定之犯罪。
- (2) 凡能證明商品之廣告，於其所違反之規定生效前，已有下列情狀之一，即非本法認定之犯罪：
- a) 已為發布；
 - b) 已確認其格式並派送發布。

相關規定

— 1997, ch. 6, par. 44 (2)

- (2) 為求明確，本法第 21 條第 2.1 項所規定 2 年起訴時效，依第 1 項修正規定，僅適用於該項修正生效後始發生之犯罪。

the product was manufactured or produced is, in the absence of evidence to the contrary, proof that the person whose identification appeared on the container is the person by or for whom the product was manufactured or produced and the person responsible for the information and representations on the container.

23. (1) No person shall be convicted of an offence under this Act in relation to the sale, importation or advertising of a product if the person establishes to the satisfaction of the court that the product in relation to which the offence was committed was received by, or was in transit to, the person from a dealer before the coming into force of the regulation that created the requirement with which the person has failed to comply.
- (2) No person shall be convicted of an offence under this Act in relation to the advertising of a product if the person establishes to the satisfaction of the court that the advertisement
- (a) was published, or
 - (b) was authorized in final form and despatched for publication,
- before the coming into force of the regulation that created the requirement with which the person has failed to comply.

RELATED PROVISIONS

— 1997, c. 6, s. 44(2)

- (2) For greater certainty, the two year limitation period provided for in subsection 21(2.1) of the Act, as amended by subsection (1), only applies in respect of offences committed after the coming into force of that subsection.

未及生效之修正條文

— 2012, ch. 24, art. 74

74. 第 28 條至第 37 條規定，於依漁業檢查法、肉類檢查法或農產品法查扣之物，或依加拿大食品檢驗局法任命為檢查員之人、依消費性商品包裝及標示法查扣之食品，且於第一項生效之日前仍未發還、放行、沒收或移出加拿大之物，適用之。

— 2012, ch. 24, art. 80

80. (1) 本法第 2 條第 1 項有關「檢查員」及「部長」之定義修正如下：

檢查員，指依工業部法任命而執行本法之人。

部長，指工業部長。

(2) 本法第 2 條第 2 項修正如下：

(2) 除本法第 11 條第 1 項所規定之事項外，工業部長依本法所定職務，以及本法之執行，得由競爭局長代為行使。

— 2012, ch. 24, art. 81

81. 本法第 3 條修正如下：

AMENDMENTS NOT IN FORCE

— 2012, c. 24, s. 74

74. Sections 28 to 37 apply in respect of any thing seized under the Fish Inspection Act, the Meat Inspection Act or the Canada Agricultural Products Act — or seized under the Consumer Packaging and Labelling Act by a person designated as an inspector under the Canadian Food Inspection Agency Act for the enforcement of the Consumer Packaging and Labelling Act as it relates to food — that had not been returned to any person, released or forfeited, or removed from Canada, before the day on which section 1 comes into force.

— 2012, c. 24, s. 80

80. (1) The definitions “inspector” and “Minister” in subsection 2(1) of the Consumer Packaging and Labelling Act are replaced by the following:

“inspector” means any person designated as an inspector for the enforcement of this Act under the Department of Industry Act;

“Minister” means the Minister of Industry;

(2) Subsection 2(2) of the Act is replaced by the following:

(2) The functions of the Minister in relation to the administration of this Act, except subsection 11(1), and in relation to the enforcement of this Act may be performed by the Commissioner on behalf of the Minister.

— 2012, c. 24, s. 81

81. Section 3 of the Act is replaced by the following:

3. (1) 本法適用於商品之規定，除第 2 項、第 3 項，以及依第 18 條授權訂定之相關法規外，應與其他法律並行適用。

(2) 本法，於食品藥物法第 2 條定義為設備及藥物之商品，不適用之。

(3) 本法，於加拿大安全食品法第 2 條定義之大宗食品，不適用之。

— 2012, ch. 24, art. 82

82. 刪除本法第 8 條。

— 2012, ch. 24, art. 83

83. 本法第 15 條第 4 項 c 款本文修正如下：

(c) 於查扣之日起算 60 日之期限屆至後。但於該期日屆至前，有下列情狀之一，不在此限：

— 2012, ch. 24, art. 84

84. (1) 本法第 20 條第 1 項本文修正如下：

20. (1) 商人違反本法第 4 條至第 9 條規定者，即有罪應罰。

(2) 本法第 20 條第 2 項本文修正如下：

(2) 凡違反本法除第 4 條至第 9 條規定、及依第 18 條第 1 項 d, e, h 三款訂定法規以外規定之人，即有

3. (1) Subject to subsections (2) and (3) and any regulations made under section 18, the provisions of this Act that are applicable to any product apply despite any other Act of Parliament.
- (2) This Act does not apply to any product that is a device or drug as defined in section 2 of the Food and Drugs Act.
- (3) This Act does not apply to any food commodity as defined in section 2 of the Safe Food for Canadians Act.

— 2012, c. 24, s. 82

82. Section 8 of the Act is repealed.

— 2012, c. 24, s. 83

83. The portion of paragraph 15(4)(c) of the Act before subparagraph (i) is replaced by the following:

- (c) after the expiry of 60 days after the day of seizure unless, before that time,

— 2012, c. 24, s. 84

84. (1) The portion of subsection 20(1) of the Act before paragraph (a) is replaced by the following:

- 20 (1) Every dealer who contravenes any of sections 4 to 9 is guilty of an offence and liable

(2) The portion of subsection 20(2) of the Act before paragraph (a) is replaced by the following:

- (2) Every person who contravenes any provision of this Act, other than any of sections 4 to 9, or any regulation made

罪應罰。

（3）刪除本法第 20 條第 2.1 項。

— 2012, ch. 24, art. 85

85. 刪除本法第 21 條第 2.1 項。

under paragraph 18(1)(d), (e) or (h), is guilty of an offence and liable

(3) Subsection 20(2.1) of the Act is repealed.

— 2012, c. 24, s. 85

85. Subsection 21(2.1) of the Act is repealed.

德國民法中之一般交易條款規定(摘錄)

制定日期：西元 1896 年 8 月 18 日。

完整引用：西元 2002 年 1 月 2 日公告內容，2015 年 4 月 21 日，經租賃權修正法第 1 條修正之德國民法典（德國聯邦法律公報，第 1 部份，第 42 頁、第 2909；2003 年，第 1 部份，第 738 頁）。

本法意旨在轉化以下指令：

1. 歐體 76/207 關於實現就業、職業教育、職業升遷與勞動條件之兩性平等原則指令；
2. 歐體 77/187 關於會員國企業、廠場或廠場一部轉讓時保護勞工請求權之法律規定同化指令；
3. 歐洲經濟共同體 85/577 關於交易場所外訂定契約情形之消費者保護指令；
4. 歐洲經濟共同體 87/102 關於會員國消費者信用法律規定與行政命令同化指令；

Bürgerliches Gesetzbuch (BGB)

Ausfertigungsdatum: 18.08.1896

Vollzitat: "Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 21. April 2015 (BGBl. I S. 610) geändert worden ist"

Stand: Neugefasst durch Bek. v. 2.1.2002 I 42, 2909; 2003, 738;
zuletzt geändert durch Art. 1 G v. 21.4.2015 I 610

Dieses Gesetz dient der Umsetzung folgender Richtlinien:

1. Richtlinie 76/207/EWG des Rates vom 9. Februar 1976 zur Verwirklichung des Grundsatzes der Gleichbehandlung von Männern und Frauen hinsichtlich des Zugangs zur Beschäftigung, zur Berufsbildung und zum beruflichen Aufstieg sowie in Bezug auf die Arbeitsbedingungen (ABl. EG Nr. L 39 S. 40),
2. Richtlinie 77/187/EWG des Rates vom 14. Februar 1977 zur Angleichung der Rechtsvorschriften der Mitgliedstaaten über die Wahrung von Ansprüchen der Arbeitnehmer beim Übergang von Unternehmen, Betrieben oder Betriebstellen (ABl. EG Nr. L 61 S. 26),
3. Richtlinie 85/577/EWG des Rates vom 20. Dezember 1985 betreffend den Verbraucherschutz im Falle von außerhalb von Geschäftsräumen geschlossenen Verträgen (ABl. EG Nr. L 372 S. 31),
4. Richtlinie 87/102/EWG des Rates zur Angleichung der Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über den Verbraucherkredit (ABl. EG Nr. L 42 S. 48), zuletzt geändert durch die Richtlinie 98/7/EG des Europäischen Parlaments und des Rates

5. 歐洲經濟共同體 90/314 旅遊指令；
6. 歐洲經濟共同體 93/13 消費者契約中條款濫用指令；
7. 歐體 94/47/不動產分期使用權取得契約之取得人保護指令；
8. 歐體 97/5 跨國匯款指令；
9. 歐體 97/7/遠距銷售契約之消費者保護指令；
10. 歐體 98/26/結算效力指令第 3 條至第 5 條；
11. 歐體 1999/44 消費財買賣與消費財擔保指令；

- vom 16. Februar 1998 zur Änderung der Richtlinie 87/102/EWG zur Angleichung der Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über den Verbraucherkredit (ABl. EG Nr. L 101 S. 17),
5. Richtlinie 90/314/EWG des Europäischen Parlaments und des Rates vom 13. Juni 1990 über Pauschalreisen (ABl. EG Nr. L 158 S. 59),
 6. Richtlinie 93/13/EWG des Rates vom 5. April 1993 über missbräuchliche Klauseln in Verbraucherverträgen (ABl. EG Nr. L 95 S. 29),
 7. Richtlinie 94/47/EG des Europäischen Parlaments und des Rates vom 26. Oktober 1994 zum Schutz der Erwerber im Hinblick auf bestimmte Aspekte von Verträgen über den Erwerb von Teilzeitnutzungsrechten an Immobilien (ABl. EG Nr. L 280 S. 82),
 8. der Richtlinie 97/5/EG des Europäischen Parlaments und des Rates vom 27. Januar 1997 über grenzüberschreitende Überweisungen (ABl. EG Nr. L 43 S. 25),
 9. Richtlinie 97/7/EG des Europäischen Parlaments und des Rates vom 20. Mai 1997 über den Verbraucherschutz bei Vertragsabschlüssen im Fernabsatz (ABl. EG Nr. L 144 S. 19),
 10. Artikel 3 bis 5 der Richtlinie 98/26/EG des Europäischen Parlaments und des Rates über die Wirksamkeit von Abrechnungen in Zahlungs- und Wertpapierliefer- und -abrechnungssystemen vom 19. Mai 1998 (ABl. EG Nr. L 166 S. 45),
 11. Richtlinie 1999/44/EG des Europäischen Parlaments und des Rates vom 25. Mai 1999 zu bestimmten Aspekten des Verbrauchsgüterkaufs und der Garantien für Verbrauchsgüter (ABl. EG Nr. L 171 S. 12),

12. 歐體2000/31電子商務交易指令第10條、第11條、第18條；

13. 歐體 2000/35 對抗支付遲延指令。

德國民法第 305 條（納入一般交易條款）

一般交易條款，乃為多數契約所預先擬定，由契約當事人之一方（使用人）於訂定契約時，向他方所提出之任何契約條款。條款是否形成契約外觀上分離之構成部分？是否納入契約文書？範圍為何？以何種書體撰寫而成？以及契約所採形式？均無關緊要。以契約條款，於契約當事人間，個別磋商者為限，不成立一般交易條款。

一般交易條款，以使用人於訂定契約時，有下列情形者為限，始成為契約之構成部份：

- 一、向他方契約當事人明示，或以因契約訂定之種類，僅以相當之難度，始可能明示者為限，於訂定契約之處所，以明顯可見之公告，加以明示；且

12. Artikel 10, 11 und 18 der Richtlinie 2000/31/EG des Europäischen Parlaments und des Rates vom 8. Juni 2000 über bestimmte rechtliche Aspekte der Dienste der Informationsgesellschaft, insbesondere des elektronischen Geschäftsverkehrs, im Binnenmarkt ("Richtlinie über den elektronischen Geschäftsverkehr", ABl. EG Nr. L 178 S. 1),
13. Richtlinie 2000/35/EG des Europäischen Parlaments und des Rates vom 29. Juni 2000 zur Bekämpfung von Zahlungsverzug im Geschäftsverkehr (ABl. EG Nr. L 200 S. 35).

§ 305 Einbeziehung Allgemeiner Geschäftsbedingungen in den Vertrag

Allgemeine Geschäftsbedingungen sind alle für eine Vielzahl von Verträgen vorformulierten Vertragsbedingungen, die eine Vertragspartei (Verwender) der anderen Vertragspartei bei Abschluss eines Vertrags stellt. Gleichgültig ist, ob die Bestimmungen einen äußerlich gesonderten Bestandteil des Vertrags bilden oder in die Vertragsurkunde selbst aufgenommen werden, welchen Umfang sie haben, in welcher Schriftart sie verfasst sind und welche Form der Vertrag hat. Allgemeine Geschäftsbedingungen liegen nicht vor, soweit die Vertragsbedingungen zwischen den Vertragsparteien im Einzelnen ausgehandelt sind.

Allgemeine Geschäftsbedingungen werden nur dann Bestandteil eines Vertrags, wenn der Verwender bei Vertragsschluss

1. die andere Vertragspartei ausdrücklich oder, wenn ein ausdrücklicher Hinweis wegen der Art des Vertragsschlusses nur unter unverhältnismäßigen Schwierigkeiten möglich ist, durch deutlich sichtbaren Aushang am Ort des Vertragsschlusses auf sie hinweist und

- 二、以可得期待，且亦適當顧及，使用人得認知他方契約當事人身體障礙之方式，給與他方契約當事人認識其內容之機會，且他方契約當事人同意其適用。

契約當事人，為特定種類之法律行為，於依第 2 項所規定要件之前提下，得預先約定特定一般交易條款之適用。

德國民法第 305a 條（於特別情形之納入）

下列情形之條款，縱未依第 305 條第 2 項第 1 款與第 2 款規定，以他方契約當事人對其適用同意者為限，亦納入契約。

- 一、權責交通行政機關許可，或依國際協定而施行之工資與鐵路實施規定，以及於路線交通範圍內，依人身運送法規定所許可，街軌車、公車與動力交通工具運送契約內之運送條款；
- 二、於聯邦電力、瓦斯、電信、郵政與鐵路網路機關之政府公報所公佈，且於使用人交易處所備妥之一般交易條款：
 - a) 其於交易場所外，以將郵件投入郵筒之方式，所訂定運送契約之內者；

2. der anderen Vertragspartei die Möglichkeit verschafft, in zumutbarer Weise, die auch eine für den Verwender erkennbare körperliche Behinderung der anderen Vertragspartei angemessen berücksichtigt, von ihrem Inhalt Kenntnis zu nehmen,

und wenn die andere Vertragspartei mit ihrer Geltung einverstanden ist.

Die Vertragsparteien können für eine bestimmte Art von Rechtsgeschäften die Geltung bestimmter Allgemeiner Geschäftsbedingungen unter Beachtung der in Absatz 2 bezeichneten Erfordernisse im Voraus vereinbaren.

§ 305a Einbeziehung in besonderen Fällen

Auch ohne Einhaltung der in § 305 Abs. 2 Nr. 1 und 2 bezeichneten Erfordernisse werden einbezogen, wenn die andere Vertragspartei mit ihrer Geltung einverstanden ist,

1. die mit Genehmigung der zuständigen Verkehrsbehörde oder auf Grund von internationalen Übereinkommen erlassenen Tarife und Ausführungsbestimmungen der Eisenbahnen und die nach Maßgabe des Personenbeförderungsgesetzes genehmigten Beförderungsbedingungen der Straßenbahnen, Obusse und Kraftfahrzeuge im Linienverkehr in den Beförderungsvertrag,
2. die im Amtsblatt der Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen veröffentlichten und in den Geschäftsstellen des Verwenders bereitgehaltenen Allgemeinen Geschäftsbedingungen
 - a) in Beförderungsverträge, die außerhalb von Geschäftsräumen durch den Einwurf von Postsendungen in Briefkästen abgeschlossen werden,

- b) 其於電信、資訊或其他直接以遠距溝通工具，於提供電信服務時，一次性提供服務之服務契約之內者，以訂約前僅以相當之難度，始能取得他方當事人之一般交易條款者為限。

德國民法第 305b 條（個別約定之優先）

個別之契約約定，優先於一般交易條款。

德國民法第 305c 條（突襲與多義條款）

一般交易條款內，依情況，尤其依契約外觀，非屬尋常，致使用人之契約當事人無須對其預見之約定，不成為契約之構成部份。

一般交易條款之解釋，有疑義者，以使用者之不利益為之。

德國民法第 306 條（於不納入與無效情形之法律效果）

一般交易條款，全部或一部不成為契約之構成部分或無效者，契約之其他部分，仍有效。

以約定不成為契約之構成部分或無效者為限，契約之內容，依法律規定定之。

- b) in Verträge über Telekommunikations-, Informations- und andere Dienstleistungen, die unmittelbar durch Einsatz von Fernkommunikationsmitteln und während der Erbringung einer Telekommunikationsdienstleistung in einem Mal erbracht werden, wenn die Allgemeinen Geschäftsbedingungen der anderen Vertragspartei nur unter unverhältnismäßigen Schwierigkeiten vor dem Vertragsschluss zugänglich gemacht werden können.

§ 305b Vorrang der Individualabrede

Individuelle Vertragsabreden haben Vorrang vor Allgemeinen Geschäftsbedingungen.

§ 305c Überraschende und mehrdeutige Klauseln

Bestimmungen in Allgemeinen Geschäftsbedingungen, die nach den Umständen, insbesondere nach dem äußeren Erscheinungsbild des Vertrags, so ungewöhnlich sind, dass der Vertragspartner des Verwenders mit ihnen nicht zu rechnen braucht, werden nicht Vertragsbestandteil.

Zweifel bei der Auslegung Allgemeiner Geschäftsbedingungen gehen zu Lasten des Verwenders.

§ 306 Rechtsfolgen bei Nichteinbeziehung und Unwirksamkeit

Sind Allgemeine Geschäftsbedingungen ganz oder teilweise nicht Vertragsbestandteil geworden oder unwirksam, so bleibt der Vertrag im Übrigen wirksam.

Soweit die Bestimmungen nicht Vertragsbestandteil geworden oder unwirksam sind, richtet sich der Inhalt des Vertrags nach den gesetzlichen Vorschriften.

縱適用第 2 項所規定之變更，對契約當事人而言，維持契約仍將為難以期待之困難者，該契約無效。

德國民法第 306a 條（脫法禁止）

本章之規定，以其他方法加以規避者，亦適用之。

德國民法第 307 條（內容控制）

一般交易條款之約定，以其違反誠實暨信用原則，而使使用人之契約相對人受有不當之不利益者為限，無效。約定不清楚或難以理解者，亦得為不當之不利益。

有疑義者，以約定有下列情形者為限，成立不當之不利益：

- 一、與其所排除法律規定之重要基本思維，相衝突者；
- 二、限制因契約本質所生之重要權利義務，致危及契約目的之達成者。

第 1 項與第 2 項規定，以及第 308 條與第 309 條規定，僅於排除法律規定或補充法律規定之一般交易條款約定，適用之。其他規定，得依第 1 項第 2 句與第 1 項第 1 句規定，無效。

Der Vertrag ist unwirksam, wenn das Festhalten an ihm auch unter Berücksichtigung der nach Absatz 2 vorgesehenen Änderung eine unzumutbare Härte für eine Vertragspartei darstellen würde.

§ 306a Umgehungsverbot

Die Vorschriften dieses Abschnitts finden auch Anwendung, wenn sie durch anderweitige Gestaltungen umgangen werden.

§ 307 Inhaltskontrolle

Bestimmungen in Allgemeinen Geschäftsbedingungen sind unwirksam, wenn sie den Vertragspartner des Verwenders entgegen den Geboten von Treu und Glauben unangemessen benachteiligen. Eine unangemessene Benachteiligung kann sich auch daraus ergeben, dass die Bestimmung nicht klar und verständlich ist.

Eine unangemessene Benachteiligung ist im Zweifel anzunehmen, wenn eine Bestimmung

1. mit wesentlichen Grundgedanken der gesetzlichen Regelung, von der abgewichen wird, nicht zu vereinbaren ist oder
2. wesentliche Rechte oder Pflichten, die sich aus der Natur des Vertrags ergeben, so einschränkt, dass die Erreichung des Vertragszwecks gefährdet ist.

Die Absätze 1 und 2 sowie die §§ 308 und 309 gelten nur für Bestimmungen in Allgemeinen Geschäftsbedingungen, durch die von Rechtsvorschriften abweichende oder diese ergänzende Regelungen vereinbart werden. Andere Bestimmungen können nach Absatz 1 Satz 2 in Verbindung mit Absatz 1 Satz 1 unwirksam sein.

德國民法第 308 條（有評價可能性之條款禁止）

下列一般交易條款之約定，無效：

一、承諾期間及給付期間

使用人為要約之承諾或拒絕或給付，保留不合理之期間或不確定之期間者；但解除期間，依第 355 條第 1 項與第 2 項規定經過後，始為給付之保留，不在此限；

a) 支付期間

使用人為契約相對人對價請求權之履行，保留不當長度之期間者；以使用人非消費者為限，有疑義者，超過受領對待給付後 30 天，或債務人於受領對待給付後，帳單或等價之支付單據到達者，超過帳單或支付單據到達後 30 天，為不當長度之期間；

b) 檢查與受領期間

使用人，保留於不當長度之檢查與受領對待給付期間經過後，始履行契約相對人之對價債權者；以使用人非消費者為限，有疑義者，超過受領對待給付後 15 天，為不當長度之期間；

§ 308 Klauselverbote mit Wertungsmöglichkeit

In Allgemeinen Geschäftsbedingungen ist insbesondere unwirksam

1. (Annahme- und Leistungsfrist)

eine Bestimmung, durch die sich der Verwender unangemessen lange oder nicht hinreichend bestimmte Fristen für die Annahme oder Ablehnung eines Angebots oder die Erbringung einer Leistung vorbehält; ausgenommen hiervon ist der Vorbehalt, erst nach Ablauf der Widerrufsfrist nach § 355 Absatz 1 und 2 zu leisten;

1a. (Zahlungsfrist)

eine Bestimmung, durch die sich der Verwender eine unangemessen lange Zeit für die Erfüllung einer Entgeltforderung des Vertragspartners vorbehält; ist der Verwender kein Verbraucher, ist im Zweifel anzunehmen, dass eine Zeit von mehr als 30 Tagen nach Empfang der Gegenleistung oder, wenn dem Schuldner nach Empfang der Gegenleistung eine Rechnung oder gleichwertige Zahlungsaufstellung zugeht, von mehr als 30 Tagen nach Zugang dieser Rechnung oder Zahlungsaufstellung unangemessen lang ist;

1b. (Überprüfungs- und Abnahmefrist)

eine Bestimmung, durch die sich der Verwender vorbehält, eine Entgeltforderung des Vertragspartners erst nach unangemessen langer Zeit für die Überprüfung oder Abnahme der Gegenleistung zu erfüllen; ist der Verwender kein Verbraucher, ist im Zweifel anzunehmen, dass eine Zeit von mehr als 15 Tagen nach Empfang der Gegenleistung unangemessen lang ist;

二、延展期間

使用人依約定，為其應為之給付，排除法律規定，保留不當長度之期間或不確定之期間者；

三、解除保留

使用人得不具實質正當理由，以及不具於契約內說明之原因，自其給付義務解除者；於繼續性債之關係，不適用之；

四、變更保留

使用人得變更所承諾之給付，或加以排除者，以該約定變更或排除，於顧及使用人利益之前提下，對契約他方當事人無可期待者為限；

五、意思表示之擬制

使用人契約相對人之表示，於特定行為之作為或不作為，視為由其發出，或非由其發出者。但有下列情形者，不在此限：

a) 已給與契約相對人，發出明示意思表示之適當期間，且

b) 使用人應期間開始時，向契約相對人特別指明，其行為所可預見之意義；

六、到達之擬制

使用人之表示具有特別意義，視為已到達契約他方當事人

2. (Nachfrist)

eine Bestimmung, durch die sich der Verwender für die von ihm zu bewirkende Leistung abweichend von Rechtsvorschriften eine unangemessen lange oder nicht hinreichend bestimmte Nachfrist vorbehält;

3. (Rücktrittsvorbehalt)

die Vereinbarung eines Rechts des Verwenders, sich ohne sachlich gerechtfertigten und im Vertrag angegebenen Grund von seiner Leistungspflicht zu lösen; dies gilt nicht für Dauerschuldverhältnisse;

4. (Änderungsvorbehalt)

die Vereinbarung eines Rechts des Verwenders, die versprochene Leistung zu ändern oder von ihr abzuweichen, wenn nicht die Vereinbarung der Änderung oder Abweichung unter Berücksichtigung der Interessen des Verwenders für den anderen Vertragsteil zumutbar ist;

5. (Fingierte Erklärungen)

eine Bestimmung, wonach eine Erklärung des Vertragspartners des Verwenders bei Vornahme oder Unterlassung einer bestimmten Handlung als von ihm abgegeben oder nicht abgegeben gilt, es sei denn, dass

- a) dem Vertragspartner eine angemessene Frist zur Abgabe einer ausdrücklichen Erklärung eingeräumt ist und
- b) der Verwender sich verpflichtet, den Vertragspartner bei Beginn der Frist auf die vorgesehene Bedeutung seines Verhaltens besonders hinzuweisen;

6. (Fiktion des Zugangs)

eine Bestimmung, die vorsieht, dass eine Erklärung des Verwenders

者；

七、契約之回復原狀

契約當事人解除契約或終止契約，使用人得為下列之請求者：

- a) 就物或權利之使用或收益，或就已為之給付，請求不當高額之報酬；
- b) 請求不當高額之費用賠償。

八、不得處分之給付

使用人於給付不具可處分性之情形，依第 3 款規定，保留自履行契約義務解脫之權利者，以使用人不負有下列義務者為限：

- a) 即時告知契約相對人給付不具可處分性一事，且
- b) 即時回復契約相對人之對待給付

德國民法第 309 條（無評價可能性之條款禁止）

縱法律規定之排除為許可者，下列一般交易條款之約定，亦無效：

一、短期之提高價格

提高商品或服務之對價，於訂定契約後 4 個月內，應交付商品或提供服務者。但於繼續性債之關係範圍內，所應交付之商品或提供之服務，不在此限；

von besonderer Bedeutung dem anderen Vertragsteil als zugegangen gilt;

7. (Abwicklung von Verträgen)

eine Bestimmung, nach der der Verwender für den Fall, dass eine Vertragspartei vom Vertrag zurücktritt oder den Vertrag kündigt,

- a) eine unangemessen hohe Vergütung für die Nutzung oder den Gebrauch einer Sache oder eines Rechts oder für erbrachte Leistungen oder
- b) einen unangemessen hohen Ersatz von Aufwendungen verlangen kann;

8. (Nichtverfügbarkeit der Leistung)

die nach Nummer 3 zulässige Vereinbarung eines Vorbehalts des Verwenders, sich von der Verpflichtung zur Erfüllung des Vertrags bei Nichtverfügbarkeit der Leistung zu lösen, wenn sich der Verwender nicht verpflichtet,

- a) den Vertragspartner unverzüglich über die Nichtverfügbarkeit zu informieren und
- b) Gegenleistungen des Vertragspartners unverzüglich zu erstatten.

§ 309 Klauselverbote ohne Wertungsmöglichkeit

Auch soweit eine Abweichung von den gesetzlichen Vorschriften zulässig ist, ist in Allgemeinen Geschäftsbedingungen unwirksam

1. (Kurzfristige Preiserhöhungen)

eine Bestimmung, welche die Erhöhung des Entgelts für Waren oder Leistungen vorsieht, die innerhalb von vier Monaten nach Vertragsschluss geliefert oder erbracht werden sollen; dies gilt nicht bei Waren oder Leistungen, die im Rahmen von

二、拒絕給付之權利

約定，有下列情形者：

- a) 對使用人之契約相對人，依第 320 條規定所享有之拒絕給付權利，加以排除或限制者；
- b) 對使用人之契約相對人所享之拒絕返還權利，加以排除或限制，以該權利基於同一契約關係者為限，尤其其以使用人承認瑕疵為要件者。

三、禁止抵銷

使用人之契約相對人，不得以無爭執或經判決確定之債權抵銷者；

四、催告、定期

使用人無須對他方契約當事人催告，或定期請求給付或補正者；

五、損害賠償請求權之總額約定

約定使用人損害賠償或價值減損賠償請求權之總額者，以下列情形為限：

- a) 總額，於法定情形，超過依事物通常過程所可期待之損害，或通常發生之價值減損者；

Dauerschuldverhältnissen geliefert oder erbracht werden;

2. (Leistungsverweigerungsrechte)

eine Bestimmung, durch die

- a) das Leistungsverweigerungsrecht, das dem Vertragspartner des Verwenders nach § 320 zusteht, ausgeschlossen oder eingeschränkt wird oder
- b) ein dem Vertragspartner des Verwenders zustehendes Zurückbehaltungsrecht, soweit es auf demselben Vertragsverhältnis beruht, ausgeschlossen oder eingeschränkt, insbesondere von der Anerkennung von Mängeln durch den Verwender abhängig gemacht wird;

3. (Aufrechnungsverbot)

eine Bestimmung, durch die dem Vertragspartner des Verwenders die Befugnis genommen wird, mit einer unbestrittenen oder rechtskräftig festgestellten Forderung aufzurechnen;

4. (Mahnung, Fristsetzung)

eine Bestimmung, durch die der Verwender von der gesetzlichen Obliegenheit freigestellt wird, den anderen Vertragsteil zu mahnen oder ihm eine Frist für die Leistung oder Nacherfüllung zu setzen;

5. (Pauschalierung von Schadensersatzansprüchen)

die Vereinbarung eines pauschalierten Anspruchs des Verwenders auf Schadensersatz oder Ersatz einer Wertminderung, wenn

- a) die Pauschale den in den geregelten Fällen nach dem gewöhnlichen Lauf der Dinge zu erwartenden Schaden oder die gewöhnlich eintretende Wertminderung übersteigt oder

- b) 未明示同意他方契約當事人得證明，未發生損害或價值減損，或明顯低於約定之總額者。

六、違約金

於拒絕受領或遲延受領給付、支付遲延，或契約當事人他方解除契約之情形，支付使用人違約金者；

七、侵害生命、身體、健康時之責任排除與重大過失責任之排除

a) 生命、身體、健康之侵害

排除或限制因使用人過失違反義務，或使用人之法定代理人或履行輔助人，故意或過失違反義務，而侵害生命、身體或健康所生之損害責任者；

b) 重大過失

排除或限制因使用人重大過失違反義務，或使用人之法定代理人或履行輔助人故意或重大過失違反義務，所生其他損害之賠償責任者。

第7款第a目與第7款第b目規定，於人身運送法所許可，線路交通範圍內之街軌車、公車、動力交通工具運送條款與團體協約內之責任限制，以其非以乘客不利益之方式，排除1970年2月27日街軌車、公車交通與路線動力交通工具

b) dem anderen Vertragsteil nicht ausdrücklich der Nachweis gestattet wird, ein Schaden oder eine Wertminderung sei überhaupt nicht entstanden oder wesentlich niedriger als die Pauschale;

6. (Vertragsstrafe)

eine Bestimmung, durch die dem Verwender für den Fall der Nichtabnahme oder verspäteten Abnahme der Leistung, des Zahlungsverzugs oder für den Fall, dass der andere Vertragsteil sich vom Vertrag löst, Zahlung einer Vertragsstrafe versprochen wird;

7. (Haftungsausschluss bei Verletzung von Leben, Körper, Gesundheit und bei grobem Verschulden)

a) (Verletzung von Leben, Körper, Gesundheit)

ein Ausschluss oder eine Begrenzung der Haftung für Schäden aus der Verletzung des Lebens, des Körpers oder der Gesundheit, die auf einer fahrlässigen Pflichtverletzung des Verwenders oder einer vorsätzlichen oder fahrlässigen Pflichtverletzung eines gesetzlichen Vertreters oder Erfüllungsgehilfen des Verwenders beruhen;

b) (Grobes Verschulden)

ein Ausschluss oder eine Begrenzung der Haftung für sonstige Schäden, die auf einer grob fahrlässigen Pflichtverletzung des Verwenders oder auf einer vorsätzlichen oder grob fahrlässigen Pflichtverletzung eines gesetzlichen Vertreters oder Erfüllungsgehilfen des Verwenders beruhen;

die Buchstaben a und b gelten nicht für Haftungsbeschränkungen in den nach Maßgabe des Personenbeförderungsgesetzes genehmigten Beförderungsbedingungen und Tarifvorschriften der Straßenbahnen, Obusse und Kraftfahrzeuge im Linienverkehr,

交通一般運送條款法規者為限，不適用之；第7款第b目規定，於國家許可之樂透或抽獎契約，不適用之。

八、其他於義務違反情形之責任排除

a) 解除契約權利之排除

於使用人就買賣標的物，或工作物瑕疵以外之義務違反，應負責之情形，排除或限制解除契約之權利。但第7款所指運送條款與團體協約，於該款要件成立之前提下，不在此限。

b) 瑕疵

於交付新製物與工作給付之契約：

aa) 請求權之排除與讓與於第三人

全部或一部排除因瑕疵所生對使用人之請求權，限制對第三人之請求權之讓與，或以先向第三人訴請為條件者；

bb) 補正之限制

全部或一部限制請求使用人補正之權利，以對契約他方當事人未明示保留，於不能補正時，減輕補正之權

soweit sie nicht zum Nachteil des Fahrgasts von der Verordnung über die Allgemeinen Beförderungsbedingungen für den Straßenbahn- und Obusverkehr sowie den Linienverkehr mit Kraftfahrzeugen vom 27. Februar 1970 abweichen; Buchstabe b gilt nicht für Haftungsbeschränkungen für staatlich genehmigte Lotterie- oder Ausspielverträge;

8. (Sonstige Haftungsausschlüsse bei Pflichtverletzung)

a) (Ausschluss des Rechts, sich vom Vertrag zu lösen)

eine Bestimmung, die bei einer vom Verwender zu vertretenden, nicht in einem Mangel der Kaufsache oder des Werkes bestehenden Pflichtverletzung das Recht des anderen Vertragsteils, sich vom Vertrag zu lösen, ausschließt oder einschränkt; dies gilt nicht für die in der Nummer 7 bezeichneten Beförderungsbedingungen und Tarifvorschriften unter den dort genannten Voraussetzungen;

b) (Mängel)

eine Bestimmung, durch die bei Verträgen über Lieferungen neu hergestellter Sachen und über Werkleistungen

aa) (Ausschluss und Verweisung auf Dritte)

die Ansprüche gegen den Verwender wegen eines Mangels insgesamt oder bezüglich einzelner Teile ausgeschlossen, auf die Einräumung von Ansprüchen gegen Dritte beschränkt oder von der vorherigen gerichtlichen Inanspruchnahme Dritter abhängig gemacht werden;

bb) (Beschränkung auf Nacherfüllung)

die Ansprüche gegen den Verwender insgesamt oder bezüglich einzelner Teile auf ein Recht auf Nacherfüllung

利，瑕疵責任之客體非建築給付時，以依其選擇，解除契約之權利者為限；

cc) 補正之費用

排除或限制使用人所負，為補正目的所必須費用之義務，尤其是運輸、道路、勞作或材料費用；

dd) 補正之排除

補正以已支付全部對價，或以基於瑕疵之考量，而顯過高之部份對價為條件者；

ee) 瑕疵通知之除斥期間

契約他方當事人，就非顯而易見之瑕疵，應於除斥期間內通知，而該期間短於第 8 款第 b 之 ff 目所許可之期間者；

ff) 消滅時效之減輕

因瑕疵所生對使用人之請求權，於第 438 條第 1 項第 2 款與第 634a 條第 1 項第 2 款所規定之情形，減輕其消滅時效，或於其他情形，其消滅時效期間，自法定消滅時效起算，短於 1 年者；

beschränkt werden, sofern dem anderen Vertragsteil nicht ausdrücklich das Recht vorbehalten wird, bei Fehlschlagen der Nacherfüllung zu mindern oder, wenn nicht eine Bauleistung Gegenstand der Mängelhaftung ist, nach seiner Wahl vom Vertrag zurückzutreten;

cc) (Aufwendungen bei Nacherfüllung)

die Verpflichtung des Verwenders ausgeschlossen oder beschränkt wird, die zum Zwecke der Nacherfüllung erforderlichen Aufwendungen, insbesondere Transport-, Wege-, Arbeits- und Materialkosten, zu tragen;

dd) (Vorenthalten der Nacherfüllung)

der Verwender die Nacherfüllung von der vorherigen Zahlung des vollständigen Entgelts oder eines unter Berücksichtigung des Mangels unverhältnismäßig hohen Teils des Entgelts abhängig macht;

ee) (Ausschlussfrist für Mängelanzeige)

der Verwender dem anderen Vertragsteil für die Anzeige nicht offensichtlicher Mängel eine Ausschlussfrist setzt, die kürzer ist als die nach dem Doppelbuchstaben ff zulässige Frist;

ff) (Erleichterung der Verjährung)

die Verjährung von Ansprüchen gegen den Verwender wegen eines Mangels in den Fällen des § 438 Abs. 1 Nr. 2 und des § 634a Abs. 1 Nr. 2 erleichtert oder in den sonstigen Fällen eine weniger als ein Jahr betragende Verjährungsfrist ab dem gesetzlichen Verjährungsbeginn erreicht wird;

九、繼續性債之關係之期間

於以使用人定期交付商品或定期提供勞務或工作為內容之契約關係：

- a) 於契約他方當事人有拘束力，長於 2 年之契約期間；
- b) 於契約他方當事人有拘束力，默示延長契約關係至超過 1 年者；
- c) 以契約他方當事人之不利益，約定超過前所約定或默示延長之契約期間 3 個月者。

以上規定，於交付集合出賣之物之契約、保險契約，以及著作權法之權利與請求權人與著作權實施法所指著作權保護協會間之契約，不適用之。

十、變更契約當事人

於買賣、金錢借貸、僱傭或承攬契約，第三人取代或得取代使用人，進入因契約所生之權利與義務者，但有下列情形者，不在此限：

- a) 第三人經記名；
- b) 約定他方契約當事人得解除契約者。

9. (Laufzeit bei Dauerschuldverhältnissen)

bei einem Vertragsverhältnis, das die regelmäßige Lieferung von Waren oder die regelmäßige Erbringung von Dienst- oder Werkleistungen durch den Verwender zum Gegenstand hat,

- a) eine den anderen Vertragsteil länger als zwei Jahre bindende Laufzeit des Vertrags,
- b) eine den anderen Vertragsteil bindende stillschweigende Verlängerung des Vertragsverhältnisses um jeweils mehr als ein Jahr oder
- c) zu Lasten des anderen Vertragsteils eine längere Kündigungsfrist als drei Monate vor Ablauf der zunächst vorgesehenen oder stillschweigend verlängerten Vertragsdauer;

dies gilt nicht für Verträge über die Lieferung als zusammengehörig verkaufter Sachen, für Versicherungsverträge sowie für Verträge zwischen den Inhabern urheberrechtlicher Rechte und Ansprüche und Verwertungsgesellschaften im Sinne des Gesetzes über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten;

10. (Wechsel des Vertragspartners)

eine Bestimmung, wonach bei Kauf-, Darlehens-, Dienst- oder Werkverträgen ein Dritter anstelle des Verwenders in die sich aus dem Vertrag ergebenden Rechte und Pflichten eintritt oder eintreten kann, es sei denn, in der Bestimmung wird

- a) der Dritte namentlich bezeichnet oder
- b) dem anderen Vertragsteil das Recht eingeräumt, sich vom Vertrag zu lösen;

十一、訂約代理人之責任

使用人，使對為契約他方當事人訂定契約之代理人，負有下列責任：

- a) 負有自己責任或擔保責任，而無須有以此為目的之明示或個別之表示者；
- b) 於無權代理之情形，負有超出第 179 條規定之責任者。

十二、舉證責任

使用人以他方契約當事人之不利益，變更舉證責任，尤其是以下列之方式為之者：

- a) 他方契約當事人，就於使用人責任範圍內之情事，負有舉證責任；
- b) 他方契約當事人，應證明特定之事實者。

十三、通知與表示之方式

應對使用人發出之通知或表示，應以較書面或到達嚴格之方式為之者。

德國民法第 310 條（適用範圍）

第 305 條第 2 項與第 3 項、第 308 條第 1 款、第 2 款至第 8 款，以及第 309 條規定，於對企業經營者、公法人或公法上特別財產所使用之一般交易條款，不適用之。第 307 條第 1 項與第 2 項規定，

11. (Haftung des Abschlussvertreters)

eine Bestimmung, durch die der Verwender einem Vertreter, der den Vertrag für den anderen Vertragsteil abschließt,

a) ohne hierauf gerichtete ausdrückliche und gesonderte Erklärung eine eigene Haftung oder Einstandspflicht oder

b) im Falle vollmachtsloser Vertretung eine über § 179 hinausgehende Haftung auferlegt;

12. (Beweislast)

eine Bestimmung, durch die der Verwender die Beweislast zum Nachteil des anderen Vertragsteils ändert, insbesondere indem er

a) diesem die Beweislast für Umstände auferlegt, die im Verantwortungsbereich des Verwenders liegen, oder

b) den anderen Vertragsteil bestimmte Tatsachen bestätigen lässt;

Buchstabe b gilt nicht für Empfangsbekanntnisse, die gesondert unterschrieben oder mit einer gesonderten qualifizierten elektronischen Signatur versehen sind;

13. (Form von Anzeigen und Erklärungen)

eine Bestimmung, durch die Anzeigen oder Erklärungen, die dem Verwender oder einem Dritten gegenüber abzugeben sind, an eine strengere Form als die Schriftform oder an besondere Zugangserfordernisse gebunden werden.

§ 310 Anwendungsbereich

§ 305 Absatz 2 und 3, § 308 Nummer 1, 2 bis 8 und § 309 finden keine Anwendung auf Allgemeine Geschäftsbedingungen, die gegenüber einem Unternehmer, einer juristischen Person des

於第 1 句所規定之情形，以其致第 308 條第 1 款與第 2 款所指之約定無效者為限，亦適用之；商業交易上適用之習慣與慣例，亦應適當顧及之。第 307 條第 1 項與第 2 項，以及第 308 條第 1a 款與第 1b 款關於條款內容控制之規定，以第 1 句所規定之情形為限，於將各次訂約時點所適用之工程採購與契約法 B 部份（VOB/B）全部納入，而於內容上並無不同之契約，不適用之。

第 308 條與第 309 條規定，於電力、瓦斯、暖氣與自來水供應企業經營者，關於自供應網路供應電力、瓦斯、暖氣與自來水之契約，以供應條款非以受領人之不利益，排除供應電力、瓦斯與自來水於普通費率消費者一般條款法規之適用者為限，不適用之。

本章之規定，併以下各款之規定，於企業經營者與消費者間之契約（消費者契約），適用之：

- 一、一般交易條款，視為由企業經營者所提出。但其由消費者納入契約者，不在此限。

öffentlichen Rechts oder einem öffentlich-rechtlichen Sondervermögen verwendet werden. § 307 Abs. 1 und 2 findet in den Fällen des Satzes 1 auch insoweit Anwendung, als dies zur Unwirksamkeit von in § 308 Nummer 1, 2 bis 8 und § 309 genannten Vertragsbestimmungen führt; auf die im Handelsverkehr geltenden Gewohnheiten und Gebräuche ist angemessen Rücksicht zu nehmen. In den Fällen des Satzes 1 finden § 307 Absatz 1 und 2 sowie § 308 Nummer 1a und 1b auf Verträge, in die die Vergabe- und Vertragsordnung für Bauleistungen Teil B (VOB/B) in der jeweils zum Zeitpunkt des Vertragsschlusses geltenden Fassung ohne inhaltliche Abweichungen insgesamt einbezogen ist, in Bezug auf eine Inhaltskontrolle einzelner Bestimmungen keine Anwendung.

Die §§ 308 und 309 finden keine Anwendung auf Verträge der Elektrizitäts-, Gas-, Fernwärme- und Wasserversorgungsunternehmen über die Versorgung von Sonderabnehmern mit elektrischer Energie, Gas, Fernwärme und Wasser aus dem Versorgungsnetz, soweit die Versorgungsbedingungen nicht zum Nachteil der Abnehmer von Verordnungen über Allgemeine Bedingungen für die Versorgung von Tarifkunden mit elektrischer Energie, Gas, Fernwärme und Wasser abweichen. Satz 1 gilt entsprechend für Verträge über die Entsorgung von Abwasser.

Bei Verträgen zwischen einem Unternehmer und einem Verbraucher (Verbraucherverträge) finden die Vorschriften dieses Abschnitts mit folgenden Maßgaben Anwendung:

1. Allgemeine Geschäftsbedingungen gelten als vom Unternehmer gestellt, es sei denn, dass sie durch den Verbraucher in den Vertrag eingeführt wurden;

二、第 305c 條第 2 項、第 306 條、第 307 條至第 309 條規定，以及民法施行法第 46b 條規定，於預先擬定，僅為一次使用之目的而約定之契約條款，以消費者因預先擬定而對其無影響力者為限，亦適用之。）

三、於判斷第 307 條第 1 項與第 2 項所規定不當之不利益時，亦應顧及伴隨締約之情事。

本章之規定，於繼承、親屬、公司法領域內之契約，以及團體協約、企業與僱用協約，不適用之。適用於勞動契約時，應顧及於勞動法上適用之特性；第 305 條第 2 項與第 3 項規定。不適用之。團體協約、企業與僱用協約，等同第 307 條第 3 項所規定之法律規定。

2. § 305c Abs. 2 und die §§ 306 und 307 bis 309 dieses Gesetzes sowie Artikel 46b des Einführungsgesetzes zum Bürgerlichen Gesetzbuche finden auf vorformulierte Vertragsbedingungen auch dann Anwendung, wenn diese nur zur einmaligen Verwendung bestimmt sind und soweit der Verbraucher auf Grund der Vorformulierung auf ihren Inhalt keinen Einfluss nehmen konnte;
3. bei der Beurteilung der unangemessenen Benachteiligung nach § 307 Abs. 1 und 2 sind auch die den Vertragsschluss begleitenden Umstände zu berücksichtigen.

Dieser Abschnitt findet keine Anwendung bei Verträgen auf dem Gebiet des Erb-, Familien- und Gesellschaftsrechts sowie auf Tarifverträge, Betriebs- und Dienstvereinbarungen. Bei der Anwendung auf Arbeitsverträge sind die im Arbeitsrecht geltenden Besonderheiten angemessen zu berücksichtigen; § 305 Abs. 2 und 3 ist nicht anzuwenden. Tarifverträge, Betriebs- und Dienstvereinbarungen stehen Rechtsvorschriften im Sinne von § 307 Abs. 3 gleich.

第 312 部—兒童線上隱私保護法施行細則

聯邦法規施行細則彙編

第 16 編 商業實務

第一章 聯邦貿易委員會

子章節 C 國會特定法案施行細則

§ 312.1 本部分適用範圍。

§ 312.2 定義。

§ 312.3 關於透過網路

以不正或詐欺行為蒐集、利用、或揭露
得自於或關於兒童個資之規定。

§ 312.4 通知。

§ 312.5 親權人同意。

§ 312.6 親權人檢視兒童提供個資之權利。

§ 312.7 禁以蒐集個資為兒童加入之條件。

§ 312.8 得之於兒童個資之機密性、安全性、及完整性。

§ 312.9 本部分之執行。

§ 312.10 數據之保留與刪除應遵循事項。

§ 312.11 避風港方案。

§ 312.12 自願提交委員會准否之程序。

§ 312.13 執行可分性。

法源：美國法典第15編第6501-6508條。

來源：若非註明，即出於2013年1月17日修正，聯邦公報第78卷第4008頁。

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

§312.1 Scope of regulations in this part.

§312.2 Definitions.

§312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

§312.4 Notice.

§312.5 Parental consent.

§312.6 Right of parent to review personal information provided by a child.

§312.7 Prohibition against conditioning a child's participation on collection of personal information.

§312.8 Confidentiality, security, and integrity of personal information collected from children.

§312.9 Enforcement.

§312.10 Data retention and deletion requirements.

§312.11 Safe harbor programs.

§312.12 Voluntary Commission Approval Processes.

§312.13 Severability.

Authority: 15 U.S.C. 6501-6508.

Source: 78 FR 4008, Jan. 17, 2013, unless otherwise noted.

§ 312.1 本部分適用範圍。

1998 年兒童線上隱私保護法（美國法典第 15 編第 6501 條以下）是為禁止透過網路，以不正或詐欺行為蒐集、利用，或揭露得自於或關於兒童之個人資料。該法依本部分規定施行。

§ 312.2 定義。

兒童，指 13 歲以下之人。

蒐集，指透過兒童取得個人資料（下略為「個資」），其手法包括但不限於下列方式：

- 1) 要求、促使，或鼓動兒童透過網路交付個資；
- 2) 使兒童公開可得識別特定人之個資。但營運者在兒童貼文於網路公開前，採取合理方法，使貼文或網站紀錄之個資，近乎刪除殆盡者，非本項定義之蒐集個資行為；

- 3) 透過網路，被動追蹤兒童。

委員會，指聯邦貿易委員會。

刪除，指移除個資，使其不再處於隨取可得的狀態，且不能依常態操作重新取得。

個資之揭露，意指：

- 1) 釋出營運者所蒐集，得自於兒童，且可得辨識特定人之個資，不問其目的為何。但營運者為其網站或線上服務之內部

§ 312.1 Scope of regulations in this part.

This part implements the Children's Online Privacy Protection Act of 1998, (15 U.S.C. 6501, *et seq.*) which prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

§ 312.2 Definitions.

Child means an individual under the age of 13.

Collects or collection means the gathering of any personal information from a child by any means, including but not limited to:

- (1) Requesting, prompting, or encouraging a child to submit personal information online;
- (2) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or
- (3) Passive tracking of a child online.

Commission means the Federal Trade Commission.

Delete means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

Disclose or disclosure means, with respect to personal information:

- (1) The release of personal information collected by an operator from a child in identifiable form for any purpose, except where an

運作，而以是類資料提供相關服務提供者，不在此限；

- 2) 公開營運者所蒐集，得自於兒童，且可得辨識特定人之個資，不問其方式為何，包括但不限公開張貼於網路或個人首頁。於網站、線上服務、筆友服務、電子郵件服務、電子留言版、或聊天室公開者，亦同。

聯邦機構，指美國法典第 5 編第 551 條第 1 項定義之機構。

網際網路，指為透過線路、無線電波、或其他傳輸方式以流通各類資訊，應用 TCP/IP 或其上下層其他通訊協定串連，以組成全球網際網路之多不勝數之電腦及電信設備總和。其周邊設備和操作軟體，亦屬之。

取得可驗證同意，指依現行可能技術，善盡合理努力，以確保透過兒童蒐集個資前，使其親權人：

- 1) 由營運者預先告知，其就個資之蒐集、利用及揭露之方式；
- 2) 就個資之蒐集、利用、或揭露而為授權。

線上連絡資料，指得以網路直接接觸本人之電子郵件位址、或其

operator provides such information to a person who provides support for the internal operations of the Web site or online service; and

- (2) Making personal information collected by an operator from a child publicly available in identifiable form by any means, including but not limited to a public posting through the Internet, or through a personal home page or screen posted on a Web site or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

Federal agency means an agency, as that term is defined in Section 551(1) of title 5, United States Code.

Internet means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

Obtaining verifiable consent means making any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child:

- (1) Receives notice of the operator's personal information collection, use, and disclosure practices; and
- (2) Authorizes any collection, use, and/or disclosure of the personal information.

Online contact information means an email address or any other

他相同性質之身份識別方式，包括但不限於即時通訊軟體、語音通訊協定（VoIP）軟體、及視訊軟體之用戶身分。

營運者，指經營網站或線上服務之人，自網站或線上服務，蒐集或維護其用戶與訪客個資之人，為其蒐集或維護該類資料之人，或透過網站或線上銷售服務，提供產品或服務之人，其網站或線上服務為商業目的而營運，不論從事州際或國際貿易，設籍於美國領土或華府，商業往來於美國領土各州間或與他國間，或於華府、美國領土或各州與他國間。

本項定義，不包括聯邦貿易委員會法第 5 條（美國法典第 15 編第 45 條）排除適用之非營利單位。有下列情狀之一，即為營運者蒐集或維護個資：

- 1) 由營運者之代理人或服務提供者為之；
- 2) 營運者允許第三人，逕向該類網站或線上服務之用戶蒐集個人資料，從而獲利。

親權人，包括法定監護人。

人，指任何自然人、合夥、法人、信託、資產、合作社、或其他實體。

substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.

Operator means any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such Web site or online service, or on whose behalf such information is collected or maintained, or offers products or services for sale through that Web site or online service, where such Web site or online service is operated for commercial purposes involving commerce among the several States or with 1 or more foreign nations; in any territory of the United States or in the District of Columbia, or between any such territory and another such territory or any State or foreign nation; or between the District of Columbia and any State, territory, or foreign nation.

This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Personal information is *collected or maintained on behalf of* an operator when:

- (1) It is collected or maintained by an agent or service provider of the operator; or
- (2) The operator benefits by allowing another person to collect personal information directly from users of such Web site or online service.

Parent includes a legal guardian.

Person means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

個資，指透過網路蒐集而來、可得辨識為特定人之資訊，包括：

- 1) 一個名字及姓氏；
- 2) 包括街名及城鎮名之住所，或其他實體地址；
- 3) 本條定義之線上連絡資料；
- 4) 與線上連絡資料有相同作用之螢幕頁面或用戶名稱；
- 5) 電話號碼；
- 6) 社會安全碼；
- 7) 應用於不同網路或線上服務，可得辨識該使用者之持久性用戶身分，包括但不限儲存於小型文字檔案（cookie）之用戶代碼、網際網路協定（IP）位址、處理器或裝置序號、或裝置唯一識別碼；
- 8) 可得見聞兒童形貌或聲音之照片、影片或聲音檔；
- 9) 足以辨識街名或城鎮名之地理定位資料；
- 10) 營運者透過網路蒐集，得自於兒童、且有關該童或其親權人之資料，並有本條所稱之身分識別方式。

釋出個資，指分享、出售、出租、或移轉個資於第三方。

支援網站或線上服務之內部營運，指：

- 1) 因下列目的而必要之行為：

Personal information means individually identifiable information about an individual collected online, including:

- (1) A first and last name;
- (2) A home or other physical address including street name and name of a city or town;
- (3) Online contact information as defined in this section;
- (4) A screen or user name where it functions in the same manner as online contact information, as defined in this section;
- (5) A telephone number;
- (6) A Social Security number;
- (7) A persistent identifier that can be used to recognize a user over time and across different Web sites or online services. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier;
- (8) A photograph, video, or audio file where such file contains a child's image or voice;
- (9) Geolocation information sufficient to identify street name and name of a city or town; or
- (10) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Release of personal information means the sharing, selling, renting, or transfer of personal information to any third party.

Support for the internal operations of the Web site or online service means:

- (1) Those activities necessary to:

- i) 為維護或分析網站或線上服務之功能；
 - ii) 為進行網路通訊；
 - iii) 網站或線上服務為驗證是否為其用戶，或使其內容得以個人化；
 - iv) 為提供網站或線上服務內容關聯式廣告，或控制廣告播放頻率；
 - v) 為保護使用者、網站或線上服務之安全性與完整性；
 - vi) 為確保符合法規；
 - vii) 為因應兒童依第 312.5 條 c 段第 3 款與第 4 款規定所為之請求。
- 2) 為前款所列目的而蒐集之資料，未因任何目的，例如為接觸某特定人，或蒐集其訊息，而以包括行為廣告在內等方式，加以利用或揭露者。

第三方，指下列各款以外之人：

- 1) 蒐集、維護網站或線上服務個資之營運者；
- 2) 支援網站或線上服務內部營運之人，或未因其他任何原因，而利用或揭露本部分所保護資料之人。

兒童導向網站或線上服務，指商業網站或線上服務內容之全部或一部，針對兒童所設計者。

- (i) Maintain or analyze the functioning of the Web site or online service;
 - (ii) Perform network communications;
 - (iii) Authenticate users of, or personalize the content on, the Web site or online service;
 - (iv) Serve contextual advertising on the Web site or online service or cap the frequency of advertising;
 - (v) Protect the security or integrity of the user, Web site, or online service;
 - (vi) Ensure legal or regulatory compliance; or
 - (vii) Fulfill a request of a child as permitted by §312.5(c)(3) and (4);
- (2) So long as The information collected for the activities listed in paragraphs (1)(i)-(vii) of this definition is not used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.

Third party means any person who is not:

- (1) An operator with respect to the collection or maintenance of personal information on the Web site or online service; or
- (2) A person who provides support for the internal operations of the Web site or online service and who does not use or disclose information protected under this part for any other purpose.

Web site or online service directed to children means a commercial Web site or online service, or portion thereof, that is targeted to children.

- 1) 關於網站或線上服務之內容，是否應評價為以兒童為導向，委員會將視其主題、視覺內容、動畫角色之運用，或兒童導向活動與其動機、音樂或其他聲音內容，範例人物之年齡，兒童名流或對兒童有吸引力之名流曝光率、語言模式，或該網站或線上服務之其他特點，與其廣告或其播送之廣告，是否以兒童為導向，以決定之。委員會另將參照可信之實證結果，了解閱聽眾之年齡分布情況，以及目標受眾之實際情況。

- 2) 若網站或線上服務實際知悉其所蒐集之個資，直接得自其他兒童導向網站或線上服務用戶，應視為兒童導向網站或線上服務。

- 3) 依第 1 款定義，應屬兒童導向網站或線上服務，但非以兒童為主要閱聽者，若有下列情狀之一，應認其非以兒童為導向：
 - i) 於蒐集年齡資料前，不蒐集用戶之個資；

 - ii) 未依本部分關於告知及親權人同意之規定，即不蒐集、利用或揭露自稱未滿 13 歲訪客之個資。

- 4) 網站或線上服務，不因其應用目錄、索引、參照、指標或超連結等資料定位工具，指向或連結至兒童導向之商業網站或線上服務，即視為兒童導向網站或線上服務。

- (1) In determining whether a Web site or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the Web site or online service, as well as whether advertising promoting or appearing on the Web site or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.
- (2) A Web site or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information directly from users of another Web site or online service directed to children.
- (3) A Web site or online service that is directed to children under the criteria set forth in paragraph (1) of this definition, but that does not target children as its primary audience, shall not be deemed directed to children if it:
 - (i) Does not collect personal information from any visitor prior to collecting age information; and
 - (ii) Prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provisions of this part.
- (4) A Web site or online service shall not be deemed directed to children solely because it refers or links to a commercial Web site or online service directed to children by using information location

§ 312.3關於透過網路，以不正或詐欺行為蒐集、利用、或揭露關於兒童個資之規定。

一般性規定。兒童導向網站或線上服務之營運者，或實際知悉其所蒐集或維護之個資，得自兒童之營運者，以違反本部分規定之方式，蒐集得自於兒童之個資，即為非法。一般而言，依本部分規定，營運者應：

- a) 於網站或線上服務告知，其對兒童蒐集何種個資、如何利用，以及其揭露該類資料之方式（第 312.4 條 b 段）；
- b) 於蒐集、利用、或揭露得自於兒童之個資前，取得親權人之可驗證同意（第 312.5 條）；
- c) 提供合理方法，使親權人得檢視得自於兒童之個資，或拒絕其再加利用或維護（第 312.6 條）；
- d) 不得以參加遊戲、提供獎項或其他活動為由，使兒童揭露參與活動之合理必需範圍以外之個資（第 312.7 條）；
- e) 建立且維護合理程序，使得自於兒童之個資，得保其機密性、安全性與完整性（第 312.8 條）。

tools, including a directory, index, reference, pointer, or hypertext link.

§ 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

General requirements. It shall be unlawful for any operator of a Web site or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part. Generally, under this part, an operator must:

- (a) Provide notice on the Web site or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§312.4(b));
- (b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children (§312.5);
- (c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (§312.6);
- (d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity (§312.7); and
- (e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children (§312.8).

§ 312.4 告知

- a) 告知之通則。營運者應於蒐集、利用或揭露得自於兒童之個資前，預先告知，且取得親權人之可驗證同意。該類告知，應以明確而可理解之書面，詳細為之，不得有無關題旨、混淆不清或自相矛盾之內容。

- b) 直接告知親權人。營運者應考量現行可能技術，善盡合理努力，確保其就得自於兒童之個資之蒐集、利用或揭露方式，或親權人此前同意之方式有實質變更時，得直接告知親權人。

- c) 直接告知親權人之內容：
 - 1) 依第 312.5 條 c 段第 1 款規定（為使親權人同意蒐集、利用或揭露得自於兒童之個資之告知）之應載事項。其告知內容應載明：
 - i) 營運者為取得親權人之同意，已自兒童取得親權人之線上連絡資料，以及應告知該兒童或親權人姓名；

 - ii) 蒐集、利用或揭露該類資料，應得親權人之同意，營運者未得同意，不得有上述作為；

§ 312.4 Notice.

- (a) General principles of notice. It shall be the obligation of the operator to provide notice and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children. Such notice must be clearly and understandably written, complete, and must contain no unrelated, confusing, or contradictory materials.
- (b) Direct notice to the parent. An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.
- (c) Content of the direct notice to the parent—
 - (1) Content of the direct notice to the parent under §312.5(c)(1) (Notice to Obtain Parent's Affirmative Consent to the Collection, Use, or Disclosure of a Child's Personal Information). This direct notice shall set forth:
 - (i) That the operator has collected the parent's online contact information from the child, and, if such is the case, the name of the child or the parent, in order to obtain the parent's consent;
 - (ii) That the parent's consent is required for the collection, use, or disclosure of such information, and that the operator will not collect, use, or disclose any personal information from the child if the parent does not provide such consent;

- iii) 營運者欲自兒童處蒐集其他個資內容，或有揭露該類資料之可能者，應經親權人同意；
 - iv) 營運者就其依本條 d 段規定，告知個資處理方式之超連結；
 - v) 於該類個資之蒐集、利用或揭露，親權人得如何行使可驗證同意；
 - vi) 親權人未於直接告知寄發後之合理時間內表示同意，營運者將自其紀錄中，刪除親權人線上連絡資料。
- 2) 依第 312.5 條 c 段第 2 款規定（就無關個資蒐集、利用或揭露之兒童線上活動，自願告知親權人）之應載事項。營運者於兒童加入其網站或線上服務時，選擇告知親權人，且除親權人線上連絡資料外，不蒐集其他任何個資者，其告知內容應載明：
- i) 營運者已自兒童處取得親權人線上連絡資料，但僅用於告知或事後通知兒童已加入其網站或線上服務，而不另行蒐集、利用或揭露兒童個資；

- (iii) The additional items of personal information the operator intends to collect from the child, or the potential opportunities for the disclosure of personal information, should the parent provide consent;
 - (iv) A hyperlink to the operator's online notice of its information practices required under paragraph (d) of this section;
 - (v) The means by which the parent can provide verifiable consent to the collection, use, and disclosure of the information; and
 - (vi) That if the parent does not provide consent within a reasonable time from the date the direct notice was sent, the operator will delete the parent's online contact information from its records.
- (2) Content of the direct notice to the parent under §312.5(c)(2) (Voluntary Notice to Parent of a Child's Online Activities Not Involving the Collection, Use or Disclosure of Personal Information). Where an operator chooses to notify a parent of a child's participation in a Web site or online service, and where such site or service does not collect any personal information other than the parent's online contact information, the direct notice shall set forth:
- (i) That the operator has collected the parent's online contact information from the child in order to provide notice to, and subsequently update the parent about, a child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information;

- ii) 親權人線上連絡資料，不因其他任何目的，而受利用或揭露；
 - iii) 親權人得拒絕允許兒童加入該網站或線上服務，要求刪除親權人線上連絡資料，並應如何對營運者提出；

 - iv) 營運者就其依本條 d 段規定，告知個資處理方式之超連結。
- 3) 依第 312.5 條 c 段第 4 款規定（營運者為與兒童進行多次線上通訊，而告知親權人）之應載事項。其告知內容應載明：
- i) 營運者為與兒童進行多次線上通訊，已自兒童處取得兒童線上連絡資料；
 - ii) 營運者已自兒童取得親權人線上連絡資料，但僅用以告知親權人，兒童為進行多次線上通訊，已向營運者註冊；
 - iii) 自兒童蒐集之線上連絡資料，不因其他任何目的，而受利用、揭露或整併於該童之其他資料；
 - iv) 親權人得拒絕允許營運者再行連絡兒童，且要求刪除親權人與該兒童之線上連絡資料，並應如何對營運者提出；

- (ii) That the parent's online contact information will not be used or disclosed for any other purpose;
 - (iii) That the parent may refuse to permit the child's participation in the Web site or online service and may require the deletion of the parent's online contact information, and how the parent can do so; and
 - (iv) A hyperlink to the operator's online notice of its information practices required under paragraph (d) of this section.
- (3) Content of the direct notice to the parent under §312.5(c)(4) (Notice to a Parent of Operator's Intent to Communicate with the Child Multiple Times). This direct notice shall set forth:
- (i) That the operator has collected the child's online contact information from the child in order to provide multiple online communications to the child;
 - (ii) That the operator has collected the parent's online contact information from the child in order to notify the parent that the child has registered to receive multiple online communications from the operator;
 - (iii) That the online contact information collected from the child will not be used for any other purpose, disclosed, or combined with any other information collected from the child;
 - (iv) That the parent may refuse to permit further contact with the child and require the deletion of the parent's and child's online contact information, and how the parent can do so;

- v) 親權人未回應直接告知，營運者得依告知之目的，利用得自於兒童之線上連絡資料；
 - vi) 營運者就其依本條 d 段規定，告知個資處理方式之超連結。
- 4) 依第 312.5 條 c 段第 5 款規定（為兒童安全而對親權人為告知）之應載事項。其告知內容應載明：
- i) 營運者為兒童安全，已取得兒童及親權人之姓名及線上連絡資料；
 - ii) 該類資料不因其他任何無關兒童安全之目的，而受利用或揭露；
 - iii) 親權人得拒絕其利用，要求刪除其所蒐集資料，並應如何對營運者提出；
 - iv) 親權人未回應直接告知，營運者得依告知之目的利用之；
 - v) 營運者就其依本條 d 段規定，告知個資處理方式之超連結。
- d) 網站或線上服務告知。營運者除直接告知親權人外，並應於網站或線上服務之首頁或登入頁面，以及所有對兒童蒐集個資之區塊，以標示鮮明之連結，指向其對兒童個資之處理方式。該

- (v) That if the parent fails to respond to this direct notice, the operator may use the online contact information collected from the child for the purpose stated in the direct notice; and
 - (vi) A hyperlink to the operator's online notice of its information practices required under paragraph (d) of this section.
- (4) Content of the direct notice to the parent required under §312.5(c)(5) (Notice to a Parent In Order to Protect a Child's Safety). This direct notice shall set forth:
- (i) That the operator has collected the name and the online contact information of the child and the parent in order to protect the safety of a child;
 - (ii) That the information will not be used or disclosed for any purpose unrelated to the child's safety;
 - (iii) That the parent may refuse to permit the use, and require the deletion, of the information collected, and how the parent can do so;
 - (iv) That if the parent fails to respond to this direct notice, the operator may use the information for the purpose stated in the direct notice; and
 - (v) A hyperlink to the operator's online notice of its information practices required under paragraph (d) of this section.
- (d) Notice on the Web site or online service. In addition to the direct notice to the parent, an operator must post a prominent and clearly labeled link to an online notice of its information practices with

連結並應置於所有應輸入個資欄位之緊密接連處。以一般閱聽眾為導向，但另闢兒童區塊之網站或線上服務，其營運者應於兒童區塊之首頁或登入頁面，另以連結告知兒童個資之處理方式。為求完備，網站或線上服務，於線上告知個資處理方式，應載明下列事項：

- 1) 透過該網站或線上服務，蒐集或維護得自於兒童之個資之所有營運者，其名稱、地址、電話號碼與電子郵件位址。營運者得以其中一人為代表，回應親權人對線上隱私處理準則與兒童個資利用方式之詢問，但應詳列代表者之名稱、地址、電話號碼與電郵位址，且他營運者之名稱，仍應表列於該公告中；

- 2) 說明營運者自兒童所蒐集之資料為何，包括該網站或線上服務，是否允許兒童自己公開其個資，以及營運者如何利用或揭露該類資料；

- 3) 親權人得檢視或刪除得自於兒童之個資，拒絕再行蒐集或利用，並應如何對營運者提出。

regard to children on the home or landing page or screen of its Web site or online service, and, at each area of the Web site or online service where personal information is collected from children. The link must be in close proximity to the requests for information in each such area. An operator of a general audience Web site or online service that has a separate children's area must post a link to a notice of its information practices with regard to children on the home or landing page or screen of the children's area. To be complete, the online notice of the Web site or online service's information practices must state the following:

- (1) The name, address, telephone number, and email address of all operators collecting or maintaining personal information from children through the Web site or online service. *Provided that:* The operators of a Web site or online service may list the name, address, phone number, and email address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the Web site or online service are also listed in the notice;
- (2) A description of what information the operator collects from children, including whether the Web site or online service enables a child to make personal information publicly available; how the operator uses such information; and, the operator's disclosure practices for such information; and
- (3) That the parent can review or have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

§ 312.5 親權人同意。

a) 一般性規定。

- 1) 營運者於蒐集、利用、或揭露得自於兒童之個資前，應取得親權人之可驗證同意。親權人此前同意之方式有實質變化時，亦同。

- 2) 營運者應使親權人得同意並利用得自於兒童之個資，但不同意對第三人揭露。

b) 取得親權人之可驗證同意。

- 1) 營運者應考量現行可能技術，善盡合理努力，以取得親權人之可驗證同意。其取得同意之方法，應依現行可能技術，合理審酌，以確保同意者為親權人。

- 2) 符合於本段規定之現行方法包括：
 - i) 提供親權人應自為簽名之格式，再以郵寄、傳真、或掃描方式，回傳於營運者；

 - ii) 要求親權人於涉及金錢交易時，使用如信用卡、轉帳卡或可提供帳戶持有人單筆交易通知之其他線上支付工具；

§ 312.5 Parental consent.

(a) General requirements.

- (1) An operator is required to obtain verifiable parental consent before any collection, use, or disclosure of personal information from children, including consent to any material change in the collection, use, or disclosure practices to which the parent has previously consented.
- (2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

(b) Methods for verifiable parental consent.

- (1) An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.
- (2) Existing methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include:
 - (i) Providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or electronic scan;
 - (ii) Requiring a parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;

- iii) 由親權人撥打免付費電話，並由專業人員回應；
 - iv) 由親權人透過視訊會議與專業人員連繫；
 - v) 查驗親權人之官方身分證明文件，核對相關資料庫，並於確認後，立即自營運者紀錄中刪除。
 - vi) 營運者未依第 312.2 條定義「揭露」得自於兒童之個資者，得以電子郵件併與其他步驟，確認同意者為親權人。所謂其它步驟包括：於親權人告知同意後，寄送確認信函，或由親權人處取得郵寄地址或電話號碼，再以信件或電話確認。採用此方法之營運者，應告知親權人得否認先前信件中所為之同意。
- 3) 避風港方案許可之親權人同意方法。委員會依第 312.11 條許可之避風港方案，得允許加入之營運者，採行前款所未列舉，但符合本條 b 段第 1 款意旨之親權人同意方式。

- (iii) Having a parent call a toll-free telephone number staffed by trained personnel;
 - (iv) Having a parent connect to trained personnel via video-conference;
 - (v) Verifying a parent's identity by checking a form of government-issued identification against databases of such information, where the parent's identification is deleted by the operator from its records promptly after such verification is complete; or
 - (vi) Provided that, an operator that does not “disclose” (as defined by §312.2) children's personal information, may use an email coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: Sending a confirmatory email to the parent following receipt of consent, or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier email.
- (3) Safe harbor approval of parental consent methods. A safe harbor program approved by the Commission under §312.11 may approve its member operators' use of a parental consent method not currently enumerated in paragraph (b)(2) of this section where the safe harbor program determines that such parental consent method meets the requirements of paragraph (b)(1) of this section.

c) 親權人事前同意之例外。於蒐集、利用、或揭露得自於兒童之個資前，除有下列情狀外，應取得親權人之可驗證同意：

- 1) 蒐集親權人或兒童之姓名或線上連絡資料，僅用以告知，是為取得第 312.4 條 c 段第 1 款規定之親權人同意。營運者於蒐集個資日後之合理時間內，未得同意者，應自其紀錄中刪除；
- 2) 蒐集親權人線上連絡資料，是為自願性告知或事後通知，兒童加入非為蒐集、利用或揭露個資之網站或線上服務。若此，親權人線上連絡資料，不得為其他任何目的而受利用或揭露。營運者應考量現行可能技術，善盡合理努力，以確保親權人得依第 312.4 條 c 段第 2 款受告知；
- 3) 蒐集兒童之線上連絡資料，僅止於一次性直接回應兒童之特定要求，其個資非用於再次連絡或其他目的，亦不為揭露，並於回應該童後，立即自營運者之紀錄中刪除；
- 4) 蒐集兒童與親權人之線上連絡資料，是為非一次性直接回應兒童之特定要求，且該類資料不因其他目的，而受利

- (c) Exceptions to prior parental consent. Verifiable parental consent is required prior to any collection, use, or disclosure of personal information from a child except as set forth in this paragraph:
- (1) Where the sole purpose of collecting the name or online contact information of the parent or child is to provide notice and obtain parental consent under §312.4(c)(1). If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;
 - (2) Where the purpose of collecting a parent's online contact information is to provide voluntary notice to, and subsequently update the parent about, the child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in §312.4(c)(2);
 - (3) Where the sole purpose of collecting online contact information from a child is to respond directly on a one-time basis to a specific request from the child, and where such information is not used to re-contact the child or for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request;
 - (4) Where the purpose of collecting a child's and a parent's online contact information is to respond directly more than once to

用、揭露或整併於該童之其他資料。若此，營運者應考量現行可能技術，善盡合理努力，以確保親權人得依第 312.4 條 c 段第 3 款受告知。無法投遞者，難謂營運者已盡合理努力；

- 5) 蒐集兒童與親權人之姓名及線上連絡資料，是為保護兒童安全，且該類資料不因其他無關兒童安全之目的，而受利用或揭露。若此，營運者應考量現行可能技術，善盡合理努力，依第 312.4 條 c 段第 4 款告知親權人；

- 6) 出於下列各款之目的，蒐集兒童之姓名與線上連絡資料：
 - i) 保全網站或線上服務之安全性或完整性；

 - ii) 防免法律責任；

 - iii) 配合司法程序；

 - iv) 依其他法規，為執法機關或公安事件之調查，提供個資，且該類資料不得用於其他任何目的；

the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in §312.4(c)(3). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;

- (5) Where the purpose of collecting a child's and a parent's name and online contact information, is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to provide a parent with notice as described in §312.4(c)(4);
- (6) Where the purpose of collecting a child's name and online contact information is to:
 - (i) Protect the security or integrity of its Web site or online service;
 - (ii) Take precautions against liability;
 - (iii) Respond to judicial process; or
 - (iv) To the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety; and where such information is not be used for any other purpose;

- 7) 所蒐集之個資，僅止於持久性用戶身分，且其目的限於支援網站或線上服務之內部營運。若此，則營運者免於第312.4條所規定之告知義務；

- 8) 第312.2條第2款關於兒童導向網站或線上服務定義所指之營運者，其所蒐集個資，僅止於持久性用戶身分，而該用戶確實與營運者互動，且此前註冊之資料，顯示其非為兒童。若此，則營運者免於第312.4條所規定之告知義務。

§ 312.6 親權人檢視兒童提供個資之權利

- a) 親權人因兒童對網站或線上服務提供個資，而提出要求者，其營運者應：
 - 1) 對親權人說明，其自兒童所蒐集個資之特定型態或類別，諸如姓名、地址、電話號碼、電郵位址、嗜好、及課外活動等；

 - 2) 提供親權人隨時拒絕營運者再行利用，或於日後再行蒐集得自於兒童之個資，並要求刪除之；

 - 3) 以不違反他法者為限，就自得於兒童之任何個資，提供親

- (7) Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the Web site or online service. In such case, there also shall be no obligation to provide notice under §312.4; or
- (8) Where an operator covered under paragraph (2) of the definition of Web site or online service directed to children in §312.2 collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child. In such case, there also shall be no obligation to provide notice under §312.4.

§ 312.6 Right of parent to review personal information provided by a child.

- (a) Upon request of a parent whose child has provided personal information to a Web site or online service, the operator of that Web site or online service is required to provide to that parent the following:
 - (1) A description of the specific types or categories of personal information collected from children by the operator, such as name, address, telephone number, email address, hobbies, and extracurricular activities;
 - (2) The opportunity at any time to refuse to permit the operator's further use or future online collection of personal information from that child, and to direct the operator to delete the child's personal information; and
 - (3) Notwithstanding any other provision of law, a means of

權人檢視之方法。營運者之方法應：

- i) 依現行可能技術，確保請求者為該兒童之親權人。
 - ii) 不得以非必要之負擔，加諸於親權人。
- b) 營運者與其代理人出於善意，且依合理程序，依本條規定揭露個資者，不違反聯邦法律或州法。
- c) 除有第 312.7 條之情形外，親權人依本條 a 段第 2 款拒絕營運者再行利用或蒐集得自於兒童之個資，或要求刪除者，營運者得終止對該兒童提供服務。

§ 312.7 禁止以蒐集個資作為兒童加入之條件

營運者不得以加入遊戲、提供獎項或其他活動為由，使兒童揭露參與活動合理必要範疇外之個資。

§ 312.8 得自於兒童個資之機密性、安全性、及完整性。

營運者應建立且維護合理程序，使得自於兒童之個資，得保其機密性、安全性與完整性。營運者，僅得對確信能保護該類個資機密、安全與完整性之服務提供者或第三人，以合理步驟釋出兒童個資。

reviewing any personal information collected from the child. The means employed by the operator to carry out this provision must:

- (i) Ensure that the requestor is a parent of that child, taking into account available technology; and
 - (ii) Not be unduly burdensome to the parent.
- (b) Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.
- (c) Subject to the limitations set forth in §312.7, an operator may terminate any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator's further use or collection of personal information from his or her child or has directed the operator to delete the child's personal information.

§ 312.7 Prohibition against conditioning a child's participation on collection of personal information.

An operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.

§ 312.8 Confidentiality, security, and integrity of personal information collected from children.

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must also take reasonable steps to

§ 312.9 本部分之執法。

除 1998 兒童線上隱私保護法第 6503 條至第 6505 條外，違反同法第 6502 條 a 段授權訂定法規者，視同聯邦貿易委員會法第 18 條 (a)(1)(B)（即美國法典第 15 編第 57 條 a(a)(1)(B)）所定義之不正或詐欺行為。

§ 312.10 數據之保留與刪除應遵循事項

網站或線上服務營運者，欲保留其透過網路所蒐集、得自於兒童之個資，限於達成其目的之合理必要期間內。營運者應以合理方式，刪除該類資料，以防刪除過程中，受有未經授權之讀取或利用。

§ 312.11 避風港方案。

- a) 概說。產業團體或他人，得以其自律方案指導原則（避風港方案），向委員會聲請許可。其聲請應提交委員會秘書處，並於聯邦政府公報發布，以尋求公眾評議。委員會應於收件後一百八十日內，發布書面裁定。

release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner.

§ 312.9 Enforcement.

Subject to sections 6503 and 6505 of the Children's Online Privacy Protection Act of 1998, a violation of a regulation prescribed under section 6502 (a) of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

§ 312.10 Data retention and deletion requirements.

An operator of a Web site or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

§ 312.11 Safe harbor programs.

- (a) In general. Industry groups or other persons may apply to the Commission for approval of self-regulatory program guidelines (“safe harbor programs”). The application shall be filed with the Commission's Office of the Secretary. The Commission will publish in the Federal Register a document seeking public comment on the application. The Commission shall issue a written determination within 180 days of the filing of the application.

b) 自律指導原則准否之準則。避風港方案之提案，應合於下列之執行標準：

- 1) 其規定應確保參與之營運者，依自律指導原則，對兒童提供不低於第 312.2 條至第 312.8 條與第 312.10 條所規定程度之保護；
- 2) 應以有效而具強制性之機制，獨立評量營運者對自律指導原則之遵循程度。該機制至少應依年度執行，就避風港方案內容全面檢視每一營運者之個資政策、實行方式與呈現結果。本款規定之評量機制，得以認證標章等獨立執行計畫為之；
- 3) 參與之營運者違反自律指導原則者，應受違紀處分。其執行標準得以下列方式為之：
 - i) 發布自律指導原則之產業團體，就營運者違紀所採取之行動，應強制公開提報。
 - ii) 消費者救濟；
 - iii) 營運者違反自律指導原則時，應自願繳納相當金額，歸於財政部之產業導向專案；

- (b) Criteria for approval of self-regulatory program guidelines. Proposed safe harbor programs must demonstrate that they meet the following performance standards:
- (1) Program requirements that ensure operators subject to the self-regulatory program guidelines (“subject operators”) provide substantially the same or greater protections for children as those contained in §§312.2 through 312.8, and 312.10.
 - (2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the self-regulatory program guidelines. At a minimum, this mechanism must include a comprehensive review by the safe harbor program, to be conducted not less than annually, of each subject operator's information policies, practices, and representations. The assessment mechanism required under this paragraph can be provided by an independent enforcement program, such as a seal program.
 - (3) Disciplinary actions for subject operators' non-compliance with self-regulatory program guidelines. This performance standard may be satisfied by:
 - (i) Mandatory, public reporting of any action taken against subject operators by the industry group issuing the self-regulatory guidelines;
 - (ii) Consumer redress;
 - (iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the self-regulatory guidelines;

- iv) 就營運者違反自律指導原則之操作模式或行為，通報委員會；
 - v) 具同等效力之其他行為。
- c) 自律指導原則許可之聲請。其聲請提案應備下列文件：
- 1) 詳細說明聲請人之企業模式，以及就參與方案營運者之適格性，進行初始與後續評量之技術能力與機制；
 - 2) 聲請許可之指導原則全文與相關附件；
 - 3) 詳細比對第 312.2 條至第 312.8 條與第 312.10 條之各項規定，與對應之指導原則條款；
 - 4) 詳細說明下列事項：
 - i) 該自律指導原則與相應之評量機制，何以合於本部分規定；
 - ii) 該評量機制及依本條 b 段第 2 款與第 3 款設計之紀律規定，如何有效執行本部分規定。
- d) 通報與紀錄保存之規定。許可通過之避風港方案應：

- (iv) Referral to the Commission of operators who engage in a pattern or practice of violating the self-regulatory guidelines; or
 - (v) Any other equally effective action.
- (c) Request for Commission approval of self-regulatory program guidelines. A proposed safe harbor program's request for approval shall be accompanied by the following:
- (1) A detailed explanation of the applicant's business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program;
 - (2) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;
 - (3) A comparison of each provision of §§312.2 through 312.8, and 312.10 with the corresponding provisions of the guidelines; and
 - (4) A statement explaining:
 - (i) How the self-regulatory program guidelines, including the applicable assessment mechanisms, meet the requirements of this part; and
 - (ii) How the assessment mechanisms and compliance consequences required under paragraphs (b)(2) and (b)(3) provide effective enforcement of the requirements of this part.
- (d) Reporting and recordkeeping requirements. Approved safe harbor programs shall:

- 1) 自 2014 年 7 月 1 日起，每年對委員會提交報告，其內容至少應包括：依本條 b 段第 2 款所為獨立評估之綜合結果，依 b 段第 3 款對營運者採取違紀處分之始末，以及依第 312.5 條 b 段第 3 款是否許可營運者自為親權同意機制之判斷標準；

- 2) 委員會要求額外訊息者，應即回應；

- 3) 下列文件應保留至少三年，以備委員會考查或命令製作複本：
 - i) 消費者認營運者有違指導原則所為之申訴；

 - ii) 營運者受違紀處分之紀錄；

 - iii) 依本條 b 段第 2 款規定，就營運者之遵循程度所為獨立評估之結果。

- e) 自律指導原則許可後之修訂。許可後之避風港方案再行修正者，應提交委員會，依本條 c 段第 2 款規定，以初始審查之許可準則為之。其依 c 段第 4 款所為之陳述，應說明修正提案對於現行指導原則條款，有何影響。

- (1) By July 1, 2014, and annually thereafter, submit a report to the Commission containing, at a minimum, an aggregated summary of the results of the independent assessments conducted under paragraph (b)(2) of this section, a description of any disciplinary action taken against any subject operator under paragraph (b)(3) of this section, and a description of any approvals of member operators' use of a parental consent mechanism, pursuant to §312.5(b)(3);
- (2) Promptly respond to Commission requests for additional information; and
- (3) Maintain for a period not less than three years, and upon request make available to the Commission for inspection and copying:
 - (i) Consumer complaints alleging violations of the guidelines by subject operators;
 - (ii) Records of disciplinary actions taken against subject operators; and
 - (iii) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2) of this section.
- (e) Post-approval modifications to self-regulatory program guidelines. Approved safe harbor programs must submit proposed changes to their guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(2) of this section. The statement required under paragraph (c)(4) of this section must describe how the proposed changes affect existing provisions of the guidelines.

- f) 自律指導原則之撤銷。依本條核准之自律指導原則，委員會得於認有違反本部分規定之情形時，撤銷之。本部分修正案發布前核准之避風港方案，未於 2013 年 3 月 1 日前提交依新法規定所為之修正，應撤銷其指導原則。

- g) 營運者之參與避風港方案。營運者遵循委員會核准之避風港方案指導原則者，視為合於第 312.2 條至第 312.8 條及第 312.10 條規定。營運者或有違反本部分規定者，委員會考量應否發動偵查或採取法律行動，應衡諸其加入方案後之作為，是否就其違紀而為補正，及其違紀是否該當本條 b 段規定之處分。

【2013年1月17日發布，載於聯邦公報，2013年12月20日修正，載於聯邦公報】

§ 312.12 自願提交委員會准否之程序

- a) 親權人同意之方式。利害關係人得以書面聲請委員會，許可第 312.5 條 b 段規定以外親權人同意之方式。當事人應說明理由，且分析其聲請合於本法第 312.5 條 b 段第 1 款意旨之理由。其聲請應提交委員會祕書處，並於聯邦政府公報發布，以

- (f) Revocation of approval of self-regulatory program guidelines. The Commission reserves the right to revoke any approval granted under this section if at any time it determines that the approved self-regulatory program guidelines or their implementation do not meet the requirements of this part. Safe harbor programs that were approved prior to the publication of the Final Rule amendments must, by March 1, 2013, submit proposed modifications to their guidelines that would bring them into compliance with such amendments, or their approval shall be revoked.
- (g) Operators' participation in a safe harbor program. An operator will be deemed to be in compliance with the requirements of §§312.2 through 312.8, and 312.10 if that operator complies with Commission-approved safe harbor program guidelines. In considering whether to initiate an investigation or bring an enforcement action against a subject operator for violations of this part, the Commission will take into account the history of the subject operator's participation in the safe harbor program, whether the subject operator has taken action to remedy such non-compliance, and whether the operator's non-compliance resulted in any one of the disciplinary actions set forth in paragraph (b)(3).

[78 FR 4008, Jan. 17, 2013, as amended at 78 FR 76986, Dec. 20, 2013]

§312.12 Voluntary Commission Approval Processes.

- (a) Parental consent methods. An interested party may file a written request for Commission approval of parental consent methods not currently enumerated in §312.5(b). To be considered for approval, a party must provide a detailed description of the proposed

尋求公眾評議。委員會應於收件後一百二十日內發佈書面裁定。

- b) 支援網站或線上服務之內部營運。利害關係人得以書面聲請委員會，許可擴張支援內部營運之定義。當事人應說明理由，且分析其於兒童線上隱私之潛在效應。其聲請應提交委員會秘書處，並於聯邦政府公報發佈，以尋求公眾評議。委員會應於收件後一百二十日內，發佈書面裁定。

§ 312.13 可分性

本部分各條款得彼此獨立，分別行使。縱一部停止適用或歸於無效，委員會仍欲他部行使無礙。。

parental consent methods, together with an analysis of how the methods meet §312.5(b)(1). The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the Federal Register a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request; and

- (b) Support for internal operations of the Web site or online service. An interested party may file a written request for Commission approval of additional activities to be included within the definition of support for internal operations. To be considered for approval, a party must provide a detailed justification why such activities should be deemed support for internal operations, and an analysis of their potential effects on children's online privacy. The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the Federal Register a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request.

§312.13 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

美國消費者評論公平法

本法乃為禁止以特定形式之契約限制消費者交流關於州際商業交易契約標的商品或服務之權利，並為其他目的。

本法係由美國眾議院及參議院所制定。

第 1 節 簡稱

本法得稱為「2016 消費者評論公平法」。

第 2 節 消費者評論保障

(a) 定義—於本條中：

(1) 委員會：「委員會」係指聯邦交易委員會。

(2) 評論：「評論」係指任一由標準化契約當事人之一方，以書寫、口述或插畫、評鑑、或其他類似等方式，包括以電子形式，分析商品、服務、或該標準化契約當事人之一方之行為。

(3) 標準化契約：

(A) 原則上除本款第 (B) 項規定外，「標準化契約」係指一契約包含之標準化條款—

Consumer Review Fairness Act of 2016

To prohibit the use of certain clauses in form contracts that restrict the ability of a consumer to communicate regarding the goods or services offered in interstate commerce that were the subject of the contract, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consumer Review Fairness Act of 2016".

SEC. 2. CONSUMER REVIEW PROTECTION.

(a) Definitions.--In this section:

- (1) Commission.--The term "Commission" means the Federal Trade Commission.
- (2) Covered communication.--The term "covered communication" means a written, oral, or pictorial review, performance assessment of, or other similar analysis of, including by electronic means, the goods, services, or conduct of a person by an individual who is party to a form contract with respect to which such person is also a party.
- (3) Form contract.--
 - (A) In general.--Except as provided in subparagraph (B), the term "form contract" means a contract with standardized terms--

- (i) 係由某人於銷售或租賃其商品或服務中所使用；
且
- (ii) 該契約當事人之一方實際上無法協商該標準化條款內容。

(B) 例外：「標準化契約」並未包括僱用關係或獨立承攬人契約。

(4) 插畫：包括圖片、照片、影像、圖解與標誌等。

(b) 限制消費者評論之無效契約一

(1) 原則上，除本條第 (2) 與第 (3) 項規定外，標準化契約之條款應屬自始無效，若該條款：

(A) 禁止或限制標準化契約當事人之一方參與評論；

(B) 對於參與評論之標準化契約當事人之一方課以懲罰或收費；或

(C) 除有得使用該內容之非專屬授權外，移轉或要求參與評論之標準化契約當事人之一方移轉予他人於該評論或回饋內容中之任何智慧財產權，此為該契約當事人原本得合法評論關於該他人或其提供之商品或服務。

- (i) used by a person in the course of selling or leasing the person's goods or services; and
 - (ii) imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.
- (B) Exception.--The term "form contract" does not include an employer-employee or independent contractor contract.
- (4) Pictorial.--The term "pictorial" includes pictures, photographs, video, illustrations, and symbols.
- (b) Invalidity of Contracts That Impede Consumer Reviews.--
 - (1) In general.--Except as provided in paragraphs (2) and (3), a provision of a form contract is void from the inception of such contract if such provision--
 - (A) prohibits or restricts the ability of an individual who is a party to the form contract to engage in a covered communication;
 - (B) imposes a penalty or fee against an individual who is a party to the form contract for engaging in a covered communication; or
 - (C) transfers or requires an individual who is a party to the form contract to transfer to any person any intellectual property rights in review or feedback content, with the exception of a non-exclusive license to use the content, that the individual may have in any otherwise lawful covered communication about such person or the goods or services provided by such person.

(2) 解釋規則：第 (1) 項規定不得視為影響：

(A) 任何依法（包括行政命令）要求之保密義務；

(B) 任何誹謗、書面誹謗或口頭誹謗之民事請求權，或其他類似之請求權；

(C) 契約任一方得除去或拒絕公開於網路上由該契約方所擁有、經營或控制之網站或網頁上，任何評論內容之權利，若該內容：

(i) 包含個人資訊或他人之照片，或為誹謗、騷擾、侮辱、猥褻、粗俗、色情，或有關種族、性別、性傾向、族群或其他個人固有特質之不當內容；

(ii) 與該契約方之網路網站或網頁上所提供之商品或服務無關；或

(iii) 明顯錯誤或誤導；或

(D) 若該影像或影片為契約一方之受僱人或某一商業實體之獨立承攬人僅為其商業目的所製作，該契約方基於該影像或影片創作所有權得成立條款與條件之權利。

(3) 例外：第 (1) 項規定不應適用於標準化契約之條款為禁止公開、提供、或保留經營線上消費者評論或意見之人或公司刪除下述內容之權利：

- (2) Rule of construction.--Nothing in paragraph (1) shall be construed to affect--
- (A) any duty of confidentiality imposed by law (including agency guidance);
 - (B) any civil cause of action for defamation, libel, or slander, or any similar cause of action;
 - (C) any party's right to remove or refuse to display publicly on an Internet website or webpage owned, operated, or otherwise controlled by such party any content of a covered communication that--
 - (i) contains the personal information or likeness of another person, or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
 - (ii) is unrelated to the goods or services offered by or available at such party's Internet website or webpage; or
 - (iii) is clearly false or misleading; or
 - (D) a party's right to establish terms and conditions with respect to the creation of photographs or video of such party's property when those photographs or video are created by an employee or independent contractor of a commercial entity and solely intended for commercial purposes by that entity.
- (3) Exceptions.--Paragraph (1) shall not apply to the extent that a provision of a form contract prohibits disclosure or submission of, or reserves the right of a person or business that hosts online consumer reviews or comments to remove--

- (A) 營業秘密或自他人所取得且被視為特許保密或機密之商業或財務資訊；
 - (B) 人事與醫療檔案等資訊，其揭露將對個人隱私造成不合理之明顯侵害；
 - (C) 為執法目的所保存之紀錄或資訊，其揭露將對個人隱私造成不合理之明顯侵害；
 - (D) 內容不合法或符合第 (2) 項第 (C) 款之規定；或
 - (E) 內容包含任何電腦病毒、電腦蠕蟲或其他對於電腦編碼、處理、程式、應用或檔案具潛在威脅等。
- (c) 禁止—任何人提出之標準化契約，若包含依第 (b) 條視為無效之條款，應為違法。
- (d) 委員會執法—
- (1) 不公平或詐欺行為或實踐：違反第 (c) 條者，依據聯邦交易法第 5 條第 (a) 項第 (2) 款 (15 U.S.C. 45(a)(2)) 之授權，委員會得將該行為視為違反聯邦交易法第 5 條第 (a) 項第 (1) 款第 (B) 款 (15 U.S.C. 57a(a)(1)(B)) 所定義之不公平或詐欺行為或實踐。
 - (2) 委員會之職權：
 - (A) 原則上：委員會執行本條之方式、管轄權、權限與責

- (A) trade secrets or commercial or financial information obtained from a person and considered privileged or confidential;
 - (B) personnel and medical files and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
 - (C) records or information compiled for law enforcement purposes, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
 - (D) content that is unlawful or otherwise meets the requirements of paragraph (2)(C); or
 - (E) content that contains any computer viruses, worms, or other potentially damaging computer code, processes, programs, applications, or files.
- (c) Prohibition.--It shall be unlawful for a person to offer a form contract containing a provision described as void in subsection (b).
- (d) Enforcement by Commission.--
- (1) Unfair or deceptive acts or practices.--A violation of subsection (c) by a person with respect to which the Commission is empowered under section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).
- (2) Powers of commission.--
- (A) In general.--The Commission shall enforce this section in

任，應與執行聯邦交易法所得適用之全部或一部條款及規定相同。

(B) 特權與豁免：任何違反本條規定者，應適用聯邦交易法 (15 U.S.C. 41 et seq.) 規定之裁罰及特權與豁免規定。

(e) 州執法—

(1) 授權：依據第 (2) 項規定，如該州之司法部長有合理相信，該州居民之權益遭任何人以符合並違反第 (c) 條規定之行為威脅或不利影響時，該州之司法部長得於合適之美國地方法院，以國家監護人(*parens patriae*)之身分，為該州之居民提起民事訴訟以資救濟。

(2) 聯邦交易委員會之權利：

(A) 通知聯邦交易委員會：

(i) 原則上：除第 (iii) 款規定外，州司法部長若欲向第 (d) 條第 (1) 項規定之人，依第 (1) 項之規定提起民事訴訟時，應以書面通知委員會。

the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

(B) Privileges and immunities.--Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(e) Enforcement by States.--

(1) Authorization.--Subject to paragraph (2), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (c) in a practice that violates such subsection, the attorney general of the State may, as *parens patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

(2) Rights of federal trade commission.—

(A) Notice to federal trade commission.--

(i) In general.--Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating the civil action against a person described in subsection (d)(1).

(ii) 內容：前項所要求有關之該民事訴訟通知，應包含申請提起該民事訴訟文件之副本。

(iii) 例外：若州司法部長無法於提起依第 (1) 項規定之民事訴訟前，提供第 (i) 款所要求之通知，該州司法部長應於民事訴訟開始後立即通知委員會。

(B) 聯邦交易委員會介入：委員會得一

(i) 介入任何州司法部長依據 第(1) 項所對第 (d) 條第 (1) 項規定之人提起之民事訴訟；並且

(ii) 於介入時：

(I) 聽取民事訴訟中所有提出之事項；及

(II) 為民事訴訟之判決提起上訴。

(3) 調查權限：本項之規定不得視為阻礙州司法部長行使其依照州法授權所得啟動調查之權限、主持宣誓和陳述事實、要求證人出庭或製作書面等其他證據。

(4) 聯邦交易委員會之預防措施：若聯邦交易委員會對於違反第 (c) 條者提起民事或行政訴訟，於該訴訟進行期間，州

- (ii) Contents.--The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.
 - (iii) Exception.--If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.
- (B) Intervention by federal trade commission.--The Commission may--
- (i) intervene in any civil action brought by the attorney general of a State under paragraph (1) against a person described in subsection (d)(1); and
 - (ii) upon intervening--
 - (I) be heard on all matters arising in the civil action; and
 - (II) file petitions for appeal of a decision in the civil action.
- (3) Investigatory powers.--Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.
- (4) Preemptive action by federal trade commission.--If the Federal Trade Commission institutes a civil action or an administrative

司法部長得不對於該訴訟中之任何被告，提起第（1）項規定之民事訴訟。

(5) 審判地；訴訟書狀送達：

(A) 審判地：任何依據第（1）項所提起之訴訟應由：

(i) 符合美國法典第 28 篇第 1391 章 (section 1391 of title 28, United States Code) 有關審判地規定之美國地方法院；或

(ii) 其他具有合法管轄權之法院。

(B) 訴訟書狀送達：依據第（1）項所提起之訴訟中，訴訟書狀送達之區域應為被告：

(i) 為該區之居民；或

(ii) 得被找到之處。

(6) 由州之其他官員所提起之訴訟：

(A) 原則上：除依據第（1）項得由州司法部長提起之民事訴訟外，若經由該州之授權，其消費者保護官員亦得提起第（1）項規定之民事訴訟，且亦應遵守與州司法部長提起該訴訟相同之規定與限制。

action with respect to a violation of subsection (c), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

(5) Venue; service of process.--

(A) Venue.--Any action brought under paragraph (1) may be brought in--

- (i) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code; or
- (ii) another court of competent jurisdiction.

(B) Service of process.--In an action brought under paragraph (1), process may be served in any district in which the defendant--

- (i) is an inhabitant; or
- (ii) may be found.

(6) Actions by other state officials.--

(A) In general.--In addition to civil actions brought by attorneys general under paragraph (1), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

- (B) 保留條款：本項之規定不得視為限制任何經授權之州官員，於州法院中開啟或接續任何之民事或刑事訴訟。
- (f) 對企業之教育與推廣：於本法施行之 60 日內，委員會應開始執行教育與推廣，提供企業非拘束性之遵法最佳方式。
- (g) 與州請求權之關聯：本節不影響任何人依據現行或未來之州法，所得提起之任何請求權。
- (h) 保留條款：本節之規定並未限制、減損或取代聯邦交易法或任何其他聯辦法規。
- (i) 生效日期：除下述例外，本節自制定時開始施行：
- (1) 第 (b) 與第 (c) 條應適用於本法施行後 90 日以上生效之契約；且
 - (2) 第 (d) 與第 (e) 條應適用於本法施行後 1 年以上生效之契約。

於 2016 年 12 月 14 日批准

- (B) Savings provision.--Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.
- (f) Education and Outreach for Businesses.--Not later than 60 days after the date of the enactment of this Act, the Commission shall commence conducting education and outreach that provides businesses with non-binding best practices for compliance with this Act.
- (g) Relation to State Causes of Action.--Nothing in this section shall be construed to affect any cause of action brought by a person that exists or may exist under State law.
- (h) Savings Provision.--Nothing in this section shall be construed to limit, impair, or supersede the operation of the Federal Trade Commission Act or any other provision of Federal law.
- (i) Effective Dates.--This section shall take effect on the date of the enactment of this Act, except that--
- (1) subsections (b) and (c) shall apply with respect to contracts in effect on or after the date that is 90 days after the date of the enactment of this Act; and
 - (2) subsections (d) and (e) shall apply with respect to contracts in effect on or after the date that is 1 year after the date of the enactment of this Act.

Approved December 14, 2016.

歐盟一般資料保護規則

2016年4月27日 歐洲議會與理事會通過 第2016/679號規則
針對自然人個人資料處理與境外傳輸之保護，並廢除資料保護
指令(95/46/EC)
(內容與EEA相關)

歐盟依據歐盟基本條約第16條，

本於歐盟執委會之建議，
將本立法草案遞交予各國議會，
歐盟經濟與社會委員會之意見，

區域委員會的意見，
並依據通常的立法程序，

鑒於：

- (1) 保護個人資料處理為自然人之基本權利。歐盟基本權利憲章（下稱「憲章」）第8條第(1)項及歐盟基本條約（下稱歐盟條約）第16條第(1)項規定，每人皆有獲得保護個人資料之權利。
- (2) 有關保護自然人處理個人資料之原則與規範，無論其國籍或居住地，皆應尊重其基本權利與自由，特別係關於保護其個人資料之權利。歐盟個資規則旨在實現區域內之自由、安全、正義與經濟聯盟，並促進經濟與社會進步，並加強內部市場經濟匯

**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)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the ‘Charter’) and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her.
- (2) The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data.

流，與促進自然人之福祉。

- (3) 歐洲議會及理事會之資料保護指令(95/46/EC)旨在調和處理進程中，保護自然人之基本權利和自由，並確保成員國之間自由流通個人資料。
- (4) 個人資料之處理設計應以人為本。保護個人資料之權利並非絕對之權利；必須考慮其於社會中之功能，並依照比例原則與其他基本權保障權衡。歐盟個資規則尊重所有基本權利，並遵守歐盟條約中所載且憲章所承認之自由與原則，尤其尊重私人和家庭生活、家庭和交流、保護個人資料、思想、良心與信仰自由、言論自由、資訊自由、發展業務自由、接受有效之救濟和公平審判之權利，以及文化、宗教和語言多樣性。
- (5) 內部市場運作促使經濟和社會整合，導致大幅增加個人資料跨境傳輸。政府與私人之間交換個人資料，包括自然人、組織和歐盟境內企業皆有所增加。成員國之政府基於歐盟法律要求進行合作並交換個人資料，以便履行其職責或代表另一成員國之政府執行其職責。

This Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and to the well-being of natural persons.

- (3) Directive 95/46/EC of the European Parliament and of the Council seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States.
- (4) The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.
- (5) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border flows of personal data. The exchange of personal data between public and private actors, including natural persons, associations and undertakings across the Union has increased. National authorities in the Member States are being called upon by Union law to cooperate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State.

- (6) 技術革新和全球化對保護個人資料帶來新的挑戰。收集和分享個人資料之規模亦大幅增加。技術允許私人公司及政府當局以前所未有之規模利用個人資料，以便執行任務。自然人越來越常全面地公開個人資料。科技已轉變經濟與社會生活，且應進一步促進個人資料於歐盟內自由傳輸，並進而轉移至第三國家和國際組織，同時確保高標準之個人資料保護。
- (7) 有鑑於建立信任對於內部市場中數位經濟發展之重要性，這些發展需要歐盟以堅實且連貫之保護個人資料架構，以及有利之執法作為支持。自然人應得掌控自己之個人資料。並加強法律上及實務上自然人、經濟實業者和政府機構之確定性。
- (8) 若歐盟個資規則之規定對於成員國之法律產生規範或限制，則成員國得於必要時，為維持其法律一致性並使該法律適用之對象得以理解該國法律規定，應盡可能將歐盟個資規則之內容納入其國內法中。
- (9) 95/46/EC 資料保護指令之目的與原則仍未變更，惟其未能防免歐盟內執行資料保護過於片段、法律上不確定性，或廣泛大眾認為對於自然人之保護風險仍然嚴重，尤其係於網路活動中。在成員國處理個人資料方面，保護自然人之權利和自由，特別係針對個人資料權利保障程度之差異，可能將妨礙個人資料於整個歐盟內之自由流通。因此，這些差異可能造成歐盟追求經濟活動發展之障礙，並扭曲競爭及阻礙各當局履行歐盟法所賦予其之責任。而如此之保護上差異，係由於 95/46/EC 資料保護

- (6) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of the collection and sharing of personal data has increased significantly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Natural persons increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and should further facilitate the free flow of personal data within the Union and the transfer to third countries and international organisations, while ensuring a high level of the protection of personal data.
- (7) Those developments require a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance of creating the trust that will allow the digital economy to develop across the internal market. Natural persons should have control of their own personal data. Legal and practical certainty for natural persons, economic operators and public authorities should be enhanced.
- (8) Where this Regulation provides for specifications or restrictions of its rules by Member State law, Member States may, as far as necessary for coherence and for making the national provisions comprehensible to the persons to whom they apply, incorporate elements of this Regulation into their national law
- (9) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the implementation of data protection across the Union, legal uncertainty or a widespread public perception that there are significant risks to the protection of natural persons, in particular with regard to online activity. Differences in the level of protection of the rights and freedoms of natural persons, in particular the right to the protection of personal data, with regard to the processing of personal data in the Member States may prevent

指令不一致之實施及適用所致。

- (10) 為確保自然人受一致且高標準之保護，並消弭歐盟內個人資料流通之障礙，於處理此等資料時，對自然人權利與自由之保護程度於所有成員國中應為均等。於歐盟境內，應確保處理個人資料時，自然人基本權利與自由之保護規則均為一致且同等適用。關於處理個人資料以符合法律義務時，為公共利益履行任務或授權賦予監督機關履行其職務，成員國應維持或納入國內法規中，以進一步明確規定歐盟個資規則之適用範圍。於結合執行 95/46/EC 資料保護指令之總則及水平資料保護規範時，於需進一步具體規定之領域中，成員國有若干針對特定事業之法規。另為使成員國具體化其國內法規，包括處理特定類型之個人資料程序（即「敏感性資料」），歐盟個資規則賦予其一定之立法形成自由。於此範圍內，歐盟個資規則並未排除成員國法律得規定特定處理程序情況，包括更準確地判斷處理個人資料是否合法之條件。

the free flow of personal data throughout the Union. Those differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. Such a difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.

- (10) In order to ensure a consistent and high level of protection of natural persons and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of natural persons with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Regarding the processing of personal data for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Member States should be allowed to maintain or introduce national provisions to further specify the application of the rules of this Regulation. In conjunction with the general and horizontal law on data protection implementing Directive 95/46/EC, Member States have several sector-specific laws in areas that need more specific provisions. This Regulation also provides a margin of manoeuvre for Member States to specify its rules, including for the processing of special categories of personal data ('sensitive data'). To that extent, this Regulation does not exclude Member State law that sets out the circumstances for specific processing situations, including determining more precisely the conditions under which the processing of personal data is lawful.

- (11) 歐盟境內個人資料之有效保護，需加強並詳細列舉資料主體之權利、處理和決定處理個人資料程序者之義務，以及監督並確保遵守保護個人資料規則之同等權力，和對成員國內侵權事件之同等制裁權。
- (12) 歐盟條約第 16 條第(2)項授權歐洲議會及理事會制定有關處理自然人個人資料及其個人資料自由流通規則之保護規定。
- (13) 為確保歐盟境內自然人享有一致之保護標準，並防止規範差異妨礙個人資料於內部市場中自由流通，必須制定一保護規則，以確保經濟營運者之法律可預見性及使規範透明，包括微型及中小型企業，並賦予所有成員國內之自然人得依法執行之權利義務，及對管理者和受託者加諸法律責任，以確保對所有成員國之個人資料處理持續之監督及相應之制裁，及不同成員國之監督機關相互有效之合作。為使內部市場正常運作，個人資料處理過程中，歐盟內個人資料之自由流通，不應基於與保護自然人個人資料處理有關之理由，而受到限制或禁止。有鑑於微型與中小企業之特性，對於少於 250 人之組織，歐盟個資規則對於其檔案保存另有限縮規範。此外，亦鼓勵歐盟機構與機關、成員國及其主管考慮微型及中小企業適用歐盟個資規則之特定需求。微型及中小企業之概念，應參照第 2003/361/EC(1) 號委員會建議附件第 2 條。

- (11) Effective protection of personal data throughout the Union requires the strengthening and setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for infringements in the Member States.
- (12) Article 16(2) TFEU mandates the European Parliament and the Council to lay down the rules relating to the protection of natural persons with regard to the processing of personal data and the rules relating to the free movement of personal data.
- (13) In order to ensure a consistent level of protection for natural persons throughout the Union and to prevent divergences hampering the free movement of personal data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide natural persons in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective cooperation between the supervisory authorities of different Member States. The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a derogation for organisations with fewer than 250 employees with regard to record-keeping. In addition, the Union institutions and bodies, and Member States and their supervisory authorities, are encouraged to take account of the specific needs of micro, small and

- (14) 歐盟個資規則規定之保護措施應適用於與處理其個人資料有關之自然人，且無論其國籍或居住地為何。歐盟個資規則並不適用於法人之個人資料處理，尤其係以法人所成立之企業，包括該法人之姓名、形式以及其聯繫方式。
- (15) 為避免導致嚴重之規避風險，保護自然人應為技術中立，不應因所使用之技術而有差異。自然人之保護應適用於以自動方式處理之個人資料，若個人資料儲存或將被儲存於檔案系統中，則亦適用於人工處理方式。不符合特定標準所建立之檔案或檔案集及其封面，並非歐盟個資規則之適用範圍。
- (16) 不適用歐盟法之活動所涉之個人資料，對於其基本權利、自由或自由流通保障之相關爭議，並不受歐盟個資規則規範，例如有關國家安全之活動。另，歐盟個資規則亦不適用於成員國執行歐盟共同外交和安全政策時之個人資料處理。
- (17) 歐洲議會和理事會第 45/2001 號條例適用於歐盟機構、機關、辦事處和代理處之個人資料處理。得適用於此個人資料處理情況之第 45/2001 號條例和其他歐盟法規，應納入歐盟個資規則

medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw from Article 2 of the Annex to Commission Recommendation 2003/361/EC.

- (14) The protection afforded by this Regulation should apply to natural persons, whatever their nationality or place of residence, in relation to the processing of their personal data. This Regulation does not cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person.
- (15) In order to prevent creating a serious risk of circumvention, the protection of natural persons should be technologically neutral and should not depend on the techniques used. The protection of natural persons should apply to the processing of personal data by automated means, as well as to manual processing, if the personal data are contained or are intended to be contained in a filing system. Files or sets of files, as well as their cover pages, which are not structured according to specific criteria should not fall within the scope of this Regulation.
- (16) This Regulation does not apply to issues of protection of fundamental rights and freedoms or the free flow of personal data related to activities which fall outside the scope of Union law, such as activities concerning national security. This Regulation does not apply to the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union.
- (17) Regulation (EC) No 45/2001 of the European Parliament and of the Council applies to the processing of personal data by the Union institutions, bodies, offices and agencies. Regulation (EC) No

所規定之原則與規範，且適用時亦應依循歐盟個資規則。為提供歐盟強而有力且連貫一致之資料保護架構，於歐盟個資規則通過後，應對第(EC) 45/2001 號條例進行必要之修改，以使歐盟個資規則得以同時適用。

- (18) 歐盟個資規則不適用於純個人或家庭活動中自然人處理之個人資料，故與專業或商業活動無關。個人及家庭活動得包括通訊和持有地址、或於個人或家庭墓地內所進行之社群和線上活動。惟歐盟個資規則仍適用於提供該個人或家庭活動處理個人資料管道之管理者或受託者。
- (19) 對於自然人個人資料處理之保護，若與監督機關以防止、調查、偵查或追訴刑事犯罪或執行刑罰為目的，而進行之個人資料處理相關時，包括維護和預防公共安全避免威脅等以及該等資料之自由流通，此為特定歐盟法之規範對象，是以歐盟個資規則不應適用於以該目的所進行之個人資料處理。惟由公權力機關依據歐盟個資規則所處理之個人資料，若係基於上述目的，應受更詳細之歐盟法所規範，亦即歐洲議會與理事會第 2016/680 號指令。成員國得授權第 2016/680 號指令定義範圍內之監督機關，執行未必以防止、調查、偵查或追訴刑事犯罪或執行刑罰為目的之職務，包括維護和預防公共安全避免威脅等，是以若此等個人資料處理係以其他目的，且仍為歐盟法規適用範圍內時，仍得適用本保護規定。

45/2001 and other Union legal acts applicable to such processing of personal data should be adapted to the principles and rules established in this Regulation and applied in the light of this Regulation. In order to provide a strong and coherent data protection framework in the Union, the necessary adaptations of Regulation (EC) No 45/2001 should follow after the adoption of this Regulation, in order to allow application at the same time as this Regulation.

- (18) This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. However, this Regulation applies to controllers or processors which provide the means for processing personal data for such personal or household activities.
- (19) The protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and the free movement of such data, is the subject of a specific Union legal act. This Regulation should not, therefore, apply to processing activities for those purposes. However, personal data processed by public authorities under this Regulation should, when used for those purposes, be governed by a more specific Union legal act, namely Directive (EU) 2016/680 of the European Parliament and of the Council. Member States may entrust competent authorities within the meaning of Directive (EU) 2016/680 with tasks which are not necessarily carried out for the purposes of the

有關上述監督機關處理屬於歐盟個資規則範圍內目的之個人資料，成員國應維持或制定更多細節之條款，以納入歐盟個資規則之內容。且該條款得規定，為量及各成員國憲法、組織及行政架構，上述監督機關基於該目的而處理個人資料時，應遵守較歐盟個資規則更嚴格之具體要件。當私人機構處理個人資料適用本保護規定時，歐盟個資規則應規定成員國於特定條件下，得以法律限制某些義務和權利，當此種限制為維護民主社會具體重要利益之必要且符合比例之手段，包括公共安全、防範、偵查、起訴刑事犯罪及執行刑事處罰，亦包括防範並預防對公共安全之威脅。此與反洗錢框架案件或法醫實驗室活動亦為相關。

- (20)雖歐盟個資規則排除適用於法院和其他司法行為，惟歐盟或成員國之法律仍得規範其於處理個人資料時，仍應遵循之具體處理操作及程序。監督機關之職權不包括法院為執行其司法職權而進行個人資料處理之程序，以維護司法機關執行司法職務之獨立性，包括判決等。惟成員國仍得將此類個人資料處理業務之監督，委託予該國司法體系內之特定機關，且該機關尤應確

prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, falls within the scope of this Regulation.

With regard to the processing of personal data by those competent authorities for purposes falling within scope of this Regulation, Member States should be able to maintain or introduce more specific provisions to adapt the application of the rules of this Regulation. Such provisions may determine more precisely specific requirements for the processing of personal data by those competent authorities for those other purposes, taking into account the constitutional, organisational and administrative structure of the respective Member State. When the processing of personal data by private bodies falls within the scope of this Regulation, this Regulation should provide for the possibility for Member States under specific conditions to restrict by law certain obligations and rights when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific important interests including public security and the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. This is relevant for instance in the framework of anti-money laundering or the activities of forensic laboratories.

- (20) While this Regulation applies, *inter alia*, to the activities of courts and other judicial authorities, Union or Member State law could specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not cover the processing of personal data when courts are

保歐盟個資規則之遵循、加強司法機關對於歐盟個資規則賦予其義務之認知，並負責對於該相關個人資料處理實務之爭議。

- (21) 歐盟個資規則不影響歐洲議會及理事會第 2000/31/EC 號指令之適用，尤其係該指令第 12 至 15 條有關中介服務提供者責任之規範。該指令之立法目的旨在確保成員國間資訊社會服務之自由流通，以利內部市場正常運作。
- (22) 在歐盟內設立管理者或受託者等行為過程中所為之個人資料處理，皆應依照歐盟個資規則執行，無論該處理程序是否實際於歐盟內進行。設立意即藉由常態性之編制且存在有效並確實活動。此種編制之法律形式，無論係透過分公司或具法人格之子公司，並非判斷之決定因素。
- (23) 為確保自然人並避免被剝奪歐盟個資規則賦予之保障，對於位於歐盟境內之個人資料主體，即便進行該資料處理之管理者或受託者並非位於歐盟境內，該個人資料處理程序仍應受到本規則之規制，若該處理活動與提供該資料主體商品或服務有關者，且無論是否有對價。為判斷該資料管理者或受託者是否係提供位於歐盟之資料主體商品或服務，應該確定該管理者或受託者是否明確顯示其向歐盟中一或多個成員國之資料主體提供

acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of its judicial tasks, including decision-making. It should be possible to entrust supervision of such data processing operations to specific bodies within the judicial system of the Member State, which should, in particular ensure compliance with the rules of this Regulation, enhance awareness among members of the judiciary of their obligations under this Regulation and handle complaints in relation to such data processing operations.

- (21) This Regulation is without prejudice to the application of Directive 2000/31/EC of the European Parliament and of the Council, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive. That Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between Member States.
- (22) Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union. Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect.
- (23) In order to ensure that natural persons are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects who are in the Union by a controller or a processor not established in the Union should be subject to this Regulation where the processing activities are related to offering goods or services to such data subjects irrespective of whether connected to a payment. In order to determine whether such

服務。若僅係管理者、受託者或歐盟內之中介網站，得由電子郵件或其他聯絡方式近用，或資料管理者使用其所位於之第三地所通常使用之語言，此並不足以認定具備上述主觀認知，可用以判斷之因素有：在一或多個成員國所廣泛使用之語言或貨幣，且有以該他種語言進行商品和服務交易之可能性，或提及在歐盟境內之消費者或用戶等，始得被認定為該管理者係為歐盟境內資料主體提供商品或服務。

(24) 由非位於歐盟之管理者或受託者所處理其個人資料且位於歐盟內之資料主體，若此係有關監督該資料主體之行為、且該行為範圍係於歐盟內時，該處理程序亦應適用歐盟個資規則。為判斷該處理程序是否構成監督資料主體之行為，應確認自然人是否在網路上被追蹤，包括潛在之後續使用個人資料之處理技術，此包含對自然人進行資料剖析，尤其係為做出有關她/他之決定，或分析或預測她/他個人偏好、行為與態度。

(25) 若成員國之國內法依據國際公法得以適用時，歐盟個資規則亦適用於非位於歐盟之管理者，例如於成員國之外交使團或領事館內。

a controller or processor is offering goods or services to data subjects who are in the Union, it should be ascertained whether it is apparent that the controller or processor envisages offering services to data subjects in one or more Member States in the Union. Whereas the mere accessibility of the controller's, processor's or an intermediary's website in the Union, of an email address or of other contact details, or the use of a language generally used in the third country where the controller is established, is insufficient to ascertain such intention, factors such as the use of a language or a currency generally used in one or more Member States with the possibility of ordering goods and services in that other language, or the mentioning of customers or users who are in the Union, may make it apparent that the controller envisages offering goods or services to data subjects in the Union.

- (24) The processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union should also be subject to this Regulation when it is related to the monitoring of the behaviour of such data subjects in so far as their behaviour takes place within the Union. In order to determine whether a processing activity can be considered to monitor the behaviour of data subjects, it should be ascertained whether natural persons are tracked on the internet including potential subsequent use of personal data processing techniques which consist of profiling a natural person, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.
- (25) Where Member State law applies by virtue of public international law, this Regulation should also apply to a controller not established in the Union, such as in a Member State's diplomatic mission or consular post.

- (26) 資料保障之原則應適用於任何與已識別或足資識別之自然人有關之資訊。經過去連結化之個人資料，此可歸因於使用額外資料之自然人，該個人資料應被視為足資識別之自然人。為判斷自然人是否為足資識別，應考慮所有合理可能被採用之方法，例如透過管理者或第三人直接或間接識別出該自然人之挑選方式。為判斷方法是否為合理可能被採用於識別自然人，應考慮所有客觀因素，例如識別所需之費用及時間，考量處理資料當下之現有科技與科技發展。因此，資料保護原則不應適用於匿名信息，即與已識別或足資識別之自然人無關之資訊，或該資料主體已不能或不再足資識別之匿名方式有關之個人資料。是以，歐盟個資規則不涉及處理該種匿名資訊，包括以統計或研究之目的。
- (27) 歐盟個資規則不適用於亡者之個人資料。成員國得自行制定處理亡者個人資料之規範。
- (28) 將去連結化應用於個人資料可減少對於資料主體之風險，並幫助管理者和受託者實現其資料保護義務。在歐盟個資規則中，明文規範「去連結化」並未代表排除任何其他對於資料保護之措施。
- (29) 為激勵於個人資料處理過程中加入去連結化措施，於允許進行一般性分析時，同一管理者若已採取技術上及組織上之必要措

- (26) The principles of data protection should apply to any information concerning an identified or identifiable natural person. Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments. The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.
- (27) This Regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons.
- (28) The application of pseudonymisation to personal data can reduce the risks to the data subjects concerned and help controllers and processors to meet their data-protection obligations. The explicit introduction of ‘pseudonymisation’ in this Regulation is not intended to preclude any other measures of data protection.
- (29) In order to create incentives to apply pseudonymisation when processing personal data, measures of pseudonymisation should,

施，以確保該處理過程係遵循歐盟個資規則之規範，且該可連結至特定資料主體之額外資訊已分開保存時，同一管理者應得採取去連結化措施。處理個人資料之管理者應指出於同一管理者內之授權人員。

- (30) 自然人藉由裝置、應用程式、工具及協定等，而得與線上識別碼連結，例如網路協定位置、小型文字檔案識別碼或其他識別符號，如無線射頻識別系統等。如此可能留下足跡，尤其若伺服器接收到獨特之識別符號和其他資訊相結合時，得以使用該足跡來剖析自然人個人檔案並識別出其身分。
- (31) 依其法定義務且為執行職務而獲得個人資料之政府機關，如稅務、海關、財政調查單位、獨立行政機關、或負責監管和監督證券市場之金融管理機構等，若其基於公共利益且符合歐盟或成員國之法律時，其收到為執行特定調查所必要之個人資料，該機關應不視為資料接受者。政府機關要求提供個人資料時，應以書面、附加理由及非定期為之，且不應涉及整體檔案系統或導致檔案系統相互連結。依據各該處理目的，政府機關處理個人資料之程序應遵循得適用之資料保護規範。
- (32) 同意應為清楚之積極行為，確立資料主體同意對於有關其個人資料之處理係基於自由意志、特定、經由充分告知且以明確指

whilst allowing general analysis, be possible within the same controller when that controller has taken technical and organisational measures necessary to ensure, for the processing concerned, that this Regulation is implemented, and that additional information for attributing the personal data to a specific data subject is kept separately. The controller processing the personal data should indicate the authorised persons within the same controller.

- (30) Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.
- (31) Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law. The requests for disclosure sent by the public authorities should always be in writing, reasoned and occasional and should not concern the entirety of a filing system or lead to the interconnection of filing systems. The processing of personal data by those public authorities should comply with the applicable data-protection rules according to the purposes of the processing.
- (32) Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the

示為之，例如透過書面聲明，包括電子方式或口頭陳述。同意行為包括瀏覽網頁時勾選同意欄位、選擇資訊社會服務之技術上設定、或其他陳述及行動可明確顯示在該脈絡下，資料主體接受對於其個人資料進行處理之提議。相對地，沉默、預選同意欄窗或消極不作為應不得視為同意。同意的範圍應涵蓋所有為同樣目的而做出之處理程序。若該處理程序有多重目的時，同意之範圍應包括所有目的。若資料主體之同意係經電子方式之詢問後始得發出，則該詢問必須明確、簡明且不會對使用其提供之服務造成不必要之障礙。

- (33) 於收集資料時，往往無法同時完全確定科學研究目的與該個人資料處理之目的。因此，於符合科學倫理通則之情況下，應允許資料主體針對特定領域之科學研究給予同意。資料主體應得僅就符合計畫目的允許程度之特定領域研究或研究計畫之一部給予同意。
- (34) 基因資料應定義為透過分析自系爭自然人取得之生物樣本，而獲得之經遺傳或後天取得與該自然人基因特徵有關之個人資料，特別係染色體、脫氧核糖核酸（DNA）或核糖核酸（RNA）之分析，或自分析其他元素所能得到同等內容之資訊。

data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

- (33) It is often not possible to fully identify the purpose of personal data processing for scientific research purposes at the time of data collection. Therefore, data subjects should be allowed to give their consent to certain areas of scientific research when in keeping with recognised ethical standards for scientific research. Data subjects should have the opportunity to give their consent only to certain areas of research or parts of research projects to the extent allowed by the intended purpose.
- (34) Genetic data should be defined as personal data relating to the inherited or acquired genetic characteristics of a natural person which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained.

- (35) 有關健康之個人資料，應包括與資料主體健康狀況有關之所有數據，其中顯示與該資料主體過去、現在或未來之身體或精神健康狀況有關之資訊。此包括：依據歐洲議會及理事會第2011/24/EU 號指令有關自然人之規定，自然人註冊醫療服務之過程或其條款中所蒐集之個人資料；為醫療目的而對某一自然人賦加數字、符號以辨識特定身分；來自測試或檢查身體部位或身體物質（包括遺傳數據和生物樣本）之資料；以及任何資料，例如，有關疾病、殘疾、疾病風險、就診歷史、醫療方式或資料主體之生理或生物醫學狀態，且獨立於其來源，例如自某醫生或其他醫療專家、醫院、醫療器材或體外診斷檢測。
- (36) 於歐盟中設置主要之管理者應位於其在歐盟內中央行政所在處，除非決定該個人資料處理程序之目的及方式係由歐盟內另外設置之管理者所為，則該他管理者應視為主要管理者之建置。歐盟內設置主要管理者應依照客觀標準，並得透過穩定之編制，有效且實際執行與處理程序之目的與方式有關重要決定之運營活動。該客觀標準不應取決於個人資料處理程序是否係於該位置進行。存在並使用處理個人資料或處理活動之技術方式及技術本身，並不構成設置主要管理者，故此非是否設置主要管理者之客觀標準。主要管理者之設置應位於其在歐盟內之中央行政所在處，若於歐盟中並無該位置，則應為其於歐盟內主要進行處理活動之處。若同時涉及管理者與受託者之情況，該適格之監管單位仍為管理者主要設置處所位於之成員國之監督機關，但該受託者之監督機關應為有關之主管單位，且該單位應參與依據歐盟個資規則規定之合作程序。於任何情況下，成員國之監督機關或若於國內設置數個受託者之成員國，皆不

- (35) Personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject. This includes information about the natural person collected in the course of the registration for, or the provision of, health care services as referred to in Directive 2011/24/EU of the European Parliament and of the Council to that natural person; a number, symbol or particular assigned to a natural person to uniquely identify the natural person for health purposes; information derived from the testing or examination of a body part or bodily substance, including from genetic data and biological samples; and any information on, for example, a disease, disability, disease risk, medical history, clinical treatment or the physiological or biomedical state of the data subject independent of its source, for example from a physician or other health professional, a hospital, a medical device or an in vitro diagnostic test.
- (36) The main establishment of a controller in the Union should be the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union, in which case that other establishment should be considered to be the main establishment. The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes and means of processing through stable arrangements. That criterion should not depend on whether the processing of personal data is carried out at that location. The presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute a main establishment and are therefore not determining criteria for a main establishment. The

應被視為前述有關之監督機關，若該決議草案僅與管理者有關時。若處理程序係由企業集團執行，則主要管理企業之設置應視為該企業集團本身之設置，除非當處理程序之目的及方式係由其他企業為之時。

(37) 企業集團應包括執行管理之企業及旗下之控制企業，且該執行管理企業應得藉由例如所有權、資金投入、得適用之規範或執行個人資料保護規範之權力，而對其他控制企業行使主導權。得於附屬之企業中控制個人資料處理程序之企業，應與其附屬企業一併被視為一企業集團。

(38) 未成人之個人資料應享有特定之保障，因未成人較難認知關於處理其個人資料相關之風險、後果及防護措施。具體而言，該特定保障應適用於以行銷或製作個人化或使用個人資

main establishment of the processor should be the place of its central administration in the Union or, if it has no central administration in the Union, the place where the main processing activities take place in the Union. In cases involving both the controller and the processor, the competent lead supervisory authority should remain the supervisory authority of the Member State where the controller has its main establishment, but the supervisory authority of the processor should be considered to be a supervisory authority concerned and that supervisory authority should participate in the cooperation procedure provided for by this Regulation. In any case, the supervisory authorities of the Member State or Member States where the processor has one or more establishments should not be considered to be supervisory authorities concerned where the draft decision concerns only the controller. Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered to be the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking.

- (37) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exert a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. An undertaking which controls the processing of personal data in undertakings affiliated to it should be regarded, together with those undertakings, as a group of undertakings.
- (38) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal

料等為目的，以及在使用直接向未成年人提供之服務時所收集有關未成人之個人資料。在直接向未成年人提供保護性或諮詢性服務情況下，負有監護責任者之同意並非必須。

- (39) 個人資料之處理過程應為合法且公正。有關自然人個人資料之蒐集、使用、諮詢或以其他方式處理，以及該個人資料係經過或將以何種程度處理，此皆應對自然人公開透明。公開透明原則要求任何與該處理個人資料程序有關之資訊與通訊應為容易取得且理解，並使用清晰且平易近人之用語。該原則主要要求給予資料主體有關該處理程序管理者之身分以及目的之資訊，並且得獲得額外之資訊，以確保與該自然人有關之公平且透明處理過程，及確保該自然人有權要求對於其經處理之個人資料有關之確認及溝通。應使該自然人了解與該個人資料處理程序相關之風險、規範、保障與權利，以及行使其有關該處理程序權利之方法。具體而言，處理個人資料之具體目的應在收集個人資料時即已明確、合法並經確定。個人資料應完整、有關聯性並僅限於為處理目的所需之資料。此尤其須確保將個人資料存儲之時間嚴格限制在最低限度。僅當以其他方式無法合理達成處理目的時，始得以該方式處理個人資料。為確保該個人資料之儲存並未超過必要之期間，管理者應規定超過期間限制即銷毀及定期審查。應採取一切合理之手段，以確保不正確之個人資料獲得修正或刪除。應確保個人資料係以適當安全及保密之方式接受處理，包括預防未授權之讀取、使用該個人資料及該處理之儀器。

data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

- (39) Any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. That principle concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed. Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the

- (40) 為使該處理程序合法，處理個人資料應基於該資料主體之同意或其他由法律規定之合法基礎，無論係依據本保護規範之規定或其他本保護規定提及之歐盟法或成員國法規定，包括必須遵守管理者應承擔之法律義務，或須履行與資料主體訂立之契約義務，或在訂立契約之前，依照資料主體要求採取行動。
- (41) 本保護規範所稱之合法基礎或立法方式，並不當然要求一經過議會通過之法律，且不影響相關成員國其憲法秩序之規定。惟該合法基礎或立法方式應為明確且精準，且其適用應對於受規範者有可預見性，並符合歐洲聯盟法院（下稱歐盟法院）及歐洲人權法之規定。
- (42) 若處理程序係基於資料主體之同意時，管理者應向已給予同意之資料主體示範操作過程。尤其若係以書面聲明此種場合時，此保護措施應確保資料主體了解具體情況及其給予同意之程度。根據歐盟理事會第 93/13/EEC 號指令，管理者預先擬定之

personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or use of personal data and the equipment used for the processing.

- (40) In order for processing to be lawful, personal data should be processed on the basis of the consent of the data subject concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation, including the necessity for compliance with the legal obligation to which the controller is subject or the necessity for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
- (41) Where this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without prejudice to requirements pursuant to the constitutional order of the Member State concerned. However, such a legal basis or legislative measure should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union (the ‘Court of Justice’) and the European Court of Human Rights.
- (42) Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure

同意聲明應以可理解且易於取得之形式提供，即使用清楚易懂之用語並且不得載有不公平條款。為使同意形成，資料主體至少須知管理者之身分以及其所提供之個人資料將被處理之目的。若資料主體並非出於真意或無法自由選擇、無法拒絕或其撤回同意將受損害時，則該資料主體之同意應被視為並非自願。

(43) 為確保該同意係出於自由意志，當資料主體和控制者間存在明顯不對等之特定情況下，資料主體之同意不應作為處理個人資料之有效法律上依據，尤其當管理者係政府機關時，於此特定前提下，同意在任何情況下皆因此不應視為自願。同意應推定為非自願給予，倘若不允許針對不同之個人資料處理程序個別提出同意時，儘管於個案中該操作程序係屬適當，或若履行載有服務條款之契約義務，係取決於是否得到同意，但該同意對於履行契約義務並非必要時。

(44) 若於契約範圍內或對於訂立契約有必要時，處理個人資料應為合法。

(45) 當執行處理程序係基於管理者之法定義務，或該處理程序係為履行公益任務或執行職務時，該處理程序應有歐盟或成員國法律依據。歐盟個資規則並不要求個別處理程序皆須具體法律授權。一法律可概括做為數處理程序操作，如管理者基於法定義務之處理程序、為履行公益任務或執行職務之處理程序等之法律基礎。且歐盟或成員國之法律亦應用以確認處理程序之日

that the data subject is aware of the fact that and the extent to which consent is given. In accordance with Council Directive 93/13/EEC a declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.

- (43) In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation. Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the consent despite such consent not being necessary for such performance.
- (44) Processing should be lawful where it is necessary in the context of a contract or the intention to enter into a contract.
- (45) Where processing is carried out in accordance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority, the processing should have a basis in Union or Member State law. This Regulation does not require a specific law for each individual processing. A law as a basis for

的。此外，該法律得規範歐盟個資規則之總則，以制定管理者處理程序之合法性、制定管理者之要件規範、受處理之資料類別、資料主體範圍、資料利用對象、處理目的之限制、資料保存期間等及其他得確保處理程序係為合法與公平之措施。另外，亦應由歐盟法或成員國法判斷，執行公益任務或職務之管理者是否為受公法管制之公部門或其他自然人或法人，或者，當處理個人資料係為公益目的並適用私法時，包括與健康相關如公共健康、社會保障、及管理健康保險服務等目的，例如專業團體等。

- (46) 若對於保護資料主體或其他自然人之生命有必要時，該個人資料之處理亦應視為合法。基於另一個自然人之重要利益而進行個人資料處理，原則上僅於無其他明確法律基礎之情況下時，方得為之。某些情況下，個人資料處理可能同時有助於公共利益和數據主體的切身利益，例如當處理程序係為人道目的之必須，包括監視傳染病及其擴散，或面臨人道危機時，尤係自然與人為災難發生時。

several processing operations based on a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority may be sufficient. It should also be for Union or Member State law to determine the purpose of processing. Furthermore, that law could specify the general conditions of this Regulation governing the lawfulness of personal data processing, establish specifications for determining the controller, the type of personal data which are subject to the processing, the data subjects concerned, the entities to which the personal data may be disclosed, the purpose limitations, the storage period and other measures to ensure lawful and fair processing. It should also be for Union or Member State law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public authority or another natural or legal person governed by public law, or, where it is in the public interest to do so, including for health purposes such as public health and social protection and the management of health care services, by private law, such as a professional association.

- (46) The processing of personal data should also be regarded to be lawful where it is necessary to protect an interest which is essential for the life of the data subject or that of another natural person. Processing of personal data based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis. Some types of processing may serve both important grounds of public interest and the vital interests of the data subject as for instance when processing is necessary for humanitarian purposes, including for monitoring epidemics and their spread or in situations of humanitarian emergencies, in particular in situations of natural and man-made disasters.

(47) 管理者，包括得利用個人資料之管理者，以及第三方之合法利益，可作為處理個人資料之法律依據，倘若未凌駕該資料主體之利益及基本權益和自由，此判斷取決於資料主體對於其與管理者間關係之合理期待。上開合法利益得存在於資料主體與管理者之間具有關聯性且適當之關係時，例如資料主體為客戶或接受管理者服務等情況。惟無論如何，該合法利益之存否需要嚴謹之評估，包括資料主體是否能於蒐集其個人資料當時合理期待該目的之處理程序將發生。在資料主體無法合理期待進一步處理之情況下，資料主體受影響之利益和基本權利重要性應凌駕於資料管理者之利益。倘若立法者應立法提供政府法律依據以處理個人資料時，該法律依據不應適用於政府為執行職務而進行之個人資料處理程序。而為避免詐欺之情況所進行絕對必要之個人資料處理，亦得作為系爭管理者之合法利益。此外，為直接行銷之目的處理個人資料亦可作為為合法利益而進行。

(48) 企業集團或具有中央組織之相關機構，其管理者於為內部行政目的在組織內進行傳輸之個人資料亦屬具有合法利益，包括處理其客戶或受僱者之個人資料。於企業集團內傳輸個人資料，即便傳輸至位於第三國家之企業，相關之基本原則效力亦不受影響。

- (47) The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law for the legal basis for public authorities to process personal data, that legal basis should not apply to the processing by public authorities in the performance of their tasks. The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned. The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.
- (48) Controllers that are part of a group of undertakings or institutions affiliated to a central body may have a legitimate interest in transmitting personal data within the group of undertakings for internal administrative purposes, including the processing of clients' or employees' personal data. The general principles for the transfer of personal data, within a group of undertakings, to an undertaking

(49) 為確保網路和資訊安全在絕對必要和符合比例之範圍內處理個人資料，亦即網路或資訊系統於一定可信度內，得以抵抗意外事件、或降低已儲存或傳輸之個人資料之使用性、真實性、完整性及保密性之非法、惡意行為，及由政府機關、電腦緊急回應小組（CERT）、資訊系統應變負責小組（CSIRT）、電子通訊網路與服務提供者以及資訊安全及服務提供者，透過網路及系統所提供或存取之相關服務，此皆構成系爭管理者處理個人資料之合法利益。此合法利益，舉例而言，可包括防止未授權進入電子通訊網路及散播惡意編碼以及阻擋「拒絕服務」對於電腦和電子通訊網路之攻擊及損害。

(50) 對於與原蒐集目的不同之個人資料處理，僅限於該後續處理程序與原蒐集目的相容時，始得為之。於此情形中，除允許蒐集個人資料之法律依據外，無須其他法律基礎。若該處理程序係管理者為執行其公益任務或職務所必須，歐盟或成員國法律應明確訂定為該任務與目的而進行之後續處理程序應具相容性且合法。為達到公共利益、科學上、歷史研究或統計研究等目的之後續處理，應視為相容且合法之處理程序。歐盟或成員國法律作為執行之個人資料處理之依據，亦得作為後續處理之合法基礎。為確定後續處理之目的是否與原蒐集目的相容，管理者於達成所有原使用程序之合法要件時，應額外考慮下述情況：原使用目的與欲進行之後續處理目間之關聯性；個人資料蒐集時之脈絡，尤其係資料主體基於其與管理者之間的關係，所對於個人資料延伸使用之合理期待；該個人資料之特性；欲進行之後續程序對於資料主體之影響；以及原使用及欲進行之後續操作是否有適當之安全措施

located in a third country remain unaffected.

- (49) The processing of personal data to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted personal data, and the security of the related services offered by, or accessible via, those networks and systems, by public authorities, by computer emergency response teams (CERTs), computer security incident response teams (CSIRTs), by providers of electronic communications networks and services and by providers of security technologies and services, constitutes a legitimate interest of the data controller concerned. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping ‘denial of service’ attacks and damage to computer and electronic communication systems.
- (50) The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union or Member State law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations. The legal basis provided by Union or Member State law for the processing of

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若資料主體已同意，或該處理程序係根據歐盟或成員國法律，且該法律為民主社會中，尤其係為保障重要公共利益目的所必要且符合比例時，管理者應得進行個人資料後續處理程序，無論與原目的是否相容。惟無論如何，皆應確保歐盟個資規則所規範之原則仍應適用，尤其係資料主體知悉該其他目的，及包括拒絕權等其他權利。管理者指出潛在犯罪行為或對公共安全之威脅並將個案或數筆同一犯罪行為或公共安全威脅之相關個人資料傳輸予監督機關，應被視為該管理者之目的具有合法利益。惟，若處理程序不符合法律、專業上或其他具有約束力之保密義務時，則應禁止以管理者基於上述合法利益進行傳輸或進一步處理個人資料。

personal data may also provide a legal basis for further processing. In order to ascertain whether a purpose of further processing is compatible with the purpose for which the personal data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account, inter alia: any link between those purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of data subjects based on their relationship with the controller as to their further use; the nature of the personal data; the consequences of the intended further processing for data subjects; and the existence of appropriate safeguards in both the original and intended further processing operations.

Where the data subject has given consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard, in particular, important objectives of general public interest, the controller should be allowed to further process the personal data irrespective of the compatibility of the purposes. In any case, the application of the principles set out in this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object, should be ensured. Indicating possible criminal acts or threats to public security by the controller and transmitting the relevant personal data in individual cases or in several cases relating to the same criminal act or threats to public security to a competent authority should be regarded as being in the legitimate interest pursued by the controller. However, such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.

(51) 與基本權利和自由相關，且敏感性特種個人資料應受更嚴密之保護，因為對其進行處理之脈絡可能造成基本權利和自由重大風險。此種個人資料應包括公開種族或種族來源，而歐盟個資規則此所採用「種族來源」一詞並非意味歐盟接受試圖確定各別人種存在之理論。對於照片之處理不應被系統性地視為處理特殊類別之個人資料，因僅有經過對自然人獨特識別或認證之特定技術手段處理時，始符合生物特徵識別資料之定義。敏感性特種個人資料不應受任何處理，除非該處理程序符合歐盟個資規則有特定規範之情況時，且應注意者，成員國法律得制定特定個人資料保護條款納入歐盟個資規則之規範，以使管理者於執行其公益任務或職務時得遵循法律義務。除了針對該處理程序之特定規範外，歐盟個資規則之基本原則與其他規範仍應適用，尤其係關於合法處理程序之要件。針對原則禁止對特殊種類個人資料處理之例外應另有明確之規定，除其他情況外，當資料主體給予其具體之同意，或當該處理程序係由特定團體或基金會執行合法活動過程中所為，且其目的係為使基本權利得行使時。

(52) 禁止處理特殊種類個人資料之例外，若歐盟或成員國法另有規定且須遵守相應之安全措施時仍得為之，以達保護該個人資料

- (51) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term ‘racial origin’ in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. Such personal data should not be processed, unless processing is allowed in specific cases set out in this Regulation, taking into account that Member States law may lay down specific provisions on data protection in order to adapt the application of the rules of this Regulation for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. In addition to the specific requirements for such processing, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, *inter alia*, where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.
- (52) Derogating from the prohibition on processing special categories of personal data should also be allowed when provided for in Union or

及其他基本權利，且係為公益而為之，具體而言，係指在勞動法、社會保護法，包括退休金及健康安全、監控與警報目的、預防或控制傳染疾病或其他對健康造成重大威脅等領域中，所進行之個人資料處理。此些例外亦得以健康為目的，包括公共健康與經營健康保健服務，尤其係為確保健康保險系統中有關保障與服務申訴處理程序之品質與效率，或為達到公共利益、科學、歷史及統計研究目的。例外得進行處理特殊個人資料之情況，亦應包括為建立、執行或辯護等法律行為所必須，無論係為法庭內之程序、行政或法庭外之程序。

- (53) 需要更高程度保障之特殊種類個人資料應受以健康相關為目的之處理程序，且僅當為達成對自然人與整體社會有益處此目的所必要時，具體而言即經營健康保健或社會關懷服務及體系等，包括經由包括管理層和中央國家衛生監督機關對這些資料之處理，以進行質量控制、管理資訊和衛生或社會關懷體系之國家和地方一般性監督，並確保健康或社會關懷和跨境醫療保健或衛生安全、監測和警告等持續性目的，或為達到公益目的、科學、歷史研究或統計目的，此些目的依據歐盟或成員國法規此皆達到公共利益之目標，如同於公共衛生領域為達公共利益所進行之研究等。是故，歐盟個資規則應規定處理特殊類型且與健康相關之個人資料之共通要件，尤其係與特定需求有關，具體而言，當處理該類型之資料係由負法律上專業保密義務者，為特定健康相關之目的而進行時。歐盟或成員國之法律應制定特定且合適之措施以保障自然人個人資料及基本權利。成員國亦應允許維持或採納進一步之規範，包括與處理基因資料、生物特徵識別資料或其他與健康有關資料之其他限制。惟

Member State law and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where it is in the public interest to do so, in particular processing personal data in the field of employment law, social protection law including pensions and for health security, monitoring and alert purposes, the prevention or control of communicable diseases and other serious threats to health. Such a derogation may be made for health purposes, including public health and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. A derogation should also allow the processing of such personal data where necessary for the establishment, exercise or defence of legal claims, whether in court proceedings or in an administrative or out-of-court procedure.

- (53) Special categories of personal data which merit higher protection should be processed for health-related purposes only where necessary to achieve those purposes for the benefit of natural persons and society as a whole, in particular in the context of the management of health or social care services and systems, including processing by the management and central national health authorities of such data for the purpose of quality control, management information and the general national and local supervision of the health or social care system, and ensuring continuity of health or social care and cross-border healthcare or health security, monitoring and alert purposes, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, based on Union or Member State law which has to meet an objective of public interest, as well as for studies conducted in the public interest in the area of public health. Therefore, this Regulation should provide for harmonised conditions for the processing of

若當該具體規範得適用於跨境處理該種個人資料時，仍不得阻礙歐盟內個人資料之流通。

(54) 特殊類別個人資料之處理若係因與公共衛生有關之公共利益時，若有必要得不經過資料主體之同意。該處理程序應遵循適當且具體之措施，以保護自然人之權利與自由。於此情況中，「公共衛生」應與歐洲議會及理事會第 (EC) No 1338/2008 號條例中之定義作相同解釋，亦即所有與健康有關之元素，也就是健康狀況，包括發病率和殘疾、影響健康狀況之因素、保健需求、分配醫療保健之資源、提供和普及衛生保健、保健支出與財政以及死亡原因等。此種為了公共利益與健康有關之資料處理，不得導致個人資料受到如僱用人、保險或銀行等第三方，以其他目的利用之。

(55) 此外，由公務機關基於憲法或國際公法規定，為達到正式認可之宗教團體之目標而處理個人資料時，此係具有公共利益基礎。

special categories of personal data concerning health, in respect of specific needs, in particular where the processing of such data is carried out for certain health-related purposes by persons subject to a legal obligation of professional secrecy. Union or Member State law should provide for specific and suitable measures so as to protect the fundamental rights and the personal data of natural persons. Member States should be allowed to maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health. However, this should not hamper the free flow of personal data within the Union when those conditions apply to cross-border processing of such data.

- (54) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. Such processing should be subject to suitable and specific measures so as to protect the rights and freedoms of natural persons. In that context, ‘public health’ should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council, namely all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers or insurance and banking companies.
- (55) Moreover, the processing of personal data by official authorities for the purpose of achieving the aims, laid down by constitutional law or by international public law, of officially recognised religious associations, is carried out on grounds of public interest.

- (56) 於競選活動過程中，成員國民主制度之運作要求政黨編制有關人民政治觀點等個人資料時，若為了公共利益，始得允許處理這些數據，惟仍須建立適當之安全措施。
- (57) 倘若由管理者處理之個人資料屬於管理者不得識別自然人之情況，該資料管理者不應有獲取額外訊息以便識別該資料主體之義務，以達到遵守歐盟個資規則任何規範此一唯一目的。惟該管理者不應拒絕資料主體提供額外之資訊，以協助其行使權利。識別應包括資料主體之數位識別，舉例而言，透過認證機制，如資料主體用以登入管理者提供之線上服務之相同憑證等。
- (58) 透明原則要求任何傳達予公眾或資料主體之資訊應為簡潔、容易取得與理解，且應使用簡明易懂之語言，此外，若適當時，應將資訊圖像化（visualisation）。該資訊亦應以電子形式提供，例如架設網站以向公眾宣傳。此於某些情況下特別相關，亦即當行為者大幅增加且實務上技術複雜性造成資料主體難以知悉與理解究竟其個人資料之蒐集係由何者、為達何種目的時，例如線上廣告。再者，未成年人應受到更特定之保障，任何關於處理程序之資訊與通訊對象若為未成年人時，應以未成年人能容易理解之簡明語言為之。

- (56) Where in the course of electoral activities, the operation of the democratic system in a Member State requires that political parties compile personal data on people's political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.
- (57) If the personal data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. However, the controller should not refuse to take additional information provided by the data subject in order to support the exercise of his or her rights. Identification should include the digital identification of a data subject, for example through authentication mechanism such as the same credentials, used by the data subject to log-in to the on-line service offered by the data controller.
- (58) The principle of transparency requires that any information addressed to the public or to the data subject be concise, easily accessible and easy to understand, and that clear and plain language and, additionally, where appropriate, visualisation be used. Such information could be provided in electronic form, for example, when addressed to the public, through a website. This is of particular relevance in situations where the proliferation of actors and the technological complexity of practice make it difficult for the data subject to know and understand whether, by whom and for what purpose personal data relating to him or her are being collected, such as in the case of online advertising. Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.

- (59) 應提供方式以便資料主體行使歐盟個資規則賦予其之權利，包括包括請求之機制，且若適當時，應不收取任何費用，尤其對於取得、更正或刪除個人資料和行使異議權。管理者應提供請求之電子化管道，尤其當個人資料係經由電子管道處理時。管理者應有義務回覆來自資料主體之請求，且不應有不當延遲，倘若管理者不願接受該請求，最遲於一個月內應回覆理由。
- (60) 基於公正透明處理原則，資料主體應被告知處理程序之存在及其目的。管理者應提供資料主體任何必要之額外資訊，以確保有關特定情形與情狀下個人資料係受到公正透明之利用。此外，資料主體亦應被告知存有個人化剖析與其後續結果。當從資料主體蒐集個人資料時，該資料主體應被告知其是否有義務提供個人資料。該訊息可以標準化之圖示組合提供，以醒目、容易理解且清晰易讀之方式傳達該預定處理程序相關之有意義概述。若該圖示係以電子方式呈現，應使電腦得以讀取。
- (61) 與處理資料主體有關之個人資料時，相關資訊應於蒐集資料時告知資料主體，或若該資料係從第三方取得時，亦應依照個案情況於合理期間內為之。若個人資料得合法提供予第三方時，第三方首次接收該個人資料時即應告知資料主體。若管理者欲

- (59) Modalities should be provided for facilitating the exercise of the data subject's rights under this Regulation, including mechanisms to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and the exercise of the right to object. The controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means. The controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests.
- (60) The principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes. The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed. Furthermore, the data subject should be informed of the existence of profiling and the consequences of such profiling. Where the personal data are collected from the data subject, the data subject should also be informed whether he or she is obliged to provide the personal data and of the consequences, where he or she does not provide such data. That information may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner, a meaningful overview of the intended processing. Where the icons are presented electronically, they should be machine-readable.
- (61) The information in relation to the processing of personal data relating to the data subject should be given to him or her at the time of collection from the data subject, or, where the personal data are obtained from another source, within a reasonable period, depending

以特定目的外利用其以收集之個人資料時，管理者應於後續處理程序開始前，告知資料主體該其他目的與相關必要資訊。倘若個人資料出處因使用多數來源而無法提供予資料主體時，亦應告知資料主體概略之訊息。

(62) 惟若資料主體已得知相關訊息時，例如個人資料之紀錄或公開係明確依據法律，或實際上無法或需以不符比例之成本告知資料主體相關訊息時，即無須要求提供相關資訊之義務。後者之情況在具體個案中，得為當該處理程序係為公共利益、科學、歷史研究或統計之目的。於此情況下，應考量資料主體之數量、數據之年齡或採取任何適當之安全措施。

(63) 資料主體應有權獲取有關其被蒐集之個人資料，並且得容易以合理之頻率行使該權利，以便了解並認證相關處理程序之合法性。此權力包括資料主體得存取有關其健康之資料，例如記載其診斷、檢查結果、主治醫師評估及任何其他治療或受干預措施等醫療紀錄。是以，每位資料主體應有權知悉並獲得針對其受利用之個人資料目的相關之通訊、對於可能處理資料之期間、個人資料接收者、涉及任何自動化個人資料處理系統邏輯、以及，至少於進行個人化剖析時，該處理過程之後續影響等。若可行時，管理者應得提供遠端讀取經加密系統，以提供資料主體得直接讀取與其相關之個人資料。該權利不應反而影

on the circumstances of the case. Where personal data can be legitimately disclosed to another recipient, the data subject should be informed when the personal data are first disclosed to the recipient. Where the controller intends to process the personal data for a purpose other than that for which they were collected, the controller should provide the data subject prior to that further processing with information on that other purpose and other necessary information. Where the origin of the personal data cannot be provided to the data subject because various sources have been used, general information should be provided.

- (62) However, it is not necessary to impose the obligation to provide information where the data subject already possesses the information, where the recording or disclosure of the personal data is expressly laid down by law or where the provision of information to the data subject proves to be impossible or would involve a disproportionate effort. The latter could in particular be the case where processing is carried out for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. In that regard, the number of data subjects, the age of the data and any appropriate safeguards adopted should be taken into consideration.
- (63) A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals, in order to be aware of, and verify, the lawfulness of the processing. This includes the right for data subjects to have access to data concerning their health, for example the data in their medical records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided. Every data subject should therefore have the right to know and obtain communication in particular with regard to the purposes for which the personal data

響他人之權利及自由，包括營業秘密或智慧財產，亦即保護軟體之著作權等。惟上述考量之結果不應做為全面拒絕提供資料主體資訊之理由。當管理者擁有與資料主體相關之大量資料時，該管理者應得要求，於該資訊發出前，資料主體應特定其欲了解之資訊或資料處理活動。

- (64) 管理者應採許所有合理之措施，以核對提出請求之資料主體身分，尤其係於線上服務及使用線上身分識別時。管理者不得僅為了回覆潛在之請求，而留存相關個人資料。
- (65) 資料主體應得要求對有關其之個人資料行使修正權，且當系爭管理者依據歐盟個資規則、歐盟或成員國法不得留存該資料時，資料主體亦得行使「被遺忘權」。詳言之，資料主體應有權要求刪除其個人資料，且若該資料對於原蒐集或其他使用目的而言已無必要、資料主體要求撤回其同意、或反對使用該個人資料、或當該個人資料處理程序已違反歐盟個資規則時，得要求不得繼續使用。上述權利尤其適用於資料主體原為未成年人且無法完全理解該處理程序之風險，而後希望能刪除該個人資料時，特別係於網路活動。資料主體應有權行使該權利，儘管其已成年。然而，若有必要時，例如為行使表達與資訊自由權利、遵守法定義務、管理者為執行與公共利益有關之任務或

are processed, where possible the period for which the personal data are processed, the recipients of the personal data, the logic involved in any automatic personal data processing and, at least when based on profiling, the consequences of such processing. Where possible, the controller should be able to provide remote access to a secure system which would provide the data subject with direct access to his or her personal data. That right should not adversely affect the rights or freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of those considerations should not be a refusal to provide all information to the data subject. Where the controller processes a large quantity of information concerning the data subject, the controller should be able to request that, before the information is delivered, the data subject specify the information or processing activities to which the request relates.

- (64) The controller should use all reasonable measures to verify the identity of a data subject who requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the sole purpose of being able to react to potential requests.
- (65) A data subject should have the right to have personal data concerning him or her rectified and a ‘right to be forgotten’ where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That

公務，以達到公益、科學、歷史研究或統計等目的，或係為成立、行使或辯護法律上主張時，仍得留存該個人資料。

- (66) 為強化網路環境中之被遺忘權，要求刪除之權利應延伸適用使公開該個人資料之管理者應有義務通知其他處理該資訊之管理者，移除與該個人資料有關之連結、複製或轉發。於執行時，考量當下之科技與得適用之方式，該管理者應採取合理之措施，包括技術上方法等，以通知其他亦使用該經個人資料管理者。
- (67) 個人資料之處理限制，除其他以外，得包括暫時將該被選擇之資料移至另一處理系統，使該被選擇之資料不得被使用者讀取，或暫時將公開資料從網站上移除等。於自動化歸檔系統，處理程序之限制應原則上受技術措施保障，亦即該個人資料得不受後續處理程序使用且不得被變更。而個人資料處理之限制應清楚地顯示於該系統中。

right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims.

- (66) To strengthen the right to be forgotten in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such personal data to erase any links to, or copies or replications of those personal data. In doing so, that controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the controllers which are processing the personal data of the data subject's request.
- (67) Methods by which to restrict the processing of personal data could include, inter alia, temporarily moving the selected data to another processing system, making the selected personal data unavailable to users, or temporarily removing published data from a website. In automated filing systems, the restriction of processing should in principle be ensured by technical means in such a manner that the personal data are not subject to further processing operations and cannot be changed. The fact that the processing of personal data is

(68) 為更進一步加強對於自身資料之掌控，當個人資料處理係以自動化方式時，資料主體亦得以有組織性、通常使用、機器得讀取且可通用之格式，以接收其提供予管理者之個人資料，並傳輸至其他管理者。且應使資料管理者建立通用之格式以促進資料可攜性。該權利應適用於當資料主體提供其個人資料，係基於其同意，或該處理過程係履行契約義務之必要時。且當該處理程序係基於同意或契約以外之法律規範時，該權利則不應適用。有鑑於該權利之本質，該權利不得行使用以對抗為執行公共職務而處理個人資料之管理者。是以該權利不得適用於，當個人資料處理程序係為使管理者遵守法律上義務所必須，或當管理者係為履行其公共利益任務或執行職務時。資料主體傳輸或接收有關其個人資料之權利，不應對管理者造成須採納或維持處理系統技術相容性之義務。於特定組合之個人資料中，若涉及複數資料主體，其接收個人資料之權利不應影響其他資料主體依據歐盟個資規則賦予之權利與自由。此外，該權利亦不應影響資料主體有權刪除個人資料及歐盟個資規則規範對該權利之限制，進一步言之，即不得刪除資料主體提供為履行契約，而提供之履約必要個人資料。且若技術上可行，資料主體應有權要求其個人資料直接從原管理者傳輸另一管理者。

restricted should be clearly indicated in the system.

- (68) To further strengthen the control over his or her own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to receive personal data concerning him or her which he or she has provided to a controller in a structured, commonly used, machine-readable and interoperable format, and to transmit it to another controller. Data controllers should be encouraged to develop interoperable formats that enable data portability. That right should apply where the data subject provided the personal data on the basis of his or her consent or the processing is necessary for the performance of a contract. It should not apply where processing is based on a legal ground other than consent or contract. By its very nature, that right should not be exercised against controllers processing personal data in the exercise of their public duties. It should therefore not apply where the processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller. The data subject's right to transmit or receive personal data concerning him or her should not create an obligation for the controllers to adopt or maintain processing systems which are technically compatible. Where, in a certain set of personal data, more than one data subject is concerned, the right to receive the personal data should be without prejudice to the rights and freedoms of other data subjects in accordance with this Regulation. Furthermore, that right should not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should, in particular, not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract to the extent that and

- (69) 當個人資料得合法使用，係因該處理程序為管理者履行其公共利益任務或執行公務所必要，或基於管理者或第三方之合法利益時，資料主體仍應有權利於具體情況中，針對其個人資料之處裡提出異議。此時，管理者應有義務證明其合法利益之重要性大於該資料主體基本權利與自由之利益。
- (70) 當個人資料處理之目的為直接行銷時，該資料主體有權反對該處理程序，包括對於與該直接行銷有關之個人化剖析，且無論係反對原本或後續之使用、時間點以及不應付費。該權利應明確地提醒資料主體，並以清楚且與其他資訊分別之方式告知。
- (71) 資料主體應有權利不受決策之拘束，該決策可能包括評估與該資料主體個人本身有關且係經自動化處理之措施，並對其有法律上或類似重要之效果，例如無真人介入自動化拒絕線上信用申請或線上招聘等。該處理程序中包含「個人化剖析」，這包括任何形式之自動化處理個人資料，以評估與自然人個人有關之資訊，具體而言即分析或預測該資料主體工作上、經濟情況、健康、個人偏好或興趣、可信度及行為、位置或行動等方面，並產生對於該資料主體法律上或其他類似之重大效果。惟，以上述處理程序為基礎之決策，包括個人化剖析，若經得適用於管理者之歐盟或成員國法律明確授權後，亦得為之，包括為監視並預防詐欺或逃

for as long as the personal data are necessary for the performance of that contract. Where technically feasible, the data subject should have the right to have the personal data transmitted directly from one controller to another.

- (69) Where personal data might lawfully be processed because processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, or on grounds of the legitimate interests of a controller or a third party, a data subject should, nevertheless, be entitled to object to the processing of any personal data relating to his or her particular situation. It should be for the controller to demonstrate that its compelling legitimate interest overrides the interests or the fundamental rights and freedoms of the data subject.
- (70) Where personal data are processed for the purposes of direct marketing, the data subject should have the right to object to such processing, including profiling to the extent that it is related to such direct marketing, whether with regard to initial or further processing, at any time and free of charge. That right should be explicitly brought to the attention of the data subject and presented clearly and separately from any other information.
- (71) The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her, such as automatic refusal of an online credit application or e-recruiting practices without any human intervention. Such processing includes ‘profiling’ that consists of any form of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the data subject's performance at work,

漏稅等目的，執行上符合歐盟機構或國家監督機關有關之規範、標準和建議，且能確保管理者提供該服務之安全與可信度，或係為訂立或履行管理者與資料主體間契約之必要，或當該資料主體已給予其明確具體之同意時。在任何情況下，該種處理程序應採用適當之安全措施，包括告知資料主體詳細資訊以及資料主體有權要求人工介入、表達資料主體之意見、獲得經評估後做出之決策之理由、並得對決策提出異議等。上述安全措施不應涉及任何未成年人。

為確保與資料主體有關之處理程序公平及透明，應考量處理個人資料之特定情況及脈絡中，管理者應使用適當之數學或統計方法進行個人化剖析、採用技術上及組織上合適之確保措施，詳言之，即得修正有誤之個人資料並最小化發生錯誤之風險、考量對資料主體利益與權力之潛在風險而採用之個人資料保護措施，並且除其他規定外，強調避免因種族或種族起源、政治傾向、宗教信仰、所屬工會相關之個人資料、基因或健康狀況、性傾向等所造成之歧視效果，或其他造成同樣效果之措施。對於特殊類型個人資料之自動化決策及個人化剖析，僅當令有特定規範時，始得為之。

economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her. However, decision-making based on such processing, including profiling, should be allowed where expressly authorised by Union or Member State law to which the controller is subject, including for fraud and tax-evasion monitoring and prevention purposes conducted in accordance with the regulations, standards and recommendations of Union institutions or national oversight bodies and to ensure the security and reliability of a service provided by the controller, or necessary for the entering or performance of a contract between the data subject and a controller, or when the data subject has given his or her explicit consent. In any case, such processing should be subject to suitable safeguards, which should include specific information to the data subject and the right to obtain human intervention, to express his or her point of view, to obtain an explanation of the decision reached after such assessment and to challenge the decision. Such measure should not concern a child.

In order to ensure fair and transparent processing in respect of the data subject, taking into account the specific circumstances and context in which the personal data are processed, the controller should use appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, in particular, that factors which result in inaccuracies in personal data are corrected and the risk of errors is minimised, secure personal data in a manner that takes account of the potential risks involved for the interests and rights of the data subject and that prevents, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or that result in measures having such an effect. Automated decision-making and profiling based on special

- (72) 個人化剖析應遵守歐盟個資規則中，有關管制處理個人資料之規定，例如處理程序之法律基礎或資料保護原則等。依據歐盟個資規則所成立之歐洲資料保護委員會（下稱委員會）應有權發布與上述有關之指導建議。
- (73) 有關特定原則之限制以及個人資料之資訊、近用與更正、刪除權、個人資料可攜權、異議權、基於個人化剖析之決策、以及有關依據歐盟或成員國法規定，管理者應告知資料主體有關個人資料外洩以及特定相關義務等，即民主社會所必要和符合比例以維護公共安全，包括保護人類生命，特別係針對自然或人為災害、預防、調查和起訴刑事犯罪或執行刑事處罰等，包括打擊和預防對公共安全威脅之措施、受管制之專業人員違反其職業道德規範、其他有關歐盟或成員國之整體公共利益重要之目標等，對於已使用之個人資料進行後續處理，以獲得與前極權政權下政府行為、或與保護資料主體之權利與自由有關之特定資訊，包括社會輔助、公共健康及其他人道目的等。上述限制應符合憲章與歐洲人權公約規定之要求。

categories of personal data should be allowed only under specific conditions.

- (72) Profiling is subject to the rules of this Regulation governing the processing of personal data, such as the legal grounds for processing or data protection principles. The European Data Protection Board established by this Regulation (the ‘Board’) should be able to issue guidance in that context.
- (73) Restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, the right to object, decisions based on profiling, as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or manmade disasters, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, or of breaches of ethics for regulated professions, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes. Those restrictions should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- (74) 任何處理個人資料之管理者或該管理者之代理人，應規範其責任與義務。具體而言，管理者應有義務執行適當且有效之措施，並能示範如何遵循歐盟個資規則處理個人資料之活動，包括該措施之有效性。上述措施應考量系爭處理程序之特性、範圍、脈絡及目的，以及對於自然人權利和自由之風險。
- (75) 對於自然人權利及自由之風險，針對各種不同之可能性與嚴重性，可能肇因於個人資料處理程序所造成之身體、金錢或非金錢之傷害，具體例子如：處理程序可能帶來歧視、身分盜竊、詐欺、財物損失、名譽傷害、違反職業上保密義務而經洩漏個人資料、未授權公開去連結之資料，或任何其他對經濟或社會造成重大不利亦之情況；資料主體被剝奪其權利及自由，或受限無法行使對於其個人資料之掌控；個人資料處理過程中公開種族或種族來源、政治傾向、宗教或價值觀信仰、所屬工會相關之個人資料、以及處理有關基因資料、健康相關資訊、與性生活或犯罪起訴與前科紀錄、或相關之保安處分等；多方評價資料主體個人，尤其係分析或預測有關其工作、經濟情況、健康、個人喜好或興趣、可信度或行為、所在位置或行動等，以創建或使用此個人化剖析；弱勢自然人之個人資料，例如未成年人等，受到利用；或當該處理程序涉及大量之個人資料量以及資料主體時。

- (74) The responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should be obliged to implement appropriate and effective measures and be able to demonstrate the compliance of processing activities with this Regulation, including the effectiveness of the measures. Those measures should take into account the nature, scope, context and purposes of the processing and the risk to the rights and freedoms of natural persons.
- (75) The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of personal data protected by professional secrecy, unauthorised reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or prevented from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, in particular analysing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.

- (76) 資料主體權利與自由之風險可能性與嚴重性，應取決於參考該處理程序之特性、範圍、脈絡與目的。風險之評價應基於客觀評估機制，且該機制應無論系爭處理程序是否涉及風險或高度風險皆應建置。
- (77) 實施適當措施之建議，以及相關管理者或受託者示範如何遵法，尤其係關於辨識處理程序之風險、評估風險之來源、性質、可能性與嚴重性、找尋實務上最佳降低風險之方式等，皆得以提出得到允許之行為準則、證書、或遵守委員會或其他資料保護機關指示之建議規範。委員會亦得發布有關處理程序操作之建議規範，有關如何降低對於自然人權利與自由造成高風險，以及指示對於該種風險之有效對應措施。
- (78) 有關處理個人資料過程中對自然人權利與自由之保障，要求採取適當之技術上與組織上措施以確保遵守歐盟個資規則之規範。為能顯示已遵循歐盟個資規則，管理者應採用內部政策與執行措施，且該措施符合從設計上與默認設置即以保護個人資料為原則。上述措施，除其他規定外，即包含最低程度利用個人資料、最快速去連結化個人資料、使資料主體得監控資料處理過程、以及讓管理者得創建並改善安全設置。當建置、設計、選擇及使用基於利用個人資料或以處理個人資料達到其任務之應用軟體、服務、產品時，該產品、服務及應用程式之提供者，應鼓勵其於建置、設計該產品、服務及應用軟體時，即已注意資料受保護之權利，並且完整考慮當下最先進之技術，以確保管理者與受託者有能力履行其保護資料之責任。於公開招標情況時，亦應考慮從設計上與默認設置保護資料之原則。

- (76) The likelihood and severity of the risk to the rights and freedoms of the data subject should be determined by reference to the nature, scope, context and purposes of the processing. Risk should be evaluated on the basis of an objective assessment, by which it is established whether data processing operations involve a risk or a high risk.
- (77) Guidance on the implementation of appropriate measures and on the demonstration of compliance by the controller or the processor, especially as regards the identification of the risk related to the processing, their assessment in terms of origin, nature, likelihood and severity, and the identification of best practices to mitigate the risk, could be provided in particular by means of approved codes of conduct, approved certifications, guidelines provided by the Board or indications provided by a data protection officer. The Board may also issue guidelines on processing operations that are considered to be unlikely to result in a high risk to the rights and freedoms of natural persons and indicate what measures may be sufficient in such cases to address such risk.
- (78) The protection of the rights and freedoms of natural persons with regard to the processing of personal data require that appropriate technical and organisational measures be taken to ensure that the requirements of this Regulation are met. In order to be able to demonstrate compliance with this Regulation, the controller should adopt internal policies and implement measures which meet in particular the principles of data protection by design and data protection by default. Such measures could consist, inter alia, of minimising the processing of personal data, pseudonymising personal data as soon as possible, transparency with regard to the functions and processing of personal data, enabling the data subject to monitor the data processing, enabling the controller to create and improve security features. When developing, designing, selecting

- (79) 保護資料主體權利與自由並兼顧管理者與受託者之責任與義務，以及有關監督機關監督和其他措施，此皆需要歐盟個資規則明確分配責任歸屬，包括管理者決定其與其他管理者共同使用個人資料之目的與方式，或當處理程序係由管理者之代理人為之時。
- (80) 非於歐盟境內成立之管理者或受託者使用位於歐盟境內資料主體之個人資料，且該利用活動係與提供商品或服務相關，無論資料主體是否應支付對價，對於該位於歐盟境內之資料主體，以及監督其於歐盟境內所進行之活動，該管理者或受託者應指定代表，除非該利用活動並非經常性，且並未涉及大規模地處理特殊種類個人資料或該處理過程與刑事追訴和犯罪無關，且亦無可能增加對自然人權利與自由之風險，惟若該管理者或受託者係公權力機關或機構時，亦應考量該處理過程之性質、脈絡、範圍和目的。該指定之代表應以管理者或受託者之名義為之，並得由任何監督機關指派。該代表應由管理者或受託者明確以書面授權該代表係以其名義並遵守歐盟個資規則賦予其之義務。指派代表並不影響管理者或受託者依據歐盟個資規則應負擔之責任或義務。該代表應履行其由管理者或受託者所授權

and using applications, services and products that are based on the processing of personal data or process personal data to fulfil their task, producers of the products, services and applications should be encouraged to take into account the right to data protection when developing and designing such products, services and applications and, with due regard to the state of the art, to make sure that controllers and processors are able to fulfil their data protection obligations. The principles of data protection by design and by default should also be taken into consideration in the context of public tenders.

- (79) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors, also in relation to the monitoring by and measures of supervisory authorities, requires a clear allocation of the responsibilities under this Regulation, including where a controller determines the purposes and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.
- (80) Where a controller or a processor not established in the Union is processing personal data of data subjects who are in the Union whose processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union, or to the monitoring of their behaviour as far as their behaviour takes place within the Union, the controller or the processor should designate a representative, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing or if the controller is a public authority or

指派之任務，包括配合適當監督機關進行確保有關遵守歐盟個資規則之行動等。若管理者或受託者違反法規時，該受指派之代表應配合相應之執法程序。

- (81) 為確實遵循歐盟個資規則中，受託者以管理者之名義進行處理程序之相關規定，當管理者授權受託者進行個人資料處理活動時，該管理者應僅得使用提出充分保證之受託者，尤其係有關專業知識、可信度與資源等，以達到歐盟個資規則要求之技術上與組織上措施，包括處理程序之安全性等。受託者遵守經准許之行為準則或認證機制，可用以證明符合管理者義務。受託者執行處理程序應遵守契約或其他歐盟或成員國法律規定，包括將受託者與管理者綁訂、訂定處理程序之主題與期間、性質、目的等，以及何種個人資料與資料主體之種類，並考量受託者於進行處理資料過程中之具體任務與責任，和對於資料主體權利與自由造成之風險等。管理者與受託者得選擇使用個別契約或由歐盟執委會提出或其他監督機關依循一致之機制並經歐盟執委會採用之定型化契約。於以管理者之名義進行之處理程序結束時，受託者應本於管理者之選擇，歸還或刪除該個人資料，除另有受託者應遵循之歐盟或成員國法，要求儲存該個人資料者。

body. The representative should act on behalf of the controller or the processor and may be addressed by any supervisory authority. The representative should be explicitly designated by a written mandate of the controller or of the processor to act on its behalf with regard to its obligations under this Regulation. The designation of such a representative does not affect the responsibility or liability of the controller or of the processor under this Regulation. Such a representative should perform its tasks according to the mandate received from the controller or processor, including cooperating with the competent supervisory authorities with regard to any action taken to ensure compliance with this Regulation. The designated representative should be subject to enforcement proceedings in the event of non-compliance by the controller or processor.

- (81) To ensure compliance with the requirements of this Regulation in respect of the processing to be carried out by the processor on behalf of the controller, when entrusting a processor with processing activities, the controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation, including for the security of processing. The adherence of the processor to an approved code of conduct or an approved certification mechanism may be used as an element to demonstrate compliance with the obligations of the controller. The carrying-out of processing by a processor should be governed by a contract or other legal act under Union or Member State law, binding the processor to the controller, setting out the subject-matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects, taking into account the specific tasks and responsibilities of the processor in the context of the processing to be carried out and the

- (82) 為證明遵守歐盟個資規則規定，管理者或受託者應有義務留存有關處理活動之紀錄。每一位管理者及受託者應有義務配合監督機關，且經請求時，亦應提供監督機關有關之紀錄，以此達到監督該處理程序操作之目的。
- (83) 為維持安全性及防止處理過程中違反歐盟個資規則之規定，管理者或受託者應評估處理過成本有之風險，並採取迴避措施，例如加密。該種措施應確保一定程度之安全標準，包括保密性等，並衡量實施與該風險和應保障之個人資料性質有關之安全措施當時之最新科技及成本。於評估資料安全風險時，應注意個人資料處理過程所帶來之危險，例如意外或違法破壞、損失、變更、未授權之公開或讀取，經傳輸、儲存或以其他方式處理之個人資料所造成身體上、金錢或非金錢上之損害等。
- (84) 為促進有可能造成自然人權利與自由高度風險之處理程序遵循歐盟個資規則，管理者應有義務執行個人資料影響評估，尤其

risk to the rights and freedoms of the data subject. The controller and processor may choose to use an individual contract or standard contractual clauses which are adopted either directly by the Commission or by a supervisory authority in accordance with the consistency mechanism and then adopted by the Commission. After the completion of the processing on behalf of the controller, the processor should, at the choice of the controller, return or delete the personal data, unless there is a requirement to store the personal data under Union or Member State law to which the processor is subject.

- (82) In order to demonstrate compliance with this Regulation, the controller or processor should maintain records of processing activities under its responsibility. Each controller and processor should be obliged to cooperate with the supervisory authority and make those records, on request, available to it, so that it might serve for monitoring those processing operations.
- (83) In order to maintain security and to prevent processing in infringement of this Regulation, the controller or processor should evaluate the risks inherent in the processing and implement measures to mitigate those risks, such as encryption. Those measures should ensure an appropriate level of security, including confidentiality, taking into account the state of the art and the costs of implementation in relation to the risks and the nature of the personal data to be protected. In assessing data security risk, consideration should be given to the risks that are presented by personal data processing, such as accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed which may in particular lead to physical, material or non-material damage.
- (84) In order to enhance compliance with this Regulation where processing operations are likely to result in a high risk to the rights

係評估相關風險之來源、性質、特殊性及嚴重性。該評估之結果應考量決定採用何種適當之措施以符合該處理個人資料程序符合歐盟個資規則。當個人資料影響評估結果顯示某處理程序涉及高風險，且當時之科技或實施成本讓管理者無法以適當之措施迴避該風險時，應於處理程序前先向監督機關諮詢。

- (85) 個人資料外洩發生時，若無適當且及時之補救方式，得造成自然人身體、金錢或非金錢之損失，例如使系爭資料主體失去對個人資料之掌控、限制其權利、歧視、身份盜竊或詐欺、財物損失、未授權而公開去連結化資料、名譽傷害、失去專業義務對於個人資料之保密、或其他重大經濟上或社會上之不利益。因此，當管理者知悉個人資料外洩發生時，應及時且不應有任何耽誤地將該外洩事件通知監督機關，並且若可行時，應不超過知悉後 72 小時，除非該管理者依據可歸責原則，證明該個人資料外洩並不會對自然人權利與自由造成風險。上述通知若無法於 72 小時內發出時，延遲之理由應附隨於通知，且該資訊得於無更多延誤下分階段提供。

- (86) 管理者應及時將個人資料外洩事件通知資料主體，若該外洩將

and freedoms of natural persons, the controller should be responsible for the carrying-out of a data protection impact assessment to evaluate, in particular, the origin, nature, particularity and severity of that risk. The outcome of the assessment should be taken into account when determining the appropriate measures to be taken in order to demonstrate that the processing of personal data complies with this Regulation. Where a data-protection impact assessment indicates that processing operations involve a high risk which the controller cannot mitigate by appropriate measures in terms of available technology and costs of implementation, a consultation of the supervisory authority should take place prior to the processing.

- (85) A personal data breach may, if not addressed in an appropriate and timely manner, result in physical, material or non-material damage to natural persons such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality of personal data protected by professional secrecy or any other significant economic or social disadvantage to the natural person concerned. Therefore, as soon as the controller becomes aware that a personal data breach has occurred, the controller should notify the personal data breach to the supervisory authority without undue delay and, where feasible, not later than 72 hours after having become aware of it, unless the controller is able to demonstrate, in accordance with the accountability principle, that the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where such notification cannot be achieved within 72 hours, the reasons for the delay should accompany the notification and information may be provided in phases without undue further delay.
- (86) The controller should communicate to the data subject a personal

可能對自然人之權利及自由造成高危險時，以使資料主體得採取必要預防措施。此通知應敘述該資料外洩事件之情況，以及建議受影響之自然人可採取以減緩負面衝擊之方式。對資料主體做出之通知應於合理可行之情況下儘速作出，並且與監督機關緊密配合，尊重監督機關或其他相關機關，例如執法機關等，所提出之建議。舉例而言，對於減緩損害立即發生之風險可能需要與資料主體進行即時溝通，再者，實施合適措施以阻止持續或相類似之個人資料外洩事件再次發生，可能需要更多溝通時間等。

(87) 必須確認是否所有合適之技術保障及組織安排皆已實施，以立即確認個人資料是否外洩，並及時通知監督機關與資料主體。應確認通知之作成應未受不當拖延，特別係考慮個人資料外洩事件之性質、嚴重程度以及後果和對資料主體造成之反效果。該通知可能導致監督機關基於歐盟個資規則賦予其職權而介入。

(88) 於制定適用於個人資料外洩通知之形式與步驟等詳細規範時，應完整考慮該外洩情況，包括該個人資料是否已有適當之技術保障措施、有效地避免身份詐欺或其他不當使用之可能性等。再者，該規範及步驟應考量執法單位之合法利益，尤係若過早公開將造成該個人資料外洩事件調查不必要之阻礙時。

data breach, without undue delay, where that personal data breach is likely to result in a high risk to the rights and freedoms of the natural person in order to allow him or her to take the necessary precautions. The communication should describe the nature of the personal data breach as well as recommendations for the natural person concerned to mitigate potential adverse effects. Such communications to data subjects should be made as soon as reasonably feasible and in close cooperation with the supervisory authority, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities. For example, the need to mitigate an immediate risk of damage would call for prompt communication with data subjects whereas the need to implement appropriate measures against continuing or similar personal data breaches may justify more time for communication.

- (87) It should be ascertained whether all appropriate technological protection and organisational measures have been implemented to establish immediately whether a personal data breach has taken place and to inform promptly the supervisory authority and the data subject. The fact that the notification was made without undue delay should be established taking into account in particular the nature and gravity of the personal data breach and its consequences and adverse effects for the data subject. Such notification may result in an intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation.
- (88) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of that breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests

- (89) 資料保護指令(95/46/EC) 規範了通知監督機關有關處理個人資料之一般性義務。且該義務加諸了行政與財政上負擔，惟其並非於任何情況下皆有助於保障個人資料。此種無差別之一般性通知義務應因此而廢除，並以更有效之方式和機制取代，著重於因其性質、範圍、脈絡與目的，而較有可能對自然人之權利和自由造成高風險之個人資料處理操作程序。此種處理程序，尤其係涉及使用新科技或前所未有，且過去並無管理者評估其資料保護影響測試，或由於從初始處理程序後隨著時間過去而變得有必要。
- (90) 上述情況發生時，管理者應於執行處理程序前，先行資料保護影響測試，以評估具體高風險之可能性與嚴重性，並考量該處理程序之性質、範圍、脈絡與目的以及風險來源。該影響評估應包括，詳言之，用以緩衝風險之方法、安全措施及機制，以確保對個人資料之保障並證明符合歐盟個資規則之規範。
- (91) 對於大規模利用個人資料，即欲進行區域性、全國性或跨國性層級之大量個人資料處理，且將影響極多資料主體，並由於其敏感性，將可能造成高風險，例如基於當時科技知識水準，大規模地採用新科技於其他處理程序，而造成對資料主體之權利與自由產生高風險，尤其當此些處理程序使資料主體更難以行

of law-enforcement authorities where early disclosure could unnecessarily hamper the investigation of the circumstances of a personal data breach.

- (89) Directive 95/46/EC provided for a general obligation to notify the processing of personal data to the supervisory authorities. While that obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Such indiscriminate general notification obligations should therefore be abolished, and replaced by effective procedures and mechanisms which focus instead on those types of processing operations which are likely to result in a high risk to the rights and freedoms of natural persons by virtue of their nature, scope, context and purposes. Such types of processing operations may be those which in, particular, involve using new technologies, or are of a new kind and where no data protection impact assessment has been carried out before by the controller, or where they become necessary in the light of the time that has elapsed since the initial processing.
- (90) In such cases, a data protection impact assessment should be carried out by the controller prior to the processing in order to assess the particular likelihood and severity of the high risk, taking into account the nature, scope, context and purposes of the processing and the sources of the risk. That impact assessment should include, in particular, the measures, safeguards and mechanisms envisaged for mitigating that risk, ensuring the protection of personal data and demonstrating compliance with this Regulation.
- (91) This should in particular apply to large-scale processing operations which aim to process a considerable amount of personal data at regional, national or supranational level and which could affect a large number of data subjects and which are likely to result in a high risk, for example, on account of their sensitivity, where in

使其權利時，即應該適用前段所述規範。若當個人資料處理，係為針對特定自然人作出決策，且該決策係參照對其個人各方面之系統性及延伸之評估，例如基於該自然人之個人化剖析、或參考處理特殊種類之個人資料、生物特徵識別資料、或該自然人之刑事起訴與犯罪、以及相關之保安處分等，此時更應執行資料保護影響評估。對於大規模監督公共出入區域時，亦需要進行資料保護影響評估，尤其當使用光電儀器或任何其他監督機關認為該處理程序有可能造成資料主體權利與自由產生高風險時，詳言之，由於該處理程序阻礙資料主體行使權利、使用某些服務或契約，或因大規模及系統性地執行該程序之故。個人資料處理程序應非視為係大規模進行，若該程序涉及之個人資料係來自病患或獨立開業醫生、其他醫療相關專業人員或律師之客戶時。於此情況下，資料保護影響評估並非強制。

- (92) 有些情況下，資料保護影響評估可合理且符合經濟效益地比單一項目更廣泛，舉例而言，當公權力機關欲建立一通用系統或處理平台，或當多數管理者計畫跨產業領域、部門或廣泛地用於水平活動時，引進一通用系統或處理環境。

accordance with the achieved state of technological knowledge a new technology is used on a large scale as well as to other processing operations which result in a high risk to the rights and freedoms of data subjects, in particular where those operations render it more difficult for data subjects to exercise their rights. A data protection impact assessment should also be made where personal data are processed for taking decisions regarding specific natural persons following any systematic and extensive evaluation of personal aspects relating to natural persons based on profiling those data or following the processing of special categories of personal data, biometric data, or data on criminal convictions and offences or related security measures. A data protection impact assessment is equally required for monitoring publicly accessible areas on a large scale, especially when using optic-electronic devices or for any other operations where the competent supervisory authority considers that the processing is likely to result in a high risk to the rights and freedoms of data subjects, in particular because they prevent data subjects from exercising a right or using a service or a contract, or because they are carried out systematically on a large scale. The processing of personal data should not be considered to be on a large scale if the processing concerns personal data from patients or clients by an individual physician, other health care professional or lawyer. In such cases, a data protection impact assessment should not be mandatory.

- (92) There are circumstances under which it may be reasonable and economical for the subject of a data protection impact assessment to be broader than a single project, for example where public authorities or bodies intend to establish a common application or processing platform or where several controllers plan to introduce a common application or processing environment across an industry sector or segment or for a widely used horizontal activity.

- (93) 當成員國通過政府機關或政府機構履行其職務所根據之法律過程中，且該法規規範系爭特定或一系列之處理程序時，成員國得規定應於進行處理程序活動前，須先執行上述評估測試。
- (94) 若資料保護影響評估顯示，處理程序若缺少防護、安全措施及機制以緩衝風險，將造成對於自然人權利與自由極高風險，且該管理者亦同意該風險無法以當時科技與實施成本可行之合理方式緩衝時，應於開始該處理程序前，先向監督機關諮詢。上述之高風險有可能係來自特定類型之處理程序、處理程序之程度與頻率等，此亦可能實際上造成自然人之損害或對其權利與自由之阻礙。監督機關應於一定期限內，回應該諮詢之請求。然而，於期限內監督機關之不作為不應影響監督機關本於歐盟個資規則所賦予其職權與權力進行介入，包括有權禁止該處理程序。有關該諮詢程序之部分內容，有關係爭處理程序之資料保護影響評估結果應交付予監督機關，尤其係關於用以減緩對自然人權利與自由之風險所採用之措施。
- (95) 若有必要且經請求時，受託者應協助管理者進行確保遵守執行資料保護影響評估之義務，以及向監督機關事先徵詢意見等。

- (93) In the context of the adoption of the Member State law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question, Member States may deem it necessary to carry out such assessment prior to the processing activities.
- (94) Where a data protection impact assessment indicates that the processing would, in the absence of safeguards, security measures and mechanisms to mitigate the risk, result in a high risk to the rights and freedoms of natural persons and the controller is of the opinion that the risk cannot be mitigated by reasonable means in terms of available technologies and costs of implementation, the supervisory authority should be consulted prior to the start of processing activities. Such high risk is likely to result from certain types of processing and the extent and frequency of processing, which may result also in a realisation of damage or interference with the rights and freedoms of the natural person. The supervisory authority should respond to the request for consultation within a specified period. However, the absence of a reaction of the supervisory authority within that period should be without prejudice to any intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation, including the power to prohibit processing operations. As part of that consultation process, the outcome of a data protection impact assessment carried out with regard to the processing at issue may be submitted to the supervisory authority, in particular the measures envisaged to mitigate the risk to the rights and freedoms of natural persons.
- (95) The processor should assist the controller, where necessary and upon request, in ensuring compliance with the obligations deriving from the carrying out of data protection impact assessments and from prior consultation of the supervisory authority.

- (96) 諮詢監督機關，亦應於訂定有關該個人資料處理程序之立法或監管措施過程中進行，以確保該欲進行之處理程序符合歐盟個資規則，並且確實減緩對資料主體造成之風險。
- (97) 當處理程序係由政府機關進行時，除法院或獨立司法機關執行其司法職務以外，當於私部門中，由管理者進行之處理程序核心活動需要大規模定期且系統化監視資料主體時，或當該管理者或受託者之核心活動涵蓋處理大規模之特殊種類個人資料，且該資料與刑事起訴和犯罪有關時，應有一具備個人資料保護法與實務專業知識者協助該管理者或受託者，自內部監督是否符合歐盟個資規則。於私部門中，管理者核心活動係指其主要活動，並且與處理個人資料此附帶活動無關。專業知識之必要程度應取決於系爭資料處理程序，以及經管理者或受託者處理之個人資料應有之保護。該資料保護專責人員，無論其是否為管理者之員工，皆應有資格獨立執行其責任與任務。
- (98) 應鼓勵代表管理者或受託者群體之協會或其他機構，於歐盟個資規則限制範圍內，制定行為準則，以方便歐盟個資規則有效實施，並考慮某些產業進行處理程序之特性、微型、小型及中型企業之特殊需求等。具體而言，上述行為準則應調整管理者與受託者之義務，並考量該處理程序對自然人之權利和自由可

- (96) A consultation of the supervisory authority should also take place in the course of the preparation of a legislative or regulatory measure which provides for the processing of personal data, in order to ensure compliance of the intended processing with this Regulation and in particular to mitigate the risk involved for the data subject.
- (97) Where the processing is carried out by a public authority, except for courts or independent judicial authorities when acting in their judicial capacity, where, in the private sector, processing is carried out by a controller whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects on a large scale, or where the core activities of the controller or the processor consist of processing on a large scale of special categories of personal data and data relating to criminal convictions and offences, a person with expert knowledge of data protection law and practices should assist the controller or processor to monitor internal compliance with this Regulation. In the private sector, the core activities of a controller relate to its primary activities and do not relate to the processing of personal data as ancillary activities. The necessary level of expert knowledge should be determined in particular according to the data processing operations carried out and the protection required for the personal data processed by the controller or the processor. Such data protection officers, whether or not they are an employee of the controller, should be in a position to perform their duties and tasks in an independent manner.
- (98) Associations or other bodies representing categories of controllers or processors should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors and

能產生之風險。

- (99) 於制定上述行為準則，或修訂、延伸該準則時，代表管理者或受託者群體之協會或其他機構應諮詢受影響之利害關係人，包括資料主體，並若可行時，考量接收到之意見與看法並對此作出的回應。
- (100) 為增進透明性與符合歐盟個資規則規範，應鼓勵建立認證機制與資料保護密封與記號，使資料主體得快速取得有關商品或服務一定之資料保護。
- (101) 將個人資料傳輸至其他歐盟外國家和國際組織，為拓展國際貿易及合作之必要。此種傳輸之增加對於個人資料保護造成新挑戰及考驗。然而，當個人資料從歐盟傳輸至第三國或國際組織之管理者、受託者或其他接收者時，對於自然人於歐盟內依據歐盟個資規則所受保障之程度不應減損，包括向第三國或國際組織轉交個人資料予位於相同或第三國以外之控制者、受託者或國際組織。任何情況下，傳輸至第三國和國際組織僅得於完全符合歐盟個資規則之情況下，始得為之。除歐盟個資規則之其他規定外，僅當管理者或受託者遵守歐盟個資規則中，有關將個人資料傳輸至第三國或國際組織之條文中所規定之要件時，始得進行傳輸。

the specific needs of micro, small and medium enterprises. In particular, such codes of conduct could calibrate the obligations of controllers and processors, taking into account the risk likely to result from the processing for the rights and freedoms of natural persons.

- (99) When drawing up a code of conduct, or when amending or extending such a code, associations and other bodies representing categories of controllers or processors should consult relevant stakeholders, including data subjects where feasible, and have regard to submissions received and views expressed in response to such consultations.
- (100) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms and data protection seals and marks should be encouraged, allowing data subjects to quickly assess the level of data protection of relevant products and services.
- (101) Flows of personal data to and from countries outside the Union and international organisations are necessary for the expansion of international trade and international cooperation. The increase in such flows has raised new challenges and concerns with regard to the protection of personal data. However, when personal data are transferred from the Union to controllers, processors or other recipients in third countries or to international organisations, the level of protection of natural persons ensured in the Union by this Regulation should not be undermined, including in cases of onward transfers of personal data from the third country or international organisation to controllers, processors in the same or another third country or international organisation. In any event, transfers to third countries and international organisations may only be carried out in full compliance with this Regulation. A transfer could take place

- (102) 歐盟個資規則不影響其他歐盟與第三國間，締結有關傳輸個人資料之國際協議，包括對資料主體適當之安全措施等。成員國得締結有關傳輸第三國或國際組織之國際協議，只要該協議並不影響歐盟個資規則之效力，以及任何歐盟法，並且訂有對資料主體基本權利適當程度之保障時。
- (103) 歐盟執委會得作出對歐盟整體有拘束力之決議，有關第三國、第三國之區域特定產業、或國際組織內應提供足夠之資料保護標準，從而提供歐盟有關應提供該保護標準之第三國或國際組織法律明確性及一致性。在上述情況中，將個人資料傳輸至第三國或國際組織不須取得任何後續授權即得進行。歐盟執委會亦得決議，在已給予第三國或國際組織通知及陳述完整理由後，撤銷上述決議。
- (104) 為符合歐盟成立所秉持之基本價值，亦即保障人民之權利，歐盟執委會於評估第三國、或位於第三國之區域或特定產業時，應考量到第三國係如何遵守法治原則、司法救濟權以及國際人權法和標準、以及其一般和部門法律，包括有關公共安全、國防、國家安全及公共秩序和刑法等。採納與第三國之區域或特定產業相關之適宜決策時，應考慮簡明與客觀之標準，例如具

only if, subject to the other provisions of this Regulation, the conditions laid down in the provisions of this Regulation relating to the transfer of personal data to third countries or international organisations are complied with by the controller or processor.

- (102) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects. Member States may conclude international agreements which involve the transfer of personal data to third countries or international organisations, as far as such agreements do not affect this Regulation or any other provisions of Union law and include an appropriate level of protection for the fundamental rights of the data subjects.
- (103) The Commission may decide with effect for the entire Union that a third country, a territory or specified sector within a third country, or an international organisation, offers an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third country or international organisation which is considered to provide such level of protection. In such cases, transfers of personal data to that third country or international organisation may take place without the need to obtain any further authorisation. The Commission may also decide, having given notice and a full statement setting out the reasons to the third country or international organisation, to revoke such a decision.
- (104) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should, in its assessment of the third country, or of a territory or specified sector within a third country, take into account how a particular third country respects the rule of law, access to justice as well as international human rights norms and standards and its

體資料處理程序、第三國得適用之有效法律規範範圍。第三國應承諾確保充足之保障程度，且應實質上等同於歐盟境內標準，尤係個人資料將於一或多具體部門所使用時。詳言之，第三國應確保獨立個人資料保護機關，並應提供與成員國之資料保護監督機關合作機制，並且資料主體應享有確實可行使之權利，以及有效之行政與司法救濟。

(105) 除第三國或國際組織簽訂之國際承諾外，歐盟執委會亦應考慮第三國或國際組織參與多邊或區域系統所生與個人資料保護有關之義務，以及該義務之履行。詳言之，第三國加入歐洲評議會於 1981 年 1 月 28 日簽署之個人資料自動化處理之個人保護條約及附加議定書時，應納入考量。於評估第三國或國際組織個人資料保障層級時，歐盟執委會應徵詢委員會之意見。

(106) 歐盟執委會應監督有關第三國、位於第三國之區域或特定產業、國際組織資料保護層級決定之運作情況，此監督決策運作情況係依據資料保護指令(95/46/EC)第 25 條第(6)項及第 26 條第(4)項。針對適宜之決策，歐盟執委會應提出有關其運作情況

general and sectoral law, including legislation concerning public security, defence and national security as well as public order and criminal law. The adoption of an adequacy decision with regard to a territory or a specified sector in a third country should take into account clear and objective criteria, such as specific processing activities and the scope of applicable legal standards and legislation in force in the third country. The third country should offer guarantees ensuring an adequate level of protection essentially equivalent to that ensured within the Union, in particular where personal data are processed in one or several specific sectors. In particular, the third country should ensure effective independent data protection supervision and should provide for cooperation mechanisms with the Member States' data protection authorities, and the data subjects should be provided with effective and enforceable rights and effective administrative and judicial redress.

- (105) Apart from the international commitments the third country or international organisation has entered into, the Commission should take account of obligations arising from the third country's or international organisation's participation in multilateral or regional systems in particular in relation to the protection of personal data, as well as the implementation of such obligations. In particular, the third country's accession to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its Additional Protocol should be taken into account. The Commission should consult the Board when assessing the level of protection in third countries or international organisations.
- (106) The Commission should monitor the functioning of decisions on the level of protection in a third country, a territory or specified sector within a third country, or an international organisation, and monitor the functioning of decisions adopted on the basis of Article

之定期審查機制。該定期審查機制應與系爭第三國或國際組織協商進行，並考量所有第三國或國際組織相關之發展。為達到監督並執行定期審查之目的，歐盟執委會應考量歐爭議會及理事會，以及其他相關組織和來源之意見及調查發現。歐盟執委會應在合理期間內評估一項決策之運作情況後，根據因本保護規定所制定之歐洲議會與理事會第 182/2011 號法規，向委員會、歐洲議會及理事會報告任何有關調查結果。

(107) 歐盟執委會得認定第三國、位於第三國之區域或特定產業、國際組織不再保有一定層級之資料保護。若然，傳輸個人資料至該第三國或國際組織應受禁止，除非符合歐盟個資規則中要求有關傳輸應遵守之適當安全措施，包括內部具拘束力條款，或特定例外情況。於此情況下，應規定有關歐盟執委會與該第三國或國際組織之間之協商。歐盟執委會應及時告知該第三國或國際組織其理由，並進行協商以解決該情況。

(108) 若缺少適宜之決策，管理者或受託者應賠償資料主體因在第三國中缺少個人資料適當安全措施。前述適當安全措施得包括使用內部具拘束力條款、委員會制定之標準資料保護條款、監督

- 25(6) or Article 26(4) of Directive 95/46/EC. In its adequacy decisions, the Commission should provide for a periodic review mechanism of their functioning. That periodic review should be conducted in consultation with the third country or international organisation in question and take into account all relevant developments in the third country or international organisation. For the purposes of monitoring and of carrying out the periodic reviews, the Commission should take into consideration the views and findings of the European Parliament and of the Council as well as of other relevant bodies and sources. The Commission should evaluate, within a reasonable time, the functioning of the latter decisions and report any relevant findings to the Committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council as established under this Regulation, to the European Parliament and to the Council.
- (107) The Commission may recognise that a third country, a territory or a specified sector within a third country, or an international organisation no longer ensures an adequate level of data protection. Consequently the transfer of personal data to that third country or international organisation should be prohibited, unless the requirements in this Regulation relating to transfers subject to appropriate safeguards, including binding corporate rules, and derogations for specific situations are fulfilled. In that case, provision should be made for consultations between the Commission and such third countries or international organisations. The Commission should, in a timely manner, inform the third country or international organisation of the reasons and enter into consultations with it in order to remedy the situation.
- (108) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data

機關制定之標準資料保護條款、或由監督機關批准之契約條款等。上述安全措施應確保符合資料保護要求與適用於歐盟內部之資料主體處理權利，包括提供資料主體得行使之權利以及有效之司法救濟，包含在歐盟內或第三國中，獲得有效之行政或司法救濟，以及請求賠償金等。且其應和遵守尤其係有關個人資料處理之一般性原則，以及應從設計上與默認設置保障個人資料之原則有關。傳輸亦得由政府機關或機構與第三國之政府機關或有相應之責任與作用之國際組織間進行，包括根據將其納入行政安排之規定，例如備忘錄、制定資料主體得行使且有效之權利。當針對無法律效力之行政安排提供安全措施時，應獲得監督機關之授權。

- (109) 管理者或受託者應有機會採用由歐盟執委會或監督機關制定之標準資料保護條款，並避免管理者或受託者將該標準個人資料保護條款寫入範圍更廣之契約中，例如該受託者與其他受託者之間之契約，或加入其他條款或新增安全措施，倘若其並未直接或間接違反委員會或監督機關制定之標準契約條款，或影響資料主體之基本權利或自由時。應鼓勵管理者與受託者透過契約上承諾制定更多安全措施，以補充該標準保護條款。

subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority. Those safeguards should ensure compliance with data protection requirements and the rights of the data subjects appropriate to processing within the Union, including the availability of enforceable data subject rights and of effective legal remedies, including to obtain effective administrative or judicial redress and to claim compensation, in the Union or in a third country. They should relate in particular to compliance with the general principles relating to personal data processing, the principles of data protection by design and by default. Transfers may also be carried out by public authorities or bodies with public authorities or bodies in third countries or with international organisations with corresponding duties or functions, including on the basis of provisions to be inserted into administrative arrangements, such as a memorandum of understanding, providing for enforceable and effective rights for data subjects. Authorisation by the competent supervisory authority should be obtained when the safeguards are provided for in administrative arrangements that are not legally binding.

- (109) The possibility for the controller or processor to use standard data-protection clauses adopted by the Commission or by a supervisory authority should prevent controllers or processors neither from including the standard data-protection clauses in a wider contract, such as a contract between the processor and another processor, nor from adding other clauses or additional safeguards provided that they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the

- (110) 有經濟上合作關係之公司團體或企業集團，應得採取經批准且內部具拘束力條款，針對從歐盟傳輸至有經濟上合作關係公司團體或企業集團內之組織，並且該內部具拘束力條款包含所有必要原則及得行使之權利，以確保傳輸之安全措施以及個人資料傳輸之種類。
- (111) 應規定，當資料主體已明示同意之情況下，亦得進行傳輸，倘若該傳輸非經常性且係為契約或法律主張所必要，且無論是否係於司法程序中，或是行政或其他非司法程序，包括監督機關所訂之程序。此外，應規定，當依照歐盟或成員國法規定認有重要公共利益之理由時，或當該傳輸係依法註冊，並且係為使大眾或有合法利益之個人進行協商時，應得同意該等傳輸進行。於後者之情況下，該傳輸不應涉及個人資料之整體，或該註冊所涵蓋之所有資料類型，並且，當該註冊係為使有合理利益之個人協商時，該傳輸僅得基於該人士之請求始得進行，或者，若其將作為接收者時，應全面考量資料主體之利益與基本權利。
- (112) 前述例外應僅得適用於資料傳輸係基於重要公共利益所需及必要時，例如，在競爭監督機關、稅務或海關行政單位、財政監

data subjects. Controllers and processors should be encouraged to provide additional safeguards via contractual commitments that supplement standard protection clauses.

- (110) A group of undertakings, or a group of enterprises engaged in a joint economic activity, should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same group of undertakings, or group of enterprises engaged in a joint economic activity, provided that such corporate rules include all essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.
- (111) Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his or her explicit consent, where the transfer is occasional and necessary in relation to a contract or a legal claim, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure, including procedures before regulatory bodies. Provision should also be made for the possibility for transfers where important grounds of public interest laid down by Union or Member State law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In the latter case, such a transfer should not involve the entirety of the personal data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or, if they are to be the recipients, taking into full account the interests and fundamental rights of the data subject
- (112) Those derogations should in particular apply to data transfers required and necessary for important reasons of public interest, for

督機關、社會安全相關之服務機構之間，或係為了公共健康，例如執行追蹤傳染疾病或為了降低及/或消除運動禁藥時，始得進行國際資料傳輸。傳輸個人資料應視為合法，若係為保障資料主體重要利益或第三人之重大利益時，包括身體完整性或生命等，且若該資料主體無法作出同意時。若缺少適宜之決策，歐盟或成員國法律得，基於重要公共利益之理由，明確制定限制傳輸特殊種類之個人資料至第三國或國際組織。成員國應將該通知告知歐盟執委會。任何向國際人道團體傳輸資料主體生理上或法律上無法給予同意之個人資料，且係為完成日內瓦公約中規定之義務或遵守其他得適用於武裝衝突之國際人道法時，得視為具備重要公共利益理由之必要性，或該傳輸係為資料主體之重大利益。

- (113) 若被視為符合非重複性，且僅涉及有限數量資料主體之傳輸，應得由追求必要合法利益之管理者進行之，若當這些利益並未凌駕資料主體之利益或自由及權利，且該管理者已評估該傳輸所有之情況時。管理者應具體考量個人資料之性質、目的與該表定處理程序之時間，以及原國家之情況、第三國及最終目的地國、並應提供適當之安全措施以保護相關其個人資料處理時，自然人之基本權利與自由。前述傳輸僅得於無其他理由作為傳輸基礎時，始得允許進行。為了科學、歷史研究或統計目的時，社會對於增進知識之合理期待亦應納入考量。管理者應告知監督機關及資料主體相關之傳輸。

example in cases of international data exchange between competition authorities, tax or customs administrations, between financial supervisory authorities, between services competent for social security matters, or for public health, for example in the case of contact tracing for contagious diseases or in order to reduce and/or eliminate doping in sport. A transfer of personal data should also be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's or another person's vital interests, including physical integrity or life, if the data subject is incapable of giving consent. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of data to a third country or an international organisation. Member States should notify such provisions to the Commission. Any transfer to an international humanitarian organisation of personal data of a data subject who is physically or legally incapable of giving consent, with a view to accomplishing a task incumbent under the Geneva Conventions or to complying with international humanitarian law applicable in armed conflicts, could be considered to be necessary for an important reason of public interest or because it is in the vital interest of the data subject.

- (113) Transfers which can be qualified as not repetitive and that only concern a limited number of data subjects, could also be possible for the purposes of the compelling legitimate interests pursued by the controller, when those interests are not overridden by the interests or rights and freedoms of the data subject and when the controller has assessed all the circumstances surrounding the data transfer. The controller should give particular consideration to the nature of the personal data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country

(114) 任何情況下，當歐盟執委會不曾作出任何關於第三國家對於資料保護層級之決定時，管理者或受託者應採取之解決之道，係提供資料主體在歐盟內，有關處理其個人資料程序之可行使且有效之權利，倘若該資料已經傳輸時，是以資料主體仍得保有基本權利及安全措施賦予之保障。

(115) 部分第三國制定法律、法規或其他法律上規定，以直接規範成員國管轄權內有關處理自然人及法人資料之程序。此可能包括第三國法院或法庭之判決或行政機關之決定，要求管理者或受託者傳輸或公開個人資料，且其並非基於任何國際協議，例如在該第三國與歐盟或成員國間之雙邊法律互助條約。該跨區域適用法律、法規及其他法律上規定可能違反國際法，且可能阻礙本保護規定實現歐盟對自然人之保護。傳輸應僅得當符合歐盟個資規則中有關傳輸至第三國之規定時，始得為之。除其他情況外，此時可能發生依據適用於系爭管理者之歐盟或成員國法，公開個人資料係屬具有重要公共利益理由之必要。

- of final destination, and should provide suitable safeguards to protect fundamental rights and freedoms of natural persons with regard to the processing of their personal data. Such transfers should be possible only in residual cases where none of the other grounds for transfer are applicable. For scientific or historical research purposes or statistical purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration. The controller should inform the supervisory authority and the data subject about the transfer.
- (114) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with enforceable and effective rights as regards the processing of their data in the Union once those data have been transferred so that that they will continue to benefit from fundamental rights and safeguards.
- (115) Some third countries adopt laws, regulations and other legal acts which purport to directly regulate the processing activities of natural and legal persons under the jurisdiction of the Member States. This may include judgments of courts or tribunals or decisions of administrative authorities in third countries requiring a controller or processor to transfer or disclose personal data, and which are not based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State. The extraterritorial application of those laws, regulations and other legal acts may be in breach of international law and may impede the attainment of the protection of natural persons ensured in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may be the case, *inter alia*, where disclosure is

- (116) 當個人資料移出至歐盟境外時，可能對自然人得行使資料保護權，即保護其個人資料不受非法使用或公開該資訊，此一權能造成增加風險。在此同時，監督機關得發現其無法追訴相關申訴或執行境外有關活動之調查。為互助合作所付出之努力，在跨境之情況下，可能因缺少預防性或救濟權力、法律規範架構不一致、實際上如資源有限等障礙，而遭阻撓。因此，應有需要推廣資料保護監督機關間緊密合作，和國際對口部門之間交換情報及執行調查。為達建立國際合作機制，以促進並提供執行保障個人資料法規之國際互助等目的，歐盟執委會及監督機關應與第三國監督機關交換資訊，並於行動中互相協助行使職權，並遵守互惠原則及本保護規範。
- (117) 在成員國中所建立之監督機關，經授權得執行其職務並完全獨立行使其權力，係保障自然人有關處理其個人資料所不可或缺之一環。成員國應依照其憲法、組織及行政架構，建立複數監督機關。
- (118) 監督機關之獨立性，係指該監督機關之財務不受一般體制控制或監控，以及免受司法審查。

necessary for an important ground of public interest recognised in Union or Member State law to which the controller is subject.

- (116) When personal data moves across borders outside the Union it may put at increased risk the ability of natural persons to exercise data protection rights in particular to protect themselves from the unlawful use or disclosure of that information. At the same time, supervisory authorities may find that they are unable to pursue complaints or conduct investigations relating to the activities outside their borders. Their efforts to work together in the cross-border context may also be hampered by insufficient preventative or remedial powers, inconsistent legal regimes, and practical obstacles like resource constraints. Therefore, there is a need to promote closer cooperation among data protection supervisory authorities to help them exchange information and carry out investigations with their international counterparts. For the purposes of developing international cooperation mechanisms to facilitate and provide international mutual assistance for the enforcement of legislation for the protection of personal data, the Commission and the supervisory authorities should exchange information and cooperate in activities related to the exercise of their powers with competent authorities in third countries, based on reciprocity and in accordance with this Regulation.
- (117) The establishment of supervisory authorities in Member States, empowered to perform their tasks and exercise their powers with complete independence, is an essential component of the protection of natural persons with regard to the processing of their personal data. Member States should be able to establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure.
- (118) The independence of supervisory authorities should not mean that the supervisory authorities cannot be subject to control or

- (119) 當成員國建立數個監督機關時，其應以法律規定該監督機關應有實質參與之權限及一貫之機制。成員國應具體指派一監督機關作為單一窗口，以使該機制中其他監督機關有效之參與，以及確保與其他監督機關，即委員會與歐盟執委會之間順暢且和諧之合作。
- (120) 每個監督機關應有財政與人力資源、場址及為有效執行其任務所必要之基礎建設，包括與歐盟內其他監督機關互助合作有關之任務。每一監督機關應有獨立之公共年度預算，此得為聯邦或國家預算之一部分。
- (121) 監督機關委員之一般身份要求應由各該成員國立法定之，並且應規定該委員指派方式係由國會、政府、或成員國國家元首基於政府、政府官員、議會、或成員國法律規定之獨立機關所提議，並以透明之程序為之。為確保監督機關之獨立性，其成員應誠實信用行事、不作出任何違反職責之行為，並且於其任內，不得擔任任何有衝突之職位，無論是否有薪。監督機關亦應有內部行政官員，且係由監督機關或依成員國法成立之獨立機關挑選，並應遵守該監督機關委員之專屬指令。

monitoring mechanisms regarding their financial expenditure or to judicial review.

- (119) Where a Member State establishes several supervisory authorities, it should establish by law mechanisms for ensuring the effective participation of those supervisory authorities in the consistency mechanism. That Member State should in particular designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the mechanism, to ensure swift and smooth cooperation with other supervisory authorities, the Board and the Commission.
- (120) Each supervisory authority should be provided with the financial and human resources, premises and infrastructure necessary for the effective performance of their tasks, including those related to mutual assistance and cooperation with other supervisory authorities throughout the Union. Each supervisory authority should have a separate, public annual budget, which may be part of the overall state or national budget.
- (121) The general conditions for the member or members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members are to be appointed, by means of a transparent procedure, either by the parliament, government or the head of State of the Member State on the basis of a proposal from the government, a member of the government, the parliament or a chamber of the parliament, or by an independent body entrusted under Member State law. In order to ensure the independence of the supervisory authority, the member or members should act with integrity, refrain from any action that is incompatible with their duties and should not, during their term of office, engage in any incompatible occupation, whether gainful or not. The supervisory authority should have its

- (122) 每一監督機關於其成員國境內，得充分行使其權力以履行歐盟個資規則之任務。該權力應涵蓋之情況，諸如管理者或受託者在其所在成員國內之設置活動、政府機關或為公共利益之私人機構處理個人資料、處理過程影響位於成員國境內資料主體、或由非位於歐盟境內之管理者或受託者將預計影響成員國境內資料主體之情況等。此亦應包括接受資料主體提出之申訴、執行調查有關歐盟個資規則之適用、促進公共對於風險、規範、安全措施及與處理個人資料相關權利之認知等。
- (123) 監督機關應監督歐盟個資規則規範之適用情況，以及歐盟境內全面一致之實施，以保障自然人與處理其個人資料有關之權利，並促進個人資料於內部市場自由流通。為達此目的，監督機關應和彼此及歐盟執委會合作，且成員國間無須另訂有關互助或相關合作之協議。
- (124) 當處理個人資料係由歐盟境內之管理者或受託者所進行之設立活動中進行，且該管理者或受託者亦於多數成員國境內設立時，或當該處理程序係發生於歐盟內管理者或受託者單一設置

own staff, chosen by the supervisory authority or an independent body established by Member State law, which should be subject to the exclusive direction of the member or members of the supervisory authority.

- (122) Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the tasks conferred on it in accordance with this Regulation. This should cover in particular the processing in the context of the activities of an establishment of the controller or processor on the territory of its own Member State, the processing of personal data carried out by public authorities or private bodies acting in the public interest, processing affecting data subjects on its territory or processing carried out by a controller or processor not established in the Union when targeting data subjects residing on its territory. This should include handling complaints lodged by a data subject, conducting investigations on the application of this Regulation and promoting public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data.
- (123) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For that purpose, the supervisory authorities should cooperate with each other and with the Commission, without the need for any agreement between Member States on the provision of mutual assistance or on such cooperation.
- (124) Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union and the controller or processor is established in more

之活動，且對多個成員國之資料主體產生或可能有重大影響時，對於管理者或受託者主要設置地，或管理者或受託者單一設置地之監督機關，應作為最高監督機關。最高監督機關應與其他有關聯監督機關合作，因管理者或受託者在其成員國境內亦有設立，或因資料主體居住於其境內且受重大影響，或因為該申訴係對其提出。同樣地，當資料主體之居住地並非提出申訴地時，接收該申訴之監督機關亦應成為有關聯之監督機關。委員會基於與適用歐盟個資規則相關之問題皆因回覆建議之義務，委員會應有權發布有關用以確定系爭處理程序，是否已嚴重影響位於複數成員國境內資料主體應考量之標準，以及構成相關且合理異議之要件。

(125) 最高監督機關應有充足權限，提出符合歐盟個資規則所賦予其與適用權力措施有關之拘束性決定。本於最高監督機關之權能，其應緊密參與並與有關聯之監督機關進行決定過程之合作。當該決定結果係駁回資料主體全部或一部之申訴時，該決定應由當初接受申訴之監督機關發布之。

(126) 該決定應由最高監督機關與其他有關聯之監督機關共同同意，並且係針對主要或單一設置之管理者或受託者作出並對具有拘束力。管理者或受託者應採取必要措施，確保符合歐盟個資規

than one Member State, or where processing taking place in the context of the activities of a single establishment of a controller or processor in the Union substantially affects or is likely to substantially affect data subjects in more than one Member State, the supervisory authority for the main establishment of the controller or processor or for the single establishment of the controller or processor should act as lead authority. It should cooperate with the other authorities concerned, because the controller or processor has an establishment on the territory of their Member State, because data subjects residing on their territory are substantially affected, or because a complaint has been lodged with them. Also where a data subject not residing in that Member State has lodged a complaint, the supervisory authority with which such complaint has been lodged should also be a supervisory authority concerned. Within its tasks to issue guidelines on any question covering the application of this Regulation, the Board should be able to issue guidelines in particular on the criteria to be taken into account in order to ascertain whether the processing in question substantially affects data subjects in more than one Member State and on what constitutes a relevant and reasoned objection.

- (125) The lead authority should be competent to adopt binding decisions regarding measures applying the powers conferred on it in accordance with this Regulation. In its capacity as lead authority, the supervisory authority should closely involve and coordinate the supervisory authorities concerned in the decision-making process. Where the decision is to reject the complaint by the data subject in whole or in part, that decision should be adopted by the supervisory authority with which the complaint has been lodged.
- (126) The decision should be agreed jointly by the lead supervisory authority and the supervisory authorities concerned and should be directed towards the main or single establishment of the controller

則，並於歐盟境內進行個人資料處理活動時，遵照施行由最高監督機關向主要管理者或受託者發出有關該決定之通知。

- (127) 各該非最高監督機關之監督機關，應有權限處理地方性案件，即當管理者或受託者係建立於一以上之成員國內，但該處理程序之主旨僅著重於單一成員國內所進行之處理，並僅涉及該國內之資料主體，例如，當處理程序主旨係關於單一成員國內特定僱傭事件中員工個人資料時。發生前述情形時，監督機關應立即通報最高監督機關此情況。經通知後，最高監督機關應決定，其是否仍應依照最高監督機關與其他有關聯之監督機關合作條款，處理該案件（即「一站式機制」），或讓通報之監督機關以地方層級處理該案件。當決定是否受理該案件時，最高監督機關應考量管理者或受託者，是否有在通報之監督機關所在之成員國內設立，以確保有效地執行與管理者或受託者相關之決定。若最高監督機關決定接受該案件，通報之監督機關應得提交決定之擬稿，且最高監督機關於一站式機制下，於擬定其版本之決定書時，應最優先參考該份擬稿。

or processor and be binding on the controller and processor. The controller or processor should take the necessary measures to ensure compliance with this Regulation and the implementation of the decision notified by the lead supervisory authority to the main establishment of the controller or processor as regards the processing activities in the Union.

- (127) Each supervisory authority not acting as the lead supervisory authority should be competent to handle local cases where the controller or processor is established in more than one Member State, but the subject matter of the specific processing concerns only processing carried out in a single Member State and involves only data subjects in that single Member State, for example, where the subject matter concerns the processing of employees' personal data in the specific employment context of a Member State. In such cases, the supervisory authority should inform the lead supervisory authority without delay about the matter. After being informed, the lead supervisory authority should decide, whether it will handle the case pursuant to the provision on cooperation between the lead supervisory authority and other supervisory authorities concerned ('one-stop-shop mechanism'), or whether the supervisory authority which informed it should handle the case at local level. When deciding whether it will handle the case, the lead supervisory authority should take into account whether there is an establishment of the controller or processor in the Member State of the supervisory authority which informed it in order to ensure effective enforcement of a decision vis-à-vis the controller or processor. Where the lead supervisory authority decides to handle the case, the supervisory authority which informed it should have the possibility to submit a draft for a decision, of which the lead supervisory authority should take utmost account when preparing its draft decision in that one-stop-shop mechanism.

- (128) 有關最高監督機關與一站式機制之規範，應不得適用於當處理程序係由政府機關或具公共利益之私人所進行時。於前述情況，唯一有權限行使歐盟個資規則賦予其權力者，應為該政府機關或私人所在成員國之監督機關。
- (129) 為確保歐盟境內監督與執行歐盟個資規則之一致性，於每一成員國內，監督機關應有相同之任務及有效之權力，包括調查權、糾正權、制裁、授權及諮詢權等，由其係自然人提出之申訴案件時。且在不影響該成員國法中有關檢察官權力之規定下，將違反歐盟個資規則之案件提交至司法機關並開啟法律程序。該等權限亦包括有權施加處理程序暫時性或終局性之限制，包括禁止命令。成員國得制定其他根據歐盟個資規則規定相關之個人資料保護義務。監督機關行使權力應符合歐盟及成員國法規定之適當程序安全措施，並應公正、公平且限於合理期間內行使。為遵守本保護規定，具體措施應為合適、必要且符合比例原則，並考量個案之情況、尊重每個人於對其造成不利益之措施皆有聽審之權利、並避免造成相關人員付出多餘之成本和過度不便。有關進入場址之調查權力應符合成員國程序法之具體規範，例如須先取得司法機關事先授權等。每項有法律拘束力之監督機關處分，應以書面為之且須簡單明瞭，記載該處分係由何監督機關作出、處分發布日期、附有該機關負責人或其授權代理人之簽名、處分之理由、以及相關有效救濟之權利等。且不應排除各成員國程序法中另外之規範要件。該具法律拘束力之決定之作成，亦有可能使該成員國得對該監督機關進行司法審查。

- (128) The rules on the lead supervisory authority and the one-stop-shop mechanism should not apply where the processing is carried out by public authorities or private bodies in the public interest. In such cases the only supervisory authority competent to exercise the powers conferred to it in accordance with this Regulation should be the supervisory authority of the Member State where the public authority or private body is established.
- (129) In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have in each Member State the same tasks and effective powers, including powers of investigation, corrective powers and sanctions, and authorisation and advisory powers, in particular in cases of complaints from natural persons, and without prejudice to the powers of prosecutorial authorities under Member State law, to bring infringements of this Regulation to the attention of the judicial authorities and engage in legal proceedings. Such powers should also include the power to impose a temporary or definitive limitation, including a ban, on processing. Member States may specify other tasks related to the protection of personal data under this Regulation. The powers of supervisory authorities should be exercised in accordance with appropriate procedural safeguards set out in Union and Member State law, impartially, fairly and within a reasonable time. In particular each measure should be appropriate, necessary and proportionate in view of ensuring compliance with this Regulation, taking into account the circumstances of each individual case, respect the right of every person to be heard before any individual measure which would affect him or her adversely is taken and avoid superfluous costs and excessive inconveniences for the persons concerned. Investigatory powers as regards access to premises should be exercised in accordance with specific requirements in Member State procedural law, such as the

(130) 當受理申訴之監督機關並非最高監督機關時，最高監督機關應密切與該監督機關合作，並遵守歐盟個資規則有關和作與一致性之規定。於前述情況中，若欲採取有法律效果之措施時，包括裁處行政罰鍰等，最高監督機關應最優先參考受理該案之監督機關之觀點，惟其應仍有權限，在適當之監督機關配合下，執行於其成員國境內之調查。

(131) 當有另一監督機關作為管理者與受託者之處理活動事件之最高監督機關時，惟系爭主旨或可能涉及之違法行為，僅有關位於該申訴所提出或偵查可能違法行為所在之成員國境內之管理者或受託者，且該案主旨並未或並非有可能對另一成員國之資料主體造成重大影響，接受該申訴案、偵查或接受其他可能違反歐盟個資規則情況通知之監督機關，應尋求與管理者間達成和解，倘若不可行時，始行使其全部之權力。此應包括：在監督

requirement to obtain a prior judicial authorisation. Each legally binding measure of the supervisory authority should be in writing, be clear and unambiguous, indicate the supervisory authority which has issued the measure, the date of issue of the measure, bear the signature of the head, or a member of the supervisory authority authorised by him or her, give the reasons for the measure, and refer to the right of an effective remedy. This should not preclude additional requirements pursuant to Member State procedural law. The adoption of a legally binding decision implies that it may give rise to judicial review in the Member State of the supervisory authority that adopted the decision.

- (130) Where the supervisory authority with which the complaint has been lodged is not the lead supervisory authority, the lead supervisory authority should closely cooperate with the supervisory authority with which the complaint has been lodged in accordance with the provisions on cooperation and consistency laid down in this Regulation. In such cases, the lead supervisory authority should, when taking measures intended to produce legal effects, including the imposition of administrative fines, take utmost account of the view of the supervisory authority with which the complaint has been lodged and which should remain competent to carry out any investigation on the territory of its own Member State in liaison with the competent supervisory authority.
- (131) Where another supervisory authority should act as a lead supervisory authority for the processing activities of the controller or processor but the concrete subject matter of a complaint or the possible infringement concerns only processing activities of the controller or processor in the Member State where the complaint has been lodged or the possible infringement detected and the matter does not substantially affect or is not likely to substantially

機關位於之成員國境內或有關資料主體所在之成員國境內，進行之具體處理程序：處理程序係由特地針對監督機關所位於該成員國內之資料主體，提供商品或服務之情況；或該處理程序應根據成員國法下相關法律義務而進行評估。

- (132) 監督機關對於大眾進行之增進認知活動，應包括直接對於管理者與受託者之具體措施，包括微型、小型其中型之企業，以及在該教育情境下之自然人。
- (133) 監督機關應協助彼此以履行其職務，並提供互助合作，用以確保歐盟個資規則於內部市場中適用與施行之一致性。要求互助合作之監督機關，如果在其他監督機關收到該請求後一個月內沒有收到回覆時，則得採取臨時措施。
- (134) 若適當時，每一監督機關應投入與其他監督機關共同進行之行動。接受請求之監督機關應有義務在特定期間內回應。

affect data subjects in other Member States, the supervisory authority receiving a complaint or detecting or being informed otherwise of situations that entail possible infringements of this Regulation should seek an amicable settlement with the controller and, if this proves unsuccessful, exercise its full range of powers. This should include: specific processing carried out in the territory of the Member State of the supervisory authority or with regard to data subjects on the territory of that Member State; processing that is carried out in the context of an offer of goods or services specifically aimed at data subjects in the territory of the Member State of the supervisory authority; or processing that has to be assessed taking into account relevant legal obligations under Member State law.

- (132) Awareness-raising activities by supervisory authorities addressed to the public should include specific measures directed at controllers and processors, including micro, small and medium-sized enterprises, as well as natural persons in particular in the educational context.
- (133) The supervisory authorities should assist each other in performing their tasks and provide mutual assistance, so as to ensure the consistent application and enforcement of this Regulation in the internal market. A supervisory authority requesting mutual assistance may adopt a provisional measure if it receives no response to a request for mutual assistance within one month of the receipt of that request by the other supervisory authority.
- (134) Each supervisory authority should, where appropriate, participate in joint operations with other supervisory authorities. The requested supervisory authority should be obliged to respond to the request within a specified time period.

- (135) 為確保歐盟個資規則於歐盟境內一致性地適用，應建立監督機關合作之一致化機制。該一致化機制應具體適用於當某監督機關欲對一嚴重影響位於多個成員國內大量資料主體之處理程序，作出有法律效果之處分時。該機制亦應適用於任何有關聯之監管機構或歐盟執委會要求該事件應以一致化機制處理時。該機制應不影響歐盟執委會行使依據條約賦予其權力所作出之處分。
- (136) 當適用一致化機制時，若經其委員多數通過或經任何有關聯之監督機關或歐盟執委會要求時，委員會應在一定之期間內，作出相關之意見。若監督機關之間出現爭議時，委員會應有權作出具有法律效力之決定。為達此目的，委員會應於其委員三分之二表決通過後，針對監督機關之間有衝突看法之明確個案中，作出具有法律拘束力之裁定，尤係在基於合作機制之最高監督機關與有關聯之監督機關間，有關該個案是否違反歐盟個資規則時。
- (137) 若有緊急保護資料主體權利與自由之需要時，亦即當危險發生，且該資料主體得行使之權利即有可能受侵害時。監督機關應得在其領域內作出具有正當理由之暫時性處分，惟具體規定之有效期限不得超過三個月。

- (135) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for cooperation between the supervisory authorities should be established. That mechanism should in particular apply where a supervisory authority intends to adopt a measure intended to produce legal effects as regards processing operations which substantially affect a significant number of data subjects in several Member States. It should also apply where any supervisory authority concerned or the Commission requests that such matter should be handled in the consistency mechanism. That mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.
- (136) In applying the consistency mechanism, the Board should, within a determined period of time, issue an opinion, if a majority of its members so decides or if so requested by any supervisory authority concerned or the Commission. The Board should also be empowered to adopt legally binding decisions where there are disputes between supervisory authorities. For that purpose, it should issue, in principle by a two-thirds majority of its members, legally binding decisions in clearly specified cases where there are conflicting views among supervisory authorities, in particular in the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned on the merits of the case, in particular whether there is an infringement of this Regulation.
- (137) There may be an urgent need to act in order to protect the rights and freedoms of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. A supervisory authority should therefore be able to adopt duly justified provisional measures on its territory with a specified period of validity which should not exceed three

- (138) 該機制之適用，應作為應強制適用之個案中，監督機關所作具有法律效力處分之合法性要件。與跨境相關之其他案件裡，最高監督機關與有關聯之監督機關合作機制應適用且雙方互助與共同行動，應在不發動一致化機制之情況下，於有關聯之監督機關間，以雙邊或多邊基礎實施。
- (139) 為促進歐盟個資規則適用之一致性，委員會應於歐盟內建立獨立機構。為達此目標，委員會應有法人格。委員會應以其主席作為代表人。資料保護指令(95/46/EC)所規範之保護個人關於處理個人資料工作小組應被取代。其應包括每個成員國內監督機關之負責人，以及歐盟資料保護監督機關或其代表人等。歐盟執委會應參與委員會之活動但無表決權，且該歐盟資料保護監督機關應有具體投票權。委員會應致力於歐盟境內一致地施行歐盟個資規則，包括藉由向歐盟執委會建議有關第三國或國際組織內之保護層級，以及促進歐盟境內監督機關之間合作等。委員會於履行職務時應獨立行使職權。
- (140) 委員會應由歐盟資料保護監督機關提供之秘書長協助。應執行本保護規定賦予委員會執行任務之歐盟資料保護監督機關官員，應完全依照委員會主席之指示，執行其任務並向委員會主

months.

- (138) The application of such mechanism should be a condition for the lawfulness of a measure intended to produce legal effects by a supervisory authority in those cases where its application is mandatory. In other cases of cross-border relevance, the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned should be applied and mutual assistance and joint operations might be carried out between the supervisory authorities concerned on a bilateral or multilateral basis without triggering the consistency mechanism.
- (139) In order to promote the consistent application of this Regulation, the Board should be set up as an independent body of the Union. To fulfil its objectives, the Board should have legal personality. The Board should be represented by its Chair. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of the head of a supervisory authority of each Member State and the European Data Protection Supervisor or their respective representatives. The Commission should participate in the Board's activities without voting rights and the European Data Protection Supervisor should have specific voting rights. The Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the Commission, in particular on the level of protection in third countries or international organisations, and promoting cooperation of the supervisory authorities throughout the Union. The Board should act independently when performing its tasks.
- (140) The Board should be assisted by a secretariat provided by the European Data Protection Supervisor. The staff of the European Data Protection Supervisor involved in carrying out the tasks

席報告。

(141) 資料主體應有權利，向其居住地成員國內之單一監督機關提出申訴，且依照憲章第 47 條，亦有獲得有效司法救濟權利，若該資料主體認為其基於本保護條例下之權利受侵害，或當監督機關並未依照申訴內容作為時，即一部或全部駁回或撤銷該申訴，或其行為無法保障資料主體之權利時。申訴後之調查應依照個案適當之情況執行，並接受司法監督。監督機關於合理期間內，應告知資料主體申訴相關進度及結果。若該案需要延長調查或與其他監督機關合作時，應立即告知資料主體。未能促進提出申訴，每一監督機關應採取措施，例如除現有之管道外，另提供電子化申訴申請方式等。

(142) 當資料主體認為其依據歐盟個資規則之權利受侵害時，其有權利要求依據成員國法所成立，並以公共利益為法定目標，且係有關資料保護領域之非營利性機構、團體或協會，代理資料主體向監督機關提出申訴、行使其司法救濟權、或，若該成員國另有規定，得行使代理資料主體接受賠償之權利。成員國應規定該機構、團體或協會有權於該成員國中提起申訴，即便並非基於資料主體之請求，且若有一句認為資料主體權利受侵害，係因為處理個人資料過程違反歐盟個資規則時，亦有權利獲得司法救濟。惟該機構、團體或協會若未經資料主體要求時，不

conferred on the Board by this Regulation should perform its tasks exclusively under the instructions of, and report to, the Chair of the Board.

- (141) Every data subject should have the right to lodge a complaint with a single supervisory authority, in particular in the Member State of his or her habitual residence, and the right to an effective judicial remedy in accordance with Article 47 of the Charter if the data subject considers that his or her rights under this Regulation are infringed or where the supervisory authority does not act on a complaint, partially or wholly rejects or dismisses a complaint or does not act where such action is necessary to protect the rights of the data subject. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.
- (142) Where a data subject considers that his or her rights under this Regulation are infringed, he or she should have the right to mandate a not-for-profit body, organisation or association which is constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest and is active in the field of the protection of personal data to lodge a complaint on his or her behalf with a supervisory authority, exercise the right to a judicial remedy on behalf of data subjects or, if provided for in Member State law, exercise the right to receive compensation on

應代表其請求賠償金。

- (143) 任何自然人或法人皆得基於歐盟條約第236條規定，有權向歐盟法院提起撤銷委員會之決定。針對系爭決定，依據歐盟條約第263條之規定，有意辯護之有關監督機關應得於兩個月內提起訴訟並通知對造。當委員會之決定係直接且獨立與管理者、受託者或申訴人相關時，後者得基於歐盟條約第236條規定，於委員會於其網站上公開該決定後兩個月內，提起撤銷訴訟。於不影響歐盟條約第236條規定之權利下，個別自然人或法人應進入適格之國內法院獲得有效司法救濟，以對抗監督機關對其作出有法律上效果之決定。該決定涉及行使調查、糾正及由監督機關授權或撤銷、拒絕該申訴。惟，獲得有效司法救濟之權利並不包括監督機關採取不具有法律效果之措施，例如其發布意見或建議等。針對監督機關提起之法律程序應於監督機關位於成立之成員國法院內提起，並且應依照該成員國之程序法進行。該法院應行使其管轄權，包括得審查所有與該爭議有關之事實與法律問題。

behalf of data subjects. A Member State may provide for such a body, organisation or association to have the right to lodge a complaint in that Member State, independently of a data subject's mandate, and the right to an effective judicial remedy where it has reasons to consider that the rights of a data subject have been infringed as a result of the processing of personal data which infringes this Regulation. That body, organisation or association may not be allowed to claim compensation on a data subject's behalf independently of the data subject's mandate.

- (143) Any natural or legal person has the right to bring an action for annulment of decisions of the Board before the Court of Justice under the conditions provided for in Article 263 TFEU. As addressees of such decisions, the supervisory authorities concerned which wish to challenge them have to bring action within two months of being notified of them, in accordance with Article 263 TFEU. Where decisions of the Board are of direct and individual concern to a controller, processor or complainant, the latter may bring an action for annulment against those decisions within two months of their publication on the website of the Board, in accordance with Article 263 TFEU. Without prejudice to this right under Article 263 TFEU, each natural or legal person should have an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning that person. Such a decision concerns in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, the right to an effective judicial remedy does not encompass measures taken by supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established and should be

當申訴經監督機關駁回或撤銷時，申訴人得於同一成員國之法院中提起訴訟。與適用歐盟個資規則有關之司法救濟時，審查關於作出決定所需之問題以作出判決之國內法院得，或依照歐盟條約第 267 條規定之案件，必須要求歐盟法院初步裁定歐盟法之釋義，包括歐盟個資規則。除此之外，當國內法院訴訟係有關之監督機關決定係採用委員會決議，且該委員會決議之有效性成為爭點時，該國內法並無權力宣告委員會之決議無效，但應根據歐盟條約第 267 條規定，將該有效性之問題交付歐盟法院，並經由歐盟法院作出解釋，若其認為該決議無效時。惟國內法院對於得對委員會決議提起撤銷訴訟之自然人或法人，仍不得基於其請求而交付審理委員會決議有效性之問題，尤其若該案件係直接且獨立有關該決議，但並未依照歐盟條約第 263 條規定之期限內提起者。

- (144) 若繫屬法院之有關針對監督機關決定之案件，有理由相信該訴訟有關之同一處理程序，例如有相同處理程序主旨並且由同一管理者或受託者所為、或具有同一請求權等，卻向該成員國內另一適格之法院提起時，其應聯絡該法院以確認是否有此訴訟程序存在。若該相關之訴訟程序繫屬於另一成員國法院中審理時，任何最初繫屬以外之法院得暫停訴訟程序，或基於其中一

conducted in accordance with that Member State's procedural law. Those courts should exercise full jurisdiction, which should include jurisdiction to examine all questions of fact and law relevant to the dispute before them.

Where a complaint has been rejected or dismissed by a supervisory authority, the complainant may bring proceedings before the courts in the same Member State. In the context of judicial remedies relating to the application of this Regulation, national courts which consider a decision on the question necessary to enable them to give judgment, may, or in the case provided for in Article 267 TFEU, must, request the Court of Justice to give a preliminary ruling on the interpretation of Union law, including this Regulation. Furthermore, where a decision of a supervisory authority implementing a decision of the Board is challenged before a national court and the validity of the decision of the Board is at issue, that national court does not have the power to declare the Board's decision invalid but must refer the question of validity to the Court of Justice in accordance with Article 267 TFEU as interpreted by the Court of Justice, where it considers the decision invalid. However, a national court may not refer a question on the validity of the decision of the Board at the request of a natural or legal person which had the opportunity to bring an action for annulment of that decision, in particular if it was directly and individually concerned by that decision, but had not done so within the period laid down in Article 263 TFEU.

- (144) Where a court seized of proceedings against a decision by a supervisory authority has reason to believe that proceedings concerning the same processing, such as the same subject matter as regards processing by the same controller or processor, or the same cause of action, are brought before a competent court in another Member State, it should contact that court in order to confirm the

造之請求，拒絕管轄並讓與最初繫屬法院，若該法院管轄權包括系爭之程序，且該法律允許合併相關訴訟時。認定為有關聯之訴訟程序係指，數訴訟繫緊密連結，且為避免單獨訴訟引起相互矛盾判決之風險，有必要合併審理及審判時。

(145) 針對向管理者或受託者提起之訴訟，原告應得選擇向成員國中管理者或受託者設置處法院提起訴訟，或資料主體之居住地法院，除非管理者係該成員國之政府機關並係行使其公權力時。

(146) 管理者或受託者應賠償任何因處理程序違反歐盟個資規則而遭受損害者。管理者或受託者應豁免其責任，若其得證明其並無需為該損害負責時。損害之概念應參照歐盟法院判例法，以能完整反映歐盟個資規則之立法目的之方式廣義理解之。此並不影響任何基於違反其他歐盟或成員國法而得提起損害賠償之請求。違反歐盟個資規則之處理程序，應包括違反歐盟個資規則與成員國法基於歐盟個資規則之具體規範之處理程序或實施行為。對於資料主體之損失應得受到完整且有效之賠償。當管理者或受託者涉及同一處理程序時，每一位管理者或受託者應對整體賠償負起責任。惟依據成員國法律，當其為共同參與同一司法程序時，賠償得以該造成損害發生處理程序之管理者或受託者，個別依據責任比例分配賠償金額，若已確保受損害之資料主體可獲得完整且有效之賠償時。任何已支付全部賠償之管理者或受託者，得進而向其他同一訴訟中相關之管理者或受託者請求追索之訴訟。

existence of such related proceedings. If related proceedings are pending before a court in another Member State, any court other than the court first seized may stay its proceedings or may, on request of one of the parties, decline jurisdiction in favour of the court first seized if that court has jurisdiction over the proceedings in question and its law permits the consolidation of such related proceedings. Proceedings are deemed to be related where they are so closely connected that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

- (145) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where the data subject resides, unless the controller is a public authority of a Member State acting in the exercise of its public powers.
- (146) The controller or processor should compensate any damage which a person may suffer as a result of processing that infringes this Regulation. The controller or processor should be exempt from liability if it proves that it is not in any way responsible for the damage. The concept of damage should be broadly interpreted in the light of the case-law of the Court of Justice in a manner which fully reflects the objectives of this Regulation. This is without prejudice to any claims for damage deriving from the violation of other rules in Union or Member State law. Processing that infringes this Regulation also includes processing that infringes delegated and implementing acts adopted in accordance with this Regulation and Member State law specifying rules of this Regulation. Data subjects should receive full and effective compensation for the damage they have suffered. Where controllers or processors are involved in the same processing, each controller or processor

- (147) 當本保護條例訂有特定管轄權規範時，例如包括請求賠償金、向管理者或受託者提起訴訟等程序，一般性管轄權規範係參照歐洲議會及理事會第 1215/2012 號規定，且不影響其亦得適用特定規範中。
- (148) 為促進本保護規範之實施，包括行政罰鍰在內之金錢上裁罰應適用於違反歐盟個資規則視情況，除了或取代監督機關依據歐盟個資規則所作出之處分。於輕微違反或處以罰鍰將可能對自然人造成不符比例之負擔時，得以譴責取代罰鍰。然而，應適當考慮該違反行為之性質、嚴重性和持續時間、違反行為之主觀意圖、對於造成損害之補救、責任程度或其他任何與先前違反行為有關者、監督機關知悉該違法行為之方法、對於不利益管理者或受託者處分之配合、遵守行為準則和其他加重或減輕之因素等。施加包括行政罰鍰之金錢上裁罰應遵守適當之措施以符合歐盟法及憲章之原則，包括有效之司法救濟與正當法律程序等。

should be held liable for the entire damage. However, where they are joined to the same judicial proceedings, in accordance with Member State law, compensation may be apportioned according to the responsibility of each controller or processor for the damage caused by the processing, provided that full and effective compensation of the data subject who suffered the damage is ensured. Any controller or processor which has paid full compensation may subsequently institute recourse proceedings against other controllers or processors involved in the same processing.

- (147) Where specific rules on jurisdiction are contained in this Regulation, in particular as regards proceedings seeking a judicial remedy including compensation, against a controller or processor, general jurisdiction rules such as those of Regulation (EU) No 1215/2012 of the European Parliament and of the Council should not prejudice the application of such specific rules.
- (148) In order to strengthen the enforcement of the rules of this Regulation, penalties including administrative fines should be imposed for any infringement of this Regulation, in addition to, or instead of appropriate measures imposed by the supervisory authority pursuant to this Regulation. In a case of a minor infringement or if the fine likely to be imposed would constitute a disproportionate burden to a natural person, a reprimand may be issued instead of a fine. Due regard should however be given to the nature, gravity and duration of the infringement, the intentional character of the infringement, actions taken to mitigate the damage suffered, degree of responsibility or any relevant previous infringements, the manner in which the infringement became known to the supervisory authority, compliance with measures ordered against the controller or processor, adherence to a code of conduct and any other aggravating or mitigating factor.

(149) 成員國應得制定違反歐盟個資規則之刑事罰金規範，包括違反國內法有關遵循歐盟個資規則及限制範圍內之規定。惟國內法規定之刑事罰金及行政罰鍰，不應違反歐盟法院所解釋之一事不再理原則。

(150) 為促進並協調違反歐盟個資規則之行政罰鍰，每一監督機關應有權力制定行政罰鍰。歐盟個資規則應規範違反行為與上限和裁處相關行政罰鍰之標準，且應於個案中由適格之監督機關判斷，考量所有與具體情況相關之情形，並充分注意該違反行為之性質、負擔及期間和結果，以及確保符合歐盟個資規則規定之措施、以及預防、減緩該違反行為之結果等。當行政罰鍰係對企業作出時，該企業之定義應依照歐盟條約第 101 及第 102 條規定及立法目的。當行政罰鍰係對非公司之自然人作出時，該監督機關應考量成員國平均水準之收入以及該行為人之經濟情況，以決定罰鍰之適當金額。一致化機制亦得用以促進適用行政罰鍰之一致性。應由成員國決定政府機關是否應及至何種程度受裁處行政罰鍰。制定行政罰鍰或給予警告並不影響其他監督機關基於歐盟個資規則得行使之權利或裁罰。

The imposition of penalties including administrative fines should be subject to appropriate procedural safeguards in accordance with the general principles of Union law and the Charter, including effective judicial protection and due process.

- (149) Member States should be able to lay down the rules on criminal penalties for infringements of this Regulation, including for infringements of national rules adopted pursuant to and within the limits of this Regulation. Those criminal penalties may also allow for the deprivation of the profits obtained through infringements of this Regulation. However, the imposition of criminal penalties for infringements of such national rules and of administrative penalties should not lead to a breach of the principle of *ne bis in idem*, as interpreted by the Court of Justice.
- (150) In order to strengthen and harmonise administrative penalties for infringements of this Regulation, each supervisory authority should have the power to impose administrative fines. This Regulation should indicate infringements and the upper limit and criteria for setting the related administrative fines, which should be determined by the competent supervisory authority in each individual case, taking into account all relevant circumstances of the specific situation, with due regard in particular to the nature, gravity and duration of the infringement and of its consequences and the measures taken to ensure compliance with the obligations under this Regulation and to prevent or mitigate the consequences of the infringement. Where administrative fines are imposed on an undertaking, an undertaking should be understood to be an undertaking in accordance with Articles 101 and 102 TFEU for those purposes. Where administrative fines are imposed on persons that are not an undertaking, the supervisory authority should take account of the general level of income in the Member State as well as the economic situation of the person in

- (151) 丹麥和愛沙尼亞共和國並未允許歐盟個資規則中有關行政裁罰之規定。行政裁罰相關規則，於丹麥中，該罰鍰係由適格之國內法院以刑事罰金為之，而於愛沙尼亞共和國中，該裁罰係由監督機關依據輕罪程序架構而進行處分，且於該成員國內適用上述規範時，係與規管機關處理行政裁罰有同等之效果。是以，適格之國內法院應考量發起該裁罰監督機關之建議。於任何情況下，該裁罰應為有效、符合比例且具規勸性。
- (152) 本保護規範並未調和行政裁罰或於其他個案中有必要時，例如重大違反歐盟個資規則時情況下，成員國應採許有效、符合比例且具規勸性之裁罰系統。該處罰之本質，無論係刑事或行政，皆應取決於成員國之法律規定。
- (153) 成員國法律應調和規範言論、資訊自由，包括新聞、學術、藝術或文學表達，以及歐盟個資規則所保障之個人資料保護。處理個人資料程序若係單純為新聞上目的，或其他如學術、藝術或文學表達之目的時，若係為調和保護個人資料權力與言論和

considering the appropriate amount of the fine. The consistency mechanism may also be used to promote a consistent application of administrative fines. It should be for the Member States to determine whether and to which extent public authorities should be subject to administrative fines. Imposing an administrative fine or giving a warning does not affect the application of other powers of the supervisory authorities or of other penalties under this Regulation.

- (151) The legal systems of Denmark and Estonia do not allow for administrative fines as set out in this Regulation. The rules on administrative fines may be applied in such a manner that in Denmark the fine is imposed by competent national courts as a criminal penalty and in Estonia the fine is imposed by the supervisory authority in the framework of a misdemeanour procedure, provided that such an application of the rules in those Member States has an equivalent effect to administrative fines imposed by supervisory authorities. Therefore the competent national courts should take into account the recommendation by the supervisory authority initiating the fine. In any event, the fines imposed should be effective, proportionate and dissuasive.
- (152) Where this Regulation does not harmonise administrative penalties or where necessary in other cases, for example in cases of serious infringements of this Regulation, Member States should implement a system which provides for effective, proportionate and dissuasive penalties. The nature of such penalties, criminal or administrative, should be determined by Member State law.
- (153) Member States law should reconcile the rules governing freedom of expression and information, including journalistic, academic, artistic and or literary expression with the right to the protection of personal data pursuant to this Regulation. The processing of

資訊自由時，應有歐盟個資規則部分條款之例外及豁免此亦係有鑑於憲章第 11 條之規定意旨。尤其於處理影音領域，如新聞資料庫或新聞圖書館等相關個人資料時。因此，成員國應採取立法措施規定對於衡平基本權所必要之例外及豁免情況。成員國亦應制定有關資料主體之權利、管理者與受託者、傳輸個人資料至第三國或國際組織、獨立監督機關、合作與一致性、及特定之資料處理情況等例外與豁免之情況。當該例外或豁免情況於不同成員國間有差異時，得適用於管理者之成員國法律應適用之。為考量言論自由於各民主社會中之重要性，應有必要將有關該權利，如新聞等，等以廣義解釋相關之概念。

- (154) 歐盟個資規則適用上，允許一般民眾近用政府檔案此一原則。一般民眾近用政府檔案得視為追求公共利益。個人資料若儲存於政府機關或機構時，應得由該機關或機構公開，若該公關係依照應適用於該政府機關或機構之歐盟或成員國法律。相關法律調和公共近用政府檔案以及公部門因保障個人資料之權利而拒絕公開資訊，且因進而得制定調和保障個人資料權利與歐盟個資規則之必要規範。有鑑於此所謂公權力機關及機構，應包括所有成員國法規範圍內得存取該檔案之機關或其他機構。歐洲議會及理事會第 2003/98/EC 號指令中，並未觸及或影響

personal data solely for journalistic purposes, or for the purposes of academic, artistic or literary expression should be subject to derogations or exemptions from certain provisions of this Regulation if necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information, as enshrined in Article 11 of the Charter. This should apply in particular to the processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures which lay down the exemptions and derogations necessary for the purpose of balancing those fundamental rights. Member States should adopt such exemptions and derogations on general principles, the rights of the data subject, the controller and the processor, the transfer of personal data to third countries or international organisations, the independent supervisory authorities, cooperation and consistency, and specific data-processing situations. Where such exemptions or derogations differ from one Member State to another, the law of the Member State to which the controller is subject should apply. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly.

- (154) This Regulation allows the principle of public access to official documents to be taken into account when applying this Regulation. Public access to official documents may be considered to be in the public interest. Personal data in documents held by a public authority or a public body should be able to be publicly disclosed by that authority or body if the disclosure is provided for by Union or Member State law to which the public authority or public body is subject. Such laws should reconcile public access to official documents and the reuse of public sector

依照歐盟及成員國法而進行個人資料處理中，有關自然人保障之程度，且進一步言之，並未改變歐盟個資規則所規範之義務與權利。具體而言，該指令不應適用於因為近用系統或基於保障個人資料等原因，而排除或限制之近用，以及根據前述制度所提供之部分文件，其中載有個人資料之部分，依據法律規定，此個人資料之再利用不符合有關個人資料處理中保護自然人之法律。

- (155) 成員國法律或集體協議，包含「工作協議」等，應規定有關於僱傭關係中處理員工個人資料之具體規範，尤其係於僱傭關係中得基於員工之同意所進行處理個人資料之條件、聘用之目的、僱傭契約之履行，包括履行基於法律或集體協議相關之義務、經營、計畫及工作組織、工作場所之品質與多樣性、健康及工作安全、行使及享有之目的、基於單獨或集體之基礎、與該僱傭關係有關之權利和利益、及終止僱傭關係之目的等。

information with the right to the protection of personal data and may therefore provide for the necessary reconciliation with the right to the protection of personal data pursuant to this Regulation. The reference to public authorities and bodies should in that context include all authorities or other bodies covered by Member State law on public access to documents. Directive 2003/98/EC of the European Parliament and of the Council leaves intact and in no way affects the level of protection of natural persons with regard to the processing of personal data under the provisions of Union and Member State law, and in particular does not alter the obligations and rights set out in this Regulation. In particular, that Directive should not apply to documents to which access is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been provided for by law as being incompatible with the law concerning the protection of natural persons with regard to the processing of personal data.

- (155) Member State law or collective agreements, including ‘works agreements’, may provide for specific rules on the processing of employees' personal data in the employment context, in particular for the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee, the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

(156) 為公共利益、科學、歷史研究或統計目的而進行之個人資料處理，應遵守歐盟個資規則要求之保障資料主體權利與自由之適當安全措施。該安全措施應確保技術上及組織上安排之措施得達到最少化資料原則。當為達到公共利益、科學、歷史或統計目的而進行個人資料後數處理，係因該管理者評估利用該個人資料所能達成上開目的之可行性時，且為無法或不再得辨識資料主體時，若有採取適當之安全措施（例如，個人資料去連結化等），成員國得至聽處理上開目的之個人資料處理程序所適用之安全措施。成員國應經授權後，依據具體條件及遵循對資料主體之適當防護，針對資訊之要件、確認、刪除、被遺忘、限制處理程序、數據可攜性、拒絕為達成公共利益、科學、歷史或統計目的等權利，訂定詳細說明與例外。若該具體處理程序之目的及技術和組織上措施係為達到最少化處理個人資料、已符合比例與必要性原則時，有鑑於此，系爭條件與安全措施得包含賦予資料主體行使上開權利之適當具體措施。為達科學上目的而立法之個人資料，亦應符合相關之立法，例如臨床試驗等。

(156) The processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be subject to appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation. Those safeguards should ensure that technical and organisational measures are in place in order to ensure, in particular, the principle of data minimisation. The further processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is to be carried out when the controller has assessed the feasibility to fulfil those purposes by processing data which do not permit or no longer permit the identification of data subjects, provided that appropriate safeguards exist (such as, for instance, pseudonymisation of the data). Member States should provide for appropriate safeguards for the processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. Member States should be authorised to provide, under specific conditions and subject to appropriate safeguards for data subjects, specifications and derogations with regard to the information requirements and rights to rectification, to erasure, to be forgotten, to restriction of processing, to data portability, and to object when processing personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. The conditions and safeguards in question may entail specific procedures for data subjects to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with technical and organisational measures aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles. The processing of personal data for scientific purposes should also comply with other relevant legislation such as on clinical trials.

(157) 藉由連結輸入之資訊，研究員可獲得與散播醫療情況，例如傳染疾病、癌症及憂鬱症等高價值之重要新知。以輸入作為基礎，可透過利用大量人口增進研究結果。於社會科學領域，基於輸入之研究始研究員得獲得關於長期社會狀況，例如失業、教育或其他生活情況間關聯性等重要發現。透過輸入之資料所獲得之研究結果提供堅實、高品質之知識，並得作為行程與實施以該知識為基礎之政策、改善部分人群之生活品質、並增進社會服務之效率。為能促進該科學研究，個人資料為達科學研究目的而經處理時，應遵守歐盟及成員國法所規定之適當要件以及安全措施。

(158) 當個人資料處理係為達上述目的時，歐盟個資規則亦應適用於該處理程序，並應注意者，歐盟個資規則不得適用於已過世之亡者。政府機關或掌握公共利益紀錄之公、私主體，應依照歐盟或成員國法律，應有法律上義務提供取得、保存、評估、安排、描述、傳播、推廣、散佈和提供對公共利益而言長久且具價值之紀錄。成員國亦應經授權而制定為達上述目的而進行之後續處理個人資料程序，例如提供與前極權國家政權政治行為有關之具體資料、滅絕種族罪、危害人類罪，尤其係大屠殺罪或戰爭罪等。

- (157) By coupling information from registries, researchers can obtain new knowledge of great value with regard to widespread medical conditions such as cardiovascular disease, cancer and depression. On the basis of registries, research results can be enhanced, as they draw on a larger population. Within social science, research on the basis of registries enables researchers to obtain essential knowledge about the long-term correlation of a number of social conditions such as unemployment and education with other life conditions. Research results obtained through registries provide solid, high-quality knowledge which can provide the basis for the formulation and implementation of knowledge-based policy, improve the quality of life for a number of people and improve the efficiency of social services. In order to facilitate scientific research, personal data can be processed for scientific research purposes, subject to appropriate conditions and safeguards set out in Union or Member State law.
- (158) Where personal data are processed for archiving purposes, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorised to provide for the further processing of personal data for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes, genocide, crimes against humanity, in particular the Holocaust, or war crimes.

- (159) 當處理個人資料係為科學研究目的時，歐盟個資規則亦應適用於該處理程序。為達歐盟個資規則之立法目的，以科學研究為目的之個人資料處理程序應以廣義解釋，包含例如科技發展及展示、基礎研究、應用科學及私人資助之研究等。此外，亦應考量歐盟條約第 179 條第(1)項有關達成歐盟研究區域此一目標。科學研究目的亦應包括為公共衛生此公益目的所作之研究，或其他與科學研究過程相關之個人資料公開。若該有關健康之科學研究結果，為了資料主體之益處仍需要更多處理程序時，歐盟個資規則之一般性規範亦應適用於審查該延伸程序。
- (160) 當處理個人資料係以利此研究目的時，歐盟個資規則亦應適用於該處理程序。此應包括歷史及譜系之研究目的，並應注意，歐盟個資規則並不適用於始過世之亡者。
- (161) 為達同意參與臨床試驗科學研究此一目的，應遵守歐洲議會與理事會第 536/2014 號規則之相關規定。
- (162) 當個人資料處理係為統計目的時，歐盟個資規則亦應適用於該處理程序。歐盟或成員國法於歐盟個資規則規範範圍內，應認定該統計之內容、近用管制、以統計為目的而處理個人資料時

- (159) Where personal data are processed for scientific research purposes, this Regulation should also apply to that processing. For the purposes of this Regulation, the processing of personal data for scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research. In addition, it should take into account the Union's objective under Article 179(1) TFEU of achieving a European Research Area. Scientific research purposes should also include studies conducted in the public interest in the area of public health. To meet the specificities of processing personal data for scientific research purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific research purposes. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of those measures.
- (160) Where personal data are processed for historical research purposes, this Regulation should also apply to that processing. This should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.
- (161) For the purpose of consenting to the participation in scientific research activities in clinical trials, the relevant provisions of Regulation (EU) No 536/2014 of the European Parliament and of the Council should apply.
- (162) Where personal data are processed for statistical purposes, this Regulation should apply to that processing. Union or Member State law should, within the limits of this Regulation, determine

之具體目的規範、以及對保障資料主體統計上之保密性和其權利及自由，所應採取之適當防護措施等。統計目的意旨，任何蒐集和處理個人資料之操作程序，係為統計問卷或推導統計結果所必須時。該統計結果得被用以其他不同之目的，包括科學研究目的等。統計目的意味該以統計目的進行處理之結果已非個人資料，而係屬累積資料，且該結果或個人資料並非作為對任何具體自然人處分或決策之根據。

- (163) 依據歐盟及國家統計機關，為作成歐盟官方及國家官方之統計時，保密資訊應被保障。歐盟之統計應於遵守歐盟條約第 338 條第(2)項所規定之統計原則，而有所發展、製造與散佈，且國家統計一應符合該成員國法律規定。歐洲議會與理事會第 223/2009 號規則規定有關歐盟統計之詳細及統計保密性規範。
- (164) 有關監督機關基於職權從管理者或受託者存取個人資料並進入其場址，成員國得遵守歐盟個資規則之限制下，以法律規定具體規範以保障專業上或其他同等之保密義務，包括保護個人資料與專業上保密義務之必要調和。此規範應不影響成員國現行所實施，符合歐盟法要求之專業保密義務相關之義務。

statistical content, control of access, specifications for the processing of personal data for statistical purposes and appropriate measures to safeguard the rights and freedoms of the data subject and for ensuring statistical confidentiality. Statistical purposes mean any operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results. Those statistical results may further be used for different purposes, including a scientific research purpose. The statistical purpose implies that the result of processing for statistical purposes is not personal data, but aggregate data, and that this result or the personal data are not used in support of measures or decisions regarding any particular natural person.

- (163) The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in accordance with the statistical principles as set out in Article 338(2) TFEU, while national statistics should also comply with Member State law. Regulation (EC) No 223/2009 of the European Parliament and of the Council provides further specifications on statistical confidentiality for European statistics.
- (164) As regards the powers of the supervisory authorities to obtain from the controller or processor access to personal data and access to their premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy. This is without prejudice to existing Member State obligations to adopt rules on professional secrecy where required by Union law.

- (165) 歐盟個資規則遵守並不影響教會現行之教條，及依據歐盟條約第 17 條所認可之宗教團體或社群。
- (166) 為達歐盟個資規則之目的，亦即保障自然人之基本權利與自由，尤其係保護其個人資料，並促進歐盟內個人資料之流通，制定符合歐盟條約第 290 條之權力應授權予歐盟執委會。具體而言，該授權法案應規範認證機制之標準與條件、用標準化圖示呈現資訊及提供該圖示之步驟等。歐盟執委會應於準備作業時執行適當之諮詢，包括專家層級等，此係特別重要。歐盟執委會當準備並起草該授權法案時，應確保同時、及時和適當地將有關檔案送達至歐洲議會和理事會。
- (167) 為確保施行歐盟個資規則之標準化條件，當有關依照歐盟個資規則制定時應授予歐盟執委會執行權力。該權力之行使應遵循第 182/2011 號規定。於前述情況時，歐盟執委會應考慮微型、小型及中型企業之特別措施。
- (168) 審查程序應用以制定有關管理者及受託者和複數受託者之間，標準契約條款之施行方式；行為準則；技術標準及認證機制；第三國、第三國之區域或特定產業、或國際組織中所提供之合適個人資料保障層級、標準保護條款；以電子方式，在管理者、受託者及監督內部具拘束力條款機關之間，交換資訊之格

- (165) This Regulation respects and does not prejudice the status under existing constitutional law of churches and religious associations or communities in the Member States, as recognised in Article 17 TFEU.
- (166) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. In particular, delegated acts should be adopted in respect of criteria and requirements for certification mechanisms, information to be presented by standardised icons and procedures for providing such icons. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (167) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission when provided for by this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. In that context, the Commission should consider specific measures for micro, small and medium-sized enterprises.
- (168) The examination procedure should be used for the adoption of implementing acts on standard contractual clauses between controllers and processors and between processors; codes of conduct; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country, a territory

式和步驟；互助；透過電子方式於監督機關間、監督機關與委員會之間，交換資訊之設置等。

(169) 當有證據顯示第三國、第三國境內之區域或特定產業、或國際組織未能維持一定層級之保護，且存有緊急迫切之理由時，歐盟執委會應制定立即可行之實行行動。

(170) 有鑑於歐盟個資規則之立法目的，亦即確保自然人受同等保護以及個人資料於歐盟境內自由流通，無法有效地由成員國達成時，且基於該行動之規模及效果，於歐盟層級反而較能達成時，歐盟應遵守歐洲聯盟條約(TEU)第 5 條規定之輔助原則，採取相關行動。於遵守該條規範之比例原則下，歐盟個資規則並未超越達到立法目的所必要之程度。

(171) 資料保護指令(95/46/EC)應由歐盟個資規則取代之。於歐盟個資規則施行日期前已進行之處理程序，於歐盟個資規則生效後兩年內應使之符合歐盟個資規則之規定。若處理程序係基於資料保護指令(95/46/EC)規定之同意而進行時，資料主體並不需再次給予同意，若該同意之作成已符合歐盟個資規則之要件時，且該管理者於歐盟個資規則施行日期後，亦得繼續該處理程序。歐盟執委會基於資料保護指令(95/46/EC)所授權監督機關之決議，直至被修訂、取代或撤銷前，應仍有效。

or a specified sector within that third country, or an international organisation; standard protection clauses; formats and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules; mutual assistance; and arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board.

- (169) The Commission should adopt immediately applicable implementing acts where available evidence reveals that a third country, a territory or a specified sector within that third country, or an international organisation does not ensure an adequate level of protection, and imperative grounds of urgency so require.
- (170) Since the objective of this Regulation, namely to ensure an equivalent level of protection of natural persons and the free flow of personal data throughout the Union, cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (171) Directive 95/46/EC should be repealed by this Regulation. Processing already under way on the date of application of this Regulation should be brought into conformity with this Regulation within the period of two years after which this Regulation enters into force. Where processing is based on consent pursuant to Directive 95/46/EC, it is not necessary for the data subject to give his or her consent again if the manner in which the consent has been given is in line with the conditions of

- (172) 歐盟資料保護監督機關係依據第 45/2001 號規定中第 29 條第 (2)項執行諮詢，並於 2012 年 3 月 7 號發布意見。
- (173) 歐盟個資規則應適用於所有關於保護處理個人資料方面之基本權利和自由，且不受有相同目的之歐洲議會與理事會第 2002/58/EC 指令規定特定義務之拘束，包括對於管理者及自然人權利有關之義務。為釐清歐盟個資規則與第 2002/58/EC 指令之關係，該指令應儘速修正。一旦歐盟個資規則制定後，第 2002/58/EC 指令應以與確保其與歐盟個資規則規範一致之前提下審查之。

this Regulation, so as to allow the controller to continue such processing after the date of application of this Regulation. Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC remain in force until amended, replaced or repealed.

- (172) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 7 March 2012.
- (173) This Regulation should apply to all matters concerning the protection of fundamental rights and freedoms vis-à-vis the processing of personal data which are not subject to specific obligations with the same objective set out in Directive 2002/58/EC of the European Parliament and of the Council, including the obligations on the controller and the rights of natural persons. In order to clarify the relationship between this Regulation and Directive 2002/58/EC, that Directive should be amended accordingly. Once this Regulation is adopted, Directive 2002/58/EC should be reviewed in particular in order to ensure consistency with this Regulation,

已通過之歐盟個資規則：

第一章

通則

第 1 條

主旨及立法目的

1. 本規則規定有關自然人對其個人資料處理之保護及個人資料自由傳輸之規範。
2. 本規則保障自然人之基本權利及自由，尤係針對其個人資料之保護。
3. 個人資料於歐盟境內之自由流通，基於有關個人資料處理方面對自然人之保護，應不受限制或禁止。

第 2 條

規範對象

1. 本規則則適用於全部或部分以自動化方式蒐集、處理或利用之個人資料，以及構成檔案系統一部分，或為構成檔案系統而蒐集、處理利用之個人資料。
2. 本規則並不適用於下列個人資料處理：
 - (a) 於歐盟法範圍以外所進行之行動；
 - (b) 由成員國進行之活動，但並非歐洲聯盟條約第 2 章第 5 條之規範範圍內；
 - (c) 由自然人純供個人或家庭之活動；

HAVE ADOPTED THIS REGULATION:

CHAPTER I
General provisions

Article 1

Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

Article 2

Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
2. This Regulation does not apply to the processing of personal data:
 - (a) in the course of an activity which falls outside the scope of Union law;
 - (b) by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU;
 - (c) by a natural person in the course of a purely personal or household activity;

- (d) 由適格之機關，為達防止、調查、偵測或追訴刑事犯罪或執行刑罰等目的，包括預防公共安全之威脅等。
3. 針對處理個人資料之歐盟組織、機構、官員及機關等，應適用歐盟第 45/2001 號規則。歐盟第 45/2001 號規則及其他適用於該種個人資料處理程序之歐盟法規，應依照第 98 條之規定，修訂使其符合本規則之原則與規範。
4. 本規則不應影響第 2000/31/EC 號指令，尤係該指令第 12 至第 15 條關於中介服務提供者責任之規範。

第 3 條 適用地域範圍

1. 本規則適用於設立於歐盟境內之資料管理者或受託者所為之個人資料處理活動；不論該資料處理活動是否發生於歐盟境內。
2. 本規則適用於非設立於歐盟境內之資料管理者或受託者，對於歐盟境內之資料管理者或受託者，對於歐盟境內之資料資料主體為以下行為而蒐集、處理或利用個人資料之情形：
- (a) 提供商品或服務；無論資料資料主體是否需付款；或
- (b) 在歐盟境內之行為進行監控。
3. 本規則適用於非設立於於歐盟境內之管理者所進行之個人資料處

- (d) by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
3. For the processing of personal data by the Union institutions, bodies, offices and agencies, Regulation (EC) No 45/2001 applies. Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data shall be adapted to the principles and rules of this Regulation in accordance with Article 98.
4. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

Article 3

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.
2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:
- (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
 - (b) the monitoring of their behaviour as far as their behaviour takes place within the Union.
3. This Regulation applies to the processing of personal data by a

理活動，但該地點為成員國法因國際公法而得適用之處。

第 4 條 定義

有鑑於本規則之目的：

- (1) 「個人資料」意即，任何有關已識別或足資識別之自然人（即「資料主體」）；可經由識別符號，例如姓名、識別號碼、位置資訊、或線上識別碼，或經由一項或多項身體、生理、基因、精神、經濟、文化或社會身分特徵，直接或間接識別之自然人。
- (2) 「處理程序」意即，任何操作或系列操作係基於個人資料或多組個人資料，無論是否以自動化方式為之，例如蒐集、記錄、整理、結構化、儲存、修正或變更、檢索、諮詢、使用、傳播、散佈或以其他方式提供、對齊或組合、限制、刪除或破壞；
- (3) 「處理程序之限制」意即，標記已儲存之個人資料，使未來得限制處理該資料；
- (4) 「個人化剖析」意即，任何自動化處理之個人資料，包含使用個人資料以評估特定自然人之各方面，尤係分析或預測有關該自然人工作上、經濟狀況、健康、個人偏好興趣、可信度、行為、位置或移動之情況；

controller not established in the Union, but in a place where Member State law applies by virtue of public international law.

Article 4

Definitions

For the purposes of this Regulation:

- (1) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (2) ‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (3) ‘restriction of processing’ means the marking of stored personal data with the aim of limiting their processing in the future;
- (4) ‘profiling’ means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

- (5) 「去連結資料」意即，在不使用額外資料情形下，無法將個人資料歸屬於特定個人資料處理或利用方式；但該額外資料必須分別保管，並採取技術及組織上措施，以避免個人資料被歸屬於一個已識別或足資識別的自然人；

- (6) 「檔案系統」意即，任何得經由無論係功能或地理上集中化、去其中化或分散之特定標準，而讀取之結構化之個人資料組合；

- (7) 「管理者」意即，自然人或法人、政府機關、機構或其他單位，獨立或與其他合併，決定該個人資料處理程序之目的及方式；若當歐盟或成員國法已認定該處理程序之目的及方法時，管理者或指定之特定準則得由歐盟或成員國法規定；

- (8) 「受託者」意即，自然人或法人、政府機關、機構或其他以管理者之名義處理個人資料者；

- (9) 「接收者」意即，自然人或法人、政府機關、機構或其他主體，對其公開個人資料，且無論是否為第三方。惟，政府機關得基於歐盟或成員國法之具體規定框架下，接收個人資料時，其不應被視為接收者；針對政府機關處理該個人資料，應遵守依其處理程序目的，得適用之個人資料保護規範；

- (5) ‘pseudonymisation’ means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
- (6) ‘filing system’ means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
- (7) ‘controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
- (8) ‘processor’ means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- (9) ‘recipient’ means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;

- (10) 「第三方」意即，自然人或法人、政府機關、機構或其他非資料主體、管理者、受託者、以及管理者、受託者得直接命令者以外，經授權處理個人資料之主體；
- (11) 資料主體之「同意」意即，經告知後，資料主體出於自由意願，以聲明或明確積極之行為，允許其個人資料被蒐集、處理獲利用之具體、明確表示。
- (12) 「個人資料外洩」意即，安全性漏洞造成意外或非法之破壞、損失、變更、未經授權公開、讀取經傳輸、儲存或其他處理方式之個人資料；
- (13) 「基因資料」意即，個人資料與特定自然人遺傳或天生基因特徵有關，由其係得自該自然人生物樣本之分析，獲得有關其生理或健康之獨特資訊；
- (14) 「生物特徵識別資料」意即，自然人經由特定處理生理、心理或行為特質等技術，得使或辨識該自然人專屬性識別符號，例如臉部特徵或指紋鑑定等；
- (15) 「有關健康之資料」意即，個人資料與該自然人之生理、心理健康有關，包括健康照護服務之規定若有揭露該自然人健康狀態資訊時；

- (10) ‘third party’ means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data;
- (11) ‘consent’ of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;
- (12) ‘personal data breach’ means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (13) ‘genetic data’ means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
- (14) ‘biometric data’ means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (15) ‘data concerning health’ means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;

(16) 「主要許可」意即：

(a) 若管理者於複數成員國境內取得許可，即其於歐盟之中央行政所在處，除非決定系爭個人資料處理之目的和方式，係由位於歐盟中其他經許可之管理者所為，且後者之許可擁有權執行該決策，於該情況下應將其視為主要許可；

(b) 若受託者於複數成員國境內取得許可，即其於歐盟之中央行政位置，或若該受託者於歐盟中並無中央行政處，即其於歐盟內，進行主要處理活動之受託者獲得許可之所在處，且該受託者應遵守本規則規定之具體義務時；

(17) 「代表人」意即，於歐盟內之自然人或設立之法人，其經由管理者或受託者依照第 27 條規定之書面，代表該管理者或受託者有關其應遵循本規則賦予之義務。

(18) 「企業」意即，自然人或法人從事經濟活動，且無論其法律形式為何，包括合夥或定期從事經濟活動之組織等；

(19) 「企業集團」意即，由控制企業與受其控制之企業所組成；

- (16) ‘main establishment’ means:
- (a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;
 - (b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, or, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;
- (17) ‘representative’ means a natural or legal person established in the Union who, designated by the controller or processor in writing pursuant to Article 27, represents the controller or processor with regard to their respective obligations under this Regulation;
- (18) ‘enterprise’ means a natural or legal person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity;
- (19) ‘group of undertakings’ means a controlling undertaking and its controlled undertakings;

- (20) 「拘束公司之規章」意即，於成員國境內成立之管理者或受託者所根據之個人資料保護政策，以傳輸或多次傳輸個人資料至位於一或複數第三國，且為共同從事經濟活動之同一公司或企業團內部之管理者或受託者；
- (21) 「監督機關」意即，由成員國依照第 51 條規定所建立之獨立公權力機關；
- (22) 「有關聯之監督機關」意即，該監督機關與系爭個人資料處理程序有關，因：
- (a) 該管理者或受託者係於該監督機關所在之成員國所成立；
 - (b) 資料主體居住在監督機關位於之成員國境內，且其將受個人資料處理程序重大影響或有重大影響之可能時；或
 - (c) 系爭申訴係向該監督機關提出；
- (23) 「跨境處理程序」意即，以下其中之情況：
- (a) 處理個人資料之程序，係由位於複數成員國間之管理者或受託者所進行之活動，且該管理者或受託者係設立於複數成員國境內時；或
 - (b) 處理個人資料之程序，係由歐盟內單一設立之管理者或受託者所進行之活動，惟其對於位在複數成員國境內之資料主體產生或將可能產生重大之影響時。

- (20) ‘binding corporate rules’ means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity;
- (21) ‘supervisory authority’ means an independent public authority which is established by a Member State pursuant to Article 51;
- (22) ‘supervisory authority concerned’ means a supervisory authority which is concerned by the processing of personal data because:
- (a) the controller or processor is established on the territory of the Member State of that supervisory authority;
 - (b) data subjects residing in the Member State of that supervisory authority are substantially affected or likely to be substantially affected by the processing; or
 - (c) a complaint has been lodged with that supervisory authority;
- (23) ‘cross-border processing’ means either:
- (a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or
 - (b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely

- (24) 「有關聯且合理之駁回」意即，駁回有關於是否違反本規則之決定擬稿，或管理者或受託者從事之行為是否遵循本規則之決定擬稿，且其明顯透過該決定擬稿證明，對於資料主體基本權利與自由相關，或依個案情況，亦與該個人資料於歐盟中流通有關風險之嚴重性。
- (25) 「資訊社會服務」意即，歐洲議會與理事會第 2015/1535 號指令第 1 條第 1 項第(b)點定義之服務；
- (26) 「國際組織」意即，一組織與其附隨之機構係遵守國際公法，或其他機構之建立或建立之基礎，係基與雙邊或多邊國家之協議。

第二章 原則

第 5 條 處理個人資料之原則

1. 個人資料應為：
 - (a) 合法、公平且對資料主體透明之方式處理（即「合法性、公平性與透明性」）；
 - (b) 基於具體、特定且合法之目的蒐集，且無與原目的不相容之延伸處理程序；惟若後續延伸處理程序，係為公共利益、科

to substantially affect data subjects in more than one Member State.

- (24) ‘relevant and reasoned objection’ means an objection to a draft decision as to whether there is an infringement of this Regulation, or whether envisaged action in relation to the controller or processor complies with this Regulation, which clearly demonstrates the significance of the risks posed by the draft decision as regards the fundamental rights and freedoms of data subjects and, where applicable, the free flow of personal data within the Union;
- (25) ‘information society service’ means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council (19);
- (26) ‘international organisation’ means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

CHAPTER II

Principles

Article 5

Principles relating to processing of personal data

1. Personal data shall be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those

學、歷史研究或統計等目的，得依據第 89 條第(1)項之規定，不應視為與原處理目的不相容（即「目的限制」）；

- (c) 適當、具關連性、且僅限對於資料處理程序目的有所必要（即「最少化處理資料」）；
- (d) 精確，且當有必要時與時並進；採取確保個人資料正確之所有必要合理措施，並及時考量到處理、刪除、修正個人資料之目的（即「正確性」）；
- (e) 得識別資料主體之形式保存之個人資料，應不超過該資料處理目的必要之時間內；個人資料得延長儲存時間，倘若該個人資料將僅利用於達成公共利益、科學、歷史研究或統計等目的，且應遵守第 89 條第(1)項所規定，實施本規則所要求之適當技術上與組織上措施，以確保資料主體之權利與自由（即「儲存限制」）；
- (f) 以能確保個人資料適當安全性之方式，包括對未授權或非法處理程序之保護、以及針對意外損失、破壞或傷害，並使用適當技術上與組織上措施（即「完整性與保密性」）。

2. 管理者應負責，或得證明其遵守前項之規定（即「可責性」）。

- purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');
- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
 - (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
 - (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');
 - (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').
2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

第 6 條 合法處理程序

1. 處理程序僅當符合下列至少一款規定時，始為合法：
 - (a) 資料主體已同意系爭處理程序一項或多項具體目的；
 - (b) 處理程序係資料主體為履行其為契約一方之必須，或經資料主體於締結契約前階段之請求；
 - (c) 處理程序係為履行管理者其法定義務之必要；
 - (d) 處理程序係為保護資料主體或其他自然人之重大利益；
 - (e) 處理程序係管理者為履行公益任務或執行職務所必須；
 - (f) 處理程序係管理者或第三方為追求具合法利益之目的，但資料主體（特別係未成年人時）對該資料之保護，具有更重要的利益、權利或自由者，不在此限。

前項第(f)款，於政府機關履行其職務所處理個人資料時，亦應適用之。

2. 成員國得維持或引進更具體之規定，於有關前項第(c)及第(e)款之處理程序時，適用本規則之規範，並針對該處理程序和其他確保合法公正處理程式之措施時，規定更多細節性之具體要件，包括

Article 6

Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

2. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by

其他規定於第九章之特定處理程序情況等。

3. 第1項第(c)及第(e)款處理程序所依據之基礎，得由下述法律規定：

(a) 歐盟法；或

(b) 管理者應遵守之成員國法律。

應認定處理目的之法律基礎，或第1項第(e)款規定之處理程序時，其應限為該管理者執行其公益任務或法定職務時所必要。該法律基礎得包括具體規定以遵循本規則之適用，除其他規定外，尤係管理者管控該處理程序合法性之一般性條件；受處理之個人資料類型；受影響之資料主體；個人資料公開之對象及目的；目的限制；儲存期限；以及處理之操作及步驟，包括用與確保處理程序合法及公平之措施，例如第九章所規範之其他具體處理情況等。歐盟或成員國法應符合公共利益之目的，且其追求之目的應符合比例原則及合法。

4. 當所進行處理之個人資料，於蒐集當時並非基於資料主體之同意，或依據歐盟或成員國法律，構成民主社會中，對於維護第23條第(1)項規定之目的所必要且符合比例之措施時，為確定該為其他目的進行之處理程序是否與資料蒐集時之原目的相容時，除其他規定外，該管理者應考慮以下事項：

determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

(a) Union law; or

(b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, *inter alia*: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX. The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is

- (a) 任何原目的與欲進行之後續處理程序目的間之連結；
- (b) 個人資料蒐集時之脈絡，尤其係資料主體與管理者間之關係
- (c) 該個人資料之特性，尤其是否處理符合第 9 條規定之特殊類型個人資料，或依照第 10 條之規定，該受處理之個人資料是否與刑事起訴和犯罪有關；
- (d) 欲進行之後續程序對於資料主體之影響；
- (e) 以及欲進行之後續處理程序是否已有適當之安全措施，包括加密或去連結化。

第 7 條 **同意之條件**

1. 以同意作為合法使用個人資料之事由時，資料主體是否同意，應由資料管理者證明。
2. 若資料主體同意係由書面聲明為之，該書面同時包括其他事項，則資料主體同意之部分必須與其他事項清楚分離，並且以清晰可理解、易於接近、清楚且通常始用之文字呈現。任何違反本規則要求之聲明皆不生效力。

compatible with the purpose for which the personal data are initially collected, take into account, inter alia:

- (a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;
- (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
- (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;
- (d) the possible consequences of the intended further processing for data subjects;
- (e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

Article 7

Conditions for consent

1. Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.
2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.

3. 資料主體有權隨時撤回其同意。資料主體嗣後撤回同意，對撤回前基於同意所為蒐集、處理或利用的合法性不生影響。在資料主體同意前，應告知上述事項。且撤回同意應與給予同意一樣容易。
4. 當評估同意是否出於自由意願時，最重要的考量因素，諸如：契約的履行，包括服務的提供，是否以資料主體同意蒐集、處理或利用非屬履行該契約必要範圍內之資料為條件。

第 8 條

未成年人使用資訊社會服務應適用之條件

1. 當直接提供資訊社會服務予未成年人，且以同意作為蒐集、處理或利用其個人資料的基礎時，該未成年必須年滿 16 歲，相關的資料使用才合法。當未成年人未滿 16 歲時，必須由行使親權者表示或授權同意，資料使用才合法。

成員國可以依據法律將同意年齡降低，但不得低於 13 歲。

2. 資料管理者必須考量現有的科技，付出合理地努力，以確認同意是由行使親權者所表示或授權。
3. 第 1 項應不影響成員國之一般契約法規定中，有關與未成年人締結契約之效力、形成或拘束力等

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw as to give consent.
4. When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

Article 8

Conditions applicable to child's consent in relation to information society services

1. Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.
3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

第 9 條 處理特殊類型之個人資料

1. 處理個人資料若有關民族或種族來源、政治見解、宗教或價值觀信仰或所屬工會相關之個人資料，以及得明確識別特定人之基因資料、生物特徵資料，以及個人之健康資料或性生活或性傾向資料時，原則上不得處理。

2. 前項之規定僅得於符合下列例外情況時，始得為之：
 - (a) 資料主體表示明確之同意，但若歐盟法或各成員國之法令明訂特種資料處理之禁止不得藉由資料主體同意而解除時，則不在此限；

 - (b) 該處理為資料管理者或資料主體主張其基於勞動法或社會安全或保護之法令所享有之權利所必要。

 - (c) 該處理係為保護資料主體或其他自然人具生存重要性之法益所必要，且資料主體出於身體或法律上原因無法表示同意。

 - (d) 該處理透過基於政治、世界觀、宗教或工會所設立之基金會、社團或其他組織提供適當保障，非以營利為目的且係於其法定權限範圍內所為，但該處理僅限於其成員或昔日成員或與為達成其業務目的而有經常性聯繫之人，且該個人資料

Article 9

Processing of special categories of personal data

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
2. Paragraph 1 shall not apply if one of the following applies:
 - (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
 - (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
 - (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
 - (d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates

在未經資料主體同意前不得對外公開。

- (e) 欲處理之個人資料已明顯由資料主體公開。
- (f) 該處理係為執行、行使或保護法律上之請求權或為法庭審理範圍內之司法職權所必要。
- (g) 該處理係依據歐盟法或成員國法令，與其所欲達成目的間具合理關聯性，維護個人資料保護權利之本質，並訂有保護資料主體基本權利及利益之適當特殊措施，而基於有重大之公益理由，認有必要者。
- (h) 該處理係出於健康照護或為判斷受僱者工作能力之勞動醫學，為了醫學上之診斷、健康或社會領域之照護或治療或為了健康或社會領域之體系或服務之管理，依據歐盟法、成員國之法令或與擔任健康相關職業之成員間簽訂之契約，並符合第3項所定要件及保障，而認有必要者。
- (i) 該處理係於公共衛生領域基於公益理由，例如為防範跨境之嚴重健康危害或為維護健康照護及醫藥產品的高品質及安全標準，並已依歐盟法或成員國法令採行維護資料主體權利及自由之適當特殊措施，而認有必要者。

- solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;
- (e) processing relates to personal data which are manifestly made public by the data subject;
 - (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
 - (g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
 - (h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;
 - (i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;

- (j) 該處理係依據歐盟法或成員國法令，與其所欲達成目的間具合理關聯性，維護個人資料保護權利之本質，並訂有保護資料主體基本權利及利益之適當特殊措施，而依據第 89 條第 1 項基於公益之檔案儲存目的、學術或歷史研究目的以及統計目的，認有必要者。
3. 第 1 項規定之個人資料得以第 2 項第(h)款規定之目的進行處理，若該資料係由專業人士，根據歐盟或成員國法律或其他國家適格機關頒布之規範應遵守其專業保密義務，或其他依據前述法規亦有保密義務者。
4. 有關基因資料、生物特生或健康資料之處理，成員國應維持或另行訂定附加之要件，如限制要件等。

第 10 條

處理與刑事追訴或犯罪有關之個人資料

處理有關刑事追訴或犯罪、或第 6 條第(1)項規定之保安措施時，應僅得於政府機關之控制，或該處理程序係由歐盟或其他成員國法律所授權並遵守對資料主體權利與自由之安全措施。任何有關刑事追訴之整體紀錄應僅得由政府機關保存之。

- (j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.
3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.
4. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.

Article 10

Processing of personal data relating to criminal convictions and offences

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.

第 11 條

無須識別之處理程序

1. 若管理者處理個人資料之目的，管理者並不需要或不再需要由管理者識別資料主體時，該管理者應無必要僅為遵循本規則之規範，而有義務維持、要求或處理為識別該資料主體所需之額外資訊。

2. 涉及前項規定之個案中，若管理者得證明其無須識別該資料主體時，該管理者應於可行之情況下，將此告知相應之資料主體。於此情況下，第 15 條至第 20 條應不再適用，除非該資料主體係為基於此些條文之規範，行使其權利，而提供可識別其身分之額外資訊。

第三章

資料主體之權利

第一節

透明性與態樣

第 12 條

使資料主體得行使其權利之透明化資訊、通知及態樣

1. 管理者應採取所有適當之措施，以提供第 13 條、第 14 條、以及任何基於第 15 條至第 22 條之通知，及第 34 條有關該通知應以精確、透明、易懂及容易取得之形式，並使用清楚、通用之用語，若係向兒童告知時，尤應遵守此一規定。該資訊應以書命或其他方式，包括若適當時，得以電子方式告知；如資料資料主體要求，且其身分經確認後，相關資訊可以口頭方式告知。

Article 11

Processing which does not require identification

1. If the purposes for which a controller processes personal data do not or do no longer require the identification of a data subject by the controller, the controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with this Regulation.
2. Where, in cases referred to in paragraph 1 of this Article, the controller is able to demonstrate that it is not in a position to identify the data subject, the controller shall inform the data subject accordingly, if possible. In such cases, Articles 15 to 20 shall not apply except where the data subject, for the purpose of exercising his or her rights under those articles, provides additional information enabling his or her identification.

CHAPTER III

Rights of the data subject

Section 1

Transparency and modalities

Article 12

Transparent information, communication and modalities for the exercise of the rights of the data subject

1. The controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or

2. 管理者應促進資料主體行使其依照第 15 條至第 22 條規定之權利。於第 11 條第(2)項規範之情況中，管理者應不得拒絕基於資料主體基於行使其第 15 條至第 22 條規定之權利，所提出之請求，如非該管理者證明其並無法識別該資料主體時。
3. 管理者應提供資訊，並回應資料主體基於第 15 條至第 22 條規定所提出之請求，不得有過度遲延，且無論任何情況皆應於收到該請求後一個月內為之。考量到請求之複雜性與數量，若有必要時，該期限應得展延兩個月。管理者應於收到請求後一個月內告知資料主體前述展延及其原因。當資料主體以電子方式提出請求時，若可行時且資料主體無另外要求時，該資料應亦以電子方式提供。
4. 若管理者並未配合資料主體之請求，該管理者應立即告知該資料主體，並至遲於收到該請求之一個月內，提出其前述決定之理由，以及得向監督機關提出申訴及獲得司法上救濟之管道。
5. 依據第 13 條及第 14 條提供資訊，或依第 15 條至第 22 條及第 34 條所為之通訊或其他行均應免費。若該資料主體之請求明顯無理由或濫權時，尤其係因為重複時，管理者得

by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.

2. The controller shall facilitate the exercise of data subject rights under Articles 15 to 22. In the cases referred to in Article 11(2), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22, unless the controller demonstrates that it is not in a position to identify the data subject.
3. The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.
4. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.
5. Information provided under Articles 13 and 14 and any communication and any actions taken under Articles 15 to 22 and 34 shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:

(a) 考量提供資訊或通訊或其他行為的行政成本，收取合理費用；
或

(b) 拒絕處理該請求。

管理者對於相關顯無理由或濫權之請求，應負擔舉證責任。

6. 於不影響第 11 條效力之情況下，當管理者有合理懷疑有關依照第 15 條至第 22 條提出請求自然人之身分時，管理者得請求其提出為識別其身分之必要額外資訊。
7. 依照第 13 條及第 14 條規定所提供予資料主體之資訊，得以其他標準化圖示併同提供，以便資料主體以容易注意、理解及理解之方式，對於該處理程序有整體性之理解。若該圖示係以電子方式呈現時，應以機器可讀取之格式提供之。
8. 歐盟執委會依照第 92 條，有權限制定授權法規，以認定應以圖示呈現之資訊，以及提供標準化圖示之步驟。

第二節

資訊與個人資料之近用

第 13 條

個人資料係直接向資料主體蒐集情況之通知

- (a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or
- (b) refuse to act on the request.

The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

6. Without prejudice to Article 11, where the controller has reasonable doubts concerning the identity of the natural person making the request referred to in Articles 15 to 21, the controller may request the provision of additional information necessary to confirm the identity of the data subject.
7. The information to be provided to data subjects pursuant to Articles 13 and 14 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 for the purpose of determining the information to be presented by the icons and the procedures for providing standardised icons.

Section 2

Information and access to personal data

Article 13

Information to be provided where personal data are collected from the data subject

1. 當有關之個人資料係從資料主體直接蒐集時，管理者應於獲得該個人資料當時，提供資料主體以下資訊：
 - (a) 資料蒐集者的名稱及聯絡方式；
 - (b) 資料保護專責人員聯絡方式（如有適用）；
 - (c) 蒐集資料的目的及合法事由；
 - (d) 基於第 6 條第 1 項(f)款蒐集時的合法利益為何；
 - (e) 個人資料的收受者或其類別；
 - (f) 若有適用時，資料管理者是否會將資料傳輸至第三國與歐盟執委會針對該第三國資料安全程度所做的決定。或當該傳輸係依據第 46 或第 47 條，或第 49 第(1)項第 2 款，有關適當或合適之安全措施，以及得到複本或提供該資訊之方式。

2. 除前項規定外，為確保資料蒐集、處理或利用之公平或透明所必要時，管理者需進一步告知以下事項：
 - (a) 個人資料保存期限或其決定標準；

1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:
 - (a) the identity and the contact details of the controller and, where applicable, of the controller's representative;
 - (b) the contact details of the data protection officer, where applicable;
 - (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
 - (d) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
 - (e) the recipients or categories of recipients of the personal data, if any;
 - (f) where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:
 - (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;

- (b) 資料主體得向管理者請求近用、修正或刪除個人資料，或限制對其之相關處理程序，或拒絕後續之處理，以及資料可攜性等相關權利；
 - (c) 若係基於第 6 條第(1)項第(a)款、或第 9 條第(2)項第(b)款而進行之處理程序，資料主體應得隨時撤回其同意，且不影響該程序於撤回前已進行處理之合法性；
 - (d) 資料主體向監督機關提出申訴之權利；
 - (e) 提供資料是否是基於法律規定或契約要求或締結契約所必須、資料主體是否得自由選擇提供個人資料及不提供對其權益的影響；
 - (f) 是否存在自動化決定，如第 22 條第(1)項及第(4)項之規定，且於該情況下，應告知資料主體包括個人化資料剖析，與自動化決定的邏輯與對資料主體可能之影響等。
3. 當管理者為追求與蒐集資料當時不同目的，而欲進行後續個人資料處理時，管理者應於執行前將該不同之目的告知資料主體，以及其他如第 2 項規定之相關資訊。
 4. 第 1、2 及第 3 項之規定不適用於，資料主體已知悉相關內容時。

- (b) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or to object to processing as well as the right to data portability;
 - (c) where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
 - (d) the right to lodge a complaint with a supervisory authority;
 - (e) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and of the possible consequences of failure to provide such data;
 - (f) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
3. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.
4. Paragraphs 1, 2 and 3 shall not apply where and insofar as the data subject already has the information.

第 14 條

個人資料係並非直接從資料主體蒐集情況之通知

1. 當個人資料並非從資料主體所獲得時，管理者應提供該資料主體以下資訊：
 - (a) 資料蒐集者的名稱及聯絡方式，以及若適用時，該管理者之代表人；
 - (b) 資料保護專責人員聯絡方式（如有適用）；
 - (c) 蒐集資料的目的及合法事由；
 - (d) 蒐集個人資料之類別；
 - (e) 依個案情況，個人資料的收受者或其類別；
 - (f) 依個案情況，管理者是否會將資料傳輸至第三國與歐盟執委會針對該第三國資料安全程度所做的決定；或第 46 條或第 47 條之規定、以及第 49 條第(1)項第 2 款之規定所進行之資料傳輸，有關適當或合適之安全措施，以及得到複本或提供該資訊之方式。

2. 除前項規定之資訊外，為確保資料蒐集、處理或利用的公平與透明所必要，管理者應提供資料主體下述資訊：
 - (a) 個人資料保存期限或其決定標準；

Article 14

Information to be provided where personal data have not been obtained from the data subject

1. Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:
 - (a) the identity and the contact details of the controller and, where applicable, of the controller's representative;
 - (b) the contact details of the data protection officer, where applicable;
 - (c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
 - (d) the categories of personal data concerned;
 - (e) the recipients or categories of recipients of the personal data, if any;
 - (f) where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available.
2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing in respect of the data subject:
 - (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;

- (b) 基於第 6 條第 1 項(f)款蒐集時之合法利益為何；
 - (c) 資料主體得向管理者請求近用、修正或刪除個人資料，或限制對其之相關處理程序，或拒絕後續之處理，以及資料可攜性等相關權利；
 - (d) 若係基於第 6 條第(1)項第(a)款、或第 9 條第(2)項第(b)款而進行之處理程序，資料主體應得隨時撤回其同意，且不影響該程序於撤回前已進行處理之合法性；
 - (e) 資料主體向監督機關提出申訴之權利
 - (f) 個人資料的來源以及是否源自一般可得的來源；
 - (g) 是否存在自動化決定，如第 22 條第(1)項及第(4)項之規定，且於該情況下，應告知資料主體包括個人化資料剖析，與自動化決定的邏輯與對資料主體可能之影響等。
3. 管理者應將前二項規定之資訊通知資料主體：
- (a) 在取得個人資料後合理期間內告知；但考量個人資料蒐集、處理或利用的具體情形，至遲應於一個月內為之；
 - (b) 若將使用該個人資料與資料主體聯繫，至遲應於第一次與資料主體聯繫時告知；或

- (b) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
 - (c) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to data portability;
 - (d) where processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
 - (e) the right to lodge a complaint with a supervisory authority;
 - (f) from which source the personal data originate, and if applicable, whether it came from publicly accessible sources;
 - (g) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
3. The controller shall provide the information referred to in paragraphs 1 and 2:
- (a) within a reasonable period after obtaining the personal data, but at the latest within one month, having regard to the specific circumstances in which the personal data are processed;
 - (b) if the personal data are to be used for communication with the data subject, at the latest at the time of the first communication to that data subject; or

- (c) 若該個人資料預計將對第三人揭露，至遲應於第一次揭露時告知。
4. 當管理者為追求與蒐集資料當時不同目的，而欲進行後續個人資料處理時，管理者應於執行前將該不同之目的告知資料主體，以及其他如第 2 項規定之相關資訊。
5. 有關第 1 項至第 4 項之告知，應不適用於：
- (a) 資料主體已經知悉相關資訊；
 - (b) 提供資料不具可能性或將涉及不成比例的努力，特別是依照第 89 條第(1)項；基於公益目的之檔案保存、科學或歷史研究目的或統計目的，或依據本條第 1 項之規定，提供基本告知事項將嚴重影響資料蒐集、處理或利用目的的達成。於該情況時，管理者應採許適當之措施以保障資料主體之權利與義務和合法利益，包括將資訊對大眾公開；
 - (c) 資料管理者係基於歐盟或成員國法律取得相關資料，且對資料主體的合法利益有適當保障；
 - (d) 基於歐盟或成員國法律所課予之職業上保密義務。

- (c) if a disclosure to another recipient is envisaged, at the latest when the personal data are first disclosed.
4. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.
5. Paragraphs 1 to 4 shall not apply where and insofar as:
- (a) the data subject already has the information;
 - (b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available;
 - (c) obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests; or
 - (d) where the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.

第 15 條 資料主體近用個人資料之權利

1. 資料主體應有權自管理者確認與其相關之個人資料是否經處理程序，以及若個案中發生時，得近用個人資料及獲得下列資訊：
 - (a) 處理程序之目的；
 - (b) 涉及個人資料之類型；
 - (c) 利用對象或其類型，尤其係位於第三國或國際組織之利用對象；
 - (d) 若可行時，儲存個人資料之預訂期間，或若有可能時，用以決定該期間之標準；
 - (e) 有權向資料管理者請求更正或刪除該個人資料、或限制該資料之處裡、以及資料主體得拒絕該處理程序等；
 - (f) 得向監督機關提出申訴之權利；
 - (g) 若並非從資料主體直接取得之個人資料，任何有關該資料來源之資訊；
 - (h) 是否存在自動化決定，如第 22 條第(1)項及第(4)項之規定，且於該情況下，應告知資料主體包括個人化資料剖析，與自動化決定的邏輯與對資料主體可能之影響等。

2. 當個人資料係傳輸至第三國或國際組織時，資料管理者依據第 46 條規定所應採取之適當安全措施為何。

Article 15

Right of access by the data subject

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:
 - (a) the purposes of the processing;
 - (b) the categories of personal data concerned;
 - (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
 - (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
 - (e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
 - (f) the right to lodge a complaint with a supervisory authority;
 - (g) where the personal data are not collected from the data subject, any available information as to their source;
 - (h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
2. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.

3. 管理者應提供有關經處理之個人資料之複本。若資料主體請求更多複本時，管理者得收取合理之行政費用。當資料主體以電子方式請求時，除另有要求外，該資訊應以通用之電子形式提供。

4. 前項得請求複本之權利，不應對其他資料主體之權利與自由造成負面影響。

第三節 個人資料修正與刪除

第 16 條 修正權

資料主體有權要求管理者應立即修正其持有之不正確個人資料。考量符合處理目的之範圍內，資料主體應有權補齊不完整之個人資料，包括以增加附帶說明之方式。

第 17 條 刪除權（被遺忘權）

1. 資料主體有權要求管理者立即刪除其個人資料，並有下列情況之一時，管理者亦有刪除之義務：
 - (a) 該個人資料對於當時蒐集或處理之目的已無必要；

3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Section 3

Rectification and erasure

Article 16

Right to rectification

The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

Article 17

Right to erasure ('right to be forgotten')

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:
 - (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

- (b) 資料主體撤回依據第 6 條第 1 項第 a 款或第 9 條第 2 項第 a 款處理資料所需之同意，且該處理欠缺其他之法律依據；
 - (c) 資料主體依據第 21 條第 1 項對於處理提出異議，且該處理未具備有更優先之正當理由，或資料主體依據第 21 條第 2 項對於處理提出異議。
 - (d) 個人資料被違法的處理；
 - (e) 個人資料的刪除係資料管理者依據歐盟法或各成員國法規履行法定義務所必要；
 - (f) 個人資料已由資訊社會所提供服務依據第 8 條第 1 項所蒐集。
2. 針對依據第 17 條第 1 項負有刪除義務之管理者，已將個人資料公開之情況，其應考量現行可行之科技技術及履行成本，採用適當之措施與技術形式，通知處理該個人資料之資料管理者，關於資料主體所提出刪除所有與其個人資料之連結或其影本或複本之要求。
3. 當該個人資料之處理係為了下列情形所必要時，資料主體即不得主張同條第 1 項及第 2 項之權利：
- (a) 行使表達言論及資訊權；
 - (b) 為履行依據歐盟或各成員國法令所課予資料管理者之法定義務或管理者受託履行與公益任務或履行公權力任務；

- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
 - (c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
 - (d) the personal data have been unlawfully processed;
 - (e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;
 - (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).
2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.
3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:
- (a) for exercising the right of freedom of expression and information;
 - (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

- (c) 依據第 9 條第 2 項第 h 款及第 i 款及第 9 條第 3 項基於公共健康領域內之公益理由；
- (d) 依據第 89 條第 1 項基於公益儲存檔案之目的，學術或歷史研究目的或統計目的，而刪除權之行使可能對上述目的之實現造成嚴重妨礙或使其無法達成。
- (e) 為建立法律上權利之主張、行使或防禦。

第 18 條 **有關限制處理程序之權利**

1. 資料主體有權要求管理者限制其對個人資料之處理，若下述情況發生時：
 - (a) 資料主體個人資料之正確性有疑義時。而於此情況下之限制處理，該期間之設定，應使資料管理者得有充分的時間查證該個人資料正確性；
 - (b) 處理係不合法，且資料主體表明拒絕刪除，反而要求限制其個人資料之使用；
 - (c) 該個人資料之處理對於處理目的之達成已無必要，但其對於資料主體主張、行使或防禦法律上權利仍有必要時；
 - (d) 資料主體依據第 21 條第 1 項，對於處理提出異議，在尚未確認資料管理者處理之利益凌駕於資料主體所主張之利益前，資料主體得限制處理其個人資料。
2. 若資料主體請求上述之限制處理，則其個人資料除了本身之備份外，僅得於資料主體同意、為主張、行使或防禦法律上權利、或

- (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
- (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
- (e) for the establishment, exercise or defence of legal claims.

Article 18

Right to restriction of processing

1. The data subject shall have the right to obtain from the controller restriction of processing where one of the following applies:
 - (a) the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data;
 - (b) the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
 - (c) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;
 - (d) the data subject has objected to processing pursuant to Article 21(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.
2. Where processing has been restricted under paragraph 1, such personal data shall, with the exception of storage, only be processed with the

為保護其他歐盟及成員國內自然人或法人之重大權利時，始得為之。

3. 於限制處理結束前，資料管理者應立即通知資料資料主體。

第 19 條 通知義務

管理者應通知所有個人資料接收者，任何依據第 16 條，第 17 條第 1 項及第 18 條所進行之個人資料修正、刪除或限制處理之請求，除非該通知客觀上不可能或需耗費不合比例之費用時。若資料主體要求，管理者應提供有關該接收者之資訊。

第 20 條 資料可攜權

1. 資料主體有權要求接收與其相關之個人資料，且要求以有組織、常用及機器可讀取之格式提供其個人資料之複本，且亦有權透過該管理者將該資料無障礙地傳輸予其他資料管理者，並且：
 - (a) 該處理程序係基於第 6 條第(1)項第(a)款、或第 9 條第(2)項第(b)款之同意，或基於第 6 條第(1)項第(b)款規定之契約時；
 - (b) 以自動化之處理程序進行。

data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

3. A data subject who has obtained restriction of processing pursuant to paragraph 1 shall be informed by the controller before the restriction of processing is lifted.

Article 19

Notification obligation regarding rectification or erasure of personal data or restriction of processing

The controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17(1) and Article 18 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

Article 20

Right to data portability

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:
 - (a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9(2) or on a contract pursuant to point (b) of Article 6(1); and
 - (b) the processing is carried out by automated means.

2. 於行使前項之權利時，若有可使用之技術時，資料主體應有權選擇從已持有該資料之管理者直接將該個人資料傳輸至另一管理者。
3. 於行使本條第 1 項之權利時，應不影響第 17 條之效力。該權利應不適用於，管理者係為執行公益任務或履行政府職務之必要所進行之處理程序。
4. 本條第 1 項規定之權利時，不應對其他人之權利及自由造成不利益之效果。

第四節 異議權與自動化之個人化決策

第 21 條 異議權

1. 資料主體得基於與其有關之具體情況提出異議，並且得於任何時點，向依照第 6 條第(1)項第(e)或第(f)款規定作出之個人資料之處理程序，包括個人化剖析等，行使此權利。除非管理者證明其處理程序具有急迫之正當性且凌駕於資料主體之利益、權利或自由時，或為建立、行使或辯護其法律主張時，管理者方得繼續該處理程序。
2. 當資料處理程序係為了直接用於行銷之目的時，資料主體有權隨時對有關其及該行銷目的之處理程序提出異議，此處理包括直接用於行銷範圍之個人化剖析。

2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one controller to another, where technically feasible.
3. The exercise of the right referred to in paragraph 1 of this Article shall be without prejudice to Article 17. That right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.

Section 4

Right to object and automated individual decision-making

Article 21 Right to object

1. The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of Article 6(1), including profiling based on those provisions. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.
2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.

3. 當資料主體對於前項之處理程序提出異議時，以該目的所為之處理程序應立即停止。
4. 最遲應於與資料主體進行第一次通知時，第 1 及第 2 項規定之權利應明確提醒該資料主體，並應以清晰且與其他資訊分離之方式呈現。
5. 於使用資訊社會服務之情況下，且儘管第 2002/58/EC 號指令另有規定，資料主體得透過附帶科技說明書之自動化方式，行使其拒絕權。
6. 當個人資料係依據第 89 條第(1)項之規定，基於科技、歷史研究目的或統計目的等進行處理程序時，資料主體於該具體情況中，仍應有權對與其個人資料有關之處理程序提出異議，惟若該程序係基於公益目的時，則不在此限。

第 22 條

自動化個人決策，包括資料剖析

1. 資料主體應有權不受僅以自動化程序所作出決定之拘束，包括個人資料剖析等，且當該結果對資料主體產生法律上或其他類似嚴重性之效果時。
2. 前項之規定不應適用於當該決定之作成，係：
 - (a) 為締結、履行資料主體與資料管理者之間契約所必須；

3. Where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.
4. At the latest at the time of the first communication with the data subject, the right referred to in paragraphs 1 and 2 shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.
5. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the data subject may exercise his or her right to object by automated means using technical specifications.
6. Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to Article 89(1), the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.

Article 22

Automated individual decision-making, including profiling

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.
2. Paragraph 1 shall not apply if the decision:
 - (a) is necessary for entering into, or performance of, a contract between the data subject and a data controller;

- (b) 經適用於管理者之歐盟或成員國法律授權，且亦同時規定適當之安全措施以保障資料主體之權利、自由與合法利益時；或
- (c) 基於資料主體明確同意時。
3. 於涉及前項第(a)及第(c)款規定之個案中，資料管理者得採取適當之措施，以保護資料主體之權利自由及合法利益，且資料主體至少有權獲得管理者以人力介入之方式，及表達其對於該自動化作成決定之個人意見或反對。
4. 第 2 項規定決定之作成，不應利用第 9 條第(1)項規定之特殊種類個人資料，除非適用第 9 條第(2)項第(a)或第(g)款之規定，且已採取適當之安全措施以保障資料主體之權利、自由及合法利益。

第五節 限制

第 23 條 限制

1. 管理者或受託者應遵守之歐盟或成員國法，得以立法制定本規則第 12 條至第 22 條、以及第 34 條之規定，限制其責任之範圍及權利，以及第 5 條規定所對應第 12 條至第 22 條規定之權利及義務，且當此種限制符合基本權利和自由核心，且為民主社會中必要及符合比例之措施時：

- (b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
- (c) is based on the data subject's explicit consent.
3. In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.
4. Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

Section 5 Restrictions

Article 23 Restrictions

1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:

- (a) 國家安全；
 - (b) 國防；
 - (c) 公共安全；
 - (d) 預防、調查、偵測或追訴形式犯罪，或為執行刑事處罰，包括維護和預防對公共安全之威脅；

 - (e) 其中歐盟或成員國中重要之公共利益目的，尤係與歐盟或成員國重要經濟或財政利益有關，包括貨幣、預算和稅收、公共衛生和社會保障等；

 - (f) 維護司法獨立性與司法程序；
 - (g) 預防、調查、偵測或追訴違反受管制之職業倫理規範；

 - (h) 監督、檢查或即便僅偶爾行使，監管有關政府有關第(a)到(e)及第(g)和第(i)款規定案件之職能；

 - (i) 保護資料主體及其他權利和自由之職能；

 - (j) 執行民事上法律主張；
2. 具體而言，任何前項規定之立法措施，若有關聯時，應包括下述至少一項情況：
- (a) 處理程序之目的或類別；
 - (b) 個人資料之類型；

- (a) national security;
 - (b) defence;
 - (c) public security;
 - (d) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
 - (e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
 - (f) the protection of judicial independence and judicial proceedings;
 - (g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
 - (h) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (e) and (g);
 - (i) the protection of the data subject or the rights and freedoms of others;
 - (j) the enforcement of civil law claims.
2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least, where relevant, as to:
- (a) the purposes of the processing or categories of processing;
 - (b) the categories of personal data;

- (c) 適用之限制範圍；
- (d) 預防濫權或非法取得、傳輸資料之安全措施；
- (e) 管理者之詳細介紹或種類；
- (f) 儲存期限，及考量該處理程序之性質、範圍、目的以及種類後，可適用之安全措施；
- (g) 對於資料主體之權利及自由產生之風險；及

- (h) 資料主體得接受該限制有關之通知，除該通知將影響限制目的外。

第五章 管理者與處理者

第一節 一般性義務

第 24 條 管理者之責任

1. 考量系爭處理程序之性質、範圍、內容與目的，以及其對於自然人之權利和自由帶來風險之各種可能性和嚴重性，管理者應採取技術上與組織上之措施，以證明該處理程序係遵循本保護規則所執行。上述措施若有必要時，應經審查及更新。

2. 若對於系爭處理活動係屬符合比例時，前項規定之安全措施應包括由管理者實施適當之個人保護政策。

- (c) the scope of the restrictions introduced;
- (d) the safeguards to prevent abuse or unlawful access or transfer;
- (e) the specification of the controller or categories of controllers;
- (f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
- (g) the risks to the rights and freedoms of data subjects; and
- (h) the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.

CHAPTER IV

Controller and processor

Section 1

General obligations

Article 24

Responsibility of the controller

1. Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation. Those measures shall be reviewed and updated where necessary.
2. Where proportionate in relation to processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the controller.

3. 若遵守第 40 條規定經許可之行為準則或規定於第 42 條之認證機制時，其得用以證明管理者之責任已確實履行。

第 25 條

從設計及默認設置保障個人資料

1. 考量當時最新之科技技術、實施成本、及該處理程序之性質、範圍、內容及目的，以及其對於自然人之權利和自由帶來風險之各種可能性和嚴重性，管理者應，於決定採取何種處理方式及處理程序本身同時，採取適當之技術上與組織上措施，例如去連結化等，從設計上即遵守個人保護原則，例如最小化處理個人資料等，並且以有效之方式，將必要之安全措施整合入該處理過程，以符合本規則之要求並且保障資料主體。
2. 管理者應採取技術上與組織上措施，確保藉由初始之默認設置，僅使用為特定目的所進行之處理程序而言必要之個人資料。該義務適用於已蒐集之個人資料量、對其處理之程度、儲存期限和其可近用程度。具體而言，該措施應從初始之默認設置即確保該個人資料於缺少個人介入之情況下，不會涉及無限數量之自然人。
3. 規定於第 42 條且經許可之認證機制，得用以證明該資料主體已履行本條第 1 及第 2 項之要求。

3. Adherence to approved codes of conduct as referred to in Article 40 or approved certification mechanisms as referred to in Article 42 may be used as an element by which to demonstrate compliance with the obligations of the controller.

Article 25

Data protection by design and by default

1. Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.
2. The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.
3. An approved certification mechanism pursuant to Article 42 may be used as an element to demonstrate compliance with the requirements set out in paragraphs 1 and 2 of this Article.

第 26 條 共同管理者

1. 當兩位以上之管理者共同決定該處理程序之目的及方式時，其即構成共同管理者。其應以透明之方式，決定本規則賦予其應遵守義務之責任分配，尤其係行有關資料主體行使權利時，共同管理者依照第 13 和第 14 條規定，應負擔提供資訊責任之分配，且依照該分配，除非若管理者應遵守之歐盟或成員國法已有相關之責任歸屬規定時。其亦得安排指定對資料主體之聯絡窗口。
2. 前項規定之分配，應完整反映共同管理者與資料主體之間，相對應之角色和關係。該分配之結果應提供予資料主體。
3. 無論依據第 1 項規定該分配之內容為何，資料主體得基於本規則之規定，向有關及個別之管理者行使權利。

第 27 條 非於歐盟境內成立之管理者或受託者之代表人

1. 當第 3 條第(2)項規定適用時，管理者或受託者應以書面指定其歐盟境內代表人。
2. 前項規定之義務於本條中，不應適用於：
 - (a) 非經常性之管理程序，但排除以大規模處理、涉及第 9 條第(1)項規定之個人資料種類、或該個人資料係與第 10 條規定

Article 26

Joint controllers

1. Where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers *vis-à-vis* the data subjects. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.

Article 27

Representatives of controllers or processors not established in the Union

1. Where Article 3(2) applies, the controller or the processor shall designate in writing a representative in the Union.
2. The obligation laid down in paragraph 1 of this Article shall not apply to:
 - (a) processing which is occasional, does not include, on a large scale, processing of special categories of data as referred to in Article

之刑事追訴及犯罪有關、或若不會對於自然人之權利與自由造成風險之處理程序，併應考量該程序之性質、內容、範圍及目的；或

(b) 政府機關或機構。

3. 該代表應建立於資料主體所在之成員國境內，因其個人資料係與提供商品或服務有關、或其行為受到監督時者；
4. 為確保遵守本規則之規定，該代表人應經過所有管理者或受託者之指派，作為原有之管理者及受託者以外或代替其行為，以協助除監督機關及資料主體有關所有與該處理程序有關之爭議。
5. 當管理者或受託者指定該代表人時，應不影響得對該管理者或受託者本身原得提起之法律訴訟。

第 28 條 受託者

1. 當該處理程序係以管理者之名義為之，管理者應得依據該受託者以提供足夠保證其乃實施適當之技術上及組織上措施，令該處理程序將符合本規則之要求並保障資料主體之權利。
2. 若管理者並未先以特定或概要之書面授權，受託者不得逕自使用另一受託者。於概要之書面授權情況中，該受託者應通知管理者任何有關計畫增加或替換受託者之情況，並給予管理者機會對該

9(1) or processing of personal data relating to criminal convictions and offences referred to in Article 10, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing;
or

(b) a public authority or body.

3. The representative shall be established in one of the Member States where the data subjects, whose personal data are processed in relation to the offering of goods or services to them, or whose behaviour is monitored, are.
4. The representative shall be mandated by the controller or processor to be addressed in addition to or instead of the controller or the processor by, in particular, supervisory authorities and data subjects, on all issues related to processing, for the purposes of ensuring compliance with this Regulation.
5. The designation of a representative by the controller or processor shall be without prejudice to legal actions which could be initiated against the controller or the processor themselves.

Article 28 **Processor**

1. Where processing is to be carried out on behalf of a controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.
2. The processor shall not engage another processor without prior specific or general written authorisation of the controller. In the case of general written authorisation, the processor shall inform the controller of any

變動表示異議。

3. 由受託者進行之處理程序，應遵循合約或其他依據歐盟或成員國法之法律行為之拘束，且對受託者有關管理者、訂定之處理程序主旨和期限、處理程序之性質及目的、使用之個人資料種類及資料主體之類別、以及管理者之權利義務等，皆有拘束力。該合約或其他法律行為應規定該受託者應具體遵守：
 - (a) 僅處理管理者於紀錄說明中有關之個人資料，包括傳輸該個人資料至第三國或國際組織，除應適用於受託者之歐盟或成員國法要求為之外，於此情況下，受託者應於執行處理程序前通知管理者該法律要求，除非該府律基於重要公共利益而禁止該通知。
 - (b) 確保授權得進行處理之個人遵守其對該個資承諾之保密義務，或應遵守法律對其要求之保密義務；
 - (c) 遵守第 32 條規定之所有措施；
 - (d) 於涉及其他受託者時，遵守第 2 及第 4 項之要件；
 - (e) 考量該處理程序之本質，以適當之技術與組織措施協助管理者，且若可行時，協助管理者完成其依照第三章之規定，履行其對行使權利之資料主體回應之責任；

intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.

3. Processing by a processor shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the controller and that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller. That contract or other legal act shall stipulate, in particular, that the processor:
 - (a) processes the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - (b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) takes all measures required pursuant to Article 32;
 - (d) respects the conditions referred to in paragraphs 2 and 4 for engaging another processor;
 - (e) taking into account the nature of the processing, assists the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;

- (f) 協助管理者確保遵守第 32 至第 36 條規定之義務，並考量系爭處理程序之本質及提供予受託者之資訊等。
- (g) 除歐盟或成員國法另有要求保存該個人資料外，基於管理者之選擇。當該處理程序有關之服務契約結束時，刪除或歸還所有予管理者相關個人資料，並同時刪除現存之複本。
- (h) 使管理者得取得所有證明其符合本條規定之必要資訊，並使其得進行審計，包括由管理者或其他其指派之審計人員進行之檢查等。

有關前項第(h)款之規定，受託者應立即通知管理者，若本於其意見，該指令係違反本規則或其他予個人資料保護有關之歐盟法和成員國法規定時。

4. 當管理者採用另一受託者以管理者之名義執行特定處理活動時，第3項規定之管理者予受託者間合約或其他法律行為相同之資料保障義務，應亦以合約或其他歐盟或成員國法規定之法律行為，拘束該另一受託者。尤其有關提供足夠之保障，確保實施適當之技術上及組織上措施，使該處理程序將符合本保護規則之要求。當該受託者無法履行其資料保護責任時，該原先之受託者應對管理者承擔履行另一受託者之責任。

- (f) assists the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 taking into account the nature of processing and the information available to the processor;
- (g) at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data;
- (h) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

With regard to point (h) of the first subparagraph, the processor shall immediately inform the controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.

4. Where a processor engages another processor for carrying out specific processing activities on behalf of the controller, the same data protection obligations as set out in the contract or other legal act between the controller and the processor as referred to in paragraph 3 shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of this Regulation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.

5. 受託者遵守依照第 40 條之規定許可之行為準則，或第 42 條規定批准之認證制度時，得用以證明受託者已充分履行其依據本條第 1 項及第 4 項之規定。
6. 於不影響管理者與受託者之間個別契約下，本條第 3 項規定之合約或其他法律行為得，全部或一部，根據本條第 7 及第 8 項有關定型化契約之規定，包括其依照第 42 及第 43 條之規定，授予管理者或受託者部分之認證。
7. 歐盟執委會得對於有關本條第 3 及第 4 項之規定，制定標準契約條款，並符合第 93 條第(2)項有關檢驗程序之規定。
8. 監督機關得針對有關本條第 3 及第 4 項之規定，制定標準契約條款，並符合第 63 條所規定之機制。
9. 本條第 3 及第 4 項規定之合約或其他法律行為，應以書面為之，包括以電子形式。
10. 於不影響第 82、83 及第 84 條規定下，若受託者違反本規則，取決於系爭處理程序之目的及方式，該受託者應被視為等同於由管理者進行該處理程序。

第 29 條

管理者或受託者本於職權進行之處理程序

受託者及任何經管理者或受託者授權者，若得近用個人資料，除基於管理者之指示，應不得處理該資料。若歐盟或成員國法另有要

5. Adherence of a processor to an approved code of conduct as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate sufficient guarantees as referred to in paragraphs 1 and 4 of this Article.
6. Without prejudice to an individual contract between the controller and the processor, the contract or the other legal act referred to in paragraphs 3 and 4 of this Article may be based, in whole or in part, on standard contractual clauses referred to in paragraphs 7 and 8 of this Article, including when they are part of a certification granted to the controller or processor pursuant to Articles 42 and 43.
7. The Commission may lay down standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the examination procedure referred to in Article 93(2).
8. A supervisory authority may adopt standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the consistency mechanism referred to in Article 63.
9. The contract or the other legal act referred to in paragraphs 3 and 4 shall be in writing, including in electronic form.
10. Without prejudice to Articles 82, 83 and 84, if a processor infringes this Regulation by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

Article 29

Processing under the authority of the controller or processor

The processor and any person acting under the authority of the controller or of the processor, who has access to personal data, shall not

求，則不在此限。

第 30 條 處理程序之紀錄

1. 個別管理者及，依其個案情況，管理者之代理人，應基於責任保存有關處理行動之紀錄。該紀錄應記載以下所有資訊：
 - (a) 管理者之姓名、聯絡資訊，及若適當時，包括共同管理者、管理者代表人、以及資料保護專責人員等資訊；
 - (b) 處理之目的；
 - (c) 敘述資料主體及其個人資料之種類；
 - (d) 個人資料已經或將對其公開之接收者類別，包括於第三國家或國際組織中之接收者；
 - (e) 若合適時，傳輸個人資料至第三國或國際組織，包括該第三國或國際組織之身分，以及若符合第 49 條第(1)項第 2 款之傳輸情況時，有關適當安全措施之檔案；
 - (f) 若可行時，對於不同種類資料所採用以之時間限制；
 - (g) 若可行時，有關第 32 條第(1)項所要求之技術上與組織上安全措施之敘述；
2. 各受託者以及，若合適時，受託者之代表人，應保存所有其以管

process those data except on instructions from the controller, unless required to do so by Union or Member State law.

Article 30

Records of processing activities

1. Each controller and, where applicable, the controller's representative, shall maintain a record of processing activities under its responsibility. That record shall contain all of the following information:
 - (a) the name and contact details of the controller and, where applicable, the joint controller, the controller's representative and the data protection officer;
 - (b) the purposes of the processing;
 - (c) a description of the categories of data subjects and of the categories of personal data;
 - (d) the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations;
 - (e) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
 - (f) where possible, the envisaged time limits for erasure of the different categories of data;
 - (g) where possible, a general description of the technical and organisational security measures referred to in Article 32(1).
2. Each processor and, where applicable, the processor's representative

理者之名義所進行之處理活動，包括：

- (a) 受託者之姓名、聯絡資訊，及其他亦以同一管理者名義之受託者，且若適當時，包括受託者之代表人、以及資料保護專責人員等資訊；
 - (b) 以個別管理者名義進行處理之目的；
 - (c) 若合適時，傳輸個人資料至第三國或國際組織，包括該第三國或國際組織之身分，以及若符合第 49 條第(1)項第 2 款之傳輸情況時，有關適當安全措施之檔案；
 - (d) 若可行時，有關第 32 條第(1)項所要求之技術上與組織上安全措施之敘述；
3. 第 1 項及第 2 項之紀錄應以書面為之，包括以電子之形式。
4. 管理者及受託者，若適當時，以及其代表人，於受要求時，應將該紀錄提供予監督機關。
5. 第 1 項及第 2 項規定之義務，不得適用於僱佣少於 250 名員工之企業或組織，除非其所執行之處理程序，有可能對資料主體之權利和自由帶來風險、該處理程序並非經常性、或該處理程序涉及第 9 條第(1)項規定之特殊種類個資，或與第 10 條之刑事追訴和定罪有關時。

shall maintain a record of all categories of processing activities carried out on behalf of a controller, containing:

- (a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting, and, where applicable, of the controller's or the processor's representative, and the data protection officer;
 - (b) the categories of processing carried out on behalf of each controller;
 - (c) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
 - (d) where possible, a general description of the technical and organisational security measures referred to in Article 32(1).
3. The records referred to in paragraphs 1 and 2 shall be in writing, including in electronic form.
 4. The controller or the processor and, where applicable, the controller's or the processor's representative, shall make the record available to the supervisory authority on request.
 5. The obligations referred to in paragraphs 1 and 2 shall not apply to an enterprise or an organisation employing fewer than 250 persons unless the processing it carries out is likely to result in a risk to the rights and freedoms of data subjects, the processing is not occasional, or the processing includes special categories of data as referred to in Article 9(1) or personal data relating to criminal convictions and offences referred to in Article 10.

第 31 條 與監督機關合作

管理者及受託者應，若適當時，以及其代表人，應基於請求，和履行其職權之監督機關合作。

第二節 個人資料之安全性

第 32 條 處理程序之安全性

1. 考量當時最新之科技技術、實施成本、及該處理程序之性質、範圍、內容及目的，以及其對於自然人之權利和自由帶來風險之各種可能性和嚴重性，管理者與受託者應採取適當之技術上及組織上措施，確保對於風險一定程度之安全性，除其他規定外，若適當時應採取：
 - (a) 個人資料去連結化及加密；
 - (b) 確保持續之保密性、完整性、可利用性及該處理程序及服務之耐受性能力等；
 - (c) 對於個人資料之可利用性及近用，於遭受物理或技術上攻擊時，得以及時之方式修復之能力。
 - (d) 定期測試、檢驗及評估技術上及組織上確保處理程序安全之有效性制度；
2. 於評估處理程序造成具體風險應採取何種層級之安全措施時，應考量尤其係來自意外或非法之破壞、損傷、變更或非授權而公開、近用個人資料以傳輸、儲存或其他方式處理時。

Article 31

Cooperation with the supervisory authority

The controller and the processor and, where applicable, their representatives, shall cooperate, on request, with the supervisory authority in the performance of its tasks.

Section 2

Security of personal data

Article 32

Security of processing

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
 - (a) the pseudonymisation and encryption of personal data;
 - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
2. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or

3. 遵循第 40 條規定許可之行為準則，或依照第 42 條規定批准之認證機制，得作為證明已完成本條第 1 項規範義務。

4. 管理者及受託者應確保任何其行使職權下之自然人，雖其得近用該自然人之個人資料，但除經歐盟或成員國法之要求外，不得僅基於管理者之命令而對其進行處理。

第 33 條 個資外洩通知監督機關之義務

1. 當個人資料外洩，管理者應避免不當拖延，並在可能的情形下，於知悉事件發生後 72 小時內，通知第 55 條規定之監督機關。但於個資外洩不至於對自然人自由與權利產生危險者，不在此限。通知未能於 72 小時內為之者，資料管理者於通知時應說明理由。

2. 受託者在知悉個資外洩後，應避免不當拖延，儘速通知管理者。

3. 依據第 1 項規定應向監督機關通知之內容，應包括：
 - (a) 個資外洩事件本質之描述，包括受影響資料主體之種類及其大略人數，以及外洩個人資料種類及大略數量；

otherwise processed.

3. Adherence to an approved code of conduct as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate compliance with the requirements set out in paragraph 1 of this Article.
4. The controller and processor shall take steps to ensure that any natural person acting under the authority of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union or Member State law.

Article 33

Notification of a personal data breach to the supervisory authority

1. In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the supervisory authority competent in accordance with Article 55, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the supervisory authority is not made within 72 hours, it shall be accompanied by reasons for the delay.
2. The processor shall notify the controller without undue delay after becoming aware of a personal data breach.
3. The notification referred to in paragraph 1 shall at least:
 - (a) describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;

- (b) 資料保護專責人員或其他聯絡窗口之姓名及聯絡方式；
 - (c) 描述個人資料外洩可能影響；
 - (d) 描述資料管理者已經採取或即將採取的因應措施，包括降低或減緩個人資料外洩可能造成不利影響的作法。
4. 若不可能同時提供上述所有資訊時，有關資訊得及時以階段性方式發布。
 5. 管理者應記錄所有個人資料外洩事件、將相關事實統整於該個資外洩事件、其影響和所採取之救濟程序。該檔案應提供予監督機關作為審查是否符合本條規定。

第 34 條

個資外洩通知資料主體之義務

1. 當個人資料外洩可能導致自然人自由或權利的高度風險時，管理者應避免不當拖延，及時將個資外洩情事，通知資料主體。
2. 依前項規定而該通知資料主體，應包括以清楚簡明之文字敘述該個資外洩情況外，包含至少一項定於前條第(3)項第(b)、(c)及第(d)款之內容。
3. 依第 1 項規定而該通知資料主體，若符合以下要件則不必為之：

- (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
 - (c) describe the likely consequences of the personal data breach;
 - (d) describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
4. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.
 5. The controller shall document any personal data breaches, comprising the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the supervisory authority to verify compliance with this Article.

Article 34

Communication of a personal data breach to the data subject

1. When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 of this Article shall describe in clear and plain language the nature of the personal data breach and contain at least the information and measures referred to in points (b), (c) and (d) of Article 33(3).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:

- (a) 管理者對於外洩之個人資料已採取適當之技術及組織上保護措施，例如加密等，使未經授權者，無法理解資料的內容。
 - (b) 管理者在事發後採取措施，使第 1 項所稱之資料主體其自由或權利之高度風險不再可能發生。
 - (c) 須付出不合比例的努力。於此情形下，管理者應採取公告或其他類似措施，使資料資料主體以相同有效的方式知悉通知內容。
4. 若管理者未依規定將個人資料外洩事件通知資料主體，監督機關於考量個資外洩導致高風險之可能性後，得要求管理者通知，或判斷第 3 項各款豁免通知事由是否存在。

第三節 資料保護影響評估及諮詢先行

第 35 條 資料保護影響評估

1. 凡處理特定類型之個人資料，尤係使用新科技，並考量其性質、範圍、情境及目的，可能對自然人之自由及權利產生高度風險時，管理者應先針對該預計進行之處理活動對個人資料保護的影響，進行評估。

- (a) the controller has implemented appropriate technical and organisational protection measures, and those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
 - (b) the controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;
 - (c) it would involve disproportionate effort. In such a case, there shall instead be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.
4. If the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so or may decide that any of the conditions referred to in paragraph 3 are met.

Section 3

Data protection impact assessment and prior consultation

Article 35

Data protection impact assessment

1. Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.

2. 管理者得於尋求資料保護專責人員之建議後，若有指定該人員時，使進行相關之資料保護影響評估。
3. 第 1 項規定之資料保護影響評估，應適用於以下具體情形：
 - (a) 基於個人資料動化處理，包括個人化剖析，對自然人個人進行系統性及大規模之分析，並據以對特定個人作成具有法律效果之決定或產生類似影響。
 - (b) 大規模蒐集、處理或利用第9條第1項規定之特種個人資料，或第10條規定有關刑事追訴及犯罪等資料。
 - (c) 大規模且系統性地監控公眾場所。
4. 基於第 1 項規定對資料保護影響評估之要求，監督機關應建立且公告其應執行之資料保護影響評估。監督機關應將該公告依第 68 條之規定，告知委員會。
5. 監督機關得公告不需進行評估之資料蒐集、處理或利用活動，並將該提交至委員會。
6. 於制訂前二項之公告前，適格之監督機關應依據第 63 條之規定，實施一致化機制，適用於有關提供資料主體商品或服務、於多成員國中之監督行為、或得對歐盟境內個人資料自由流通造成重大影響者。

2. The controller shall seek the advice of the data protection officer, where designated, when carrying out a data protection impact assessment.
3. A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:
 - (a) a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;
 - (b) processing on a large scale of special categories of data referred to in Article 9(1), or of personal data relating to criminal convictions and offences referred to in Article 10; or
 - (c) a systematic monitoring of a publicly accessible area on a large scale.
4. The supervisory authority shall establish and make public a list of the kind of processing operations which are subject to the requirement for a data protection impact assessment pursuant to paragraph 1. The supervisory authority shall communicate those lists to the Board referred to in Article 68.
5. The supervisory authority may also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required. The supervisory authority shall communicate those lists to the Board.
6. Prior to the adoption of the lists referred to in paragraphs 4 and 5, the competent supervisory authority shall apply the consistency mechanism referred to in Article 63 where such lists involve processing activities which are related to the offering of goods or services to data subjects or to the monitoring of their behaviour in

7. 該評估應至少包括：
 - (a) 對預計進行之處理活動及其目的有關之系統性描述，包括管理者所得主張之合法利益；
 - (b) 該處理活動為達到目的之必要性與比例性評估；
 - (c) 對於資料主體自由與權利所造成之風險評估；
 - (d) 針對該風險所預計採取之措施，包括保護措施、安全措施，以及考量資料主體與其他關係人權利與合法利益，並確保個人資料保護符合本規則要求所採取之機制。
8. 於評估處理程序相關之影響時，為達到該資料保護影響評估之目的，應充分考量管理者或受託者是否遵守根據第 40 條規定所批准之行為準則。
9. 若適當時，管理者應就預計之資料處理活動，請資料主體或其代表人表示意見；但為保護商業或公共利益、或維護資料活動安全者不在此限。
10. 當依照第 6 條第(1)項第(c)或第(e)款所進行之處理程序，在適用於管理者之歐盟法或成員法律中具備法律依據時，且該法律係規範特定系爭單一或多數處理程序，以及相關資料保護影響評估已於該法律依據制定時，已作為一般性影響評估之一部分而執行完

several Member States, or may substantially affect the free movement of personal data within the Union.

7. The assessment shall contain at least:
 - (a) a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
 - (c) an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.
8. Compliance with approved codes of conduct referred to in Article 40 by the relevant controllers or processors shall be taken into due account in assessing the impact of the processing operations performed by such controllers or processors, in particular for the purposes of a data protection impact assessment.
9. Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.
10. Where processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law or in the law of the Member State to which the controller is subject, that law regulates the specific processing operation or set of operations in question, and a data protection

畢，則應排除第 1 到第 7 項之適用，除成員國另有法律認定，該評估有必要於系爭處理程序前執行時。

11. 若有必要時，管理者應審查以評估該處理程序是否係遵照資料保護影響評估而執行，至少可從該處理程序相關風險之變化觀察。

第 36 條

諮詢先行

1. 若依照第 35 條所進行之資料影響評估顯示，該處理程序對於資料主體將造成高度風險、且管理者未採取減緩風險之措施時，管理者應於執行處理程序前諮詢監督機關。
2. 當監督機關認為，前項規範預定進行之處理程序可能違反本規則時，由其管理者並未充分辨識及減緩相關風險時，監督機關應於收到諮詢之請求後至多 8 週內，提供管理者、或若適當時包括受託者書面建議，及得行使第 58 條規定之任何職權。考慮該處理程序之複雜性，該期限得再展延 6 週。監督機關應於自收到請求後一個月內，通知管理者及適當時包括受託者有關前述之展延以及理由。該期間亦得暫停，直至監督機關獲得為該諮詢目的請求之資訊。

impact assessment has already been carried out as part of a general impact assessment in the context of the adoption of that legal basis, paragraphs 1 to 7 shall not apply unless Member States deem it to be necessary to carry out such an assessment prior to processing activities.

11. Where necessary, the controller shall carry out a review to assess if processing is performed in accordance with the data protection impact assessment at least when there is a change of the risk represented by processing operations.

Article 36

Prior consultation

1. The controller shall consult the supervisory authority prior to processing where a data protection impact assessment under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.
2. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 1 would infringe this Regulation, in particular where the controller has insufficiently identified or mitigated the risk, the supervisory authority shall, within period of up to eight weeks of receipt of the request for consultation, provide written advice to the controller and, where applicable to the processor, and may use any of its powers referred to in Article 58. That period may be extended by six weeks, taking into account the complexity of the intended processing. The supervisory authority shall inform the controller and, where applicable, the processor, of any such extension within one month of receipt of the request for consultation together with the reasons for the delay. Those periods may be suspended until the supervisory authority has obtained information it has requested for the purposes of the consultation.

3. 當依照第 1 項規定向監督機關諮詢時，管理者應提供以下資訊：
 - (a) 若可行時，管理者、共同管理者、及與該處理程序有關之受託者相對應之責任分配，尤其係於企業集團中所進行時；
 - (b) 系爭處理程序之目的及方式；
 - (c) 本規範所規定對於資料主體權利及自由之保護及安全措施；
 - (d) 若可行時，其資料保護專責人員之聯絡方式；
 - (e) 依據第 35 條執行之資料保護影響評估；以及
 - (f) 任何其他監督機關要求提供之資訊。
4. 成員國於其國家議會準備起草立法法案時，應諮詢該監督機關與處理程序相關之管制措施。
5. 儘管第 1 項之規定，成員國法律得要求管理者諮詢、並從監督機關獲得事先之授權，以執行其為公益目的所應履行之處理程序，包括予社會維護及公共健康有關之處理程序。

第四節 資料保護專責人員

第 37 條 指定資料保護專責人員

3. When consulting the supervisory authority pursuant to paragraph 1, the controller shall provide the supervisory authority with:
 - (a) where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;
 - (b) the purposes and means of the intended processing;
 - (c) the measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to this Regulation;
 - (d) where applicable, the contact details of the data protection officer;
 - (e) the data protection impact assessment provided for in Article 35; and
 - (f) any other information requested by the supervisory authority.
4. Member States shall consult the supervisory authority during the preparation of a proposal for a legislative measure to be adopted by a national parliament, or of a regulatory measure based on such a legislative measure, which relates to processing.
5. Notwithstanding paragraph 1, Member State law may require controllers to consult with, and obtain prior authorisation from, the supervisory authority in relation to processing by a controller for the performance of a task carried out by the controller in the public interest, including processing in relation to social protection and public health.

Section 4

Data protection officer

Article 37

Designation of the data protection officer

1. 管理者或受託者於以下情況中，必須指定資料保護專責人員：
 - (a) 由政府機關或機構進行資料處理之情況，但法院於行使其司法職權範圍內則不在此限；
 - (b) 管理者或受託者於執行核心處理活動時，依據該處理過程之形式、範圍及/或目的，必須廣泛地對資料主體進行持續性並系統化的監視；或
 - (c) 管理者或受託者於執行核心處理活動時，大規模地涉及第 9 條所稱特種個人資料，或是第 10 條關於刑事追訴及犯罪行為之個人資料的需求時；
2. 企業集團得指定共同資料保護專責人員，且其應得由各企業所在處取得其服務；
3. 若管理者或受託者係政府機關或組織時，得依據其架構及規模，任命共同之資料保護專責人員。
4. 除第 1 項規定須任命資料保護專責人員外，管理者或受託者亦得由所屬之協會或其他工會組織，基於歐盟與成員國法之要求，任命資料保護專責人員。該資料保護專責人員得代表管理者或受託者歸屬之協會或其他工會組織。
5. 資料保護專責人員之選任，應基於其專業素質、以及對於資料保護法專業知識和實務經驗，以及得履行第 39 條規定之義務。

1. The controller and the processor shall designate a data protection officer in any case where:
 - (a) the processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
 - (b) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or
 - (c) the core activities of the controller or the processor consist of processing on a large scale of special categories of data pursuant to Article 9 and personal data relating to criminal convictions and offences referred to in Article 10.
2. A group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment.
3. Where the controller or the processor is a public authority or body, a single data protection officer may be designated for several such authorities or bodies, taking account of their organisational structure and size.
4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may or, where required by Union or Member State law shall, designate a data protection officer. The data protection officer may act for such associations and other bodies representing controllers or processors.
5. The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 39.

6. 資料保護專責人員得為管理者或受託者之員工，基於服務契約而履行其任務。
7. 管理者或受託者應公布該資料保護專責人員之聯絡方式，並通知監督機關。

第 38 條 **資料保護專責人員之地位**

1. 管理者及受託者應確保資料保護專責人員之參與，係以適當且及時之方式，涉及所有關於個人資料保護之爭議。
2. 管理者及受託者應支援該資料保護專責人員履行其依據第 39 條規定之任務，並提供執行該任務必要之資源和有關個資及處理程序之近用，並維持其專業知識。
3. 管理者及受託者應確保，資料保護專責人員於履行其任務時，不接收關於履行任務之指示。管理者及受託者不得因資料保護專責人員執行其任務，而予以解職或不利之待遇。資料保護專責人員直接向管理者及受託者之最高管理階層為報告。
4. 資料主體應通知資料保護專責人員所有與處理其個資有關之爭議，並行使其本於本規則之權利。
5. 於履行任務時，資料保護專責人員應受歐盟及成員國法上賦予其秘密或保密性義務。

6. The data protection officer may be a staff member of the controller or processor, or fulfil the tasks on the basis of a service contract.
7. The controller or the processor shall publish the contact details of the data protection officer and communicate them to the supervisory authority.

Article 38

Position of the data protection officer

1. The controller and the processor shall ensure that the data protection officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.
2. The controller and processor shall support the data protection officer in performing the tasks referred to in Article 39 by providing resources necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge.
3. The controller and processor shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by the controller or the processor for performing his tasks. The data protection officer shall directly report to the highest management level of the controller or the processor.
4. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation.
5. The data protection officer shall be bound by secrecy or confidentiality concerning the performance of his or her tasks, in accordance with Union or Member State law.

6. 資料保護專責人員應履行其他任務和責任。管理者或受託者應確保該其他任務及責任將不會造成利益衝突。

第 39 條 **資料保護專責人員之任務**

1. 資料保護專責人員應至少履行下列任務：
 - (a) 告知並指導管理者或受託者及其負責處理資料之員工，關於其依據本規則以及依據其他歐盟或成員國法律有關資料保護之規範、其所擔負之義務；
 - (b) 監督本規則、其他歐盟或各成員國之資料保護法、管理者或受託者之個人資料遵行保護政策，包括職權分配、對於參與處理程序人員之示範及教育，以及與其相關之審查；
 - (c) 依請求提供資料保護影響評估結果、及依據第 35 條進行監督相關之諮詢；
 - (d) 與監督機關合作；
 - (e) 作為監督機關與處理有關爭議之窗口，包括依據第36條規範之先行諮詢，以及對於其他事項提供建議。
2. 資料保護專責人員應於履行其任務時，充分注意與處理程序有關之風險，並考量該處理程序之性質、範圍、情境及目的。

6. The data protection officer may fulfil other tasks and duties. The controller or processor shall ensure that any such tasks and duties do not result in a conflict of interests.

Article 39

Tasks of the data protection officer

1. The data protection officer shall have at least the following tasks:
 - (a) to inform and advise the controller or the processor and the employees who carry out processing of their obligations pursuant to this Regulation and to other Union or Member State data protection provisions;
 - (b) to monitor compliance with this Regulation, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits;
 - (c) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 35;
 - (d) to cooperate with the supervisory authority;
 - (e) to act as the contact point for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter.
2. The data protection officer shall in the performance of his or her tasks have due regard to the risk associated with processing operations, taking into account the nature, scope, context and purposes of processing.

第五節 行為準則與認證

第 40 條 行為準則

1. 應鼓勵成員國、監督機關、委員會、歐盟執委會制定行為準則，以促使本規則之運作，並考量各種處理產業之特性，以及微型、小型、中行之企業特殊需求。

2. 管理者或受託者亦得由所屬之協會或其他工會組織，得準備、修改或延伸行為準則，以達適用本保護規則此特定目的。例如係針對：
 - (a) 公平且透明之處理程序；
 - (b) 管理者於特定情境下所追求之合法利益；
 - (c) 蒐集個人資料；
 - (d) 個人資料去連結化；
 - (e) 公開或提供資料主體之資訊；
 - (f) 資料主體行使其權利；
 - (g) 對於未成年人所提供之資訊獲保障，以及獲得未成年人監護權之方式；

 - (h) 第 24 及第 25 條規定為確保處理過程安全性符合第 32 條之規定，而採取之措施與步驟；

Section 5

Codes of conduct and certification

Article 40

Codes of conduct

1. The Member States, the supervisory authorities, the Board and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various processing sectors and the specific needs of micro, small and medium-sized enterprises.
2. Associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or amend or extend such codes, for the purpose of specifying the application of this Regulation, such as with regard to:
 - (a) fair and transparent processing;
 - (b) the legitimate interests pursued by controllers in specific contexts;
 - (c) the collection of personal data;
 - (d) the pseudonymisation of personal data;
 - (e) the information provided to the public and to data subjects;
 - (f) the exercise of the rights of data subjects;
 - (g) the information provided to, and the protection of, children, and the manner in which the consent of the holders of parental responsibility over children is to be obtained;
 - (h) the measures and procedures referred to in Articles 24 and 25 and the measures to ensure security of processing referred to in Article 32;

- (i) 個人資料外洩時向監督機關及資料主體之通知；
 - (j) 將個人資料傳輸至第三國或國際組織；或
 - (k) 法院外司法程序及其他爭端解決機制，以解決管理者與資料主體間，有關處理程序之爭議，且不應影響第 77 及第 79 條對於資料主體權利之規定。
3. 除管理者及受託者遵行本規則外，依照本條第 5 項所許可之行為準則，以及同條第 9 項規定有關之一般性效果，管理者或受託者依據本規則第 3 條規定，亦應遵守之，以提供於傳輸至第三國或國際組織此個人資料架構下，符合第 46 條第 2 項第(e)款有關適當安全措施之規範。該管理者及受託者應透過契約或具法律效果之方式，作出具拘束力及可強制執行之承諾，以適用對資料主體之權利適當之安全措施。
4. 本條第 2 項規定之行為準則，應包括特定機制，使第 41 條第(1)項規範之機構得執行義務性監督，使管理者或受託者得遵守其適用該準則之規範，並不會對監督機關根據第 55 條或第 56 條規定，所得行使之職權。
5. 本條第 2 項所稱之協會或其他組織，若欲準備行為準則，或修訂、延伸現行之準則時，應將草案、修正案或延伸計畫，依照第 55 條之規定交付監督機關。監督機關應基於本規則提供相關之意

- (i) the notification of personal data breaches to supervisory authorities and the communication of such personal data breaches to data subjects;
 - (j) the transfer of personal data to third countries or international organisations; or
 - (k) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to processing, without prejudice to the rights of data subjects pursuant to Articles 77 and 79.
3. In addition to adherence by controllers or processors subject to this Regulation, codes of conduct approved pursuant to paragraph 5 of this Article and having general validity pursuant to paragraph 9 of this Article may also be adhered to by controllers or processors that are not subject to this Regulation pursuant to Article 3 in order to provide appropriate safeguards within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (e) of Article 46(2). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards including with regard to the rights of data subjects.
4. A code of conduct referred to in paragraph 2 of this Article shall contain mechanisms which enable the body referred to in Article 41(1) to carry out the mandatory monitoring of compliance with its provisions by the controllers or processors which undertake to apply it, without prejudice to the tasks and powers of supervisory authorities competent pursuant to Article 55 or 56.
5. Associations and other bodies referred to in paragraph 2 of this Article which intend to prepare a code of conduct or to amend or extend an existing code shall submit the draft code, amendment or extension to

見，或得批准該準則，或修訂、延伸，若其認為具有充分之適當安全措施時。

6. 當草案、修正案或延伸計畫依前項而受批准時，且當該行為準則有關之處理程序並未於多個成員國進行時，監督機關應登記並公開該準則。
7. 當行為準則草案與多個成員國進行之處理活動有關時，依第 55 條而適格之監督機關應，在批准該草案、修正案或延伸計畫前，依循第 63 條之程序交付予委員會，以提供與遵循本規則有關之意見，或若有本條第 3 項所稱之情形時，提供適當之安全措施。
8. 當前項所稱之意見確認該草案、修正案或延伸計畫符合本規則，或於本條第 3 項所稱之情形時，已採取適當之安全措施，委員會得將該意見提交至歐盟執委會。
9. 歐盟執委會得，以制定法案之方式，決定該批准之行為準則、草案或延伸符合本條第 8 項之規定，且在歐盟內有一般性效力。此種立法應採取符合第 93 條第(2)項規定之審查程序。
10. 歐盟執委會應確保依據前項而具有一般性效力之已批准準則適當之公開性，

the supervisory authority which is competent pursuant to Article 55. The supervisory authority shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation and shall approve that draft code, amendment or extension if it finds that it provides sufficient appropriate safeguards.

6. Where the draft code, or amendment or extension is approved in accordance with paragraph 5, and where the code of conduct concerned does not relate to processing activities in several Member States, the supervisory authority shall register and publish the code.
7. Where a draft code of conduct relates to processing activities in several Member States, the supervisory authority which is competent pursuant to Article 55 shall, before approving the draft code, amendment or extension, submit it in the procedure referred to in Article 63 to the Board which shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation or, in the situation referred to in paragraph 3 of this Article, provides appropriate safeguards.
8. Where the opinion referred to in paragraph 7 confirms that the draft code, amendment or extension complies with this Regulation, or, in the situation referred to in paragraph 3, provides appropriate safeguards, the Board shall submit its opinion to the Commission.
9. The Commission may, by way of implementing acts, decide that the approved code of conduct, amendment or extension submitted to it pursuant to paragraph 8 of this Article have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 93(2).
10. The Commission shall ensure appropriate publicity for the approved codes which have been decided as having general validity in accordance with paragraph 9.

11. 委員會應勘查並登記所有經批准之行為準則、修正及延伸，並以適當之方式公布之。

第 41 條 **監督已批准之行為準則**

1. 於不影響適格之監督機關基於第 57 及 58 條規範其職權下，監督符合第 40 條規定之行為準則，應由基於該準則有關之主旨以及目的，由適當專業程度之機構作為其適格之監督機關。
2. 前項所稱得被認可監督遵行行為守則之機構，該機構應：
 - (a) 證明其獨立性與該行為準則主旨有關之專業，以符合適格監督機關之要求；
 - (b) 建立程序使關係管理者及受託者得合理近用及適用該行為準則；
 - (c) 建立程序及架構，以處理已實施或現正遵循該準則之管理者，得就有關違反該準則進行申訴，或使該程序及架構公開於大眾及資料主體週知；
 - (d) 證明符合適格監督機關並履行其任務與責任時，並未有利益衝突之情況。

11. The Board shall collate all approved codes of conduct, amendments and extensions in a register and shall make them publicly available by way of appropriate means.

Article 41

Monitoring of approved codes of conduct

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, the monitoring of compliance with a code of conduct pursuant to Article 40 may be carried out by a body which has an appropriate level of expertise in relation to the subject-matter of the code and is accredited for that purpose by the competent supervisory authority.
2. A body as referred to in paragraph 1 may be accredited to monitor compliance with a code of conduct where that body has:
 - (a) demonstrated its independence and expertise in relation to the subject-matter of the code to the satisfaction of the competent supervisory authority;
 - (b) established procedures which allow it to assess the eligibility of controllers and processors concerned to apply the code, to monitor their compliance with its provisions and to periodically review its operation;
 - (c) established procedures and structures to handle complaints about infringements of the code or the manner in which the code has been, or is being, implemented by a controller or processor, and to make those procedures and structures transparent to data subjects and the public; and
 - (d) demonstrated to the satisfaction of the competent supervisory authority that its tasks and duties do not result in a conflict of interests.

3. 適格監督機關應提交本條第 1 項所規範之機構認證標準草案至委員會，以符合第 63 條規定之一致化機制；
4. 於不影響適格監督機關之職權以及第八章之規定，本條第 1 項所稱之機構應遵循適當之安全措施、於管理者或受託者違反準則時採取適合之行動，包括暫停或將系爭管理者或受託者排除於準則外。且應告知適格之監督機關其行為與理由。
5. 適格監督機關應撤銷第 1 項所稱之機構認證，若該認證條件未達或不再符合，或其採取之行動違反本規則時。
6. 本條規定不得適用於由政府機關或機構所執行處理程序時。

第 42 條 **認證機制**

1. 應鼓勵成員國、監督機關、委員會及歐盟執委會，由其於歐盟層級，制定有關個人資料保護之認證機制，以及該資料保障之標章及記號，以證明管理者或受託者於處理過程中遵守本規則。並應注意有關微型、小型及中型規模企業之特殊需求。

3. The competent supervisory authority shall submit the draft criteria for accreditation of a body as referred to in paragraph 1 of this Article to the Board pursuant to the consistency mechanism referred to in Article 63.
4. Without prejudice to the tasks and powers of the competent supervisory authority and the provisions of Chapter VIII, a body as referred to in paragraph 1 of this Article shall, subject to appropriate safeguards, take appropriate action in cases of infringement of the code by a controller or processor, including suspension or exclusion of the controller or processor concerned from the code. It shall inform the competent supervisory authority of such actions and the reasons for taking them.
5. The competent supervisory authority shall revoke the accreditation of a body as referred to in paragraph 1 if the conditions for accreditation are not, or are no longer, met or where actions taken by the body infringe this Regulation.
6. This Article shall not apply to processing carried out by public authorities and bodies.

Article 42

Certification

1. The Member States, the supervisory authorities, the Board and the Commission shall encourage, in particular at Union level, the establishment of data protection certification mechanisms and of data protection seals and marks, for the purpose of demonstrating compliance with this Regulation of processing operations by controllers and processors. The specific needs of micro, small and medium-sized enterprises shall be taken into account.

2. 管理者及受託者除應遵守本規則外，依據本條第 5 項規定所批准之資料保護驗證機制、標章及記號，得作為證明，依據第 3 條規定而不適用本條例之管理者或受託者，在依照第 46 條第(2)項第(f)款有關個人資料傳輸至第三國或國際組織之框架下，已採取適當之安全措施。此種管理者或受託者應透過契約或具法律效果之方式，作出具拘束力及可強制執行之承諾，以適用對資料主體之權利適當之安全措施。

3. 該認證措施應為自願性，且透過透明程序提供之。

4. 符合本條規定之認證，不應降低管理者或受託者依本條例所應負擔之責任，並且不影響監督機關依照第 55 條或第 56 條規範之職責。

5. 符合本條之認證，應由認證機構依照第 43 條、或由適格之監督機關，基於經該監督機關依照第 58 條第 3 項所許可之標準，或經由委員會依照第 63 條規定所頒布。當該標準已經委員會批准時，得導致通用認證，亦即歐洲數據保護標章。

6. 將其處理程序提交至該認證機制之管理者或受託者，應依據第 43 條規定提供認證機構，或適當時，提供適格之監督機構，所有為執行該驗證程序所必須之資訊與近用其處理活動。

2. In addition to adherence by controllers or processors subject to this Regulation, data protection certification mechanisms, seals or marks approved pursuant to paragraph 5 of this Article may be established for the purpose of demonstrating the existence of appropriate safeguards provided by controllers or processors that are not subject to this Regulation pursuant to Article 3 within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (f) of Article 46(2). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards, including with regard to the rights of data subjects.
3. The certification shall be voluntary and available via a process that is transparent.
4. A certification pursuant to this Article does not reduce the responsibility of the controller or the processor for compliance with this Regulation and is without prejudice to the tasks and powers of the supervisory authorities which are competent pursuant to Article 55 or 56.
5. A certification pursuant to this Article shall be issued by the certification bodies referred to in Article 43 or by the competent supervisory authority, on the basis of criteria approved by that competent supervisory authority pursuant to Article 58(3) or by the Board pursuant to Article 63. Where the criteria are approved by the Board, this may result in a common certification, the European Data Protection Seal.
6. The controller or processor which submits its processing to the certification mechanism shall provide the certification body referred to in Article 43, or where applicable, the competent supervisory

7. 對管理者或受託者頒發認證，應於最多三年內為之，且若持續符合相關要求時，得依照相同之條件更新認證。若適當時，認證機構亦得依照第 43 條之規定，或由適格之監督機構撤銷認證，倘若該認證之要件並未或不再達到時。

8. 委員會應登記整理所有認證機制、資料保護標章及記號，並應以任何適當方式公開提供。

第 43 條 認證機構

1. 不影響第 57 條及第 58 條規定賦予適格監督機關之權限下，與資料保護有關具有一定專業水準之認證機構應該，於告知該監督機關後以使其得行使基於第 58 條第 2 項第 h 款規定之權力，且於有必要時頒布並更新該認證。成員國應確保該認證機構通過以下一項或兩項認證：
 - (a) 該監督機關符合第 55 及第 56 條之規定；

 - (b) 該指定之國家認可機構係符合歐洲議會與理事會第 765/2008 號規則，以及由監督機關機於符合第 55 及第 56 條之規定，所制定之額外要件。

authority, with all information and access to its processing activities which are necessary to conduct the certification procedure.

7. Certification shall be issued to a controller or processor for a maximum period of three years and may be renewed, under the same conditions, provided that the relevant requirements continue to be met. Certification shall be withdrawn, as applicable, by the certification bodies referred to in Article 43 or by the competent supervisory authority where the requirements for the certification are not or are no longer met.
8. The Board shall collate all certification mechanisms and data protection seals and marks in a register and shall make them publicly available by any appropriate means.

Article 43

Certification bodies

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, certification bodies which have an appropriate level of expertise in relation to data protection shall, after informing the supervisory authority in order to allow it to exercise its powers pursuant to point (h) of Article 58(2) where necessary, issue and renew certification. Member States shall ensure that those certification bodies are accredited by one or both of the following:
 - (a) the supervisory authority which is competent pursuant to Article 55 or 56;
 - (b) the national accreditation body named in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council in accordance with EN-ISO/IEC 17065/2012 and with the additional requirements established by the supervisory

2. 第 1 項所稱之認證機構應依照該項認定，僅當其已：
 - (a) 證明其獨立及與認證主題相關之專業知識，使適格之監督機關滿意；
 - (b) 承諾遵守第 42 條第 5 項規範之標準，以及經依照第 55 條或第 56 條規定之監督機關，以及依照第 63 條之委員會核准；
 - (c) 建立有關發布、定期審查和撤銷資料保戶認證、標章和記號之程序；
 - (d) 建立處理關於違反認證之申訴程序和架構，或該認證已經或正由管理者或受託者遵循之方式、以及使這些程序和架構公開於資料主體及大眾；
 - (e) 直致使適格監督機關滿意之證明，其任務和職責並未導致利益衝突。
3. 本條第 1 款和第 2 款所稱對於認證機構之認證，應根據第 55 條或第 56 條之規定，由適格之監督機構許可之標準，或由委員會依照第 63 條之規定核准；在根據本條第 1 項第(b)項進行認證時，這些條件應補充第 765/2008 號規則規定之要求、以及制訂認證機構方法和程序上之技術規則。

authority which is competent pursuant to Article 55 or 56.

2. Certification bodies referred to in paragraph 1 shall be accredited in accordance with that paragraph only where they have:
 - (a) demonstrated their independence and expertise in relation to the subject-matter of the certification to the satisfaction of the competent supervisory authority;
 - (b) undertaken to respect the criteria referred to in Article 42(5) and approved by the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63;
 - (c) established procedures for the issuing, periodic review and withdrawal of data protection certification, seals and marks;
 - (d) established procedures and structures to handle complaints about infringements of the certification or the manner in which the certification has been, or is being, implemented by the controller or processor, and to make those procedures and structures transparent to data subjects and the public; and
 - (e) demonstrated, to the satisfaction of the competent supervisory authority, that their tasks and duties do not result in a conflict of interests.
3. The accreditation of certification bodies as referred to in paragraphs 1 and 2 of this Article shall take place on the basis of criteria approved by the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63. In the case of accreditation pursuant to point (b) of paragraph 1 of this Article, those requirements shall complement those envisaged in Regulation (EC) No 765/2008 and the technical rules that describe the methods and procedures of the certification bodies.

4. 第 1 款所稱之認證機構，應負責進行有關認證之適當評估或撤銷此認證，且此並不影響管理者或受託者依本規則應負擔之責任。該認證發放時間最長應不超過五年，並且得在相同條件下更新，若該認證機構仍符合本條規定之要求時。

5. 第 1 款所稱之認證機構，應向適格之監督機關提供頒布或撤銷認證申請之理由。

6. 本條第 3 項規定和第 42 條第(5)項規定之標準，應由監督機關以易於取得之形式公佈。監督機關亦應將這些條件和標準交付至委員會。委員會應將所有認證機制和資料保護標章整理目錄，並以任何適當之方式公開。

7. 在不影響第八章的情況下，監督機關或者國家認可機構應依照本條第 1 項之規定，撤銷對認證機構之認證，若未達或不再符合認證條件，或認證機構採取之行動違反本規則。

8. 歐盟執委會有權根據第 92 條規定採取授權行為，以規定第 41 條第 1 項所述之資料保護認證機制應考慮之要件。

9. 歐盟執委會得採許行動規範驗證機制、資料保護標章及記號等之技術標準，以及促進和認可該認證機制、標章和記號之機制。該立法行為應採用依照第 93 條第 2 項規範之審查程序。

4. The certification bodies referred to in paragraph 1 shall be responsible for the proper assessment leading to the certification or the withdrawal of such certification without prejudice to the responsibility of the controller or processor for compliance with this Regulation. The accreditation shall be issued for a maximum period of five years and may be renewed on the same conditions provided that the certification body meets the requirements set out in this Article.
5. The certification bodies referred to in paragraph 1 shall provide the competent supervisory authorities with the reasons for granting or withdrawing the requested certification.
6. The requirements referred to in paragraph 3 of this Article and the criteria referred to in Article 42(5) shall be made public by the supervisory authority in an easily accessible form. The supervisory authorities shall also transmit those requirements and criteria to the Board. The Board shall collate all certification mechanisms and data protection seals in a register and shall make them publicly available by any appropriate means.
7. Without prejudice to Chapter VIII, the competent supervisory authority or the national accreditation body shall revoke an accreditation of a certification body pursuant to paragraph 1 of this Article where the conditions for the accreditation are not, or are no longer, met or where actions taken by a certification body infringe this Regulation.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 for the purpose of specifying the requirements to be taken into account for the data protection certification mechanisms referred to in Article 42(1).
9. The Commission may adopt implementing acts laying down technical standards for certification mechanisms and data protection seals and marks, and mechanisms to promote and recognise those certification

第五章 個人資料傳輸至第三國或國際組織

第 44 條 傳輸之一般性原則

任何對個人資料之傳輸，無論係針對正在進行之處理過程、或係欲於傳輸至第三國或國際組織後始進行處理之個人資料，僅得於符合本規則、管理者或受託者符合本章規定之要件時始得為之，包括將個人資料從第三國或國際組織傳送至另一第三國或另一國際組織。本章所有規定均應適用，以確保本規則所保障之自然人保護標準並未減損。

第 45 條 基於有效決定所進行之傳輸

1. 個人資料傳輸至第三國或國際組織得進行，倘若歐盟執委會認定該第三國、第三國的領域或一或多個特定產業、或國際組織已提供適當之保護時。此類傳輸並不要求任何具體授權。

mechanisms, seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

CHAPTER V

Transfers of personal data to third countries or international organisations

Article 44

General principle for transfers

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation shall take place only if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions in this Chapter shall be applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined.

Article 45

Transfers on the basis of an adequacy decision

1. A transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection. Such a transfer shall not require any specific authorisation.

2. 在評估是否有適當之保護級別時，歐盟執委會應特別考慮以下要素：
 - (a) 法治國原則、對人權和基本自由之尊重、相關法律，包括公共安全、國防、國家安全和刑法等方面之普遍性和部門性規定，以及政府機關近用個人資料，以及實施此類之立法、資料保護規範、專業倫理規範和安全措施，包括向外傳輸個人資料至另一第三國或國際組織之規範，已經該國或國際組織所遵守、判例法、以及有效和可行使之資料主體權利、以及經個資傳輸之數據主體而言有效之行政和司法救濟；
 - (b) 第三國中存有一或多個獨立監督機關並仍有效運作，或者受其規制之國際組織，以負責確保和執行資料保護規則之遵守，包括適當之執法權限、協助和指導資料主體行使其權利，並與成員國之監督機關合作；且
 - (c) 相關之第三國或國際組織有參與之國際承諾，或其他具有法律約束力之公約或文書產生之其他義務，以及參與多邊或區域體制，特別針對保護個人資料方面所承擔之義務。
3. 歐盟執委會，於評估保護層級是否充分後，得採取立法行動決定，該第三國、第三國內一或多特定產業、或國際組織遵守本條

2. When assessing the adequacy of the level of protection, the Commission shall, in particular, take account of the following elements:
- (a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data are being transferred;
 - (b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with the data protection rules, including adequate enforcement powers, for assisting and advising the data subjects in exercising their rights and for cooperation with the supervisory authorities of the Member States; and
 - (c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.
3. The Commission, after assessing the adequacy of the level of protection, may decide, by means of implementing act, that a third

第 2 項所指適當保護標準。該執行行為應規定定期審查機制，至少每四年一次，且該機制應考慮第三國或國際組織所有相關發展。該執行行為應規定其區域和產業適用範圍，並酌情認定監督機關或本條第 2 項第(b)款所述之其他主管機關。該執行行為亦應依第 93 條第 2 項規定之審查程序採用。

4. 歐盟執委會應以持續之方式，監測可能影響經本條第 3 項規定所通過之決定於第三國和國際組織之運作情況，以及根據資料保護指令(95/46/EC)第 25 條第 6 項所通過之決定。

5. 如有資料顯示，尤其是依本條第 3 項規定之審查後，第三國、第三國內一或多個特定產業、或國際組織內，不再符合本條第 2 項所稱之適當保護標準時，歐盟執委會在必要的範圍內，應通過不具有回溯效力之決定，廢除、修改或中止依據本條第 3 項所作之決定。該執行行為應依第 93 條第 2 項規定之審查程序為之。

僅於基於正當之重大、迫切之理由，歐盟執委會始應按照第 93 條第 3 項規範之程序，立即採取合適之執行行為。

country, a territory or one or more specified sectors within a third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2 of this Article. The implementing act shall provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation. The implementing act shall specify its territorial and sectoral application and, where applicable, identify the supervisory authority or authorities referred to in point (b) of paragraph 2 of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 93(2).

4. The Commission shall, on an ongoing basis, monitor developments in third countries and international organisations that could affect the functioning of decisions adopted pursuant to paragraph 3 of this Article and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC.
5. The Commission shall, where available information reveals, in particular following the review referred to in paragraph 3 of this Article, that a third country, a territory or one or more specified sectors within a third country, or an international organisation no longer ensures an adequate level of protection within the meaning of paragraph 2 of this Article, to the extent necessary, repeal, amend or suspend the decision referred to in paragraph 3 of this Article by means of implementing acts without retro-active effect. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 93(3).

6. 歐盟執委會應與第三國或國際組織進行溝通，以補救導致依據第 5 項作成之決定。
7. 根據本條第 5 項作成之決定，不影響第 46 條至第 49 條規定有關將個人資料傳輸至第三國、第三國境內之區域或一或多個特定產業、或相關國際組織之情況。
8. 歐盟執委會應於歐盟官方公報及其官方網站中發布第三國、第三國之領土和特定產業、國際組織之清單，記載歐盟執委會已決定該清單已不再具備適當之保護標準。
9. 歐盟執委會根據第 95/46/EC 號資料保護令第 25 條第 6 項所通過之決定將繼續生效，直至經歐盟執委會根據本條第 3 項或第 5 項所通過之決定修改、取代或廢除為止。

第 46 條 **傳輸應遵守之適當保障**

1. 在缺乏根據第 45 條第 3 項作成決定情況下，只當管理者或受託者已提供適當之安全措施時，管理者或受託者才可將個人資料傳輸至第三國或國際組織，並且限於資料主體具備可行使之權利和有效之法律救濟程序可採用時。
2. 於不需監督機關任何具體授權時，第 1 款規定之適當保障措施得依照：

6. The Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to paragraph 5.
7. A decision pursuant to paragraph 5 of this Article is without prejudice to transfers of personal data to the third country, a territory or one or more specified sectors within that third country, or the international organisation in question pursuant to Articles 46 to 49.
8. The Commission shall publish in the Official Journal of the European Union and on its website a list of the third countries, territories and specified sectors within a third country and international organisations for which it has decided that an adequate level of protection is or is no longer ensured.
9. Decisions adopted by the Commission on the basis of Article 25(6) of Directive 95/46/EC shall remain in force until amended, replaced or repealed by a Commission Decision adopted in accordance with paragraph 3 or 5 of this Article.

Article 46

Transfers subject to appropriate safeguards

1. In the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.
2. The appropriate safeguards referred to in paragraph 1 may be provided for, without requiring any specific authorisation from a supervisory authority, by:

- (a) 政府機關或機構間具有法律約束力和可強制執行之文書；
 - (b) 按照第 47 條規定之內部具拘束力條款；
 - (c) 歐盟執委會根據第 93 條第 2 項規定審查程序所通過之定型化資料保護條款；
 - (d) 監督機關所通過，並經歐盟執委會根據第 93 條第 2 項之審查程序批准之定型化資料保護條款；
 - (e) 根據第 40 條所批准之行為準則，以及第三國之管理者或受託者作出具有法律效力並得強制執行之承諾，以適用包括針對資料主體之權利適當之安全措施；或
 - (f) 根據第 42 條所批准之認證機制，以及第三國管理者或受託者作出具有法律效力並得強制執行之承諾，以適用包括針對資料主體之權利適當之安全措施。
3. 在得到主管機關授權的情況下，第 1 項所稱之適當保障措施，具體情況得為：
- (a) 管理者或受託者與第三國或國際組織之個人資料之管理者或受託者、或接收者間之契約條款；或
 - (b) 將規定納入政府機關或機構內之行政安排，其中包括可強制執行和有效之資料主體權利。

- (a) a legally binding and enforceable instrument between public authorities or bodies;
 - (b) binding corporate rules in accordance with Article 47;
 - (c) standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 93(2);
 - (d) standard data protection clauses adopted by a supervisory authority and approved by the Commission pursuant to the examination procedure referred to in Article 93(2);
 - (e) an approved code of conduct pursuant to Article 40 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights; or
 - (f) an approved certification mechanism pursuant to Article 42 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights.
3. Subject to the authorisation from the competent supervisory authority, the appropriate safeguards referred to in paragraph 1 may also be provided for, in particular, by:
- (a) contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation; or
 - (b) provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

4. 監督機關在本條第 3 項所述情況下，適用第 63 條規定之一致化機制。
5. 成員國或監督機構基於資料保護指令(95/46/EC)第 26 條第 2 項作出之授權將持續生效，直至經該監督機關若有必要修改、取代或廢除時。歐盟執委會根據資料保護指令第 95/46/EC 號第 26 條第 4 項所通過之決定將繼續生效，直到歐盟執委會依據本條第 2 項規定通過決定修改、取代或廢除為止。

第 47 條 **內部具拘束力條款**

1. 適格之監督機關應當按照第 63 條規定之一致化機制，核准內部具拘束力條款，基於下述條件：
 - (a) 具有法律約束力，適用於且經由所有從事共同經濟活動相關企業集團之成員實施，包括其員工；
 - (b) 在處理個人資料時明確賦予資料主體可行駛之權利；及
 - (c) 符合第 2 項規定之要求。
2. 第 1 款所述之內部具拘束力條款至少應規定：
 - (a) 企業集團或從事共同經濟活動之企業集團及其各成員之組織結構和聯繫方式；

4. The supervisory authority shall apply the consistency mechanism referred to in Article 63 in the cases referred to in paragraph 3 of this Article.
5. Authorisations by a Member State or supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid until amended, replaced or repealed, if necessary, by that supervisory authority. Decisions adopted by the Commission on the basis of Article 26(4) of Directive 95/46/EC shall remain in force until amended, replaced or repealed, if necessary, by a Commission Decision adopted in accordance with paragraph 2 of this Article.

Article 47

Binding corporate rules

1. The competent supervisory authority shall approve binding corporate rules in accordance with the consistency mechanism set out in Article 63, provided that they:
 - (a) are legally binding and apply to and are enforced by every member concerned of the group of undertakings, or group of enterprises engaged in a joint economic activity, including their employees;
 - (b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data; and
 - (c) fulfil the requirements laid down in paragraph 2.
2. The binding corporate rules referred to in paragraph 1 shall specify at least:
 - (a) the structure and contact details of the group of undertakings, or group of enterprises engaged in a joint economic activity and of each of its members;

- (b) 單一或整組之資料傳輸，包括個人資料類別、處理程序類型及其用途、受影響之資料主體的類型以及有關係爭第三國或國家之身分；
- (c) 其內在和外在具有法律約束力之性質；
- (d) 一般資料保護原則的應用，特別是目的限制、資料最少化處理、存儲期間限制、資料質量、資料保護之設計和默認設置、處理之法律依據、特種個人資料之處理、確保資料安全之措施，以及有關向不受該內部具拘束力條款之企業傳輸之要求；
- (e) 資料主體於有關處理程序之權利和行使這些權利的手段，包括不受僅基於自動化決定拘束之權利，包括根據第 22 條進行個人化剖析的權利、有權向監督機關提出申訴，並按照第 79 條之規定向成員國管轄法院提起訴訟，並在違反內部具拘束力條款情況下獲得救濟，並在適當情況下接受賠償；
- (f) 接收方係位於成員國境內違反內部具拘束力條款之管理者或受託者，而該規章係由非設立於歐盟內之有關成員；該管理者應豁免於該違反責任之一部或全部，僅當其能證明該成員應對造成損害之原因負責任時；
- (g) 關於如何提供資料主體有關內部具拘束力條款資訊，除了第 13 條和第 14 條外，尤其係本項第 d、e 和第 f 款規定；

- (b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;
- (c) their legally binding nature, both internally and externally;
- (d) the application of the general data protection principles, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules;
- (e) the rights of data subjects in regard to processing and the means to exercise those rights, including the right not to be subject to decisions based solely on automated processing, including profiling in accordance with Article 22, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;
- (f) the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member concerned not established in the Union; the controller or the processor shall be exempt from that liability, in whole or in part, only if it proves that that member is not responsible for the event giving rise to the damage;
- (g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph

- (h) 根據第 37 條指定之資料保護專責人員，或負責監督企業集團或從事共同經濟活動之企業集團遵守內部具拘束力條款之任務，包括監督培訓和處理申訴；
- (i) 申訴程序；
- (j) 這些機制應包括資料保護審計和確保糾正措施作為保護資料主體權利之方法。該核查結果應當通知依據第(h)款所稱之個人或實體，以及企業集團中之控制集團董事會。或從事共同經濟活動之企業集團，並應提供與經請求之主管機關；
- (k) 報告和記錄規章變更之機制，並向監督機關報告該變更；
- (l) 與監督機關之合作機制，確保企業集團任何成員或從事共同經濟活動之企業集團之遵守，特別是告知監督機構有關依據第(j)款實施確認措施之結果；
- (m) 向主管機關報告，有關在第三國中，企業集團成員或從事共同經濟活動之企業集團受到的任何法律要求之機制，且該要求可能對內部具拘束力條款提供之保障造成重大不利益；

is provided to the data subjects in addition to Articles 13 and 14;

- (h) the tasks of any data protection officer designated in accordance with Article 37 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, or group of enterprises engaged in a joint economic activity, as well as monitoring training and complaint-handling;
- (i) the complaint procedures;
- (j) the mechanisms within the group of undertakings, or group of enterprises engaged in a joint economic activity for ensuring the verification of compliance with the binding corporate rules. Such mechanisms shall include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. Results of such verification should be communicated to the person or entity referred to in point (h) and to the board of the controlling undertaking of a group of undertakings, or of the group of enterprises engaged in a joint economic activity, and should be available upon request to the competent supervisory authority;
- (k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority;
- (l) the cooperation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, or group of enterprises engaged in a joint economic activity, in particular by making available to the supervisory authority the results of verifications of the measures referred to in point (j);
- (m) the mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group of undertakings, or group of enterprises engaged in a joint

- (n) 對持續或定期近用個人資料之人員進行適當之資料保護培訓。
3. 於本條規範範圍內，歐盟執委會可以指定管理者、受託者及內部具拘束力條款之監管機構之間交換信息之格式和程序。該執行行為應採取第 93 條第 2 項規定之審查程序。

第 48 條

未經歐盟法律授權之傳輸或公開

任何法院或法庭之判決，以及第三國行政機關決定要求管理者或受託者傳輸或公開個人資料時，僅於在根據請求之第三國與歐盟或成員國之間有效之國際協議（如司法協助條約）此基礎上，才能予以承認或得強制執行，但不影響根據本章有關其他傳輸理由。

第 49 條

特定例外情況

1. 在沒有根據第 45 條第 3 項作出關於適當性決定下，或缺少根據第 46 條適用的保障措施，包括內部具拘束力條款時，向第三國或國際組織傳輸單一或一組個人資料時，僅得符合於下述情況之一時始得為之：

economic activity is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and

- (n) the appropriate data protection training to personnel having permanent or regular access to personal data.
3. The Commission may specify the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 93(2).

Article 48

Transfers or disclosures not authorised by Union law

Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State, without prejudice to other grounds for transfer pursuant to this Chapter.

Article 49

Derogations for specific situations

1. In the absence of an adequacy decision pursuant to Article 45(3), or of appropriate safeguards pursuant to Article 46, including binding corporate rules, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions:

- (a) 資料主體明確同意該傳輸提議，並告知資料主體由於缺乏關於適當性之決定和適當的保障措施，造成該傳輸可能存在之風險已告知資料主體後；
- (b) 對資料主體和管理者間之履行契約，或按照資料主體要求進行締約前措施，該傳輸係屬必要時；
- (c) 對於管理者與另一自然人或法人間為資料主體之利益所締結之契約，該傳輸係結束或履行該契約所必需時；
- (d) 為了重要公共利益原因，傳輸係屬必要；
- (e) 傳輸是成立、行使或者辯護法律主張所必需；
- (f) 傳輸是為了保護資料主體或其他人之迫切利益，且資料主體無法由以身體或法律表達同意時，
- (g) 傳輸是根據歐盟或成員國法律中，為提供大眾資訊、及開放讓公眾或任何證明有合法利益者諮詢，所登記之傳輸目錄，但僅限於滿足歐盟或成員國有關諮詢之法律在具體個案中滿足其所規定之條件。

若傳輸無法基於第 45 條或第 46 條之規定，包括關於內部具拘束力條款之規定，以及不適用本條第 1 項之具體例外情況時，傳輸至第三國或國際組織僅得在傳輸非為重複性情況下，或僅涉及有限之資料主體、管理者為追求重要合法利益並未被資料主體權利與自由之超越時，且該管理者已評估所有與該資料傳輸有關之情況，且基

- (a) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;
- (b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request;
- (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;
- (d) the transfer is necessary for important reasons of public interest;
- (e) the transfer is necessary for the establishment, exercise or defence of legal claims;
- (f) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent;
- (g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case.

Where a transfer could not be based on a provision in Article 45 or 46, including the provisions on binding corporate rules, and none of the derogations for a specific situation referred to in the first subparagraph of this paragraph is applicable, a transfer to a third country or an international organisation may take place only if the

於該評估提供保戶資料主體個資之合適安全措施時。管理者應告知監督機關有關之傳輸。除了提供第 13 條和第 14 條規定之資訊外，管理者還應通知資料主體有關之傳輸以及其所追求之重要合法利益。

2. 符合第 1 項第 g 款之傳輸應不得包含目錄中所載之全部個人資料、或個人資料的全部之類型。若目錄係為使具有合法利益者進行諮商，該傳輸應僅基於該人之請求或當其為接收者時，始得為之。
3. 第 1 項第 a、b、和 c 款及第 2 項的不適用於政府機關行使其公權力之活動。
4. 第 1 項第 d 款所稱之公共利益，應受歐盟法或管理者位於之成員國法律予以承認。
5. 於缺少適當性決定下，歐盟或成員國法律得，為了重要公共利益，明確制定對於傳輸特種個人資料至第三國或國際組織之限制。成員國應將該規定告知歐盟執委會。

transfer is not repetitive, concerns only a limited number of data subjects, is necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject, and the controller has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment provided suitable safeguards with regard to the protection of personal data. The controller shall inform the supervisory authority of the transfer. The controller shall, in addition to providing the information referred to in Articles 13 and 14, inform the data subject of the transfer and on the compelling legitimate interests pursued.

2. A transfer pursuant to point (g) of the first subparagraph of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register. Where the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.
3. Points (a), (b) and (c) of the first subparagraph of paragraph 1 and the second subparagraph thereof shall not apply to activities carried out by public authorities in the exercise of their public powers.
4. The public interest referred to in point (d) of the first subparagraph of paragraph 1 shall be recognised in Union law or in the law of the Member State to which the controller is subject.
5. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of personal data to a third country or an international organisation. Member States shall notify such provisions to the Commission.

6. 管理者或受託者應記錄有關評估、以及為符合本條第 1 項第 2 款規定之適當安全措施，以符合第 30 條有關記錄之規定。

第 50 條

保護個人資料之國際互助

關於第三國和國際組織，歐盟執委會和監督機構應採取適當步驟，以：

- (a) 發展國際合作機制，促進有效執行保護個人資料之相關立法；

- (b) 在保護個人資料立法方面提供國際互助，包括透過通知、申訴轉介、調查協助與和資訊交流等，並採取適當安全措施保護個人資料和其他基本權利和自由；

- (c) 使利害關係方參與討論和活動，以促進國際合作，執行保護個人資料的立法；

- (d) 促進個人資料保護立法和實務交流和記錄，包括與第三國間管轄權之衝突。

第六章

獨立監督機關

第一節

獨立之狀態

6. The controller or processor shall document the assessment as well as the suitable safeguards referred to in the second subparagraph of paragraph 1 of this Article in the records referred to in Article 30.

Article 50

International cooperation for the protection of personal data

In relation to third countries and international organisations, the Commission and supervisory authorities shall take appropriate steps to:

- (a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
- (b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;
- (c) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data;
- (d) promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

CHAPTER VI

Independent supervisory authorities

Section 1

Independent status

第 51 條 監督機關

1. 各成員國應設立一或多個獨立機關，作為本規則之主管機關，以確保自然人之基本權利及自由在資料處理過程中之保障以及使歐盟內個人資料之自由流通更為簡便（簡稱監督機關）。
2. 所有監督機關應共同致力於歐盟個資規則於歐盟一致性地適用。其彼此之間以及與歐盟執委會間應相互合作，以達成此目的並符合第七章之規定。
3. 當多個監督機關於成員國設立時，該國應指派在委員會中作為其他機關之代表，並應建立機制確保其他機關遵循第 63 條一致化機制之規定。
4. 每個成員國應在 2018 年 5 月 25 日之前通知本委員會，其依據本章之規範修正通過之法律規定，以及任何後續對其有影響之修定，且不得延遲。

第 52 條 獨立性

1. 所有監督機關均依據本規則全然獨立地履行職務或行使職權。
2. 監督機關之成員依據本規則履行職務或行使職權時，不受到外界直接或間接之影響，亦無須請示或接受任何機關指示。

Article 51

Supervisory authority

1. Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union ('supervisory authority').
2. Each supervisory authority shall contribute to the consistent application of this Regulation throughout the Union. For that purpose, the supervisory authorities shall cooperate with each other and the Commission in accordance with Chapter VII.
3. Where more than one supervisory authority is established in a Member State, that Member State shall designate the supervisory authority which is to represent those authorities in the Board and shall set out the mechanism to ensure compliance by the other authorities with the rules relating to the consistency mechanism referred to in Article 63.
4. Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to this Chapter, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

Article 52

Independence

1. Each supervisory authority shall act with complete independence in performing its tasks and exercising its powers in accordance with this Regulation.
2. The member or members of each supervisory authority shall, in the performance of their tasks and exercise of their powers in accordance with this Regulation, remain free from external influence, whether

3. 監督機關內之委員應禁止作出與職務不相符之行為，且不得於任職期間內執行其他與其職務不相符之工作，無論有償與否。

4. 每個成員國亦應確保各個監督機關所需人事、技術及財政資源、廠址及設備之設置，以使監督機關有效執行職務及行使職權。包括有關互助、共同合作及委員會之參與等情境。

5. 各成員國應確保各個監督機關享有完全之人事決定權，並由相關之監督機關成員自行決定其機關之人事。

6. 各成員國應確保個監督機關之財政僅受到不影響其獨立性之監督，並擁有有單獨之公共年度預算，該預算得為國家整體預算之一部分。

第 53 條

監督機關之一般性要件

1. 各成員國內所設立監督機關之成員應透過透明之程序，經由國會、政府、國家元首或依成員國法賦予任命權限之獨立單位任命之。

direct or indirect, and shall neither seek nor take instructions from anybody.

3. Member or members of each supervisory authority shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.
4. Each Member State shall ensure that each supervisory authority is provided with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board.
5. Each Member State shall ensure that each supervisory authority chooses and has its own staff which shall be subject to the exclusive direction of the member or members of the supervisory authority concerned.
6. Each Member State shall ensure that each supervisory authority is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget.

Article 53

General conditions for the members of the supervisory authority

1. Member States shall provide for each member of their supervisory authorities to be appointed by means of a transparent procedure by:
 - their parliament;
 - their government;
 - their head of State; or

2. 每個成員需具備履行任務或行使職權所需資格、經驗及技術，特別是在個人資料保護之領域。
3. 各成員之任期隨著職務期間結束而停止，其辭職或強制退休，依據各成員國之法律為之。
4. 各成員職位之解除，僅得於其有重大失誤，或履行職務之前提資格不復存在時，方得為之。

第 54 條 **監督機關之設置規範**

1. 各成員國應制定下列法律：
 - (a) 設立各該監督機構；
 - (b) 要求被任命為各該監督機構成員之資格和條件；
 - (c) 任命各該監督機關成員之規範和程序；
 - (d) 監督機關成員任期至少為4年，但不適用於任期自2016年5月24起算者。當不同時間之任命係為維護監督機關獨立性必要者，部分任期可能較短。

- an independent body entrusted with the appointment under Member State law.
- 2. Each member shall have the qualifications, experience and skills, in particular in the area of the protection of personal data, required to perform its duties and exercise its powers.
- 3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement, in accordance with the law of the Member State concerned.
- 4. A member shall be dismissed only in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.

Article 54

Rules on the establishment of the supervisory authority

- 1. Each Member State shall provide by law for all of the following:
 - (a) the establishment of each supervisory authority;
 - (b) the qualifications and eligibility conditions required to be appointed as member of each supervisory authority;
 - (c) the rules and procedures for the appointment of the member or members of each supervisory authority;
 - (d) the duration of the term of the member or members of each supervisory authority of no less than four years, except for the first appointment after 24 May 2016, part of which may take place for a shorter period where that is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure;

- (e) 各該監督機構的成員是否得再任命，以及再任命次數之上限；
 - (f) 管理各監督機關成員及員工義務之條件，禁止在任職期間和之後不符合行為，職業和福利，及有關退休之規定。
2. 各該監督機關成員和員工，應根據歐盟或成員國法律規定。在任職期間及離職後，對於其因履行任務或行使職權所知悉之所有秘密資訊，皆應負有保密之義務。對於任職期間，該保密義務應由其適用於當自然人通報有關違反本規則時。

第二節 管轄、任務與職權

第 55 條 管轄

1. 所有監督機關得於其成員國之領土內，依據本規則履行職務及行使職權。

2. 監督機關管轄範圍及於所有行政機關或私人單位依據歐盟個資規則第 6 條第 1 項第 c 款及第 e 款所為之處理，排除第 56 條之適用。

- (e) whether and, if so, for how many terms the member or members of each supervisory authority is eligible for reappointment;
 - (f) the conditions governing the obligations of the member or members and staff of each supervisory authority, prohibitions on actions, occupations and benefits incompatible therewith during and after the term of office and rules governing the cessation of employment.
2. The member or members and the staff of each supervisory authority shall, in accordance with Union or Member State law, be subject to a duty of professional secrecy both during and after their term of office, with regard to any confidential information which has come to their knowledge in the course of the performance of their tasks or exercise of their powers. During their term of office, that duty of professional secrecy shall in particular apply to reporting by natural persons of infringements of this Regulation.

Section 2

Competence, tasks and powers

Article 55

Competence

1. Each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State.
2. Where processing is carried out by public authorities or private bodies acting on the basis of point (c) or (e) of Article 6(1), the supervisory authority of the Member State concerned shall be competent. In such cases Article 56 does not apply.

3. 法院於其職權範圍內所為處理，非屬監督機關之管轄範圍。

第 56 條 **最高監督機關之管轄**

1. 於不影響第 55 條之情況下，管理者或受託者之主要許可或唯一許可，由最高監督機關作為主管機關依據本規則第 60 條之程序，管理管理者或受託者之跨境處理資料行為。
2. 作為前項之例外，所有監督機關皆得處理向其提出之申訴或可能違反本規則之行為，但僅以其與該監督機關所屬成員國核發許可相關，或資料主體僅於其所屬成員國內受到明顯影響者。
3. 於本條第 2 項之相關案件中，監督機關應立即通報最高監督機關。在通報後三週內，最高監督機關應決定，其是否應依據第 60 條所定程序處理，並應考量管理者或受託者於通報之成員國內是否持有許可。
4. 最高監督機關決定處理時，應適用第 60 條之程序。通報之監督機關得就該情況擬具決議草稿，最高監督機關決議時，依據第 60 條第 3 項之規定，應最優先將其納入考量。

3. Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Article 56

Competence of the lead supervisory authority

1. Without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.
2. By derogation from paragraph 1, each supervisory authority shall be competent to handle a complaint lodged with it or a possible infringement of this Regulation, if the subject matter relates only to an establishment in its Member State or substantially affects data subjects only in its Member State.
3. In the cases referred to in paragraph 2 of this Article, the supervisory authority shall inform the lead supervisory authority without delay on that matter. Within a period of three weeks after being informed the lead supervisory authority shall decide whether or not it will handle the case in accordance with the procedure provided in Article 60, taking into account whether or not there is an establishment of the controller or processor in the Member State of which the supervisory authority informed it.
4. Where the lead supervisory authority decides to handle the case, the procedure provided in Article 60 shall apply. The supervisory authority which informed the lead supervisory authority may submit to the lead supervisory authority a draft for a decision. The lead supervisory authority shall take utmost account of that draft when

5. 若最高監督機關決定不處理，則由通報之監督機關依據歐盟個資規則第 61 條及第 62 條處理之。
6. 最高監督機關亦作為處理資料管理者或受託者執行跨境處理程序問題之專責機關。

第 57 條 任務

1. 於不影響本規則所規定之其他任務，各該監督機關應於其管轄範圍內，執行：
 - (a) 監督並執行歐盟個資規則之適用；
 - (b) 增進公眾知悉與資料處理相關之風險、規範、保障及其權利並為相應之說明。同時應特別關注對於未成年人之特殊措施；
 - (c) 符合成員國法之情況下，提供國會、政府及其他機構就保護自然人於資料處理時之權利及自由所採行政和立法措施相關之建議；
 - (d) 增進管理者和受託者知悉其依據本規則所負擔之義務；
 - (e) 應任何資料主體的詢問，提供其關於依據本規則所得主張權利之資訊，或為了達成此一目的，適當時機時與其他成員國之監督機關共同合作，

preparing the draft decision referred to in Article 60(3).

5. Where the lead supervisory authority decides not to handle the case, the supervisory authority which informed the lead supervisory authority shall handle it according to Articles 61 and 62.
6. The lead supervisory authority shall be the sole interlocutor of the controller or processor for the cross-border processing carried out by that controller or processor.

Article 57

Tasks

1. Without prejudice to other tasks set out under this Regulation, each supervisory authority shall on its territory:
 - (a) monitor and enforce the application of this Regulation;
 - (b) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing. Activities addressed specifically to children shall receive specific attention;
 - (c) advise, in accordance with Member State law, the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing;
 - (d) promote the awareness of controllers and processors of their obligations under this Regulation;
 - (e) upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, cooperate with the supervisory authorities in other Member States to that end;

- (f) 依據第80條資料主體所提出申訴或由單位、組織或協會所提出之申訴，就申訴標的於適當範圍內進行調查，並於適當期限內通知申訴人調查之進行及其結果，特別是當需要更進一步調查或有與其他監督機關協調有必要時；
- (g) 與其他監督機關合作，包括資訊交流、職務互助等，使歐盟個資規則得一致性地被適用與執行；
- (h) 調查本規則施行之情況，可同時參考其他監督機關或機關之資訊；
- (i) 密切關注影響個人資料保護重大發展，特別是資訊與通訊技術之發展與商業實務操作；
- (j) 確立第28條第8項及第46條第2項第d款所稱標準契約條款；
- (k) 建立並執行依據第35條第4項需進行資料保護影響評估之處理程序清單；
- (l) 提供關於第36條第2項所稱處理流程之諮詢；
- (m) 鼓勵制定第40條第1項之行為準則，其中應提供第40條第5項所規範之充分安全措施，並提供意見以及批准該準則；
- (n) 引進資料保護認證機制，促進建立第42條第1項之資料保護標

- (f) handle complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 80, 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;
- (g) cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation;
- (h) conduct investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or other public authority;
- (i) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;
- (j) adopt standard contractual clauses referred to in Article 28(8) and in point (d) of Article 46(2);
- (k) establish and maintain a list in relation to the requirement for data protection impact assessment pursuant to Article 35(4);
- (l) give advice on the processing operations referred to in Article 36(2);
- (m) encourage the drawing up of codes of conduct pursuant to Article 40(1) and provide an opinion and approve such codes of conduct which provide sufficient safeguards, pursuant to Article 40(5);
- (n) encourage the establishment of data protection certification

章或認證標章，以及批准依據第42條第5項提出之認證標準；

- (o) 若合適時，定期執行依據第42條第7項所核發之認證審核；
 - (p) 整理並公布對於依據第41條監督行為準則遵循機構之認證，以及依據第43條之認證機構之標準；
 - (q) 對依據第41條監督行為準則遵循之機構以及依據第43條之認證機構進行驗證；
 - (r) 核准第46條第3項所稱契約條款及規定；
 - (s) 核准第47條所稱內部具拘束力條款；
 - (t) 負責歐盟個資委員會之職務報告；
 - (u) 建立關於違反本規則以及依據第58條第2項所採相應措施之內部記錄，
 - (v) 執行任何其他為履行個人資料保護之任務。
2. 所有監督機關應簡化有關第 1 項第 f 款申訴之程序，如提供電子形式之申訴表格，但不得因此排除其他通訊方式。
3. 監督機關上述任務之履行，對於資料主體或資料保護專責人員皆屬免費。

- mechanisms and of data protection seals and marks pursuant to Article 42(1), and approve the criteria of certification pursuant to Article 42(5);
- (o) where applicable, carry out a periodic review of certifications issued in accordance with Article 42(7);
 - (p) draft and publish the criteria for accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
 - (q) conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
 - (r) authorise contractual clauses and provisions referred to in Article 46(3);
 - (s) approve binding corporate rules pursuant to Article 47;
 - (t) contribute to the activities of the Board;
 - (u) keep internal records of infringements of this Regulation and of measures taken in accordance with Article 58(2); and
 - (v) fulfil any other tasks related to the protection of personal data.
2. Each supervisory authority shall facilitate the submission of complaints referred to in point (f) of paragraph 1 by measures such as a complaint submission form which can also be completed electronically, without excluding other means of communication.
3. The performance of the tasks of each supervisory authority shall be free of charge for the data subject and, where applicable, for the data protection officer.

4. 但對於顯無理由，或特別是針對經常重複之性質、濫用查詢，監督機關得要求依據行政成本繳交合理費用或拒絕回應該查詢。但監督機關對於查詢顯無理由或無節制之情形負有舉證責任。

第 58 條 **職權**

1. 任何監督機關依據歐盟個資規則第 58 條第 1 項，得行使下列調查權：
 - (a) 向資料管理者、受託者或其代表指明，履行任務所需要其提供之所有資訊。
 - (b) 以資料保護審核形式進行之調查。
 - (c) 依據第42條第7項審核驗證。
 - (d) 提醒資料管理者或受託者避免違反歐盟個資規則之行為。
 - (e) 自資料管理者及受託者處取得其履行任務所必要之個人資料及資訊。
 - (f) 依據歐盟或各成員國之程序法令進入資料管理者及受託者之營業處所，包括所有處理資料之設施及工具。
2. 任何監督機關依據歐盟個資規則第 58 條第 2 項，行使被下列輔助之職權

4. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may charge a reasonable fee based on administrative costs, or refuse to act on the request. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

Article 58

Powers

1. Each supervisory authority shall have all of the following investigative powers:
 - (a) to order the controller and the processor, and, where applicable, the controller's or the processor's representative to provide any information it requires for the performance of its tasks;
 - (b) to carry out investigations in the form of data protection audits;
 - (c) to carry out a review on certifications issued pursuant to Article 42(7);
 - (d) to notify the controller or the processor of an alleged infringement of this Regulation;
 - (e) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its tasks;
 - (f) to obtain access to any premises of the controller and the processor, including to any data processing equipment and means, in accordance with Union or Member State procedural law.
2. Each supervisory authority shall have all of the following corrective powers:

- (a) 警告資料管理者或受託者其預計採行之處理流程可能違反歐盟個資規則。
- (b) 警告資料管理者或受託者其所採行違反歐盟個資規則之處理流程。
- (c) 向資料管理者或受託者指明，滿足資料主體依據歐盟個資規則所享有權利。
- (d) 向資料管理者或受託者指明，其處理流程應透過特定方式、於特定時間內達到歐盟個資規則之要求。
- (e) 向資料管理者指明，通知個人資料受侵害之資料主體。
- (f) 處以暫時或永久的限制處理，包括禁止處理程序。
- (g) 個人資料之更正或刪除或依據第16、17及18條之限制處理，以及通知依據第17條第2項及第19條公開個人資料之接收者，應採行之措施。
- (h) 廢止認證或要求認證機關廢止依據第42及43條核發之認證，或要求認證機關停止認證，當不符或或不再符合認證之標準。
- (i) 依據第83條處以罰金，依據個案之情況加上或以第58條第2項所定措施取代之。
- (j) 暫時停止向位於第三國或國際組織之接收者傳輸資料。

- (a) to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;
- (b) to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;
- (c) to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;
- (d) to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;
- (e) to order the controller to communicate a personal data breach to the data subject;
- (f) to impose a temporary or definitive limitation including a ban on processing;
- (g) to order the rectification or erasure of personal data or restriction of processing pursuant to Articles 16, 17 and 18 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 17(2) and Article 19;
- (h) to withdraw a certification or to order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or to order the certification body not to issue certification if the requirements for the certification are not or are no longer met;
- (i) to impose an administrative fine pursuant to Article 83, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case;
- (j) to order the suspension of data flows to a recipient in a third country or to an international organisation.

3. 任何監督機關依據歐盟個資規則第 58 條第 3 項，行使下列許可及諮詢之職權
 - (a) 依據第36條之事前協商程序，提供資料管理者諮詢。
 - (b) 對於所有與個人資料保護相關之問題，自行或經詢問向各國國會、各成員國政府，或在符合各成員國法令之規定下，向其他機構及單位以及公眾提供意見。
 - (c) 核准依據第36條第5項之處理，當成員國之法令要求此種事前許可時。
 - (d) 提出意見，並批准依據第40條第5項擬定之行為準則草案。
 - (e) 依據第43條對認證機關進行認證。
 - (f) 發給與第42條第5項相符之認證，及批准對於認證之評論。
 - (g) 依據第28條第8項及第46條第2項擬定資料保護之標準條款。
 - (h) 依據第46條第3項第a款許可契約條款。
 - (i) 依據第46條第3項第b款核准行政協約。
 - (j) 依據第47條許可內部具拘束力之規範。
4. 監督機關行使歐盟個資規則所賦予職權，應同時提供適當保障，包括有效之一致性。

3. Each supervisory authority shall have all of the following authorisation and advisory powers:
 - (a) to advise the controller in accordance with the prior consultation procedure referred to in Article 36;
 - (b) to issue, on its own initiative or on request, opinions to the national parliament, the Member State government or, in accordance with Member State law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data;
 - (c) to authorise processing referred to in Article 36(5), if the law of the Member State requires such prior authorisation;
 - (d) to issue an opinion and approve draft codes of conduct pursuant to Article 40(5);
 - (e) to accredit certification bodies pursuant to Article 43;
 - (f) to issue certifications and approve criteria of certification in accordance with Article 42(5);
 - (g) to adopt standard data protection clauses referred to in Article 28(8) and in point (d) of Article 46(2);
 - (h) to authorise contractual clauses referred to in point (a) of Article 46(3);
 - (i) to authorise administrative arrangements referred to in point (b) of Article 46(3);
 - (j) to approve binding corporate rules pursuant to Article 47.
4. The exercise of the powers conferred on the supervisory authority pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedy and due process, set out in Union and Member State law in accordance with the Charter.

5. 得透過法令賦予其監督機關向司法機關舉發違反本規則行為之權限，同時進行或參與該司法程序，以落實歐盟個資規則之規定。

6. 各成員國應以法律規定，其監督機關應有依據第 1、2 及第 3 項規定之額外權限。對於該權限之形式應不得阻礙第七章之有效實施。

第 59 條 活動報告

歐盟個資規則第 59 條課予監督機關應就其業務提交年度報告，其中包含舉發違規之清單及依據第 58 條第 2 項採行之相應措施。該報告除應轉知各成員國之國會、政府及其他依據各成員國法令所指定之機關外，亦應對公眾、執委會及歐盟個人資料保護歐盟個資委員會公開。

第七章 合作與協調

第一節 合作

第 60 條 最高監督機關與其他監督機關間合作與協調

1. 最高監督機關應與其他有關監督機關，依照本條之規定，努力達成共識。最高監督機關和有關監管機關應當互相交換所有相關信

5. Each Member State shall provide by law that its supervisory authority shall have the power to bring infringements of this Regulation to the attention of the judicial authorities and where appropriate, to commence or engage otherwise in legal proceedings, in order to enforce the provisions of this Regulation.
6. Each Member State may provide by law that its supervisory authority shall have additional powers to those referred to in paragraphs 1, 2 and 3. The exercise of those powers shall not impair the effective operation of Chapter VII.

Article 59

Activity reports

Each supervisory authority shall draw up an annual report on its activities, which may include a list of types of infringement notified and types of measures taken in accordance with Article 58(2). Those reports shall be transmitted to the national parliament, the government and other authorities as designated by Member State law. They shall be made available to the public, to the Commission and to the Board.

CHAPTER VII

Cooperation and consistency

Section 1

Cooperation

Article 60

Cooperation between the lead supervisory authority and the other supervisory authorities concerned

1. The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article in an

息。

2. 最高監督機關可隨時要求其他監督機關，根據第 61 條規定提供互助，並可以依照第 62 條的規定進行聯合行動，特別有關進行調查或監督有關於另一個成員國許可之管理者或受託者進行處理之情況。

3. 最高監督機關應當立即向有關之其他監督機關通報相關情況。其不遲延地向其他有關監管機構提出決定草案，請求其意見以進行適當考慮。

4. 根據本條第 3 項徵求意見之四週內，其他有關監管機關針對該決定草案，提出有關連且具理由之反對意見時，若主管機關不採納該反對意見，或者認為反對意見不相關或合理時，應將事項提交第 63 條所規定之一致化機制。

5. 當最高監督機關欲按照有關和具理由之反對意見時，應當向其他監督管理機構提出修改之決定草案。該修改後之決定草案，應在兩週內按照第 4 項之規定程序進行。

6. 其他有關監督機關沒有在第 4、5 項提及之期限內，反對最高監督機關提出之決定草案時，最高監督機關和有關監督機關應當被

endeavour to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information with each other.

2. The lead supervisory authority may request at any time other supervisory authorities concerned to provide mutual assistance pursuant to Article 61 and may conduct joint operations pursuant to Article 62, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.
3. The lead supervisory authority shall, without delay, communicate the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views.
4. Where any of the other supervisory authorities concerned within a period of four weeks after having been consulted in accordance with paragraph 3 of this Article, expresses a relevant and reasoned objection to the draft decision, the lead supervisory authority shall, if it does not follow the relevant and reasoned objection or is of the opinion that the objection is not relevant or reasoned, submit the matter to the consistency mechanism referred to in Article 63.
5. Where the lead supervisory authority intends to follow the relevant and reasoned objection made, it shall submit to the other supervisory authorities concerned a revised draft decision for their opinion. That revised draft decision shall be subject to the procedure referred to in paragraph 4 within a period of two weeks.
6. Where none of the other supervisory authorities concerned has objected to the draft decision submitted by the lead supervisory authority within

視為與該草案達成共識，同意並受其約束。

7. 最高監督機關應作成並將該決定通知主要許可或唯一許可之管理者或受託者，依照個案情況，並通知其他有關監督機關及委員會系爭決定，包括有關事實及基礎之摘要。受理申訴之監督機關應通知該決定之申訴人。
8. 第 7 項之相反情況下，當申訴被駁回或被拒絕者，接受申訴之監督機關應當作出該項決定並通知申訴人，以及通知其管理者。
9. 最高監督機關和有關監督機關同意駁回或拒絕部分申訴，並對該申訴之其他部分採取行動時，應依照不同事項作成個別之決定。最高監督機關應作成有關管理者行為之部分該決定，並將此通知成員國境內主要許可或唯一許可之管理者或受託者相關之申訴，而受理申訴之監督機關應作成有關駁回或拒絕申訴之部分決定，並將此通知該申訴者及相關之管理者與受託者。
10. 在最高監督機關根據第 7 項和第 9 項作出決定後，管理者及受託者應採取必要措施，確保於其在歐盟內獲得許可範圍內有關之處理活動遵守該決定。轉理者或受託者應當向最高監督機關通報為

the period referred to in paragraphs 4 and 5, the lead supervisory authority and the supervisory authorities concerned shall be deemed to be in agreement with that draft decision and shall be bound by it.

7. The lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds. The supervisory authority with which a complaint has been lodged shall inform the complainant on the decision.
8. By derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.
9. Where the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of a complaint and to act on other parts of that complaint, a separate decision shall be adopted for each of those parts of the matter. The lead supervisory authority shall adopt the decision for the part concerning actions in relation to the controller, shall notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State and shall inform the complainant thereof, while the supervisory authority of the complainant shall adopt the decision for the part concerning dismissal or rejection of that complaint, and shall notify it to that complainant and shall inform the controller or processor thereof.
10. After being notified of the decision of the lead supervisory authority pursuant to paragraphs 7 and 9, the controller or processor shall take the necessary measures to ensure compliance with the decision as

遵守決定而採取之措施，以及通知其他有關監督機構。

11. 在特殊情況下，有關監督機關若有理由認為，為保護資料主體之利益，有迫切採取行動之需要時，第 66 條關於緊急程序規定即應適用。
12. 最高監督機關和其他有關監督機關應以電子之方式以及使用標準化格式，將本條所要求之資訊提供給他方。

第 61 條 **互助**

1. 監督機關應當互相提供相關資訊和相互協助，以一致地方式實施和適用本規定，且應制定相互有效合作之措施。相互協助應尤其涉及資訊要求和監督措施，例如事先授權和協商、檢視和調查之請求。
2. 每個監督機關應當採取一切必要措施，在收到請求後至遲一個月內，回覆另一監督機關之請求。該措施尤其可能包括傳達關於進行調查之有關資料。
3. 請求援助應包含所有必要之資訊，包括請求之目的和原因。交換資訊僅用於該請求作成之目的。

regards processing activities in the context of all its establishments in the Union. The controller or processor shall notify the measures taken for complying with the decision to the lead supervisory authority, which shall inform the other supervisory authorities concerned.

11. Where, in exceptional circumstances, a supervisory authority concerned has reasons to consider that there is an urgent need to act in order to protect the interests of data subjects, the urgency procedure referred to in Article 66 shall apply.
12. The lead supervisory authority and the other supervisory authorities concerned shall supply the information required under this Article to each other by electronic means, using a standardised format.

Article 61

Mutual assistance

1. Supervisory authorities shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and investigations.
2. Each supervisory authority shall take all appropriate measures required to reply to a request of another supervisory authority without undue delay and no later than one month after receiving the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation.
3. Requests for assistance shall contain all the necessary information, including the purpose of and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.

4. 接收之監督機關不得拒絕遵守該請求，除非：
 - (a) 其不符合請求之主題，不是和執行該請求之措施；或者
 - (b) 接收請求之監督機構遵守該請求將違反本規則或歐盟、成員國法時。
5. 接收請求之監督機關應通知請求之監督機關相關之結果，如個案情況而定，以及為回應該請求所採取之措施。接收請求之監督機關應依照第 4 項之規定，提出拒絕配合之原因。
6. 接收請求之監督機關應，基於法律要求，以電子方式提供其他監督機關要求之信息，並採用標準格式。
7. 受請求之監督機關不得基於互助而要求對其採取之行動收取費用。監督機關可就特殊情況下提供互助而產生的具體支出達成協議。
8. 當監督機關收到另一監督機關之請求後 1 個月內若未提供本條第 5 項所述資料時，提出請求之監督機關可依照第 55 條第 1 項，對其成員國領域採取暫時性措施。在此情況下，應推定成立根據第 66 條第 1 項規定有關採取行動之迫切需要，並根據第 66 條第 2 項請求委員會作出緊急之約束性決定。

4. The requested supervisory authority shall not refuse to comply with the request unless:
 - (a) it is not competent for the subject-matter of the request or for the measures it is requested to execute; or
 - (b) compliance with the request would infringe this Regulation or Union or Member State law to which the supervisory authority receiving the request is subject.
5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress of the measures taken in order to respond to the request. The requested supervisory authority shall provide reasons for any refusal to comply with a request pursuant to paragraph 4.
6. Requested supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means, using a standardised format.
7. Requested supervisory authorities shall not charge a fee for any action taken by them pursuant to a request for mutual assistance. Supervisory authorities may agree on rules to indemnify each other for specific expenditure arising from the provision of mutual assistance in exceptional circumstances.
8. Where a supervisory authority does not provide the information referred to in paragraph 5 of this Article within one month of receiving the request of another supervisory authority, the requesting supervisory authority may adopt a provisional measure on the territory of its Member State in accordance with Article 55(1). In that case, the urgent need to act under Article 66(1) shall be presumed to be met and require an urgent binding decision from the Board pursuant to Article 66(2).

9. 歐盟執委會得，以採取立法行為，具體化本條規定之互相協助之形式與程序，以及在監督機關之間及監督機關與委員會之間以電子方式交換信息之規定，尤其是本條第 6 項所稱之標準格式。該立法行為應依照第 93 條第 2 項所述審查程序為之。

第 62 條 監督機關聯合行動

1. 監督機構應依個案情況進行聯合行動，包括聯合調查和共同執行措施時，涉及其他成員國監督機關之成員或人員之參與。
2. 當管理者或受託者已獲得多數成員國許可，或者多於一個成員國之大量資料主體將受處理程序之嚴重影響，該成員國其中一監督機關應有權參與該聯合行動。相關之監督機關得根據第 56 條第 1 項或第 4 項規定，邀請各成員國監督機構參與該聯合行動，且監督機關應及時回覆參與與否。
3. 監督機關可以根據成員國法律，並藉借調監督機關授權所授予其權力，包括對借調監督機關的成員或參與聯合行動的人員之調查權，或者根據主持監督機關成員國法律許可，使借調監察機關成員或人員，依照借調監督機關成員國法律行使調查權力。這種調查權僅能在主持監督機關之成員或人員指導下進行。借調監督機

9. The Commission may, by means of implementing acts, specify the format and procedures for mutual assistance referred to in this Article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board, in particular the standardised format referred to in paragraph 6 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

Article 62

Joint operations of supervisory authorities

1. The supervisory authorities shall, where appropriate, conduct joint operations including joint investigations and joint enforcement measures in which members or staff of the supervisory authorities of other Member States are involved.
2. Where the controller or processor has establishments in several Member States or where a significant number of data subjects in more than one Member State are likely to be substantially affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in joint operations. The supervisory authority which is competent pursuant to Article 56(1) or (4) shall invite the supervisory authority of each of those Member States to take part in the joint operations and shall respond without delay to the request of a supervisory authority to participate.
3. A supervisory authority may, in accordance with Member State law, and with the seconding supervisory authority's authorisation, confer powers, including investigative powers on the seconding supervisory authority's members or staff involved in joint operations or, in so far as the law of the Member State of the host supervisory authority permits,

關之成員或人員應遵守主持監督機關成員國之法律。

4. 根據第 1 項之規定，借調監督機構的工作人員於另一成員國中運作時，主持監督機關之成員國應對其行為負責，包括對其在職務期間，依照其運作所在位置成員國之法律，構成任何損害之責任時。
5. 在其境內發生損害之成員國，應在得適用於造成該損害人員之條件時，補償該損害。在其他成員國中造成對他人損害借調機關之員工，其成員國應全額補償該另一個成員國代表其支付予該受害者之款項。
6. 在不影響行使其對第三方之權利情況下，除第 5 項外，每個成員國應在第 1 項規定的情況中，不得要求另一成員國償還與所涉及規定於第 4 項中損害有關的損失。
7. 如果在表定之聯合行動，監督機關未在一個月內遵守本條第 2 項第 2 款規定之義務，其他監督機關可根據第 55 條的規定，在其成員國領土內通過暫時性措施。於上開情況中，應推定符合第 66

allow the seconding supervisory authority's members or staff to exercise their investigative powers in accordance with the law of the Member State of the seconding supervisory authority. Such investigative powers may be exercised only under the guidance and in the presence of members or staff of the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the Member State law of the host supervisory authority.

4. Where, in accordance with paragraph 1, staff of a seconding supervisory authority operate in another Member State, the Member State of the host supervisory authority shall assume responsibility for their actions, including liability, for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
5. The Member State in whose territory the damage was caused shall make good such damage under the conditions applicable to damage caused by its own staff. The Member State of the seconding supervisory authority whose staff has caused damage to any person in the territory of another Member State shall reimburse that other Member State in full any sums it has paid to the persons entitled on their behalf.
6. Without prejudice to the exercise of its rights *vis-à-vis* third parties and with the exception of paragraph 5, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement from another Member State in relation to damage referred to in paragraph 4.
7. Where a joint operation is intended and a supervisory authority does not, within one month, comply with the obligation laid down in the second sentence of paragraph 2 of this Article, the other supervisory

條第 1 項規定之迫切採取行動之需要，並要求委員會依據第 66 條第 2 項規定，作出意見或具有約束力的決定。

第二節 一致性

第 63 條 一致化機制

為有助於歐盟境內有關本規則一致之適用，監督機關應透過本節規範之一致化機制相互配合，並在相關情況下與歐盟執委會進行合作。

第 64 條 委員會之意見

1. 委員會應作成意見，若適格之監督機關打算採取任何下述措施時。為此，適格之監督機關應將決定之草案通知委員會，當：
 - (a) 為符合第 35 條第 4 項之規定，通過資料保護影響評估之要求，列出處理程序操作清單；
 - (b) 涉及根據第 40 條第 7 項之問題，即系爭行為準則草案該準則之修改、延長是否符合本規則時；

authorities may adopt a provisional measure on the territory of its Member State in accordance with Article 55. In that case, the urgent need to act under Article 66(1) shall be presumed to be met and require an opinion or an urgent binding decision from the Board pursuant to Article 66(2).

Section 2 Consistency

Article 63 Consistency mechanism

In order to contribute to the consistent application of this Regulation throughout the Union, the supervisory authorities shall cooperate with each other and, where relevant, with the Commission, through the consistency mechanism as set out in this Section.

Article 64 Opinion of the Board

1. The Board shall issue an opinion where a competent supervisory authority intends to adopt any of the measures below. To that end, the competent supervisory authority shall communicate the draft decision to the Board, when it:
 - (a) aims to adopt a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 35(4);
 - (b) concerns a matter pursuant to Article 40(7) whether a draft code of conduct or an amendment or extension to a code of conduct complies with this Regulation;

- (c) 為批准依據第 41 條第 3 項有關認證機構之標準，或符合第 43 條第 3 款規定之認證機構；
 - (d) 為決定第 46 條第 2 項第 d 款和第 28 條第 8 項中所稱定型化資料保護條款；
 - (e) 為在授權第 46 條第 3 項第 a 款提及之契約條款；或
 - (f) 為依據第 47 條所規範批准內部具拘束力條款。
2. 任何監督機關、委員會或歐盟執委會之主席，得要求多個成員國中，有關一般適用或產生影響之事宜，皆應由委員會審查以獲得意見，尤其係當監督機關並未履行第 61 條規定或第 62 條有關共同行動中之互助義務。
3. 於前兩項之情況，委員會應作成並發布該請求事項之意見，若其過去並未就同一事項作出意見時。該意見應於八週內，並通過委員會成員以普通多數決而作成。該期間得展延 6 週，考量到該事項主旨之複雜性時。有關第 1 項規定之決定草稿應在委員會成員間傳閱以符合第 5 項規定時，在主席指定之合理期限內沒有異議之成員，應被視為與決定草案合意。
4. 監督機關和歐盟執委會應立即將相關資訊以電子方式通知委員會，並使用標準化之格式，包括事實摘要、決定草案、對於作成該措施必要性之理由，以及其他有關監督機關之意見。

- (c) aims to approve the criteria for accreditation of a body pursuant to Article 41(3) or a certification body pursuant to Article 43(3);
 - (d) aims to determine standard data protection clauses referred to in point (d) of Article 46(2) and in Article 28(8);
 - (e) aims to authorise contractual clauses referred to in point (a) of Article 46(3); or
 - (f) aims to approve binding corporate rules within the meaning of Article 47.
2. Any supervisory authority, the Chair of the Board or the Commission may request that any matter of general application or producing effects in more than one Member State be examined by the Board with a view to obtaining an opinion, in particular where a competent supervisory authority does not comply with the obligations for mutual assistance in accordance with Article 61 or for joint operations in accordance with Article 62.
 3. In the cases referred to in paragraphs 1 and 2, the Board shall issue an opinion on the matter submitted to it provided that it has not already issued an opinion on the same matter. That opinion shall be adopted within eight weeks by simple majority of the members of the Board. That period may be extended by a further six weeks, taking into account the complexity of the subject matter. Regarding the draft decision referred to in paragraph 1 circulated to the members of the Board in accordance with paragraph 5, a member which has not objected within a reasonable period indicated by the Chair, shall be deemed to be in agreement with the draft decision.
 4. Supervisory authorities and the Commission shall, without undue delay, communicate by electronic means to the Board, using a standardised format any relevant information, including as the case

5. 委員會主席應立即以電子方式通知：
 - (a) 委員會及歐盟執委會成員將其收到之相關資訊，使用標準化格式傳達。委員會秘書處在必要時提供相關資訊之翻譯；及
 - (b) 個案情況中第 1 項和第 2 項所稱之監督機關，以及歐盟執委會所認定並決定公開。
6. 主管機關不得在第 3 項規定期限內，通過依照第 1 項規定之決定草案。
7. 第 1 項所述的監督機構應充分考慮委員會之意見，並應在收到意見後兩週內以電子方式向委員會主席回報是否維持或修改其決定草案，若有修改時，回報該修改之決定草案並應使用標準格式。
8. 有關監督機關在本條第 7 項所定期限內通知委員會主席，且不願全部或部分遵守委員會之意見時，應提供相關之理由，並適用第 65 條第 1 項規定。

第 65 條

委員會解決爭端機制

1. 為確保本條例在個別情況下的正確一致適用，委員會在以下情況下應當作出具有約束力的決定：

may be a summary of the facts, the draft decision, the grounds which make the enactment of such measure necessary, and the views of other supervisory authorities concerned.

5. The Chair of the Board shall, without undue, delay inform by electronic means:
 - (a) the members of the Board and the Commission of any relevant information which has been communicated to it using a standardised format. The secretariat of the Board shall, where necessary, provide translations of relevant information; and
 - (b) the supervisory authority referred to, as the case may be, in paragraphs 1 and 2, and the Commission of the opinion and make it public.
6. The competent supervisory authority shall not adopt its draft decision referred to in paragraph 1 within the period referred to in paragraph 3.
7. The supervisory authority referred to in paragraph 1 shall take utmost account of the opinion of the Board and shall, within two weeks after receiving the opinion, communicate to the Chair of the Board by electronic means whether it will maintain or amend its draft decision and, if any, the amended draft decision, using a standardised format.
8. Where the supervisory authority concerned informs the Chair of the Board within the period referred to in paragraph 7 of this Article that it does not intend to follow the opinion of the Board, in whole or in part, providing the relevant grounds, Article 65(1) shall apply.

Article 65

Dispute resolution by the Board

1. In order to ensure the correct and consistent application of this Regulation in individual cases, the Board shall adopt a binding

- (a) 在第 60 條第 4 項提及之情況下，有關監督機關對最高機關決定草案，提出了有理由之相關反對意見，或者最高機關駁回了該不相關或不合理之反對意見。具有約束力之決定應考量所有與該事項相關且有理由之異議，特別係是否違反本規則之行為；
 - (b) 對於有關監督機關是否係為主要許可之適格機關有意見衝突；
 - (c) 當適格之監督機關依照第 64 條第 1 項規定，並未要求委員會之意見，或並未遵守委員會依該條作成之意見時。於該情況下，任何有關之監督機關或歐盟執委會應將該情況通知委員會。
2. 前項規定之決定，應於一個月內針對該提交事項，由委員會成員三分之二多數通過該其間得基於事項複雜程度展延一個月。前項規定之決定應附記理由，並對該最高監督機關及所有有關監督機關作成且有拘束力。
3. 當委員會無法於前項其間內作出該決定時，在委員會成員以簡單多數通過，在第 2 段提及的第二個月期滿後兩週內作出決定。委員會成員如果意見分裂，該決定應由主席投票表決通過。

decision in the following cases:

- (a) where, in a case referred to in Article 60(4), a supervisory authority concerned has raised a relevant and reasoned objection to a draft decision of the lead authority or the lead authority has rejected such an objection as being not relevant or reasoned. The binding decision shall concern all the matters which are the subject of the relevant and reasoned objection, in particular whether there is an infringement of this Regulation;
 - (b) where there are conflicting views on which of the supervisory authorities concerned is competent for the main establishment;
 - (c) where a competent supervisory authority does not request the opinion of the Board in the cases referred to in Article 64(1), or does not follow the opinion of the Board issued under Article 64. In that case, any supervisory authority concerned or the Commission may communicate the matter to the Board.
2. The decision referred to in paragraph 1 shall be adopted within one month from the referral of the subject-matter by a two-thirds majority of the members of the Board. That period may be extended by a further month on account of the complexity of the subject-matter. The decision referred to in paragraph 1 shall be reasoned and addressed to the lead supervisory authority and all the supervisory authorities concerned and binding on them.
3. Where the Board has been unable to adopt a decision within the periods referred to in paragraph 2, it shall adopt its decision within two weeks following the expiration of the second month referred to in paragraph 2 by a simple majority of the members of the Board. Where the members of the Board are split, the decision shall be adopted by the vote of its Chair.

4. 有關監督機關不得於將該事項交由委員會後，在第 2 項和第 3 項規定期間內，通過根據第 1 項向委員會提交事項之決定。
5. 委員會主席應立即將該依據第 1 項所述決定，通知有關監督機關。並亦應同樣通知歐盟執委會。在監督機關已被通知第 6 項規定之最終決定後，該決定應立即公布於委員會之網站上。
6. 最高監督機關，或依個案情況，該受理申訴之機關，應該基於本條第 1 項之決定，作出最終決定，並不得有不適當拖延，最遲在委員會通知其決定後一個月內作成。最高監督機關，或依個案情況，該受理申訴之機關，應將其最終決定分別通知管理者、受託者及資料主體之日期通知委員會。有關監督機關之最終決定應依據第 60 條第 7、8 及第 9 項作成，且該最終決定參照本條第 1 項規範之決定應具體化該項規定之決定，並依照本條第 5 項之規定，將公布在委員會之網站上。應將本條第 1 項規範之決定作為最終決定之附件。

第 66 條

緊急措施

1. 於特殊情況下，有關監督機關認為有急迫必要採取行動始得保障資料主體之權利與自由時，其得，作為第 63 條規定一致化機制、以及第 64 及第 65 條，或第 60 條規定程序之例外狀況，立即作出暫時性處分，此係對其國內產生法律效力之措施，且指定

4. The supervisory authorities concerned shall not adopt a decision on the subject matter submitted to the Board under paragraph 1 during the periods referred to in paragraphs 2 and 3.
5. The Chair of the Board shall notify, without undue delay, the decision referred to in paragraph 1 to the supervisory authorities concerned. It shall inform the Commission thereof. The decision shall be published on the website of the Board without delay after the supervisory authority has notified the final decision referred to in paragraph 6.
6. The lead supervisory authority or, as the case may be, the supervisory authority with which the complaint has been lodged shall adopt its final decision on the basis of the decision referred to in paragraph 1 of this Article, without undue delay and at the latest by one month after the Board has notified its decision. The lead supervisory authority or, as the case may be, the supervisory authority with which the complaint has been lodged, shall inform the Board of the date when its final decision is notified respectively to the controller or the processor and to the data subject. The final decision of the supervisory authorities concerned shall be adopted under the terms of Article 60(7), (8) and (9). The final decision shall refer to the decision referred to in paragraph 1 of this Article and shall specify that the decision referred to in that paragraph will be published on the website of the Board in accordance with paragraph 5 of this Article. The final decision shall attach the decision referred to in paragraph 1 of this Article.

Article 66

Urgency procedure

1. In exceptional circumstances, where a supervisory authority concerned considers that there is an urgent need to act in order to protect the rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Articles 63, 64 and 65

之有效期限不得超過三個月。監督機關得立即將該措施及採取之理由，通知其他有關監督機關、委員會及歐盟執委會。

2. 當監督機關採取前項之措施，並考量該迫切需要而將採用最後手段時，其得請求委員會作出緊急意見書或有拘束力之緊急決定，並提供該請求意見書或建議之理由。
3. 任何監督機關得依照個案情況，向委員會請求緊急自見書或有拘束力之緊急決定，倘若有迫切需要採取行動之情況下，適格之監督機關卻沒有採取適當措施，且基於保障資料主體之權利及自由，並提供該請求作成意見書或決定之理由，包括該須採取行動之迫切需要。
4. 作為第 64 條第 3 項及第 65 條第 2 項之例外，本條第 2 及第 3 項規定之緊急意見書或有拘束力之決定，委員會應於兩週內，以簡單多數決之方式決定之。

第 67 條

資訊交換

歐盟執委會得採取大範圍之立法行動，以具體化有關監督機關、監督機關與委員會之間等，以電子方式交換資訊之配置，尤其係有關第 64 條規定之標準化格式。

or the procedure referred to in Article 60, immediately adopt provisional measures intended to produce legal effects on its own territory with a specified period of validity which shall not exceed three months. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them to the other supervisory authorities concerned, to the Board and to the Commission.

2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion or an urgent binding decision from the Board, giving reasons for requesting such opinion or decision.
3. Any supervisory authority may request an urgent opinion or an urgent binding decision, as the case may be, from the Board where a competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the rights and freedoms of data subjects, giving reasons for requesting such opinion or decision, including for the urgent need to act.
4. By derogation from Article 64(3) and Article 65(2), an urgent opinion or an urgent binding decision referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the Board.

Article 67

Exchange of information

The Commission may adopt implementing acts of general scope in order to specify the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board, in particular the standardised

該立法行動應依照第 93 條第 2 項之審查程序而為之。

第三節 歐洲個人資料保護委員會

第 68 條 歐洲個人資料保護委員會

1. 歐洲個人資料保護委員會（下稱委員會）係歐盟機構之一，具有獨立法人格。
2. 委員會係由主席為代表。
3. 委員會係由各成員國監督機關之首長，以及歐盟個人資料保護監察機構之代表組成。
4. 當成員國設有一個以上之監督機關負責監督本條例規範之適用時，應依據該成員國之規範，任命一共同之代表，作為委員會之成員。
5. 歐盟執委會有權參與委員會之活動及會議，但並無表決權。歐盟執委會應有權任命一代表參與委員會。委員會之主席應將相關運作情況告知執委會。
6. 於第 65 條規範時情況發生時，歐盟個人資料保護監察機構應僅對於適用於歐盟機關、機構、辦事處和單位之原則和規範是否實質上與本規則一致之事項，具有投票權。

format referred to in Article 64.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

Section 3

European data protection board

Article 68

European Data Protection Board

1. The European Data Protection Board (the ‘Board’) is hereby established as a body of the Union and shall have legal personality.
2. The Board shall be represented by its Chair.
3. The Board shall be composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor, or their respective representatives.
4. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, a joint representative shall be appointed in accordance with that Member State's law.
5. The Commission shall have the right to participate in the activities and meetings of the Board without voting right. The Commission shall designate a representative. The Chair of the Board shall communicate to the Commission the activities of the Board.
6. In the cases referred to in Article 65, the European Data Protection Supervisor shall have voting rights only on decisions which concern principles and rules applicable to the Union institutions, bodies, offices and agencies which correspond in substance to those of this Regulation.

第 69 條

委員會之獨立性

1. 委員會應得獨立依照第 70 條、第 71 條之規定，履行其職務或行使其職權。
2. 未影響其他歐盟執委會本於第 70 條第 1 項第 b 款，以及第 70 條第 2 項之請求，委員會應於履行其職務或行使其職權，不須諮詢或受任何單位之指示。

第 70 條

委員會之任務

1. 委員會應確保本規則之齊一適用。為達該目的，委員會應率先或適當時基於執委會之請求，應具體執行：
 - (a) 監督及確保於本規則第 64 條及第 65 條所稱情況，歐盟個資規則在不影響國內監督機關任務之前提下，正確地被適用；
 - (b) 提供歐盟執委會對於與歐盟個人資料保護相關疑義之諮詢，包括對於修訂歐盟個資規則之提議；
 - (c) 提供歐盟執委會關於內部具拘束力之個資保護規範中，就資料管理者、受託者及監督機關間資訊交換之格式與程序之諮詢；
 - (d) 針對第 17 條第 2 項，自一般公開之通訊服務中刪除個人資料之連結、複本或副本之程序，擬定方針、建議及操作流程；

Article 69

Independence

1. The Board shall act independently when performing its tasks or exercising its powers pursuant to Articles 70 and 71.
2. Without prejudice to requests by the Commission referred to in point (b) of Article 70(1) and in Article 70(2), the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from anybody.

Article 70

Tasks of the Board

1. The Board shall ensure the consistent application of this Regulation. To that end, the Board shall, on its own initiative or, where relevant, at the request of the Commission, in particular:
 - (a) monitor and ensure the correct application of this Regulation in the cases provided for in Articles 64 and 65 without prejudice to the tasks of national supervisory authorities;
 - (b) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;
 - (c) advise the Commission on the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules;
 - (d) issue guidelines, recommendations, and best practices on procedures for erasing links, copies or replications of personal data from publicly available communication services as referred to in Article 17(2);

- (e) 自主、應其成員或執委會之請求進行審查，與本規則施行相關爭議，並制定方針、建議及實務操作，以達確保本規則其一致性適用之目的；
- (f) 依本項第 e 款擬定方針、建議及最佳實務操作，以進一步規範依第 22 條第 2 項與剖析相關決定作成之標準及條件；
- (g) 依本項第 e 款擬定方針、建議及最佳實務操作，以確認個人資料保護之侵害以及確認第 33 條第 1 項及第 2 項所稱即時性，以及資料管理者或受託者應通報個人資料外洩之特殊情況；
- (h) 依本項第 e 款擬定方針、建議及最佳實務操作，規範個人資料保護之侵害可能會導致第 34 條第 1 項所稱對自然人之權利自由造成高度風險之情況；
- (i) 依本項第 e 款擬定方針、建議及操作流程，就第 47 條對傳輸個人資料所定標準及要求，其中包括對資料管理者或受託者具拘束力之內部個資保護規定，以及對資料主體個人資料保護之其他必要要求，為進一步之規範；
- (j) 依本項第 e 款擬定方針、建議及最佳實務操作，針對依據第

- (e) examine, on its own initiative, on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation;
- (f) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for further specifying the criteria and conditions for decisions based on profiling pursuant to Article 22(2);
- (g) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for establishing the personal data breaches and determining the undue delay referred to in Article 33(1) and (2) and for the particular circumstances in which a controller or a processor is required to notify the personal data breach;
- (h) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph as to the circumstances in which a personal data breach is likely to result in a high risk to the rights and freedoms of the natural persons referred to in Article 34(1).
- (i) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for the purpose of further specifying the criteria and requirements for personal data transfers based on binding corporate rules adhered to by controllers and binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned referred to in Article 47;
- (j) issue guidelines, recommendations and best practices in

49 條第 1 項傳輸個人資料之標準及要求，為進一步規範；

- (k) 制定關於監督機關依據第 58 條第 1 項、第 2 項及第 3 項所採行措施及依據第 83 條制訂罰鍰的方針；
- (l) 檢視本規則第 70 條第 1 項第 e 款及第 f 款所稱方針、建議及操作流程之實務運作；
- (m) 依本項第 e 款擬定方針、建議及最佳實務操作，以確認對於自然人依第 54 條第 2 項通報違反本規則之共同處理程序；
- (n) 推動訂定本規則第 40 條所稱行為準則及第 42 條資料保護專門認證程序及資料保護標章及審查標章之建立；
- (o) 依據歐盟個資規則第 43 條認證負責驗證之單位並對其進行經常性之審核，並對依據歐盟個資規則第 43 條第 6 項通過認證之單位以及依據歐盟個資規則第 42 條第 7 項於第三國認證許可之資料管理者或受託者實施公開目錄；
- (p) 明確規範第 43 條第 3 項所稱依據第 42 條對認證單位進行之驗證；
- (q) 針對於依據本規則第 43 條第 8 項所定認證要件，向歐盟執委會提交意見；
- (r) 針對於依據本規則第 12 條第 7 項所規範之圖示，向歐盟執委會提交意見；

accordance with point (e) of this paragraph for the purpose of further specifying the criteria and requirements for the personal data transfers on the basis of Article 49(1);

- (k) draw up guidelines for supervisory authorities concerning the application of measures referred to in Article 58(1), (2) and (3) and the setting of administrative fines pursuant to Article 83;
- (l) review the practical application of the guidelines, recommendations and best practices referred to in points (e) and (f);
- (m) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for establishing common procedures for reporting by natural persons of infringements of this Regulation pursuant to Article 54(2);
- (n) encourage the drawing-up of codes of conduct and the establishment of data protection certification mechanisms and data protection seals and marks pursuant to Articles 40 and 42;
- (o) carry out the accreditation of certification bodies and its periodic review pursuant to Article 43 and maintain a public register of accredited bodies pursuant to Article 43(6) and of the accredited controllers or processors established in third countries pursuant to Article 42(7);
- (p) specify the requirements referred to in Article 43(3) with a view to the accreditation of certification bodies under Article 42;
- (q) provide the Commission with an opinion on the certification requirements referred to in Article 43(8);
- (r) provide the Commission with an opinion on the icons referred to in Article 12(7);

- (s) 向歐盟執委會提交對於判斷第三國或國際組織所提供適當保護水準之意見，包括評估該第三國、特定區域、該第三國或國際組織內之一或多個產業是否提供適當之保護水準。為達成上述目的，歐盟執委會應提供歐盟個資委員會所有其所需文件，其中包括與第三國政府、特定區域或特定部門或國際組織之通訊；

- (t) 對於本規則第 64 條第 1 項協調程序中監督機關所擬決議草稿，依據本規則第 64 條第 2 項所提交事務，以及依據本規則第 65 條制定具拘束力之決議，包括本規則第 66 條所定情況，提交意見；

- (u) 促進監督機關間之共同合作與資訊及操作流程之有效雙邊及多邊交流；

- (v) 推動培訓計畫及支援監督機關間之人事調動，包括與第三國或國際組織間；

- (w) 促進全世界資料保護監督機關在專業知識以及與資料保護規範及實務相關

- (x) 對於依據本規則第 40 條第 9 項，於歐盟層級制定之行為準則，提交意見；

- (y) 監督機關之決議以及法院在協調程序中處理問題之電子目

- (s) provide the Commission with an opinion for the assessment of the adequacy of the level of protection in a third country or international organisation, including for the assessment whether a third country, a territory or one or more specified sectors within that third country, or an international organisation no longer ensures an adequate level of protection. To that end, the Commission shall provide the Board with all necessary documentation, including correspondence with the government of the third country, with regard to that third country, territory or specified sector, or with the international organisation.
- (t) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in Article 64(1), on matters submitted pursuant to Article 64(2) and to issue binding decisions pursuant to Article 65, including in cases referred to in Article 66;
- (u) promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities;
- (v) promote common training programmes and facilitate personnel exchanges between the supervisory authorities and, where appropriate, with the supervisory authorities of third countries or with international organisations;
- (w) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide.
- (x) issue opinions on codes of conduct drawn up at Union level pursuant to Article 40(9); and
- (y) maintain a publicly accessible electronic register of decisions taken

錄。

2. 另外，針對歐盟執委會請求歐盟個資委員會提供意見之情形，其得考量事件急迫性，訂定期限。
3. 歐盟個資委員會應將其所擬定之意見、方針、建議及操作方法，提供給歐盟執委會與第 93 條所稱委員會，且對外公開
4. 歐盟個資委員會應於適當時機，諮詢利害關係方並給予其機會於合理期間內提出建議。歐盟個資委員會於不影響第 76 條之情況下，將該諮詢程序公開。

第 71 條 報告

1. 歐盟個資委員會就歐盟、第三國及國際組織有關處理個人資料保障之情形，應作成年度報告。該報告應公開，並同時轉知歐洲議會、理事會及歐盟執委會。
2. 該年度報告應包括審查有關實際上適用對於依據第 70 條第 1 項第 1 款規定，相關指針、建議和最佳實務操作時，以及第 65 條之有拘束力決定。

第 72 條 程序

1. 歐盟個資委員會之決議，原則上以通過組成員相對多數表決方式執行。

by supervisory authorities and courts on issues handled in the consistency mechanism.

2. Where the Commission requests advice from the Board, it may indicate a time limit, taking into account the urgency of the matter.
3. The Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 93 and make them public.
4. The Board shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period. The Board shall, without prejudice to Article 76, make the results of the consultation procedure publicly available.

Article 71

Reports

1. The Board shall draw up an annual report regarding the protection of natural persons with regard to processing in the Union and, where relevant, in third countries and international organisations. The report shall be made public and be transmitted to the European Parliament, to the Council and to the Commission.
2. The annual report shall include a review of the practical application of the guidelines, recommendations and best practices referred to in point (1) of Article 70(1) as well as of the binding decisions referred to in Article 65.

Article 72

Procedure

1. The Board shall take decisions by a simple majority of its members, unless otherwise provided for in this Regulation.

2. 歐盟個資委員會應規定其有關以三分之二成員之多數表決程序規範，並統整其運作設置。

第 73 條

主席

1. 歐盟個資委員會應從其成員中，以相對多數決選任主席及兩位副主席。
2. 歐盟個資委員會主席及副主席，任期皆為 5 年；可連任一次。

第 74 條

主席之任務

1. 主席應有下列任務：
 - (a) 負責召開歐盟個資委員會會議及安排議程；
 - (b) 依據第 65 條之規定，通知最高監督機關及相關監督機關歐盟個資委員會作成之決定。
 - (c) 確保歐盟個資委員會任務之即時執行外，尤其係與第 63 條規定之一致化機制有關時。
2. 歐盟個資委員會應制訂其主席與副主席間之任務分配以及程序規範。

第 75 條

秘書處

1. 歐盟個資保護監察機構同時作為委員會之秘書處。

2. The Board shall adopt its own rules of procedure by a two-thirds majority of its members and organise its own operational arrangements.

Article 73

Chair

1. The Board shall elect a chair and two deputy chairs from amongst its members by simple majority.
2. The term of office of the Chair and of the deputy chairs shall be five years and be renewable once.

Article 74

Tasks of the Chair

1. The Chair shall have the following tasks:
 - (a) to convene the meetings of the Board and prepare its agenda;
 - (b) to notify decisions adopted by the Board pursuant to Article 65 to the lead supervisory authority and the supervisory authorities concerned;
 - (c) to ensure the timely performance of the tasks of the Board, in particular in relation to the consistency mechanism referred to in Article 63.
2. The Board shall lay down the allocation of tasks between the Chair and the deputy chairs in its rules of procedure.

Article 75

Secretariat

1. The Board shall have a secretariat, which shall be provided by the European Data Protection Supervisor.

2. 秘書處應僅聽命於歐盟個資委員會主席之指令以執行其職務。
3. 歐盟個資保護監察機構之成員涉及履行本規則下賦予委員會之任務時，其應採用與指派與歐盟個資保護監察機構其他任務之個別回報管道。
4. 若適當時，委員會及歐盟個資保護監察機構應建立並公開施行本條之備忘錄，規範合作條款、以及適用於執行本規則賦予委員會任務之歐盟個資保護監察機構員工。
5. 秘書處應提供委員會分析上、行政上與庶務之支援。
6. 秘書處應對下列事項負擔責任：
 - (a) 委員會之日常業務；
 - (b) 委員會成員、主席及歐盟執委會間之通訊；
 - (c) 與其他機構和公眾之通訊；
 - (d) 使用電子方式進行內部和外部溝通；
 - (e) 翻譯相關資訊；
 - (f) 準備委員會會議前後工作；
 - (g) 準備、起草和公佈有關監督機關間爭議之意見、決議，與委員會採用之其他文書。

2. The secretariat shall perform its tasks exclusively under the instructions of the Chair of the Board.
3. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation shall be subject to separate reporting lines from the staff involved in carrying out tasks conferred on the European Data Protection Supervisor.
4. Where appropriate, the Board and the European Data Protection Supervisor shall establish and publish a Memorandum of Understanding implementing this Article, determining the terms of their cooperation, and applicable to the staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation.
5. The secretariat shall provide analytical, administrative and logistical support to the Board.
6. The secretariat shall be responsible in particular for:
 - (a) the day-to-day business of the Board;
 - (b) communication between the members of the Board, its Chair and the Commission;
 - (c) communication with other institutions and the public;
 - (d) the use of electronic means for the internal and external communication;
 - (e) the translation of relevant information;
 - (f) the preparation and follow-up of the meetings of the Board;
 - (g) the preparation, drafting and publication of opinions, decisions on the settlement of disputes between supervisory authorities and other texts adopted by the Board.

第 76 條

保密措施

1. 當歐盟個資委員會認有必要時，得依據議事規則保密其討論內容。
2. 與歐盟個資委員會成員、第三人代表及鑑定人相關之檔卷，其公開應依歐盟第 1049/2001 號規則執行。

第 77 條

向監督機關申訴之權利

1. 保障所有資料主體，在不影響其他行政或司法救濟途徑情況下，若資料主體認其個人資料之處理有違反本規則之情形，皆得向監督機關提請申訴，該監督機關以設立於資料主體之所在地、工作地或可能事發地之成員國所設立者為主。
2. 受理申訴之監督機關，應通知申訴人關於申訴之情況及結果，包括依據第 78 條提起司法救濟之可能性。

第 78 條

透過司法救濟對抗監督機關之權利

1. 在無損其他行政或非司法救濟途徑之情況下，所有自然人或法人有對監督機關具有法律效果之決定提請司法救濟之權利；

Article 76

Confidentiality

1. The discussions of the Board shall be confidential where the Board deems it necessary, as provided for in its rules of procedure.
2. Access to documents submitted to members of the Board, experts and representatives of third parties shall be governed by Regulation (EC) No 1049/2001 of the European Parliament and of the Council .

CHAPTER VIII

Remedies, liability and penalties

Article 77

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.
2. The supervisory authority with which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint including the possibility of a judicial remedy pursuant to Article 78.

Article 78

Right to an effective judicial remedy against a supervisory authority

1. Without prejudice to any other administrative or non-judicial remedy, each natural or legal person shall have the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them.

2. 在無損其他行政或非司法救濟途徑之情況下，資料主體有權提請司法救濟之權利，倘若監督機關怠於依據歐盟個資規則第 55 條及第 56 條處理申訴，或資料主體依據本規則第 77 條提出申訴，而在 3 個月內未接獲其處理狀態或結果通知之情形。
3. 對於向監督機關提起之訴訟程序，應以該監督機關設立之成員國法院為之。
4. 當對抗監督機關作成決定之司法程序，該決定之前委員會已基於一致化機制而所作出意見書或決定時，該監督機關應將該意見書或決定於法庭上提出。

第 79 條

透過司法救濟對抗資料處理者或受託者之權利

1. 在無損其他行政或非司法救濟途徑之情況下，包括依據第 77 條向監督機關申訴，每一位資料主體應有權透過有效之司法救濟，倘若其因違反本規則之個人資料處理程序而致生損害時。
2. 對抗處理者或受託者之訴訟，應於該許可處理者或受託者之成員國境內之法院為之。除該管理者及受託者為成員國行使其公權力時，此時該訴訟得於資料主體所居住之成員國境內法院為之。

2. Without prejudice to any other administrative or non-judicial remedy, each data subject shall have the right to an effective judicial remedy where the supervisory authority which is competent pursuant to Articles 55 and 56 does not handle a complaint or does not inform the data subject within three months on the progress or outcome of the complaint lodged pursuant to Article 77.
3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.
4. Where proceedings are brought against a decision of a supervisory authority which was preceded by an opinion or a decision of the Board in the consistency mechanism, the supervisory authority shall forward that opinion or decision to the court.

Article 79

Right to an effective judicial remedy against a controller or processor

1. Without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority pursuant to Article 77, each data subject shall have the right to an effective judicial remedy where he or she considers that his or her rights under this Regulation have been infringed as a result of the processing of his or her personal data in non-compliance with this Regulation.
2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his or her habitual residence, unless the controller or processor is a public authority of a Member State acting in the exercise of its public powers.

第 80 條

資料主體之代表人

1. 資料主體應有權授權依據成員國法規合法成立，且其章程目標係為公共利益，且活躍於保障資料主體權利與自由之個人資料保護相關領域，此種非營利性機構、組織或團體，有關個人資料之保障，作為資料主體申訴之代表人，以其名義行使第 77、78 及第 79 條規定之權利，並得依照第 82 條之規定以資料主體之名字接受賠償，倘若成員國之法律有相關規範者。

2. 成員國應提供本條第 1 項所稱之任何機構、組織或團體，即便無資料主體之授權，亦有權利於該成員國境內，向依據第 77 條適格之監督機關，行使其基於第 78 及 79 條之權利，若其認為本規則賦予資料主體之權利受到系爭違法處理程序侵害時。

第 81 條

暫停程序

1. 當適格之成員國法院知悉有關另一針對相同主旨，亦即有關同一管理者或受託者進行之處理程序時，並且在其他成員國法院等待判決作出時，其應聯絡該他成員國之法院以確認前開訴訟之存否。

2. 當有關同一主旨亦即有關同一管理者或受託者進行之處理程序之訴訟程序於其他成員國法院內等待判決作出時，任何適格之法

Article 80

Representation of data subjects

1. The data subject shall have the right to mandate a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data to lodge the complaint on his or her behalf, to exercise the rights referred to in Articles 77, 78 and 79 on his or her behalf, and to exercise the right to receive compensation referred to in Article 82 on his or her behalf where provided for by Member State law.
2. Member States may provide that any body, organisation or association referred to in paragraph 1 of this Article, independently of a data subject's mandate, has the right to lodge, in that Member State, a complaint with the supervisory authority which is competent pursuant to Article 77 and to exercise the rights referred to in Articles 78 and 79 if it considers that the rights of a data subject under this Regulation have been infringed as a result of the processing.

Article 81

Suspension of proceedings

1. Where a competent court of a Member State has information on proceedings, concerning the same subject matter as regards processing by the same controller or processor, that are pending in a court in another Member State, it shall contact that court in the other Member State to confirm the existence of such proceedings.
2. Where proceedings concerning the same subject matter as regards processing of the same controller or processor are pending in a court in

院，除最先繫屬之法院外，得暫停其程序。

3. 當上開訴訟程序於第一種情況下暫停時，任何除最先繫屬之其他法院得，基於一造資料主體之聲請，且該最先係屬法院對系爭訴訟有管轄權，且其法律允許因此合併送送時，拒絕該案件之管轄。
4. 管理者或受託者如證明對引起損害之事件不負任何責任，應得免除第 2 款之責任規定。

第 82 條 **獲得賠償權及責任**

1. 任何因違反本規則之事件而遭受金錢或非金錢上損失者，均有權從管理者或受託者獲得賠償。
2. 任何涉及系爭處理過程之管理者，應對違反本規則之處理程序造成之損害負責。僅當在沒有遵守本規則之義務，特別係針對受託者或其外部行為或違反管理者合法指示時，受託者應對由處理程序造成之損害負責。
3. 管理者或受託者如證明對引起損害之事件不負任何責任，應得免除第 2 款之責任規定。
4. 當多個控制者或受託者，或其同時參與相同之處理處理，並且其根據第 2 項和第 3 項之規定，對由該處理程序造成之任何損害負賠償責任時，個別管理者及受託者應對整起損害負責，以確保對資料主體的有效賠償。

another Member State, any competent court other than the court first seized may suspend its proceedings.

3. Where those proceedings are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the consolidation thereof.

Article 82

Right to compensation and liability

1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.
2. Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.
3. A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.
4. Where more than one controller or processor, or both a controller and a processor, are involved in the same processing and where they are, under paragraphs 2 and 3, responsible for any damage caused by processing, each controller or processor shall be held liable for the

5. 當一管理者或受託者，依據第 4 項規定，支付所有對該造成之損害賠償時，該管理者或受託者則得向其他參與該處理程序之管理者或受託者，請求償還其基於責任分攤比例所應負擔之賠償責任，以符合第 2 項之規定。

6. 損害賠償訴訟程序應依第 79 條第 2 項規定，向有管轄權之成員國法院提起。

第 83 條 裁處行政罰鍰之一般性規定

1. 每一監督機關應確保裁處之行政罰鍰符合本條於第 4、5 及第 6 項針對違反歐盟個資規則之行為之規定，且於個案中應確保係有效、符合比例及具遏阻效果。

2. 根據個案情況，除第 58 條第 2 項、a 款至第 h 款和第 j 款所述之措施外，仍應採取行政罰鍰或以之替代上開措施。在決定是否作出行政罰鍰的同時，以及對個案行政罰鍰數額應適當考慮：
 - (a) 系爭處理程序性質、範圍、或目的以及受影響之資料主體受害者數量，及其損害程度、侵害的性質、嚴重程度和持續時間；

entire damage in order to ensure effective compensation of the data subject.

5. Where a controller or processor has, in accordance with paragraph 4, paid full compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 2.
6. Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under the law of the Member State referred to in Article 79(2).

Article 83

General conditions for imposing administrative fines

1. Each supervisory authority shall ensure that the imposition of administrative fines pursuant to this Article in respect of infringements of this Regulation referred to in paragraphs 4, 5 and 6 shall in each individual case be effective, proportionate and dissuasive.
2. Administrative fines shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in points (a) to (h) and (j) of Article 58(2). When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case due regard shall be given to the following:
 - (a) the nature, gravity and duration of the infringement taking into account the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them;

- (b) 該違反行為行為人之主觀要件；
 - (c) 管理者或受託者採取任何措施以減輕資料主體遭受損害；
 - (d) 考慮到根據第 25 條和第 32 條實施之技術上和組織上措施，管理者或受託者之責任程度；
 - (e) 任何管理者或受託者過去相關之違規行為；
 - (f) 與監管機構的合作程度，以補救其違規行為，並減輕違規行為可能之不利影響；
 - (g) 受違規行為影響的個人資料種類；
 - (h) 監督機關獲知該違規行為之方式，特別係管理者或受託者是否即知何種程度通報該違規行為；
 - (i) 第58條第(2)項規範之措施，針對同一事項之前已要求系爭管理者或受託者、以及該措施是否遵守。
 - (j) 依照第 40 條遵守經批准之行為準則，或依照第 42 條核准之認證機制；
 - (k) 任何其他適用於個案之加重或減輕因素，例如係為獲得經濟利益、直接或間接從該事件中迴避之損失。
3. 若管理者或受託者係故意或過失，於該相同或有連結之處理操作中，違反本規則多則規定時，該行政罰鍰之總額上限不得超過最嚴重違反行為之規定得裁處之金額。

- (b) the intentional or negligent character of the infringement;
 - (c) any action taken by the controller or processor to mitigate the damage suffered by data subjects;
 - (d) the degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 25 and 32;
 - (e) any relevant previous infringements by the controller or processor;
 - (f) the degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
 - (g) the categories of personal data affected by the infringement;
 - (h) the manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement;
 - (i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject-matter, compliance with those measures;
 - (j) adherence to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42; and
 - (k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.
3. If a controller or processor intentionally or negligently, for the same or linked processing operations, infringes several provisions of this Regulation, the total amount of the administrative fine shall not exceed the amount specified for the gravest infringement.

4. 違反下列規定之行為得基於第 2 項之規定，並遵守最高得處以 1 千萬歐元之上限，或其年度國際總營收 2% 之罰鍰，視何者較高：
 - (a) 根據第 8、11、第 25 至 39 和第 42 和第 43 條規定，管理者和受託者之義務；
 - (b) 認證機構依第 42 條和第 43 條之義務；
 - (c) 監督機關依第 41 條第 4 項規定之義務。
5. 違反下列規定之行為得基於第 2 項之規定，並遵守最高得處以 2 千萬歐元之上限，或其年度國際總營收 4% 之罰鍰，視何者較高：
 - (a) 根據第 5 條、第 6 條、第 7 條和第 9 條之處理程序的基本原則，包括同意要件等；
 - (b) 資料主體依第 12 條至第 22 條規定之權利；
 - (c) 根據第 44 條至第 49 條，將個人資料傳輸至第三國或國際組織之接收者；
 - (d) 根據第九章通過成員國法律之任何義務；
 - (e) 處理程序未遵守命令或暫時或最終限制時，經監督機關基於第 58 條第 2 項規定禁止資料流通、或未能遵守第 58 條第 1 項有關提供近用該違規行為之規定。
6. 未遵守第 58 條第 2 項規定之監督機關命令，依照本條第 2 項規定，得處以行政罰鍰 2 千萬歐元以下，或者於企業之情況下，處理上一財政年度全球年營業額 4%，以較高者為準。

4. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 10 000 000 EUR, or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:
 - (a) the obligations of the controller and the processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43;
 - (b) the obligations of the certification body pursuant to Articles 42 and 43;
 - (c) the obligations of the monitoring body pursuant to Article 41(4).
5. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:
 - (a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;
 - (b) the data subjects' rights pursuant to Articles 12 to 22;
 - (c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;
 - (d) any obligations pursuant to Member State law adopted under Chapter IX;
 - (e) non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1).
6. Non-compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to administrative fines up to 20 000 000 EUR, or in the case

7. 在不影響監督機關根據第 58 條第 2 項規定之糾正權力之情況下，各成員國得制定關於其境內設立之政府機關和機構，對行政罰款是否得裁處以及在何種程度上進行處分之規定。
8. 監督機關根據本條行使其權力，應當依照聯盟和成員國法律採取適當的程序性保障措施，包括有效的司法救濟和正當程序。
9. 成員國法律制度未規定行政罰款者，得適用本條款，並得適用於適格之監督機關發起並由國內法院施加之罰款，同時確保法律救濟之有效性，與監督機關作出之行政罰鍰具有同等效力。無論如何，所施加的罰款應是有效的、符合比例原則並有遏止效果。每個成員國應在 2018 年 5 月 25 日之前通知本委員會，其依據本章之規範修正通過之法律規定，以及任何後續對其有影響之修定。

第 84 條 罰則

1. 成員國應制定其他得適用於違反本規則行為之罰則，由係針對並不受第 83 條行政罰鍰規範之違規行為，並應採取所有必要措施確保施行。該罰額應有效、符合比例及具遏阻效果。

of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.

7. Without prejudice to the corrective powers of supervisory authorities pursuant to Article 58(2), each Member State may lay down the rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State.
8. The exercise by the supervisory authority of its powers under this Article shall be subject to appropriate procedural safeguards in accordance with Union and Member State law, including effective judicial remedy and due process.
9. Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a manner that the fine is initiated by the competent supervisory authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by 25 May 2018 and, without delay, any subsequent amendment law or amendment affecting them.

Article 84

Penalties

1. Member States shall lay down the rules on other penalties applicable to infringements of this Regulation in particular for infringements which are not subject to administrative fines pursuant to Article 83, and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.

2. 成員國應於 2018 年 5 月 25 日之前，送交歐盟執委會其依據前項所制定之規範，以及任何後續對其有影響之修定。

第九章 特定處理程序情況

第 85 條 處理程序與表意自由及資訊

1. 成員國應以法律調和本規則保障個人資料之權利以及表意和資訊自由，包括為新聞、學術、或文學表達有關目的之處理程序。
2. 對於為新聞目、學術、藝術或文學表達等目的進行之個人資料處理，成員國應於下列規定中另訂立豁免或例外規範，包括第二章（原則）、第三章（資料主體的權利）、第四章（控制者與受託者）豁免或例外、第五章（個人資料傳輸至第三國或國際組織）、第六章（獨立監督機關）、第七章（合作和協調）和第九章（特定處理程序情況），若成員國認有必要調和保護個人資料與表意和資訊自由時。
3. 成員國應立即向歐盟執委會通報其根據第 2 項通過之法律，以及後續通過任何修正案或造成影響之其他修正案。

第 86 條 個人資料保護與官方檔卷之公開

2. Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

CHAPTER IX

Provisions relating to specific processing situations

Article 85

Processing and freedom of expression and information

1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.
2. For processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall provide for exemptions or derogations from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations) if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information.
3. Each Member State shall notify to the Commission the provisions of its law which it has adopted pursuant to paragraph 2 and, without delay, any subsequent amendment law or amendment affecting them.

Article 86

Processing and public access to official documents

政府機關、公法機構或履行公益任務之私法機構其所持有官方檔卷中個人資料，得由該行政機關或機構依據其應遵循之歐盟或成員國法令公開，以求取官方檔卷向公眾公開與本規則所欲保護之個人資料權利之平衡。

第 87 條

國家代碼之處理

各成員國得進一步規定，在何種特定條件下，一般所理解之國家代碼或其他標示，得作為處理之標的。一般所理解之國家代碼或其他標示，僅得作為確保依據本規則所保障之資料主體權利或自由時方得處理。

第 88 條

受僱者之資料保護

1. 成員國得以法律或團體協約之方式，提供具體規範以確保於處理受僱人之個人資料時，其個人資料保護，尤係基於聘用、履行或終止僱傭或勞動契約之目的，包括履行法令或團體協約所定義務、管理、工作計畫及組織、工作場所之平等及多樣性、工作場所之健康及安全、保護雇主或客戶之財產權、受僱者個別或集體權利之行使等，而處理受僱者個人資料之行為。

Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.

Article 87

Processing of the national identification number

Member States may further determine the specific conditions for the processing of a national identification number or any other identifier of general application. In that case the national identification number or any other identifier of general application shall be used only under appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation.

Article 88

Processing in the context of employment

1. Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

2. 成員國制定之相關法令或簽訂之團體協約中，應顧及為維護人性尊嚴而採行之適當及特殊措施，資料主體之合法利益與權利，並特別關注處理過程之透明，公司集團間或與公司共同進行經濟上活動之團體間的資料傳輸，以及工作場所之監控系統。

3. 各成員國依據第 88 條第 1 項所頒訂之法令，成員國應於 2018 年 5 月 25 日之前，立即告知歐盟執委會其制定之規範，以及任何後續對其有影響之修定。

第 89 條

基於公益、科學或歷史以及統計目的而進行之個人資料處理

1. 以公益、科學或歷史研究或統計目的而進行之個人資料處理程序，應採取符合本規則要求之適當之安全措施，以保障資料主體之權利與自由。該安全措施應採行技術上或組織上之相關措施，以達到最少化處理資料原則。該措施包括去識別化等以確保該目的之達成。若該目的之達成可經由進一步處理個人資料，使該資料主體之身分無法或不復識別時，應以此方式為之。

2. 基於科學或歷史研究目的以及統計目的處理個人資料，得於歐盟法或各成員國之法令中保留同條第 1 項所定條件與保障之適用，當第 15 條、第 16 條、第 18 條及第 21 條所定權利可能導致該特殊目的無法達成或受到嚴重妨礙且此限制係屬達成目的所必要者。

2. Those rules shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.
3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

Article 89

Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

1. Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.
2. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render

3. 基於公益之檔案儲存目的處理個人資料，得於歐盟法或各成員國之法令中保留同條第 1 項所定條件與保障之適用，當第 15 條、第 16 條、第 18 條、第 19 條、第 20 條及第 21 條所定權利可能導致該特殊目的無法達成或受到嚴重妨礙且此之限制係屬達成目的所必要者。

4. 當符合第 2 及第 3 項之處理程序同時亦為追求其他目的時，該例外情況僅當該處理程序係為追求該規範中所訂之目的時。

第 90 條 保密義務

1. 成員國應制定具體規範監督機關依據第 58 條第 1 項第 e 款、第 f 款規定之權限，基於歐盟、成員國法或由國家適格之機關所制定之規範等，管理者及受託者應有專業上保密義務，或其他同等之保密義務，此時應符合必要及比例原則之方式調和保障個人資料之權利與該保密義務。相關規範應僅適用於有關管理者或受託者收受個人資料係因為該保密義務，或從該相關活動中所獲得。

2. 成員國應於 2018 年 5 月 25 日之前，立即告知歐盟執委會其基於前項規定所制定之規範，以及任何後續對其有影響之修定。

impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

3. Where personal data are processed for archiving purposes in the public interest, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18, 19, 20 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.
4. Where processing referred to in paragraphs 2 and 3 serves at the same time another purpose, the derogations shall apply only to processing for the purposes referred to in those paragraphs.

Article 90

Obligations of secrecy

1. Member States may adopt specific rules to set out the powers of the supervisory authorities laid down in points (e) and (f) of Article 58(1) in relation to controllers or processors that are subject, under Union or Member State law or rules established by national competent bodies, to an obligation of professional secrecy or other equivalent obligations of secrecy where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. Those rules shall apply only with regard to personal data which the controller or processor has received as a result of or has obtained in an activity covered by that obligation of secrecy.
2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

第 91 條

現行之教會或宗教團體之個人資料保護

1. 於成員國中，對於本規則生效前，教會及宗教團體組織適用以處理個人資料之規定，在與歐盟個資規則合致之前提下，得繼續適用，因此，各成員國針對教會及宗教團體組織處理個人資料，並無訂定新規範之急迫性，但仍應全面檢視現行規範是否與歐盟個資規則之內容有所歧異或衝突，而為適當修正或補充。
2. 教會及宗教團體組織依前項之規定採取全面之規範以處理個人資料，應受獨立監督機關之監督，且得為特定之監督機關，但仍應符合本規則第 6 章對監督機關之要求。

第十章

授權行為及實施行為

第 92 條

授權之行使

1. 委員會得採取授權行為之權力應依本條所列情形而訂。
2. 於 2016 年 5 月 24 日開始之過渡期間，第 12 條第 8 項及第 43 條第 8 項之授權權力應由委員會享有。
3. 歐洲議會或歐盟委員會有權隨時撤銷第 12 條第 8 項及第 43 條第 8 項之授權權力。撤銷決定將使該決定中載明之授權失效。授權撤銷應於該決定公告於歐盟公報之隔日，或於公報中載明之其他日期生效。惟該決定並不影響任何已生效之授權行為之有效性。

Article 91

Existing data protection rules of churches and religious associations

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of natural persons with regard to processing, such rules may continue to apply, provided that they are brought into line with this Regulation.
2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 of this Article shall be subject to the supervision of an independent supervisory authority, which may be specific, provided that it fulfils the conditions laid down in Chapter VI of this Regulation.

CHAPTER X

Delegated acts and implementing acts

Article 92

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 12(8) and Article 43(8) shall be conferred on the Commission for an indeterminate period of time from 24 May 2016.
3. The delegation of power referred to in Article 12(8) and Article 43(8) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. 委員會採取授權行為後，應立即通知歐洲議會及歐盟委員會。
5. 依第 12 條第 8 項及第 43 條第 8 項採取之授權行為，應於歐洲議會或歐盟委員會於收受通知三個月內均無表示反對，或於歐洲議會或歐盟委員會前述三個月期限屆至前均已告知委員會其無反對意見時，始生效之。本項期間可由歐洲議會或歐盟委員會延長，並以三個月為限。

第 93 條 委員會程序

1. 委員會應由歐盟第 182/2011 號規則定義之小組組成。
2. 歐盟第 182/2011 號規則第 5 條之規定於本項適用之。
3. 歐盟第 182/2011 號規則第 5 條及第 8 條之規定於本項共同適用之。

第十一章 最後規定

第 94 條 取代個人資料保護指令 95/46/EC

1. 個人資料保護指令 95/46/EC 應於 2018 年 5 月 25 日被取代。
2. 向該被取代之個人資料保護指令之諮詢，應轉而向本規則行使。且基於個人資料保護指令 95/46/EC 第 29 條所建制之保護個人關

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 12(8) and Article 43(8) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 93

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

CHAPTER XI

Final provisions

Article 94

Repeal of Directive 95/46/EC

1. Directive 95/46/EC is repealed with effect from 25 May 2018.
2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of

於處理個人資料工作小組，應轉為本規則下之歐盟個人資料保護委員會。

第 95 條

與歐盟第 2002/58/EC 號指令之關係

本規則不應對自然人或法人增加額外義務，若其相關之處理程序，與有關於歐盟公共通訊網絡中公開近用電子通訊服務，且其應遵循之具體義務與第 2002/58/EC 號指令有同樣之目的時。

第 96 條

與現已締結之協議之關係

成員國於 2016 年 5 月 24 日以前，締結與有關傳輸個人資料至第三國或國際組織之國際協議，且係符合當時現行之歐盟法時，仍應維持其效力直至被增修、取代或撤銷。

第 97 條

歐盟執委會報告

1. 於 2020 年 5 月 25 日起之每四年，歐盟執委會應提交有關評估及審查本保護規則之報告至歐洲議會及理事會。且該報告應公開。
2. 前項規定所稱之評估及審查，亦即歐盟執委會應具提而言，審查以下實施及職責：

Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.

Article 95

Relationship with Directive 2002/58/EC

This Regulation shall not impose additional obligations on natural or legal persons in relation to processing in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.

Article 96

Relationship with previously concluded Agreements

International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to 24 May 2016, and which comply with Union law as applicable prior to that date, shall remain in force until amended, replaced or revoked.

Article 97

Commission reports

1. By 25 May 2020 and every four years thereafter, the Commission shall submit a report on the evaluation and review of this Regulation to the European Parliament and to the Council. The reports shall be made public.
2. In the context of the evaluations and reviews referred to in paragraph 1, the Commission shall examine, in particular, the application and functioning of:

- (a) 第五章有關傳輸個人資料至第三國或國際組織，尤其係基於本規則第 45 條第 3 項所為之決定，以及依據資料保護指令 95/46/EC 第 25 條第 6 項作出之決定。
 - (b) 第七章有關合作與協調。
3. 為達第 1 項之目的，歐盟執委會報告得要求成員國及監督機關提供資訊。
 4. 於歐盟執委會執行第 1 項及第 2 項規定之評估與審查時，應考量歐洲議會、理事會及其他相關機構或來源之立場及發現。
 5. 歐盟執委會應，於有必要時，提交有關修定本規則適當之建議，尤其考量資訊科技之發展，以及資訊社會之進步。

第 98 條 **審查其他個資保護之歐盟法**

歐盟執委會應於適當時機，提出有關修訂歐盟其他與個資保護有關法規之立法建議，以確保對自然人於處理活動中之齊一及一致保障，此應特別注意與由歐盟機構、機關、辦公室或單位所執行之資料處理活動有關之自然人保護，以及該個人資料之自由流通。

第 99 條 **生效及施行**

- (a) Chapter V on the transfer of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to Article 45(3) of this Regulation and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC;
 - (b) Chapter VII on cooperation and consistency.
3. For the purpose of paragraph 1, the Commission may request information from Member States and supervisory authorities.
 4. In carrying out the evaluations and reviews referred to in paragraphs 1 and 2, the Commission shall take into account the positions and findings of the European Parliament, of the Council, and of other relevant bodies or sources.
 5. The Commission shall, if necessary, submit appropriate proposals to amend this Regulation, in particular taking into account of developments in information technology and in the light of the state of progress in the information society.

Article 98

Review of other Union legal acts on data protection

The Commission shall, if appropriate, submit legislative proposals with a view to amending other Union legal acts on the protection of personal data, in order to ensure uniform and consistent protection of natural persons with regard to processing. This shall in particular concern the rules relating to the protection of natural persons with regard to processing by Union institutions, bodies, offices and agencies and on the free movement of such data.

Article 99

Entry into force and application

1. 本規則應於歐盟官方公報發布後第 20 天生效。

2. 本規則於 2018 年 5 月 25 日施行。

本規則之全部應皆有法律拘束力，且直接適用於歐盟成員國。

於布魯塞爾作成，2016 年 4 月 27 日。

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from 25 May 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 April 2016.

外國消費者保護法規翻譯叢書索引

（第 1 輯至第 24 輯）

壹、亞太地區

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