Competence, tasks and powers

At a glance

- Supervisory authorities are given specific competence to act on their own territory.
- A lead-authority has competence in cross-border cases (see section on co-operation and consistency between supervisory authorities for further details).
- Supervisory authorities are given an extensive list of specific powers and tasks.

To do list

- ☐ Familiarise yourself with the comprehensive powers and tasks of the supervisory authorities.
- ☐ If you carry out cross-border processing, get to understand the lead-authority system, (for which see section on cooperation and consistency between supervisory authorities).
- ☐ You might wish to consider working towards compliance with a recognised Code of Conduct or Certification which will require supervisory authority approval.

Competence

Supervisory authorities (also colloquially known as "Data Protection Authorities" or "DPAs") are given competence *"for the performance of the tasks assigned to and the exercise of the powers conferred on it"* described in the GDPR on their national territory. Recital 122 tells us that this competence includes *"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 in its territory"*.

In cases where the legal basis for processing, whether by a private body or a public authority, is a legal obligation, acting in the public interest or in the exercise of official authority, the 'concerned' authority has competence and the cross-border lead authority system is disapplied. The language is rather obscure, but Recital 128 says that a supervisory authority has exclusive jurisdiction over both public authorities and private bodies acting in the public interest which in either case are established on the supervisory authority's territory. It is not clear whether this contemplates multiple establishments and is a means of excluding the one-stop shop or whether it gives exclusive jurisdiction to the home supervisory authority even if the processing is elsewhere in the EU. This might have wide application to private sector bodies – e.g. financial institutions carrying out anti-money-laundering activities in relation to customers elsewhere in the EU than the home country.

Supervisory authorities cannot exercise jurisdiction over courts acting in a judicial capacity. 'Court' is not defined and it is not entirely clear how far down the judicial hierarchy this rule will extend.

A lead-authority system is set up to deal with cross-border processing (see section on co-operation and consistency between supervisory authorities for further information about this complex arrangement).

Tasks

There is a very comprehensive list of tasks given to the supervisory authorities by Article 57 of the GDPR. There is no need to list them all, because the last on the list is *"fulfil any other tasks related to the protection of personal data"*. Supervisory authorities must therefore do anything that might reasonably be said to be about the *"protection of personal data"*.

Where can I find this?

Recitals 117-123, WP 244, Chapter VI Section 2 Articles 55-59

Some tasks are worth emphasising. Supervisory authorities are to monitor and enforce the *"application"* of the GDPR and to promote awareness amongst the public, controllers and processors.

They are to advise their governments and parliaments on proposed new laws.

Helping data subjects, dealing with and investigating complaints lodged by individuals or representative bodies, conducting investigations and especially co-operating with other supervisory authorities are all specifically mentioned, as is monitoring the development of technical and commercial practices in information technology.

Supervisory authorities are to encourage the development of Codes of Conduct and Certification systems and they are to *"draft and publish the criteria for accreditation"* of certification bodies and those which monitor codes of conduct.

Supervisory authorities cannot charge data subjects or Data Protection Officers for their services; the GDPR is however silent on whether controllers and processors could be charged fees in respect of services they receive from supervisory authorities.

Powers

Article 58 of the GDPR lists the powers of the supervisory authorities to which Member States can add if they wish. Many of the powers correspond to the specific tasks listed in Article 57 and do not need repeating.

Worthy of mention are: ordering a controller or processor to provide information; conducting investigatory audits; obtaining access to premises and data; issuing warnings and reprimands and imposing fines; ordering controllers and processors to comply with the GDPR and data subjects' rights; banning processing and trans-border data flows outside the EU; approving standard contractual clauses and binding corporate rules. The exercise of powers by a supervisory authority must be subject to safeguards and open to judicial challenge.

Member States must give supervisory authorities the right to bring matters to judicial notice and *"where appropriate, to commence or engage otherwise in legal proceedings, in order to enforce the provisions of this Regulation"*. Presumably the existing variation in powers will continue in accordance with national law and procedure.

Finally, supervisory authorities must produce annual reports. In summary, the competence, powers and tasks of supervisory authorities are a comprehensive listing of everything a supervisory authority must or might do. This is largely a predictable consolidation of existing practices with some innovations in individual Member States.

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