

Article 40 of the EU General Data Protection Regulation: Codes of conduct

=> Recitals 98, 99

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) 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 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. 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.