



ROYAL NORWEGIAN  
MINISTRY OF JUSTICE AND PUBLIC SECURITY

EFTA Surveillance Authority  
Rue Belliard 35  
B-1040 Brussels  
Belgium

Your ref.  
82797

Our ref.  
19/1712 - JAGL

Date  
03.05.2019

**Request for information concerning the incorporation of the GDPR into the Norwegian legal order**

Reference is made to the Authority's letter 25 March 2019 requesting information regarding the incorporation of the GDPR into the Norwegian legal order.

The GDPR has been implemented into Norwegian law through the Act 15 June 2018 no. 38 on the processing of personal data (Personal Data Act), cf. section 1 of the Act. The Act also sets out specific national provisions regarding processing of personal data in accordance with the GDPR. In addition, there are various provisions in Norwegian legislation regarding processing of personal data.

Please be advised that all translations are unofficial.

1. Please specify whether the Norwegian Government has adopted rules further elaborating on:

*– Article 6(2) GDPR on specific requirements for the lawfulness of processing when the basis is a legal obligation or processing in the public interest or in the exercise of official authority*

Several provisions in Norwegian law concern the requirements for lawful processing on the basis of GDPR Article 6 (1) litra c and e in various sectors and contexts, for example in the immigration sector or in the health sector. However, when such provisions are

Postal address  
PO Box 8005 Dep  
N-  
Norway

Office address  
Gullhaug Torg 4A  
0484 Oslo

Delivery by Courier  
Varemottak  
Akersgata 59  
0180 Oslo, Norway

Telephone  
+47 22 24 90 90  
Org.no.: 972 417 831

Jon Lunde  
+47 22 24 56 84

connected to a legal basis for processing in national law referred to Article 6 (3), they have been considered to be adopted or maintained in accordance with Article 6 (3), which allows “specific provisions” in conjunction with a legal basis for processing. Norway has not adopted further rules elaborating on specific requirements for the lawfulness of processing on the basis of Article 6 (1) litra c and e without such a connection to a legal basis for processing in national law in accordance with Article 6(2) GDPR.

– *Article 9(4) GDPR on specific requirements for the processing of sensitive data*

Norway has adopted rules further elaborating on specific requirements for the processing of sensitive data in accordance with Article 9(4) GDPR. In particular, such rules relate to data processing in the health sector. Legislation such as the Act 2 July 1999 no. 63 on the Rights of the Patient and the User, the Act 2 July 1999 no. 64 relating to health personnel etc., the Act 20 June 2008 no. 44 on medical and health related research, the Act 20 June 2014 no. 42 on the processing of health data in relation to medical assistance, and the Act 20 June 2014 no. 43 on health registers and the processing of health data set out requirements relating to the processing of personal data concerning health.

Furthermore, section 12 of the Personal Data Act regulates processing of *inter alia* means of unique identification, including biometric data. Under section 12, such means of unique identification may only be processed when there is a reasonable need for achieving secure identification. Furthermore, section 12 provides that the King may adopt regulations concerning the use of such means of unique identification.

– *Article 87 GDPR on authorisations to process national identification numbers*

Norway has adopted rules further elaborating on authorisations to process national identification numbers in section 12 of the Personal Data Act. Under section 12, national identity numbers may only be processed when there is a reasonable need for achieving secure identification.

– *Article 90(1) GDPR on obligations of secrecy of controllers and processors*

Norway has not adopted rules further elaborating on obligations of secrecy of controllers and processors in accordance with GDPR Article 90(1).

2. Please specify whether the Norwegian Government has adopted substantive rules on:

– *the processing of personal data of deceased persons (recital 27 of the GDPR's preamble)*

Norway has not adopted substantive rules on the processing of personal data of deceased persons.

*– the age of consent for children (Article 8(1) GDPR)*

In accordance with section 5 of the Personal Data Act, the age of consent under GDPR Article 6(1) litra a, cf. Article 8(1), is 13 years.

*– requiring controllers to consult and obtain prior authorisation from national DPA when processing is 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 (Article 36(5) GDPR)*

Under section 14 of the Personal Data Act, the King may issue administrative regulations requiring prior consultation and prior authorisation from the national DPA, the Data Protection Authority (Datatilsynet). At present, no such administrative regulations have been adopted.

*– further situations/scenarios in which associations/bodies are obliged to as appoint a DPO (Article 37(4) GDPR)*

Under section 19 of the Personal Data Act, the King may issue administrative regulations concerning the obligation to appoint a DPO. At present, no such administrative regulations have been adopted.

*– limits to transfers of specific categories of personal data to a third country or an international organisation (Article 49(5) GDPR)*

Under section 13 of the Personal Data Act, the King may issue administrative regulations concerning limits to transfers of personal data to third countries and international organisations. At present, no such administrative regulations have been adopted.

*– additional powers of the DPA (Article 58(6) GDPR)*

If the Data Protection Authority has issued an order under the Personal Data Act, the Data Protection Authority may impose a coercive fine until the order has been complied with, cf. the Personal Data Act section 29. The King may adopt regulations giving further rules on coercive fines, inter alia on the size and duration of such coercive fines. At present, no such administrative regulations have been adopted.

*– representation of data subjects by bodies or associations (Article 80(2) GDPR)*

There are no provisions in Norwegian law specifically regulating representation of data subjects by bodies or associations.

3. Please elaborate on whether the Norwegian Government has laid down:

*– Rules restricting the scope of obligations and rights provided for in Articles 12-22 (rights of a registered subject), Article 34 (notification of a data breach), Article 5 (general principles of processing), foreseen by Article 23 GDPR*

Norway has adopted rules restricting the scope of obligations and rights provided for in GDPR Articles 13, 14, 15 and 34, cf. the Personal Data Act section 16 and 17. The right to receive or access information GDPR Article 13, 14 and 15 is restricted with regard to data of significance to Norwegian foreign policy, national defence or national security interests and exempt from public access in accordance with the Freedom of Information Act. The same applies to data required to be kept confidential due to the prevention, investigation, detection and prosecution of criminal actions, data considered inadvisable to make known to the data subject due to the data subject's health or the relationship with persons close to the data subject, data that is subject to a statutory duty of confidentiality, data included in documents drawn up for internal preparation of a case, and data which it would be contrary to obvious and fundamental private or public interests to communicate. The obligation to notify the data subject of a data breach under GDPR Article 34 does not apply insofar as such notification would reveal data of significance to Norwegian foreign policy, national defence or national security interests, data required to be kept confidential due to the prevention, investigation, detection and prosecution of criminal actions or data subject to a statutory duty of confidentiality.

Section 17 of the Personal Data Act provides for restrictions of the scope of the rights provided for in GDPR Articles 15, 16 and 18 with regard to processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. The restrictions in section 17 of the Data Protection Act are based partly on GDPR Article 23 and partly on Article 89 (2) and (3). Article 15 does not apply to processing for the previously mentioned purposes insofar as it would require a disproportionate effort to provide access or if the right of access is likely to make it impossible or seriously impair the achievement of the purposes of the processing. Moreover, Articles 16 and 18 do not apply to processing for the previously mentioned purposes insofar as the rights are likely to make it impossible or seriously impair the achievement of the purposes of the processing.

Section 5-1 of the Act 2 July 1999 no. 63 on the Rights of the Patient and the User concerns the rights of the patient and the user to data contained in the medical records. As a general rule, a patient or a user has a right to access his or her medical records in accordance with GDPR Article 15. However, the patient or user may be denied such access if refusal is pressing necessary to prevent danger to his or her life or serious damage to his or her health, or if refusal is clearly inadvisable out of consideration for persons who are close to the patient or user.

*– Rules on safeguards and derogations from substantive provisions in the GDPR relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, foreseen by Article 89 GDPR*

Section 9 of the Personal Data Act regulates processing of special categories of personal data without consent for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. Under section 9, personal data listed in Article 9(1) GDPR may be processed without the consent of the data subject if the processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes and the public interest in the processing clearly overrides the adverse consequences for the individual. The processing must be in accordance with GDPR Article 89(1). Moreover the data controller must consult the DPO or another person that fulfils the requirements in GDPR Articles 37(5) and (6) and 38(3) first and second sentence before such processing takes place.

Section 17 of the Personal Data Act provides for restrictions of the scope of the rights provided for in GDPR Articles 15, 16 and 18 with regard to processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, as described above in relation to restrictions under Article 23 GDPR.

4. Please specify which national rules the Norwegian Government has adopted on:

*– Secrecy and confidentiality provisions applicable to DPOs (Article 38(5) GDPR)*

Section 18 of the Personal Data Act regulates secrecy and confidentiality obligations applicable to DPOs. The DPO has a duty to prevent others from gaining access to or knowledge of certain types of information that is revealed to the DPO in relation to the DPO's performance of its tasks. This duty also applies after the DPO's service or employment has been terminated. The confidentiality duty does not apply if the data subject has consented to release of the information or if release is necessary for the carrying out of the DPOs tasks.

*– Certification bodies' accreditation (Article 43(1) GDPR)*

Norwegian Accreditation (Norsk akkreditering) is a national body of accreditation of certification bodies pursuant to the Act 12 April 2013 no. 13 on the free movement of goods in the EEA section 3 first paragraph, cf. Article 43(1) litra b GDPR. At the current time, there are no further provisions regarding certification bodies' accreditation pursuant to Article 43(1) GDPR.

*– The independent supervisory authorities, pursuant to Chapter VI GDPR, which should have been notified to the Authority pursuant to Article 51(4) GDPR*

Norway has adopted rules on the independent supervisory authority pursuant to Chapter IV GDPR in sections 20 through 25 of the Personal Data Act and sections 3 and 4 of the Personal Data Regulations. Please refer to the letter of notification pursuant to the GDPR dated May 3 2019 with regard to the provisions to be notified in accordance with Article 51(4).

*– Administrative fines and penalties other than administrative fines, pursuant to Articles 83 and 84 GDPR, which should have been notified to the Authority pursuant to Articles 83(9) and 84(2) GDPR*

Norway has not adopted national rules pursuant to Article 83 GDPR.

Norway has adopted national rules pursuant to Article 84 GDPR in sections 26 through 30 of the Personal Data Act. Please refer to the letter of notification pursuant to the GDPR dated May 3 2019 with regard to the provisions to be notified in accordance with Article 84(2).

*– reconciliation of the right to the protection of personal data pursuant to the GDPR with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression pursuant to Article 85(1)-(2) GDPR, which should have been notified to the Authority pursuant to Article 85(3) GDPR;*

Norway has adopted a national rule reconciling the right to the protection of personal data pursuant to the GDPR with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression in section 3 of the Personal data Act. Please refer to the letter of notification pursuant to the GDPR dated May 3 2019 with regard to the provisions to be notified in accordance with Article 85 (3).

*– reconciliation of the right to the protection of personal data pursuant to the GDPR with public access to official documents, as foreseen by Article 86 GDPR*

Under Norwegian law, there are various acts regulating public access to official documents, including the Freedom of Information Act, the Public Administration Act and the Environmental Information Act. When the right of public access is statutory, processing in accordance with the general provisions of the GDPR will be permitted.

*– the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context pursuant to Article 88 GDPR, which should have been notified to the Authority pursuant to Article 88(3) GDPR*

Norway has adopted various rules on the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context pursuant to Article 88 GDPR.

Chapter 9 of the Act 17 June 2005 no. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act) regulates control measures in undertakings. Under section 9-5 of the Working Environment Act, regulations concerning employers' right of access to employees' e-mail inboxes and other electronically stored material may be adopted by the Ministry of Labour and Social Affairs. Regulation 2 July 2018 no. 1108 regulates the employer's access to emails and other electronically stored materials.

Under section 9-6 of the Working Environment Act, regulations concerning camera surveillance in undertakings may be adopted by the Ministry of Labour and Social Affairs. Regulation 2 July 2018 no. 1107 regulates camera surveillance in undertakings.

Moreover, the Ministry of Trade, Industry and Fisheries has adopted regulations on control measures in relation to employees covered by the Act on employment protection etc. for employees working on ships (the ship worker act), which concerns both camera surveillance and employers' right of access to employees' e-mail inboxes and other electronically stored material, cf. regulation 25 January 2019 no. 53.

Please refer to the letter of notification pursuant to the GDPR dated May 3 2019 with regard to the provisions to be notified in accordance with Article 88(3).

*– The continued application of existing, comprehensive data protection rules applicable to churches and religious associations or communities prior to the entry into force of the GDPR, as foreseen by Article 91 GDPR*

Norway has not adopted such national rules pursuant to Article 91 GDPR.

#### Table of Correspondence

Please find enclosed a completed Table of Correspondence.

Yours sincerely

Torunn S. Holmberg  
Acting Deputy Director General

Jon Lunde  
Higher Executive Officer

*The document is approved electronically, as such no handwritten signatures are required.*