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EFTA SURVEILLANCE
AUTHORITY

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Norwegian Ministry of Justice and Public Security
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Dear Sir/Madam,

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

Reference is made to the General Data Protection Regulation No 2016/679 (“the GDPR”), which was incorporated into the EEA Agreement by EEA Joint Committee Decision No 154/2018 of 6 July 2018 and entered into force on 20 July 2018. The Norwegian Government notified the full incorporation of the GDPR into the Norwegian legal order by Form 1 dated 16 October 2018.

Article 7 EEA requires the EEA EFTA States to incorporate Regulations into their legal orders *as such*, leaving thus very little margin of discretion as concerns the form and precise wording of the transposition measures. However, the GDPR occasionally presupposes or foresees additional national requirements.

The Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) is in the process of examining the incorporation of the GDPR into the Norwegian legal order.

For the purpose of this examination the Directorate requests the Norwegian Government to provide the following information:

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;
 - Article 9(4) GDPR on specific requirements for the processing of sensitive data;
 - Article 87 GDPR on authorisations to process national identification numbers;
 - Article 90(1) GDPR on obligations of secrecy of controllers and processors.
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);
 - the age of consent for children (Article 8(1) GDPR);
 - 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);
 - further situations/scenarios in which associations/bodies are obliged to as appoint a DPO (Article 37(4) GDPR);
 - limits to transfers of specific categories of personal data to a third country or an international organisation (Article 49(5) GDPR);
 - additional powers of the DPA (Article 58(6) GDPR);
 - representation of data subjects by bodies or associations Article 80(2) GDPR).
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;
 - 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.
4. *Please specify which national rules the Norwegian Government has adopted on:*
- Secrecy and confidentiality provisions applicable to DPOs (Article 38(5) GDPR);
 - Certification bodies’ accreditation (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.
 - 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;
 - 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;
 - 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;
 - 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;
 - 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.

In addition, the Norwegian Government is invited to complete the attached Table of Correspondence (ToC) and highlight *any divergences from the wording of the GDPR, or instances where it has availed itself of a potential margin of discretion*. Insofar as the

relevant GDPR provision is merely incorporated *as such*, an “*as such*” mention in the far right column will suffice. If the relevant provision does not entail any substantive obligations for EEA States, the field may be left blank.

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by 25 April 2019.

Yours faithfully,

Gabrielle Somers
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Gabrielle Somers.

Enclosure: Table of correspondence (Doc No 1048966)