



*Directorate-General for
Research and
Documentation*

RESEARCH NOTE

**Supervision of courts' compliance with personal data protection rules
when acting in their judicial capacity**

[...]

Subject: Review of the arrangements for supervising national courts' compliance with personal data protection rules when acting in their judicial capacity and of any measures recently adopted or ongoing legislative work in the Member States, designed to ensure that the national laws comply with Regulation (EU) 2016/679

[...]

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[...]

OVERVIEW

INTRODUCTION

1. [...] ¹[...]

2. [...] [T]he purpose of this study is to identify the ways in which the Member States arrange such supervision of the national courts, given that the GDPR now excludes the competence of the national personal data protection authorities to supervise processing operations of courts acting in their judicial capacity. ² In that regard, recital (20) of the GDPR states that it should be possible to entrust that supervision to specific bodies within the judicial system of the Member State. This study seeks, in particular, to determine whether the Member States ³ have such bodies in their national laws or, if not, whether they have established other supervisory mechanisms. The research results are summarised in an annex containing an overview table and national contributions. ⁴

¹ 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 (OJ L 119, p. 1–88).

² Regulation (EU) 2016/679, cited above, Article 55(3).

³ Slovenia and Malta could not be covered by the study ... Nevertheless, it should be stated that for the purposes of this study, 27 (and not 26) judicial systems are identified, since, in the United Kingdom, a distinction is drawn between the courts of England and Wales, on the one hand, and the courts of Scotland and Northern Ireland, on the other.

⁴ See Annex: ‘Summary table of the solutions adopted in 26 Member States and national contributions’.

3. It is apparent at the outset that legislative work, ongoing or completed,⁵ has been undertaken in almost all the national legal systems (**24**) for the purpose of excluding the competence of the national supervisory authority with regard to data processing by the courts acting in their judicial capacity. Most of those legal systems (**17**) have entrusted or intend to entrust that supervision to the courts themselves, to an external panel of judges, to other existing bodies or, in the case of **Luxembourg**, to a specific, structurally independent body. Nevertheless, **seven** of those **legal systems** have not as yet provided for any alternative to the exclusion of the competence of the national supervisory authority. Finally, the legislation in force in **two legal systems** has, for the time being, formerly retained that competence, while the situation remains uncertain in one **system**.

4. In order to review the current state of play regarding the very varied solutions adopted at national level with regard to the protection of personal data processed by the courts acting in their judicial capacity, the first part of the overview will be devoted to the presentation of the supervisory mechanisms put in place in the Member States and to their operation (part I). The second part will set out the solutions adopted in the Member States which do not have any mechanism for ensuring personal data protection in connection with the judicial activities of the courts, either because they have simply excluded the competence of the national supervisory authority without providing for an alternative, or because they have maintained the competence of that authority (part II).

⁵ In most of the Member States covered by the note, legislative work is ongoing in that regard, and therefore subsequent developments cannot be ruled out at this stage.

I. NATIONAL LEGAL SYSTEMS WITH SUPERVISORY MECHANISMS (17)

5. In **11 legal systems**, the supervision of data processing carried out by the courts acting in their judicial capacity is now entrusted to the courts themselves, in accordance with more or less detailed rules, or to an external panel of judges. In **seven legal systems**,⁶ supervision is entrusted to other existing bodies. At this time, only **Luxembourg** has provided for the establishment of a structurally independent body to carry out that supervision (part A). The extent of the powers granted to the courts or other bodies charged with this new task varies depending on the Member State (part B), as do the possibilities for appealing against the measures which they adopt (part C).

A. STRUCTURE OF THE DIFFERENT SUPERVISORY MECHANISMS

1. SUPERVISION ENTRUSTED TO THE COURTS OR TO A PANEL OF JUDGES

6. In **English**,⁷ **Austrian, Danish, Estonian, Greek, Irish, Lithuanian, Netherlands, Polish, Portuguese**⁸ and **Czech law**, the legislature has entrusted the monitoring of personal data processing carried out by the courts, acting in their judicial capacity, to the courts themselves or to a panel of judges.
7. In **Denmark** and **Estonia**, the current regulations entrust that monitoring to the courts, without laying down detailed rules. In contrast, in other national systems in that group, specific supervisory mechanisms or procedures have been

⁶ Portugal and Poland belong to both groups (supervision entrusted to the courts on the one hand, and to other existing entities, on the other).

⁷ In the United Kingdom, the competence of the three-judge panel responsible for supervision is exercised over the courts of England and Wales. Although it is not a body 'within the courts', it is nevertheless presented in this part owing to its composition and its lack of a particular legal status, which distinguishes it from Luxembourg.

⁸ In Poland, monitoring by the courts themselves applies only certain courts, the others being subject to supervision by another body. In Portugal, the tasks of monitoring and managing processed data are carried out by the courts and by other bodies (see note 14).

introduced (**Austria**,⁹ **Lithuania**, **Netherlands** and **Portugal**) or are currently being established (**England and Wales**, **Greece**, **Ireland**, **Poland** and the **Czech Republic**) within the courts.

8. In the first place, in **Poland**¹⁰ and in the **Czech Republic**, the ongoing legislative work provides for the competence of the higher court (of its president in the case of **Poland**) to supervise data processing carried out by the lower courts. In **Austria**, the higher court has competence only in civil matters, while in criminal matters supervision is carried out by the higher regional court.¹¹
9. In the second place, as regards **Ireland** and **Lithuania**, supervision is entrusted to a single judge. In **Lithuania**, it is the president of the court concerned whereas in **Ireland**, where the matter is still being discussed, that supervision is exercised by a judge appointed by the president of the Supreme Court.
10. In the third place, in **England and Wales**, supervision of processing carried out by the courts acting in their judicial capacity is conducted by a panel of three judges, from the Court of Appeal, the High Court and either the Upper Tribunal or the Employment Appeal Tribunal.
11. In the fourth place, in **Greece** and **Netherlands**, supervision is shared between several bodies which are pre-existing or established within the courts. In **Greece**, the proposed supervision will be shared between, on the one hand, the chief justice of the court or the judge appointed by him, who will be responsible for examining complaints relating to the infringement of data protection rules and, on the other hand, a committee consisting of three members of the high courts, whose task will be to ensure the uniform application of the data protection rules.

⁹ However, the details of the supervision by the courts in Austrian law concern only judicial courts.

¹⁰ See note 8, above.

¹¹ Moreover, in civil and criminal matters, when the appeal is directed against a body of the Supreme Court, it is that court which is competent.

12. In the **Netherlands**, supervision will be carried out, for some courts,¹² by an existing body, namely the procurator general at the Supreme Court, assisted by the Data Protection Officer appointed for those courts. As regards the higher administrative courts,¹³ supervision is carried out by a ‘GDPR committee’ created specifically for that task and composed of members of those courts.

2. SUPERVISION ENTRUSTED TO EXISTING BODIES

13. In **Bulgaria, Spain, Poland and Portugal**, the Supreme Judicial Council (‘SJC’) has the task of supervising compliance with the rules relating to the protection of personal data when processed by some¹⁴ or all the courts acting in their judicial capacity. In **Spain**, a certain degree of monitoring on the part of the national supervisory authority is maintained.

14. In **Finland, Slovakia and Sweden**,¹⁵ monitoring of the processing in question has been entrusted to bodies outside the judicial framework. Thus, in **Finland**, monitoring is carried out by two constitutional bodies, namely, the Chancellor of Justice, appointed by the President of the Republic and attached to the government, and the Parliamentary Ombudsman, designated by the latter, while in **Slovakia**, that task is the responsibility of the Ministry of Justice. In **Sweden**, the task of the Data Protection Officer designated for each court, will continue to include both the administrative activities and the judicial activities of the courts. That officer maybe a person already employed by the court, but also an external specialist. Moreover, to a lesser extent

¹² The courts of first instance, the courts of appeal, the Supreme Court and its Public Prosecutor's office.

¹³ The Council of State, the Central Appeals Court for Public Service and Social Security Matters and the Administrative Court of Appeal for Trade and industry.

¹⁴ In **Poland**, that body is called ‘National Council of the Judiciary’ and is competent to hear matters of processing carried out by the Constitutional Tribunal, the State Tribunal, the Supreme Court, the Administrative Court, the regional military courts and the courts of appeal. In Portugal, the competence of the SJC is limited to data processed in legal proceedings.

¹⁵ In those three States, reform is within the context of the entry into force of the GDPR.

than applies in **Finnish law**, the Swedish Chancellor of Justice and Parliamentary Ombudsman participate in supervising processing carried out by the courts.

3. SUPERVISION ENTRUSTED TO A NEW STRUCTURALLY INDEPENDENT BODY: THE CASE OF LUXEMBOURG

15. **Luxembourg** has a distinctive feature in relation to the supervisory mechanisms put in place in the Member States, presented above. A draft law provides for the creation of a specific body, called 'Judicial Supervisory Authority', which will be responsible for overseeing personal data processing carried out by all judicial authorities (including the Public Prosecutor's Office) and administrative authorities, in the exercise of their judicial functions, whether for the purposes provided for in Article 1 of that draft law¹⁶ or for those referred to in the GDPR. That processing is therefore excluded from the competence of the national supervisory authority, which nevertheless remains competent in respect of data processing carried out in connection with purely administrative decision-making¹⁷ and processing of police data.

16. In contrast to the supervisory mechanisms provided for in the courts of several Member States, or to the panel of judges being established in **English law**, the **Luxembourg Judicial Supervisory Authority** will have a structure of its own and will be composed of persons appointed for a term of six years renewable once, who will include not only representatives from the various types of court, but also a representative of the national supervisory authority. Several guarantees of the independence of the members of the Judicial Supervisory Authority are provided for, such as the limit on renewal of the appointment or subjection to professional secrecy.

¹⁶ In essence, processing carried out for criminal law and national security purposes.

¹⁷ However, processing carried out by the Public Prosecutor's Office before and after a judicial decision is taken must be subject to the new judicial supervisory authority.

B. VARYING SCOPE OF THE POWERS CONFERRED ON THE JUDGES OR BODIES RESPONSIBLE FOR SUPERVISION

17. On the basis of currently available information, several Member States provide that the body (or bodies) or judge (or judges) responsible for supervising data processing carried out by the courts acting in their judicial capacity are to examine the complaints submitted to them (**Austrian, Finnish, Greek, Lithuanian, Luxembourg, Netherlands, Polish and Czech law**) and, in some cases, may also act on their own initiative (**Finnish, Netherlands and Czech law**). However, in certain legal systems, it appears that the task of the designated body is, in general, focused on monitoring (**English and Slovak law**).
18. As regards the measures adopted by the competent body (or bodies) or judge (or judges), some legal orders provide for the adoption of decisions (**Austrian, Bulgarian, Irish and Luxembourg law**), whereas others seem on balance to limit their tasks to issuing opinions and recommendations (**Finnish, Greek, Lithuanian, Netherlands and Polish law**), or even to merely providing information and advice (**Swedish law**). However, some of them are granted additional powers, such as the power to issue injunctions and/or warnings (**Finnish, Lithuanian and Polish law**). It should be pointed out that, in **Luxembourg law** the Judicial Supervisory Authority will have the power to limit data-processing or even to prohibit it definitively. Finally, the possibility of imposing penalties is manifestly excluded in **Slovak law**, but the other legal systems do not provide for any express exclusion in that regard.
19. The other functions entrusted to the bodies or judges responsible for supervision include inter alia general tasks of raising awareness and/or developing guidelines for the effective and uniform implementation of the rules (**England and Wales, Greece, Ireland, Luxembourg,**

Netherlands, Poland, Portugal ¹⁸ and **Slovakia**), cooperating with other supervisory bodies (**Luxembourg** and **Poland**) or preparing annual activity reports (**Finland** and **Netherlands**).

C. REMEDIES AVAILABLE AGAINST MEASURES ADOPTED BY THE BODIES OR JUDGES RESPONSIBLE FOR SUPERVISION

20. In **Bulgaria, Lithuania, Luxembourg** and, to a certain extent, **Austria**, it is expressly provided that an appeal may be lodged against the decisions taken by the bodies or judges responsible for supervision. Thus, the decisions of the **Luxembourg** Judicial Supervision Authority, relating to personal data processing falling within the scope of the future law transposing Directive (EU) 2016/680, ¹⁹ will be subject to appeal before the chamber of the Court of Appeal. An appeal will also lie, this time before the administrative court, against decisions of that authority falling within the scope of the GDPR. The same applies to decisions adopted by the **Bulgarian** SJC, which will be subject to appeal before the Supreme Administrative Court and to acts or omissions of the president of the competent court in **Lithuanian law**, which may be challenged before the president of the higher court. In **Austrian law**, an appeal may be brought before the Supreme Court against the decision of the court responsible for supervision, where the decision raises a question of law of great importance for the unity of the law, legal certainty or legal development.

¹⁸ That task is performed, in parallel with the supervision carried out by the competent bodies (see above, parts A.1 and A.2), by the Commission for the Management of Data Relating to the Judicial System.

¹⁹ Directive (EU) 2016/680 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 by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89–131).

21. As far as **Ireland** is concerned, the possibility of appealing against the decisions of the designated judge does not seem, at this stage and subject to completion of the ongoing legislative work, to be excluded.
22. However, no specific appeal procedure appears to have been provided for against acts adopted by the bodies or judges of several national systems (**England and Wales**, and **Greek, Netherlands, Polish, Swedish** and **Czech law**), such an appeal being clearly excluded in other systems (**Finland**). Nevertheless, that lack is offset, in some systems, by the general remedy of an action for compensation (**Slovakia, Sweden**).

II. LEGAL SYSTEMS WITH NO SPECIFIC SUPERVISORY MECHANISM (10)

23. A distinction must be drawn between, on the one hand, the **seven legal systems** which have excluded the competence of the national supervisory authority to ensure the protection of personal data processed by the courts acting in their judicial capacity, without however providing alternative supervisory mechanisms (part A.) and, on the other hand, the **three legal systems** which have not clearly excluded the competence of that body, in spite of the entry into force of the GDPR (part B.).

A. MEMBER STATES WHICH HAVE MERELY EXCLUDED THE COMPETENCE OF THE NATIONAL SUPERVISORY AUTHORITY

24. In **seven** of the **legal systems** which have excluded the competence of the national supervisory authority in respect of personal data processing carried out by the courts acting in their judicial capacity, no alternative supervisory mechanism has, as yet,

been provided for (**German, Belgian, Croatian, Scottish and Northern Ireland, French, Italian and Latvian**²⁰ law). That omission has been criticised by academic lawyers and by the bodies responsible for data protection in **Germany** and **Belgium**.

B. LEGAL SYSTEMS WHICH HAVE NOT EXCLUDED THE COMPETENCE OF THE NATIONAL SUPERVISORY AUTHORITY

25. In **Cypriot** and **Hungarian** law, no legislation has excluded the competence of the national supervisory authority, for which provision was originally made, in respect of the processing of personal data carried out by the courts acting in their judicial capacity. For whatever purpose it may serve, it should also be noted that, in **Romanian law**, no earlier or current provision provides for or excludes the competence of the national advisory authority, so that it is impossible to be sure that the silence of that Member State on that point stems from the fact that the GDPR is directly applicable.
26. Moreover, it should be pointed out, in the first place, that in those three legal systems, legislative work is being done to update the relevant legislation in the light of the GDPR. Nevertheless, they are silent on the matter of the supervision of processing carried out by the courts acting in their judicial capacity so that technically, the national supervisory authority is (**Cypriot and Hungarian law**) or may be (**Romanian law**) competent in that regard.
27. In the second place, having noted that deficiency, the Supreme Court of **Cyprus** decided, as from 23 May 2018, to suspend temporarily the publication of any legal decision, pending a legislative framework implementing the obligations imposed under the GDPR. That Court also formulated several

²⁰ In the case of Latvia, the scope of that exclusion is by no means clear: a 2008 judgment excluded the competence of the national supervisory authority in respect of the judicial activities of the courts, while at the same time examining whether the judge had not infringed the personal data protection law.

proposals²¹ for the purpose of ensuring compliance with Article 55(3) of the GDPR. In contrast, no measure has been taken in **Hungary** to compensate for the lack of a legislative framework in accordance with the GDPR. It is also interesting to note, as regards this last State, that, during discussions relating to a former draft law to regulate the management of data linked to the judicial activity, the National Office for the Judiciary had considered that the legislation providing for the competence of the national supervisory authority was sufficient.

CONCLUSION

28. In the light of the above analysis, it appears that the vast majority of the Member States have satisfied the requirement to exclude the competence of the national supervisory authority in respect of personal data processing carried out by the courts acting in their judicial capacity. That compliance with the GDPR is apparent, in most cases, either in express national provisions or in the establishment of a specific supervisory mechanism.
29. From the **17 legal systems** which have established a specific supervisory mechanism or have initiated work in that regard, two main supervisory systems may be identified, namely, on the one hand, the introduction of mechanisms within the courts, of extremely varied types (*supervision by the courts with no additional details, supervision by the higher court, by a single judge, shared and/or collective supervision*) and, on the other hand, the establishment of supervisory mechanisms outside the courts (*Supreme Council of the Judiciary, Ministry of Justice, Data Protection Officer, Parliamentary Ombudsman, Chancellor of Justice*), the two types of supervision sometimes being combined. Only **Luxembourg** has provided for

²¹ The Supreme Court of Cyprus envisages the adoption of rules of procedure or a practical guide for the lower courts to enable them to publish their decisions in a manner compatible with the GDPR.

the establishment of a specific, structurally independent body for that supervision.

30. Of the **10 legal systems** which have not as yet established any specific supervisory mechanism, most have merely excluded, by an express national provision, the jurisdiction of the national supervisory authority. However, some Member States seem not to have provided for any exclusion of that type, in spite of the work carried out in those States for the purpose of achieving compliance between their legislation and the GDPR, and therefore the situation remains uncertain.

[...]

ANNEX

**‘SUMMARY TABLE OF THE SOLUTIONS ADOPTED
IN 26 MEMBER STATES AND NATIONAL CONTRIBUTIONS**

SUMMARY TABLE OF THE SOLUTIONS ADOPTED IN 26 MEMBER STATES

I. MEMBER STATES EXCLUDING THE COMPETENCE OF THE NATIONAL SUPERVISORY AUTHORITY¹

CREATION OF A SPECIFIC BODY	
Luxembourg: ‘Judicial Supervisory Authority’ (draft law of 2018)	
SUPERVISION BY THE COURTS THEMSELVES, BY BODIES WITHIN THEM OR BY PANELS OF JUDGES	
SUPERVISION BY THE COURTS THEMSELVES	- Austria (<i>for the administrative courts</i>), Denmark and Estonia : supervision by the courts, with no additional details
SUPERVISION BY THE HIGHER COURT	- Austria (<i>for the judicial courts</i>) ² - Poland : president of the court of higher instance - Czech Republic
SUPERVISION BY A SINGLE JUDGE	- Ireland : a judge appointed for that function - Lithuania : president of the court
SHARED AND/OR COLLECTIVE SUPERVISION	- Greece : chief justice of the court or judge appointed by him and committee of three members of the high courts - Netherlands : <ul style="list-style-type: none"> • Procurator General at the Supreme Court <i>for some courts</i> • ‘GDPR Committee’ <i>for the higher administrative courts</i> • Cooperation of the Procurator and of the Committee with the data protection officers designated for those courts. - Portugal : supervision shared between five different bodies according to the type of dispute, including members of the court (for example: Prosecutor General of the Republic for criminal investigations and other matters falling within the jurisdiction of the Public Prosecution Office)

¹ The supervision mechanisms are an innovation which has been (or is being) introduced in view of the entry into force of the GDPR in the following member states: England and Wales, Bulgaria, Greece, Ireland, Luxembourg, Netherlands, Poland, Czech Republic and Sweden. However, such system already existed in Austria, Denmark, Spain, Estonia, Lithuania and Portugal.

² In criminal matters, supervision is carried out by the higher regional court. Moreover, in civil and criminal matters, where the appeal is directed against a body of the Supreme Court, the Supreme Court has jurisdiction.

	- United Kingdom (<i>for the courts of England and Wales</i>): panel of three judges
SUPERVISION BY OTHER BODIES	
SUPREME JUDICIAL COUNCIL	Bulgaria, Spain, Poland³ and Portugal⁴
CHANCELLOR OF JUSTICE AND PARLIAMENTARY OMBUDSMAN	Finland
MINISTRY OF JUSTICE	Slovakia
DATA PROTECTION OFFICER	Sweden
NO ALTERNATIVE SUPERVISION MECHANISM	
MERE EXCLUSION OF COMPETENCE OF THE NATIONAL SUPERVISORY AUTHORITY	Germany, Belgium, Croatia, France, Italy, Latvia⁵ and United Kingdom (<i>for the courts of Scotland and Northern Ireland</i>)

II. SPECIFIC CASES

MAINTENANCE OF COMPETENCE OF THE NATIONAL SUPERVISORY AUTHORITY	
Hungary	
UNCERTAIN SITUATIONS	
SINCE 2018	Cyprus: The national supervisory authority officially remains competent. However, a judgment of the Supreme Court suspended publication of all judicial decisions as from 23 May 2018, pending a legislative framework in accordance with the GDPR.
PRE-EXISTING SITUATION	Latvia: A judgment of 2008 excluded the competence of the national supervisory authority for the judicial activities of the courts. However, the scope of that judgment is unclear, so that the exercise of de facto supervision by that authority cannot be precluded with certainty.
SITUATION UNCERTAIN BOTH BEFORE AND AFTER 2018	Romania: No clear exclusion of the competence of the national supervisory authority.

³ Called the 'National Council of the Judiciary', which has jurisdiction over processing carried out by the Constitutional Tribunal, the Tribunal of State, the Supreme Court, the Administrative Court, the regional military courts and the courts of appeal.

⁴ Only in respect of judicial litigation.

⁵ In Latvia, the competence of the national supervisory authority was excluded by a judgment of 2008, although the scope of that case-law is uncertain (see above, table No2, 'Specific Cases').