



# ONTIER



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## THE EUROPEAN DATA PROTECTION BOARD

The European Data Protection Board (“**the Board**”) will replace the Article 29 Working Party under the GDPR to ensure its consistent application across the Union. The Board will prepare important framework for the implementation and development of the GDPR in the form of guidelines, opinions and legal decisions.

**Current situation**

The Article 29 Working Party (established by Article 29 of Directive 95/46/EC) provides independent data protection advice to the European Commission (“**the Commission**”) and assists with ensuring that harmonised policies are developed in EU Member States.

The Article 29 Working Party consists of: representatives of the supervisory authorities from the Member States and a representative from the Commission and the European Data Protection Supervisor (“**the EDPS**”).

## What's new?

The European Data Protection Board will replace the previous Article 29 Working Party and has been setup as an independent body with legal personality in order to promote the consistent application of the GDPR throughout the Union. The Board will seek to achieve this aim by, for example: advising the Commission in relation to the level of protection in third countries or international organisations and encouraging co-operation amongst the supervisory authorities throughout the Union.

The Board will act independently when performing its tasks and appoint a Chair who will communicate its activities to the Commission. The Board itself will comprise of:

- (a) its Chair;
- (b) the heads/representatives of one supervisory authority of each Member State;
- (c) the head/representative of the EDPS.

In addition, the Commission itself will appoint its own representative who will have the right to participate in the meetings and activities of the Board but without the ability to vote.

The Board will be assisted by a Secretariat appointed by the EDPS. Staff from the EDPS responsible for carrying out the tasks of the Board will act under the exclusive instruction of the Chair, most likely with a view to ensure its independence.

The activities of the Board, in addition to those mentioned above, are wide ranging and include:

1. Advising the Commission on issues relating to: protection of personal data in the Union (including proposed amendments to the GDPR) and procedures for exchanging information between controllers, processors and supervisory authorities for binding corporate rules.
2. Issuing guidelines, recommendations and best practices in order to establish personal data breaches and the identifying the circumstances in which a breach may result in a high risk to rights and freedoms of natural persons.
3. Preparing guidelines to be used by supervisory authorities when, for example: conducting investigations such as data protection audits, notifying controllers or processors of alleged infringement under the GDPR, issuing warnings or reprimands and setting the relevant administrative fines the supervisory authorities are responsible for imposing.

4. Issuing opinions within determined periods of time in circumstances where the majority of the Board has decided to do so or if requested by a supervisory authority or the Commission;
5. Issuing opinions on draft decisions prepared by supervisory authorities in relation to the following matters:
  - (a) adopting a list of processing operations requiring data protection impact assessments;
  - (b) resolving concerns as to whether draft codes of conduct or an amendment/extension to an existing code of conduct complies with the GDPR;
  - (c) approving the criteria for the accreditation or certification of a body;
  - (d) determining standard data protection clauses;
  - (e) authorising contractual clauses or;
  - (f) approving binding corporate rules.
6. Adopting legally binding decisions in the event of disputes arising between supervisory authorities (such legally binding decisions to be adopted by a two-thirds' majority of the Board's members);
7. Conducting accreditations of certified bodies and maintaining a public register of accredited bodies;
8. Maintaining a publicly accessible electronic register of decisions taken by supervisory authorities and courts on issues handled in the consistency mechanism.

## What to do to adapt?

In light of the broad remit of the Board's activities and responsibilities as outlined above, it is clear that it will be responsible for managing how the GDPR is implemented, enforced and developed across the Union.

Whilst the Board will liaise with and/or direct bodies such as the Secretariat, the Commission and supervisory authorities, its decisions and policies will impact upon controllers and processors. For this reason, developing a keen awareness of the Board's activities (including its guidance, decisions and any registers it maintains containing this information) would be both useful and valuable in educating oneself of the Board's view on particular matters and identifying areas for improvement within one's own organisation.

## Practical example:

By way of example, in circumstances in which disputes arise between supervisory authorities, the Board will be empowered to adopt legally binding decisions in order to decide such cases by a two- thirds majority vote of its members. This will enable the disputed matters to be resolved and consistently applied throughout the Union.

### **Practical example:**

By way of example, in circumstances in which disputes arise between supervisory authorities, the Board will be empowered to adopt legally binding decisions in order to decide such cases by a two- thirds majority vote of its members. This will enable the disputed matters to be resolved and consistently applied throughout the Union.

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