

---

# Contents

|          |  |    |
|----------|--|----|
| <b>1</b> | <b>Introduction and ‘Checklist’</b> . . . . .  | 1  |
| 1.1      | Legislative Purpose and Previous Legal Provisions . . . . .                          | 1  |
| 1.1.1    | The Data Protection Directive . . . . .  | 1  |
| 1.1.2    | The General Data Protection Regulation . . . . .                                     | 2  |
| 1.2      | Checklist: Most Important Data Protection Obligations . . . . .                      | 3  |
| 1.2.1    | Organisational Requirements . . . . .  | 3  |
| 1.2.2    | Lawfulness of the Processing Activities . . . . .                                    | 5  |
|          | References . . . . .   | 7  |
| <b>2</b> | <b>Scope of Application of the GDPR</b> . . . . .                                    | 9  |
| 2.1      | In Which Case Does the Regulation Apply? . . . . .                                   | 9  |
| 2.1.1    | ‘Processing’ . . . . .   | 9  |
| 2.1.2    | ‘Personal Data’ . . . . .  | 11 |
| 2.1.3    | Exemptions from the Scope of Application . . . . .                                   | 16 |
| 2.2      | To Whom Does the Regulation Apply? . . . . .   | 17 |
| 2.2.1    | ‘Controller’ . . . . .   | 17 |
| 2.2.2    | ‘Processor’ . . . . .  | 20 |
| 2.2.3    | Beneficiaries of Protection Under the GDPR . . . . .                                 | 20 |
| 2.3      | Where Does the Regulation Apply? . . . . .   | 21 |
| 2.3.1    | Data Processing in the Context of the Activities<br>of an EU Establishment . . . . . | 22 |
| 2.3.2    | Processing of Personal Data of Data Subjects<br>in the EU . . . . .                  | 26 |
|          | References . . . . .   | 29 |
| <b>3</b> | <b>Organisational Requirements</b> . . . . .   | 31 |
| 3.1      | Accountability . . . . .   | 31 |
| 3.2      | General Obligations . . . . .  | 33 |
| 3.2.1    | Responsibility, Liability and General Obligations<br>of the Controller . . . . .     | 33 |
| 3.2.2    | The Allocation of Responsibility Between Joint<br>Controllers . . . . .              | 34 |
| 3.2.3    | Cooperation with Supervisory Authorities . . . . .                                   | 37 |
| 3.3      | Technical and Organisational Measures . . . . .                                      | 38 |
| 3.3.1    | Appropriate Data Protection Level . . . . .  | 38 |

|          |   |           |
|----------|---|-----------|
| 3.3.2    | Minimum Requirements . . . . .  | 39        |
| 3.3.3    | Risk-Based Approach Towards Data Security . . . . .                           | 40        |
| 3.3.4    | The NIS Directive . . . . .   | 42        |
| 3.4      | Records of Processing Activities . . . . .                                    | 44        |
| 3.4.1    | Content and Purpose of the Records . . . . .                                  | 44        |
| 3.4.2    | Exemption from the Obligation to Maintain Records . . . . .                   | 45        |
| 3.5      | Data Protection Impact Assessment . . . . .                                   | 47        |
| 3.5.1    | Affected Types of Data Processing . . . . .                                   | 47        |
| 3.5.2    | Scope of the Assessment . . . . .   | 49        |
| 3.6      | Data Protection Officer . . . . .   | 53        |
| 3.6.1    | Designation Obligation . . . . .  | 53        |
| 3.6.2    | Aspects Regarding the Designation of the Data<br>Protection Officer . . . . . | 56        |
| 3.6.3    | Position . . . . .  | 58        |
| 3.6.4    | Responsibilities . . . . .  | 60        |
| 3.7      | Privacy by Design and Privacy by Default . . . . .                            | 62        |
| 3.8      | Personal Data Breaches . . . . .  | 65        |
| 3.8.1    | Personal Data Breach . . . . .  | 65        |
| 3.8.2    | Notification to the Supervisory Authority . . . . .                           | 65        |
| 3.8.3    | Communication to the Data Subjects . . . . .                                  | 69        |
| 3.9      | Codes of Conduct, Certifications, Seals, Etc. . . . .                         | 71        |
| 3.9.1    | Relationship Between Codes of Conduct and<br>Certifications . . . . .         | 71        |
| 3.9.2    | Codes of Conduct . . . . .  | 72        |
| 3.9.3    | Certifications, Seals, Marks . . . . .  | 77        |
| 3.10     | Data Processors . . . . .   | 80        |
| 3.10.1   | Privileged Position of the Processor . . . . .                                | 80        |
| 3.10.2   | Obligation of the Controller When Choosing<br>a Processor . . . . .           | 81        |
| 3.10.3   | Obligations of the Processor . . . . .  | 83        |
| 3.10.4   | Designation of a Sub-Processor . . . . .                                      | 84        |
|          | References . . . . .  | 84        |
| <b>4</b> | <b>Material Requirements . . . . .</b>  | <b>87</b> |
| 4.1      | Basic Principles . . . . .  | 87        |
| 4.1.1    | Lawfulness, Fairness and Transparency . . . . .                               | 88        |
| 4.1.2    | Purpose Limitation . . . . .  | 88        |
| 4.1.3    | Data Minimisation . . . . .   | 90        |
| 4.1.4    | Accuracy . . . . .  | 91        |
| 4.1.5    | Storage Limitation . . . . .  | 92        |
| 4.1.6    | Integrity and Confidentiality . . . . .                                       | 92        |
| 4.2      | Legal Justifications for Data Processing . . . . .                            | 92        |
| 4.2.1    | Processing Based on Consent . . . . .   | 93        |
| 4.2.2    | Processing Based on a Legal Permission . . . . .                              | 100       |
| 4.2.3    | Processing of Special Categories of Personal Data . . . . .                   | 110       |

|          |  |            |
|----------|--|------------|
| 4.3      | Data Transfers to Third Countries . . . . .  | 116        |
| 4.3.1    | Safe Third Countries . . . . .   | 117        |
| 4.3.2    | Consent . . . . .  | 118        |
| 4.3.3    | Standard Contractual Clauses . . . . .   | 119        |
| 4.3.4    | EU–U.S. Privacy Shield . . . . .   | 122        |
| 4.3.5    | Binding Corporate Rules . . . . .  | 125        |
| 4.3.6    | Codes of Conduct, Certifications, Etc. . . . .   | 129        |
| 4.3.7    | Derogations for Specific Situations . . . . .  | 130        |
| 4.3.8    | Appointment of a Representative by Non-EU Entities . . .   | 133        |
| 4.4      | Limited Privilege for Intra-Group Processing Activities . . . . .  | 135        |
| 4.4.1    | Separate Data Protection Responsibility of Each<br>Group Member . . . . .  | 136        |
| 4.4.2    | Facilitations Regarding Material Requirements . . . . .  | 137        |
| 4.4.3    | Facilitation Regarding Organisational Requirements . . .   | 138        |
|          | References . . . . .   | 138        |
| <b>5</b> | <b>Rights of Data Subjects . . . . .</b>   | <b>141</b> |
| 5.1      | Transparency and Modalities . . . . .  | 141        |
| 5.1.1    | The Manner of Communicating with the<br>Data Subject . . . . .   | 142        |
| 5.1.2    | The Form of Communication . . . . .  | 143        |
| 5.2      | Information Obligation of the Controller Prior to Processing . . .   | 143        |
| 5.2.1    | Time of Information . . . . .  | 144        |
| 5.2.2    | Collection of the Data from the Data Subject . . . . .   | 144        |
| 5.2.3    | Obtainment of the Data from Another Source . . . . .   | 146        |
| 5.2.4    | Practical Implications . . . . .   | 147        |
| 5.3      | Response to Data Subjects' Requests . . . . .  | 147        |
| 5.3.1    | Manner of Response . . . . .   | 147        |
| 5.3.2    | Time of Response . . . . .   | 149        |
| 5.3.3    | Information in Case of Inaction . . . . .  | 149        |
| 5.3.4    | Verification of the Data Subject's Identity . . . . .  | 150        |
| 5.4      | Right to Access . . . . .  | 150        |
| 5.4.1    | Scope of the Right to Access . . . . .   | 150        |
| 5.4.2    | Provision of Access to the Personal Data . . . . .   | 152        |
| 5.4.3    | Practical Implications . . . . .   | 153        |
| 5.5      | Rights to Erasure, Rectification and Restriction . . . . .   | 154        |
| 5.5.1    | Right to Rectification . . . . .   | 154        |
| 5.5.2    | Right to Erasure . . . . .   | 156        |
| 5.5.3    | Right to Restriction of Processing . . . . .   | 164        |
| 5.5.4    | Notification of Third Parties Regarding the Rights to<br>Erasure, Rectification and Restriction, Art. 19 . . . . . | 167        |
| 5.6      | Right to Data Portability . . . . .  | 168        |
| 5.6.1    | Scope and Exercise of the Right to Data Portability . . .  | 169        |
| 5.6.2    | Technical Specifications . . . . .   | 174        |
| 5.6.3    | Transmission of the Data . . . . .   | 174        |

|          |       |  |            |
|----------|-------|--|------------|
|          | 5.6.4 | Relation to the Right to Erasure . . . . .                                 | 175        |
|          | 5.6.5 | Exclusion of the Right to Data Portability . . . . .                       | 175        |
| 5.7      |       | Right to Object . . . . .  | 176        |
|          | 5.7.1 | Grounds for an Objection to Processing . . . . .                           | 177        |
|          | 5.7.2 | Exercise of the Right and Legal Consequences . . . . .                     | 179        |
|          | 5.7.3 | Information Obligation . . . . .   | 180        |
| 5.8      |       | Automated Decision-Making . . . . .  | 180        |
|          | 5.8.1 | Scope of Application of the Prohibition . . . . .                          | 181        |
|          | 5.8.2 | Exceptions from the Prohibition . . . . .                                  | 183        |
|          | 5.8.3 | Appropriate Safeguards . . . . .   | 184        |
| 5.9      |       | Restrictions of the Data Subjects' Rights . . . . .                        | 184        |
|          |       | References . . . . .   | 185        |
| <b>6</b> |       | <b>Interaction with the Supervisory Authorities . . . . .</b>              | <b>189</b> |
|          | 6.1   | Determination of the Competent Supervisory Authority . . . . .             | 189        |
|          | 6.2   | One-Stop-Shop Mechanism . . . . .  | 191        |
|          | 6.3   | Determination of the Competent Lead Supervisory Authority . . . . .        | 192        |
|          | 6.3.1 | Determination Based on an Entity's Main<br>Establishment . . . . .         | 192        |
|          | 6.3.2 | Determination in the Absence of an EU<br>Establishment . . . . .           | 195        |
|          | 6.3.3 | Exception: Local Competences . . . . .                                     | 195        |
|          | 6.4   | Cooperation and Consistency Mechanism . . . . .                            | 197        |
|          | 6.4.1 | European Data Protection Board . . . . .                                   | 197        |
|          | 6.4.2 | Cooperation Mechanism . . . . .  | 198        |
|          | 6.4.3 | Consistency Mechanism . . . . .  | 198        |
|          |       | References . . . . .   | 199        |
| <b>7</b> |       | <b>Enforcement and Fines Under the GDPR . . . . .</b>                      | <b>201</b> |
|          | 7.1   | Tasks and Investigative Powers of the Supervisory<br>Authorities . . . . . | 201        |
|          | 7.1.1 | Greater Consistency of Investigative Powers<br>Throughout the EU . . . . . | 202        |
|          | 7.1.2 | Scope of Investigative Powers . . . . .                                    | 202        |
|          | 7.1.3 | Exercise of the Powers . . . . .   | 204        |
|          | 7.2   | Civil Liability . . . . .  | 204        |
|          | 7.2.1 | Right to Claim Compensation . . . . .                                      | 205        |
|          | 7.2.2 | Liable Parties . . . . .   | 207        |
|          | 7.2.3 | Exemption from Liability . . . . .   | 208        |
|          | 7.3   | Administrative Sanctions and Fines . . . . .                               | 208        |
|          | 7.3.1 | Corrective Powers of the Supervisory Authorities . . . . .                 | 209        |
|          | 7.3.2 | Grounds for and Amounts of Administrative Fines . . . . .                  | 210        |
|          | 7.3.3 | Imposition of Fines, Including Mitigating Factors . . . . .                | 211        |
|          | 7.3.4 | Sanctioning of Groups of Undertakings . . . . .                            | 212        |
|          | 7.3.5 | Practical Implications . . . . .   | 213        |

|           |   |            |
|-----------|---|------------|
| 7.4       | Judicial Remedies . . . . .   | 214        |
| 7.4.1     | Remedies Available to Data Processing Entities . . . . .  | 214        |
| 7.4.2     | Remedies Available to Data Subjects . . . . .   | 215        |
|           | References . . . . .  | 216        |
| <b>8</b>  | <b>National Peculiarities . . . . .</b>   | <b>219</b> |
| 8.1       | Various Opening Clauses . . . . .   | 219        |
| 8.1.1     | Opening Clauses Included in General Provisions<br>of the GDPR . . . . .                           | 219        |
| 8.1.2     | EU Member State Competence for Specific<br>Processing Situations . . . . .                        | 223        |
| 8.2       | Employee Data Protection . . . . .  | 224        |
| 8.2.1     | Opening Clause . . . . .  | 225        |
| 8.2.2     | Co-determination Bodies Provided for in Selected<br>EU Member States . . . . .                    | 226        |
| 8.3       | Telemedia Data Protection . . . . .   | 230        |
|           | References . . . . .  | 232        |
| <b>9</b>  | <b>Special Data Processing Activities . . . . .</b>   | <b>235</b> |
| 9.1       | Big Data . . . . .  | 235        |
| 9.1.1     | Applicability of the GDPR . . . . .   | 236        |
| 9.1.2     | Accountability . . . . .  | 237        |
| 9.1.3     | Safeguarding the Basic Principles of Lawful<br>Processing . . . . .                               | 237        |
| 9.2       | Cloud Computing . . . . .   | 238        |
| 9.2.1     | Allocation of Responsibilities . . . . .  | 239        |
| 9.2.2     | Choosing a Suitable Cloud Service Provider . . . . .  | 239        |
| 9.2.3     | Third-Country Cloud Service Providers . . . . .   | 240        |
| 9.3       | Internet of Things . . . . .  | 240        |
| 9.3.1     | Legal Basis for Processing in the IoT . . . . .   | 241        |
| 9.3.2     | Privacy by Design and Privacy by Default . . . . .  | 242        |
|           | References . . . . .  | 242        |
| <b>10</b> | <b>Practical Implementation of the Requirements Under the GDPR . . . . .</b>                      | <b>245</b> |
| 10.1      | Step 1: 'Gap' Analysis . . . . .  | 246        |
| 10.2      | Step 2: Risk Analysis . . . . .   | 246        |
| 10.3      | Step 3: Project Steering and Resource/Budget Planning . . . . .                                   | 247        |
| 10.4      | Step 4: Implementation . . . . .  | 247        |
| 10.5      | Step 5: National Add-On Requirements . . . . .  | 249        |
|           | References . . . . .  | 249        |
|           | <b>Annex I: Juxtaposition of the Provisions and Respective Recitals<br/>of the GDPR . . . . .</b> | <b>251</b> |
|           | <b>Index . . . . .</b>  | <b>381</b> |