

28 August 2020

Ms. Birgit Sippel MEP  
European Parliament  
60, Rue Wiertz  
B-1047 Bruxelles  
Belgium

Ref: OUT2020-0103

Dear Ms Sippel,

Thank you for your letter dated 08 May 2020 regarding the enforcement of the GDPR against public authorities. In the context of the Covid-19 crisis, this issue has gained importance.

The enforcement of the GDPR lies within the competence of the national supervisory authorities. The Board itself cannot carry out any enforcement activities against public authorities in the Member States.

According to Art. 70 GDPR the role of the EDPB is to ensure the consistent application of the GDPR. To this end, the tasks of the Board include monitoring and ensuring the correct application of this Regulation in the cases provided for in Articles 64 and 65 GDPR without prejudice to the tasks of national supervisory authorities, and promoting the cooperation and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities.

To fulfil these tasks the Board has inter alia established the Enforcement Expert Subgroup. Within this Expert Subgroup the representatives of the national supervisory authorities exchange regularly information on matters of the enforcement of the GDPR in the Member States.

In the context of the enforcement of the GDPR administrative fines and other corrective powers have to be distinguished. Art. 83(7) GDPR contains an opening clause which allows the Member States to lay down rules in national laws on whether and to what extent administrative fines may be imposed on public authorities and bodies. Some Member States exercised this opening clause and excluded the possibility to impose fines on public authorities and bodies in their national legislations. Therefore, not in all Member States public authorities can be sanctioned by administrative fines. In contrast, Article 58(2) GDPR does not provide an opening clause in terms of other corrective powers of supervisory authorities. Thus, to the extent known, corrective powers pursuant to Article 58(2) GDPR different from fines can be issued against public authorities in all Member States. This also applies to German data protection authorities with the limitation, however, that under the federal data

protection law and the national data protection law of the German Laender nearly all supervisory authorities are not entitled to enforce corrective powers towards ministries or other state authorities in the event these authorities do not comply with corrective measures.

So far, the exchange of information in the Enforcement Expert Subgroup has not shown a general lack of powers endowed to national supervisory authorities to effectively issue corrective powers pursuant to Article 58(2) GDPR. Constraints like in the concrete case to which you refer in your letter have not been reported by other Member States.

The EDPB will continue to monitor the enforcement of the GDPR in the Member States. Within the scope of its competence the Board will examine any question which arise in the context of the enforcement of the GDPR.

Yours sincerely,



Andrea Jelinek