



Message 961

Communication from the Commission - TRIS/(2025) 3020

Procedure for the provision of information EC - EFTA

Notification: 2025/9028/NO

Forwarding of the response of the EFTA surveillance authority to request for supplementary information (INFOSUP) / comments (5.2) from the European Union

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1. MSG 961 IND 2025 9028 NO EN 19-12-2025 21-10-2025 NO ANSWER 19-12-2025

2. Norway

3A. Royal Ministry of Trade, Industry and Fisheries

3B. Royal Ministry of Justice and Public Security

4. 2025/9028/NO - SERV50 - Protection of privacy

5.

6. The Norwegian Ministry of Justice and Public Security hereby responds to the Commission's request for supplementary information concerning the draft "Consultation on the age limit applicable to child's consent in relation to information society services under GDPR article 8" ("the notified draft").

The Commission has made the following request for supplementary information:

1. The Commission services would like to understand why the draft law also provides for a territorial and material scope of this obligation? More specifically, why does the law explicitly specify that the obligation applies regardless of where the data controller or data processor is established?

2. Why is this obligation limited to children residing in Norway and not all children that are at the time of processing in Norway?

Answer to question 1:

The Norwegian Personal Data Act contains national law provisions enacted under the so-called opening clauses of the GDPR. Among other things, the Personal Data Act provides for an age limit under the GDPR Article 8, which currently is set to 13 years, see Section 5 of the law. Under the proposal, the age limit will be set to 15 years.

The territorial scope of the Norwegian Personal Data Act is provided for in Section 4 of the law. According to section 4 (1), the law applies to processing of personal data in the context of the activities of an establishment of a controller or a processor in Norway, regardless of whether the processing takes place in the EEA or not. This provision mirrors the GDPR Article 3 (1). The practical implication of section 4 (1) is that the Norwegian Personal Data Act, including the age limit in Section 5, does not apply to controllers or processors established in other EEA/EU countries.

Under section 4 (2) of the law, the Norwegian Personal Data Act also applies to the processing of personal data of data subjects who are in Norway by a controller or processor not established in the EEA, where the processing activities are related to: (a) the offering of goods or services to such data subjects in Norway, irrespective of whether a payment of the data subject is required; or (b) the monitoring of their behaviour as far as their behaviour takes place within Norway. This provision mirrors the GDPR Article 3 (2).



Under the proposed regulation in the notified draft, the age limit provided for in Section 5 of the law shall apply regardless of where the data controller or data processor is established, if the processing concerns children residing in Norway. The age limit in Section 5 will therefore apply not only to controllers and processors established in Norway in accordance with Section 4 (1), but also to controllers and processors established in other EEA/EU countries if the processing concerns children residing in Norway.

The rationale behind the proposal is to ensure that children residing in Norway receive the protection afforded by the proposed 15-year age limit regardless of where the provider is established, i.e. whether it is established in Norway or in another EEA country. Several EEA countries have set an age limit lower than 15 years in their national law. The proposal will also provide greater predictability for individuals residing in Norway, as the same age limit will apply regardless of where the provider is established.

The Ministry does not have comprehensive information regarding the territorial scope of national age limits enacted under Article 8 GDPR in other EU/EEA countries. In the Ministry's understanding, the approaches taken by member states vary. The proposal in the notified draft aligns with the approach taken in Swedish law, which provides for a similar territorial scope. According to Chapter 1, Section 5 of the Swedish Act (2018:218) containing supplementary provisions to the EU General Data Protection Regulation (Swedish: "Lag (2018:218) med kompletterande bestämmelser till EU:s dataskyddsförordning"), the age limit, which is currently set at 13 years, "applies to the processing of personal data concerning children residing in Sweden, regardless of where the data controller or processor is established" (Swedish: gäller vid behandling av personuppgifter som avser barn som bor i Sverige, oavsett var de personuppgiftsansvariga eller personuppgiftsbiträdena är etablerade").

Answer to question 2:

The proposal in the notified draft is limited to children who are residing in Norway, rather than all children who are in Norway at the time of data processing. In the view of the Ministry, residency provides a clear and administratively manageable criterion for determining the applicability of the law. It ensures that service providers can reasonably assess their obligations. Extending the scope to all children temporarily present in Norway, e.g. tourists or short-term visitors is not the purpose of the proposal and could also create compliance and enforcement difficulties.

The proposal in the notified draft does not contain a legal definition of when a person is to be regarded as residing in Norway. In cases of doubt, the determination of who should be considered as residing in Norway may consider how this term is used elsewhere in Norwegian legislation, including the Population Registration Act. The main rule under Section 4-1 of the Population Registration Act is that a person who lawfully resides in Norway for at least six months is residing in Norway. According to Section 4-2, a person is also considered to be residing in Norway if their presence in Norway is lawful and they intend to stay for at least six months.

The Ministry acknowledges that there are uncertainties related to the legal enforcement of the proposal. Under the proposal, a controller or processor established in another EEA/EU country who processes personal data about children residing in Norway would, under Norwegian law, be obliged to comply with the age limit of 15 years. However, the internal law of the provider's country of establishment may set a lower age limit, for example 13 or 14 years. Whether the provider will be considered obligated to follow the Norwegian age limit, or whether the supervisory authorities and courts in the provider's country of establishment will instead apply the age limit set in their own national law, may depend, among other things, on the domestic legal framework in the relevant country. The Ministry is not aware of case law or other practice that clarifies the legal questions arising in such cases.

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