

**Decision of the Steering Committee
of the European Research Council Executive Agency
adopting implementing rules concerning the Data Protection Officer
pursuant to Article 24(8) of Regulation (EC) No 45/2001 on the protection of individuals
with regard to the processing of personal data by the Community institutions and bodies
and on the free movement of such data**

THE STEERING COMMITTEE OF THE EUROPEAN RESEARCH COUNCIL
EXECUTIVE AGENCY,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹, and in particular Article 24(8) and the Annex thereof,

Whereas:

- (1) Regulation (EC) No 45/2001 hereinafter referred to as the “Regulation”, sets out the principles and rules applicable to all European Union institutions and bodies and provides for the appointment by each institution and body of a Data Protection Officer.
- (2) Article 24(8) of the Regulation requires that further implementing rules concerning the Data Protection Officer shall be adopted by each European Union institution or body in accordance with the provisions in the Annex. The implementing rules shall in particular concern the tasks, duties and powers of the Data Protection Officer.
- (3) Council Regulation (EC) No 58/2003 of 19 December 2002 lays down the statute for the executive agencies to be entrusted with certain tasks in the management of the European Union programmes²,
- (4) Commission Decision (EC) No 2007/134 establishes the European Research Council (hereinafter referred to as “The ERC”)³,
- (5) Commission Decision 2008/37/EC of 14 December 2007 sets up the European Research Council Executive Agency (hereinafter referred to as “The Agency”)⁴, for the management of the specific programme “Ideas”,

HAS DECIDED AS FOLLOWS:

¹ OJ L 8, 12.1.2001, p. 1.
² OJ L 11, 16.01.2003, p. 1.
³ OJ L 57, 24.2.2007, p. 17.
⁴ OJ L 9, 12.1.2008, p. 15.

Article 1 *Definitions*

For the purpose of this Decision and without prejudice to the definitions provided for by the Regulation:

- “Controller”, as defined in Article 2(d) and referred to in Article 25(2)(a), shall mean the Director, the Head of Department or the Head of Unit responsible for the organisational entity that has determined the purposes and the means of the processing of personal data.

Article 2 *Scope*

1. This Decision defines the rules and procedures for implementation of the function of Data Protection Officer (hereinafter referred to as the “DPO”) within the Agency pursuant to Article 24(8) of the Regulation.
2. The Decision also lays down the general rules pursuant to which a data subject may exercise his or her rights.

Article 3 *Appointment, Status and Independence*

1. The Director of the Agency (hereinafter referred to as the “Director”) shall appoint the DPO⁵ and register him with the European Data Protection Supervisor (hereinafter referred to as the “EDPS”).
2. The term of office of the DPO shall be for a period of two up to five years, renewable up to a maximum total term of ten years, taking also into account the duration of the Agency's mandate.
3. The DPO shall act in an independent manner with regard to the internal application of the provisions of the Regulation and may not receive any instructions with respect to the performance of his duties.
4. The DPO shall be selected from the staff of the Agency following the relevant procedures. In addition to the requirements of Article 24(2) of the Regulation, the DPO should have a sound knowledge of the Agency services and their structure and administrative rules and procedures. He must have the capacity to demonstrate sound judgement and the ability to maintain an impartial and objective stance in accordance with the Staff Regulations and the Conditions of Employment of Other Servants.
5. The selection of the DPO shall not be liable to result in a conflict of interests between his duty as DPO and any other official duties, in particular in relation to the application of the provisions of the Regulation.
6. Without prejudice to the provisions of the Regulation concerning his independence and obligations, the DPO shall report directly to the Director. This also in the context

⁵ Each reference to the Data Protection Officer in the following text shall mean he or she, him or her, and his or her.

of the annual performance appraisal of the staff member appointed as DPO (in particular for the specific DPO functions), for which the Director shall ensure an equal and fair treatment.

7. The DPO shall not suffer any prejudice on account of the performance of his duties.
8. In accordance with the Regulation, the DPO may be dismissed from his post only with the consent of the EDPS, if he no longer fulfils the conditions required for the performance of his duties.

Article 4 *Tasks and Duties*

1. Without prejudice to the tasks as described in Article 24 of the Regulation and in its Annex, the DPO shall contribute to creating a culture of protection of personal data within the Agency by raising general awareness of data protection issues while maintaining a just balance between the principles of protection of personal data and transparency.
2. The DPO shall maintain an inventory of all processing operations on personal data of the Agency into which he introduces, in cooperation with the Controllers, all processing operations to be notified. The DPO shall help the Controllers to assess the risk of the processing operations under their responsibility.
3. The DPO assists the Controllers in the preparation of their notifications, and where required he submits to the EDPS the prior checking notifications pursuant to Article 27 of the Regulation.
4. The DPO shall keep the register of processing operations, provided for in Article 26 of the Regulation, available at the Agency in electronic and paper format.
5. The DPO may keep an anonymous inventory of the written requests from data subjects for the exercise of the rights referred to in Articles 13, 14, 15, 16 and 18 of the Regulation.
6. The DPO may make recommendations and give advice to the Agency, and the Controllers, on matters concerning the application of data protection provisions and may perform investigations on request, or upon his own initiative, into matters and occurrences directly relating to his tasks, and report back to the person who commissioned the investigation, in accordance with the procedure described in Article 12 hereof. If the requester is an individual, or if the requester acts on behalf of an individual, the DPO must, to the extent possible, ensure confidentiality governing the request, unless the data subject concerned gives his/her unambiguous consent for the request to be handled otherwise.
7. Processing of personal data by Staff Committee shall fall within the remit of the DPO.
8. Without prejudice to the independence of the DPO, the Director can ask him to represent the Agency in all data protection issues; this may include the DPO's participation in relevant committees and bodies.

9. In addition to the general tasks to be fulfilled, the DPO shall cooperate in the discharge of his functions with the DPOs of other institutions and bodies, in particular by exchanging experience and best practices. He shall participate to the dedicated network(s).
10. The DPO is responsible for responding to requests from the EDPS, with which he cooperates.
11. For processing operations on personal data under his responsibility the DPO shall act as Controller.

Article 5
Powers

1. In performing his tasks and duties and without prejudice to the powers conferred by the Regulation, the DPO:
 - (a) may request legal opinions from the legal officers of the Programming, Monitoring, Legal Matters and Risk Management Unit (hereinafter referred to as the “Legal Team”);
 - (b) may, in the event of conflict relating to interpretation or implementation of the Regulation, inform the competent management level and the Director before referring the matter to the EDPS;
 - (c) may bring to the attention of the Director any failure of a staff member to comply with the obligations under the Regulation and with those Agency's Internal Control Standards more specifically related to the obligations under the Regulation. Subsequently, he may suggest that an administrative investigation be launched with a view to possible application of Article 49 of the Regulation;
 - (d) may investigate matters and occurrences directly relating to his tasks, applying the appropriate principles for inquiries and audits in the Agency and the procedure described in Article 12 hereof;
 - (e) He shall have access at all times to the data forming the subject matter of processing operations on personal data and to all offices, data-processing installations and data carriers;
 - (f) He shall have the support and assistance of the IT services of the Agency, and may request technical opinions to the Local Information Security Officer;
 - (g) He shall be allowed to consult and cooperate with the pertinent services of the parent DG of the Agency, when necessary.
2. Every Controller and Agency's staff member concerned shall be required to assist the DPO performing his or her duties and to give information in reply to questions.

Article 6
Resources

The Agency shall provide the DPO with the necessary resources, including training, to carry out his tasks and duties.

Article 7
Information

1. The DPO shall be informed immediately by the lead service whenever an issue, which has data-protection implications, is under consideration in the Agency's services, and at the latest prior to taking any decision.
2. When the Agency consults and informs the EDPS under the relevant Articles of the Regulation, and in particular pursuant to Article 28(1) and 28(2), the DPO shall be informed. He shall also be informed on direct interactions between the Controllers of the Agency and the EDPS pursuant to the relevant Articles of the Regulation.
3. The DPO shall be informed by the lead service or by the Legal Team, as appropriate, about opinions and position papers of the Legal Team directly relating to internal application of the provisions of the Regulation, as well as about opinions concerning the interpretation or implementation of other legal acts related to the protection of personal data and the processing thereof, and related to access to information.
4. The DPO contributes to the Annual Activity Report of the Agency, by providing a synthesis on the state of the art as regards the data protection activities and compliance of the Agency.
5. The DPO informs the Director by means of a periodical report and dedicated meetings. He also periodically informs the EDPS.

Article 8
Controllers

1. The Controllers shall ensure that all processing operations involving personal data within their area(s) of responsibility comply with the Regulation. For that purpose they shall give prior notice to the DPO of any processing operation, in accordance with the provision described in Article 10 hereof.
2. Without prejudice to the provisions of the Regulation concerning their obligations, Controllers shall:
 - (a) cooperate with the DPO to establish the inventory of processing operations referred to in Article 4(2) hereof;
 - (b) where appropriate, consult the DPO on the conformity of processing operations, in particular in the event of doubt as to conformity;
 - (c) prepare without delay notifications to the DPO for all existing processing operations which have not yet been notified;

- (d) maintain anonymous lists of written requests from data subjects for the exercise of the rights referred to in Articles 13, 14, 15, 16 and 18 of the Regulation. These lists shall be transmitted to the DPO to feed in the inventory described in Article 4(5) hereof.

Article 9 *Processors*

Formal contracts shall be concluded with external processors; such contracts shall contain the specific requirements mentioned in Article 23(2) of the Regulation.

Article 10 *Notifications*

1. Before introducing new processing operations relating to personal data, the relevant Controller shall give notice to the DPO. The inventory referred to in Article 4(2) hereof may be used as guidance instrument for planning the notification exercise.
2. Any processing operation that are likely to present specific risks under Article 27 of the Regulation, shall be notified sufficiently well in advance to allow for prior checking by the EDPS. The Controllers shall take into account that this prior checking lasts at least two months and the operation cannot be implemented before the EDPS's opinion is issued.
3. The notifications shall include all information required in Article 25(2) of the Regulation.
4. For the submission of their notifications to the DPO, the Controllers shall use the notification forms, accessible through the website of the DPO on the Agency's Intranet. In parallel, the original signed paper notifications shall reach the DPO's office premises.
5. The Controllers shall immediately inform the DPO of any change affecting the information contained in a notification already submitted.
6. Practical guidelines and assistance will be provided by the DPO to the Controllers.

Article 11 *Register*

1. The register mentioned in Article 4(4) hereof is the Agency's database containing all the final notifications submitted by the Controllers to the DPO pursuant Article 25 of the Regulation.
2. The register shall be accessible through the Intranet of the Agency, and on paper format in the DPO's office premises. An index of the content of the register will be published on the external website of the Agency.
3. Extracts of the register can be requested by any person in writing to the DPO, who shall reply within 15 working days.

Article 12
Investigation Procedure

1. The requests for an investigation mentioned in Article 4(6) hereof shall be addressed to the DPO in writing. Within 15 days upon receipt, the DPO shall send an acknowledgment of receipt to the person who commissioned the investigation, and verify whether the request is to be treated as confidential. In the event of obvious misuse of the right to request an investigation, the DPO shall not be obliged to report back to the requester.
2. The DPO shall request a written statement on the matter from the Controller who is responsible for the data-processing operation in question. The Controller shall provide his/her response to the DPO within 15 working days. The DPO may wish to receive complementary information from him and/or other parties within 15 days. If appropriate he/she may request an opinion on the issue from the Legal Team. The DPO shall be provided with the opinion within 20 working days.
3. The DPO shall report back to the person who commissioned the investigation no later than three months following its receipt. This period may be suspended until the DPO has obtained any further information that he may have requested.
4. No one shall suffer prejudice on account of a matter brought to the attention of the DPO alleging a breach of the provisions of the Regulation.

Article 13
General Rules Governing the Exercise of Rights by Data Subjects

1. Further to their right to be appropriately informed about any processing of their personal data, data subjects may approach the relevant Controller to exercise their rights pursuant to Articles 13 to 19 of Regulation, as specified below:
 - (a) These rights may only be exercised by the data subject or their duly authorised representative. Such persons may exercise any of these rights free of charge.
 - (b) Requests to exercise these rights shall be addressed in writing to the relevant Controller. The Controller shall only grant the request if the requester's identity and, if relevant, their entitlement to represent the data subject have been appropriately verified. The Controller shall without delay inform the data subject in writing of whether or not the request has been accepted. If the request has been rejected, the controller shall include the grounds for the rejection.
 - (c) The Controller shall, at any time within three calendar months of receipt of the request, grant access pursuant to Article 13 of Regulation by enabling the data subject to consult these data on-site or to receive a copy thereof, according to the applicant's preference.
 - (d) Data subjects may contact the DPO in the event that the Controller does not respect either of the time limits in paragraphs (b) or (c). In the event of obvious abuse by a data subject in exercising their rights, the Controller may refer the data subject to the DPO. If the case is referred to the DPO, the DPO will decide on the merits of the request and the appropriate

follow-up. In the event of disagreement between the data subject and the Controller, both parties shall have the right to consult the DPO.

2. The Agency's staff members may consult the DPO before lodging a complaint with the EDPS pursuant to Article 33 of Regulation.

Article 15
Entry into Force

1. This Decision enters into force on the day of its adoption.
2. After entry into force, this Decision will be published both on the Intranet and on the external website of the Agency.

Done in Brussels on

21 JUN 2010

For the Steering Committee,

The Chairperson,



José Manuel SILVA RODRÍGUEZ