



EDPS  
EUROPEAN DATA PROTECTION SUPERVISOR

# EDPS SUPERVISORY OPINION 9/2025 ON THE DRAFT DPO IMPLEMENTING RULES FOR THE EFTA SURVEILLANCE AUTHORITY (Case 2025-0354)

## 1. INTRODUCTION

1. This Supervisory Opinion relates to draft Decision of the EFTA Surveillance Authority (“ESA” or “the Authority”) adopting rules and procedures for the implementation of the function of the Data Protection Officer (“DPO”) within the Authority pursuant to Article 45(3) of ESA Decision No 100/19/COL of 18 December 2019.
2. ESA submitted the request for consultation to the European Data Protection Supervisor (“EDPS”) on 10 April 2025, in accordance with Article 41(1) of the ESA Rules on Data Protection<sup>1</sup> (“DP Rules”).
3. The EDPS issues this formal Supervisory Opinion in accordance with Paragraph 4.3 (c) of the Memorandum of Understanding (“the MoU”) between ESA and the EDPS<sup>2</sup>.

---

<sup>1</sup> EFTA Surveillance Authority Rules on Data Protection, adopted on 18 December 2019 by College Decision 100/19/COL.

<sup>2</sup> Memorandum of Understanding between the EFTA Surveillance Authority and the European Data Protection Supervisor, 18 December 2019, entered into force on 1 January 2020.

## 2. LEGAL ANALYSIS AND RECOMMENDATIONS

### 2.1 General Comments

4. The EDPS welcomes the adoption of the draft Decision on implementing rules concerning data protection at ESA and its DPO (further as “draft Decision” or “DPO implementing rules”).
5. The EDPS considers that the DPO is fundamental in ensuring the respect of data protection principles within EUIs<sup>3</sup>.
6. Without prejudice to the application of all the principles and rules set out by the DP Rules, the EDPS issues the following recommendations to address additional details that should be implemented to achieve higher level of protection.

### 2.2 EDPS Recommendations

7. Article 1 (1) of the draft Decision defines the scope of the DPO implementing rules within the Authority, in accordance with Section 6 of the DP Rules. This includes the investigation procedure, data breach handling, and data subject request procedure. While the investigation and data breach procedures are outlined in Articles 7 and 8 respectively, the EDPS notes that the draft Decision does not contain a corresponding provision for the data subject requests. Therefore, **the EDPS recommends that ESA either include a dedicated provision on the data subject request procedure<sup>4</sup>, as referenced in Article 1(1) of the draft Decision, or remove the specific reference, to avoid any inconsistencies (Recommendation No.1).**
8. Article 4 (4) of the draft Decision provides that the DPO shall be administratively attached to the Department of Legal and Executive Affairs Department, and his or

---

<sup>3</sup> Point 2 of the EDPS Position paper on the role of Data Protection Officers of the EU institutions and bodies.

<sup>4</sup> As an example, you may see Article 13 of the EDPS Decision of 11 December 2018 on the implementing rules concerning the Data Protection Officer.

her activities shall be integrated into the activity-based budgeting and management process under that Department. While the DPO may carry out other tasks and duties, the Authority shall ensure that any such tasks and duties do not result in a conflict of interests<sup>5</sup>. The EDPS emphasizes the critical importance of the absence of conflict of interests, as this is intrinsically linked to the requirement of the DPO to act independently<sup>6</sup>. A typical example of a conflict of interest arises where a DPO is also part of the compliance team and is required to assess the data processing operations that they themselves have supported design. Similarly, if a DPO is also a member of the legal team, organisational measures should be put in place to allow the DPO and his staff to clearly distinguish their activities<sup>7</sup>. Therefore, **the EDPS recommends that ESA adopt measures to safeguard the DPO’s independence and to amend Article 4 (4) of the draft Decision to specify that “the Authority shall ensure that the DPO tasks do not result in a conflict of interests with any other official tasks and duties conferred to the DPO” (Recommendation No.2).**

9. Article 4(5) of the draft Decision states that the Authority shall provide the DPO with the necessary resources to carry out his/her tasks and duties as a DPO, including participation in relevant DPO networks. The EDPS welcomes this provision, which affirms that ESA will support the DPO in performing his/her tasks by providing resources necessary to carry out those tasks<sup>8</sup>. The EDPS notes that this implies that the DPO should be provided not only with adequate support in terms of financial resources, infrastructure (premises, facilities, equipment) and staff where appropriate, but also that the senior management actively supports the DPO function<sup>9</sup>. Therefore, **the EDPS recommends that ESA include an additional provision in Article 4 of the draft Decision requiring that the DPO’s**

---

<sup>5</sup> Article 44(6) of DP Rules.

<sup>6</sup> Point 4.5 of the EDPS Position Paper on the role of DPOs of EUIs.

<sup>7</sup> Footnote 32 in Point 4.5 of the EDPS Position Paper on the role of DPOs of EUIs.

<sup>8</sup> Article 44.2 of Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ, L 295, 21.11.2018.

<sup>9</sup> Point 4.2 of the EDPS Position Paper on the role of DPOs of EUIs.

**designation shall be formally communicated to all staff.** Such official communication will raise awareness of the DPO's role across the Organization and will help ensure that senior management and other services, such as the legal service or the communication team, can provide the DPO the necessary active support **(Recommendation No.3).**

10. Article 5 of the draft Decision outlines the duties of the DPO. The EDPS notes, however, that the Article does not refer to the need for the DPO to take into account the guidelines issued by the EDPS. Given that the data protection implications of some functions that are common to EU Institutions and EFTA bodies are similar, the EDPS regularly publishes guidelines on specific topics that may also be relevant to ESA. The EDPS consolidates their guidance from previous supervisory opinions and consultations and include relevant guidance issued by the European Data Protection Board ('EDPB') and the Article 29 Working Party, as well as the case law of the European courts. **The EDPS recommends ESA to amend Article 5 of the draft Decision to specify that the DPO shall be informed, as appropriate, about opinions and position papers of the EDPS directly relating to the internal application of the provisions of the DP Rules<sup>10</sup>, as well as those concerning the interpretation or implementation of other legal acts related to the protection of personal data and access to personal data.** The inclusion of this requirement in the draft Decision will ensure that the DPO of ESA takes due account of the EDPS guidelines when performing his or her duties **(Recommendation No.4).**
11. Article 5 (1) (c) of the draft Decision states that the DPO shall develop a form for the purpose of keeping a central register of records, keep the central register of records and make it available on the internal and external websites of the Authority, and ensure that the notified processing operation is added to the inventory. However, the EDPS underlines that, under Article 32 (1) of the DP Rules, it is the responsibility of the Authority to maintain the records of processing activities related to specific processing operations. Moreover, Article 32(5) of the DP Rules establishes that the

---

<sup>10</sup> As an example, you may see Article 7 (2) of the EDPS Decision of 11 December 2018 on the implementing rules concerning the Data Protection Officer.

Authority shall keep its records of processing activities in a central register and shall make the register publicly accessible. Therefore, **the EDPS recommends that ESA revise: a) Article 5 (1) (c) of the draft Decision to include the specification “building on the records provided by the Authority”<sup>11</sup>, and b) Article 2 (2) (g) to include the obligation of the controller to develop and maintain the records of processing activities the records of processing activities (Recommendation No.5).**

12. The EDPS observes that the draft Decision does not include provisions on the handling and communication of personal data breaches<sup>12</sup>, but instead places this responsibility solely on the DPO. Article 8 of the draft Decision states that the DPO is responsible for making available a policy on the handling of data breaches as well as a routine for reporting the data breaches. Pursuant to the DP Rules, the Authority shall inform the DPO about personal data breaches<sup>13</sup>. Where requested, the DPO provides advice as regards the necessity for a notification to the EDPS or a communication of a personal data breach to the affected data subjects<sup>14</sup>. Responsible staff members of the Authority (including the local information security officer, depending on the ESA’s internal procedures) must inform the DPO without undue delay, including in cases when they have doubts on whether personal data are affected by the security breach. Therefore, **the EDPS recommends that ESA revise Article 8 by removing the DPO’s obligation to make available a policy on the handling of data breaches and a routine for reporting them. Instead, ESA should establish and describe a procedure<sup>15</sup> for the handling and notification of data breaches involving the DPO as well as the security officer (or the staff member of the Authority having a similar role).** The DPO should be provided with all the necessary information enabling him/her to ensure that ESA complies with

---

<sup>11</sup> As an example, you may see Article 4 (4) of the EDPS Decision of 11 December 2018 on the implementing rules concerning the Data Protection Officer.

<sup>12</sup> Article 34 and 35 of the DP Rules.

<sup>13</sup> Article 34 (5) of the DP Rules.

<sup>14</sup> Points 4.1 and 5.2 of the EDPS Position paper on the role of Data Protection Officers of the EU institutions and bodies.

<sup>15</sup> As an example, you may see Article 8 (3) of the EDPS Decision of 11 December 2018 on the implementing rules concerning the Data Protection Officer.

the DP Rules and more specifically with the obligations on personal data breach notifications and communications in accordance with Articles 34 and 35 of the DP Rules(**Recommendation No.6**).

13. Article 7(1) of the draft Decision provides that the DPO may on their own initiative or the request of the Authority, the processor, the Staff Committee, or any individual, launch an investigation and may investigate matters and occurrences directly relating to their tasks or matters which come to their notice. The EDPS welcomes this approach and **recommends that ESA complete Article 7(1) of the draft Decision by indicating that the Staff Committee and all services of the ESA must cooperate closely with the DPO in cases of an alleged breach of data protection rules, and ensure that they are duly informed and consulted**<sup>16</sup>. Indeed, it is important that the DPO receives the necessary and valuable support and close cooperation from all services of the Authority when monitoring compliance with the DP Rules (**Recommendation No.7**).

### 3. CONCLUSION

14. In light of the accountability principle, the EDPS expects ESA to implement the above recommendations accordingly and has decided to **close the case**.

Done at Brussels on 12 May 2025

*(e-signed)*

Thomas ZERDICK, LL.M.

---

<sup>16</sup> Point 5.5 of the EDPS Position paper on the role of Data Protection Officers of the EU institutions and bodies.

