



EUROPEAN DATA PROTECTION SUPERVISOR

## **Decision 55/2025 of the European Data Protection Supervisor (‘EDPS’) in investigation case 2025-0787 against the European Defence Agency (‘EDA’)**

The European Data Protection Supervisor,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Article 57(1)(f) and Article 58(2)(b) of Regulation (EU) 2018/1725 (‘the Regulation’),<sup>1</sup>

Has adopted the following decision:

### **1. Scope**

1. This decision sets out the results of the European Data Protection Supervisor’s (‘EDPS’) investigation (case 2025-0787) against the European Defence Agency (‘EDA’ or ‘the Agency’) regarding the dismissal of its data protection officer (‘DPO’), by decision of EDA’s Chief Executive of [REDACTED]
2. This Decision is addressed to EDA.

### **2. Proceedings**

3. On 1 September 2025, the EDPS learned about the dismissal of [REDACTED] (‘the staff member’ or ‘the DPO’) from his position as [REDACTED] DPO by decision of [REDACTED] 2025, with effect as of [REDACTED] 2025, and the decision of [REDACTED] [REDACTED]. His term of designation as DPO was due to expire on [REDACTED].

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<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and of 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, p. 39–98. References to Articles in this document refer to the Regulation unless otherwise indicated.

<sup>2</sup> Decision [REDACTED]

2. On [REDACTED] 2025, the EDPS received a written request from EDA's Chief Executive to obtain the EDPS' consent under Article 44(8) of the Regulation for the envisaged dismissal of the staff member as DPO of EDA.
3. On [REDACTED] 2025, the EDPS acknowledged receipt of the request and informed EDA that it had started the administrative consent procedure to examine the facts and assess whether the conditions for the EDPS' consent under Article 44(8) of the Regulation were fulfilled [REDACTED].
4. Additionally, the EDPS informed EDA that more detailed information to perform this assessment was required and requested EDA to provide this information by [REDACTED] 2025.
5. EDA did not reply to this request within the deadline, nor did it wait for the EDPS' consent before adopting the dismissal decision of [REDACTED] 2025.
6. Given that the EDPS had not given consent on the dismissal in accordance with Article 44(8) of the Regulation, the EDPS decided to open a formal investigation (case 2025-0787) on the matter.

### **3. Establishment of the facts**

7. The staff member was appointed as DPO of EDA for a [REDACTED] [REDACTED].
8. By letter dated [REDACTED] 2025, EDA submitted a request to the EDPS to obtain its consent in accordance with Article 44(8) of Regulation for the envisaged dismissal of the DPO of EDA.
9. On [REDACTED] 2025, the EDPS acknowledged receipt of the request and requested additional information and documents to be provided by [REDACTED] 2025. In its correspondence with EDA, the EDPS specified that '[o]nly after receiving all relevant information will the EDPS be able to assess whether consent for the dismissal can be granted or if further analysis will be necessary.' EDA did not reply to this request within the deadline.
10. On [REDACTED] 2025, the staff member informed the EDPS that he had been dismissed [REDACTED] by its decision of [REDACTED] 2025, with effect as of [REDACTED] 2025. He also informed the EDPS of the EDA decision of [REDACTED] 2025 to [REDACTED].
11. On the same day, the EDPS requested EDA to confirm whether it had indeed adopted a dismissal decision regarding [REDACTED].

12. EDA replied, still on the same day, and confirmed that the staff member had been notified, on [REDACTED] 2025, of a decision [REDACTED] on [REDACTED] 2025. EDA acknowledged that it had not complied with the requirement laid down in Article 44(8) of the Regulation to obtain the EDPS' prior consent and apologised for this shortcoming.
13. By letter of [REDACTED] 2025, the Chief Executive of EDA informed the EDPS of his decision to appoint [REDACTED] as DPO of EDA for a term of four years as of [REDACTED] 2025, 'following the end of mandate of the Agency's former DPO, [the staff member] on [REDACTED] 2025'.
14. The EDPS notes that after having dismissed the DPO, EDA provided the EDPS with the additional information and documents previously requested. However, given that Article 44(8) of the Regulation applies before the dismissal, not after, these elements are not relevant in the context of this investigation. The EDPS has assessed them under the separate case file opened for the administrative consent procedure ([REDACTED]), with the aim of determining whether the conditions for the EDPS to give his consent for the dismissal have been met.

#### **4. Preliminary assessment**

15. On [REDACTED] 2025, the EDPS issued its preliminary assessment to provide EDA with the opportunity to submit observations on the preliminary findings of fact, the initial legal assessment of those facts, including any alleged infringements of the Regulation, and the corrective measures the EDPS envisaged taking.
16. By letter of [REDACTED] 2025, EDA provided its observations on the preliminary assessment to the EDPS.
17. In its observations, EDA confirmed the facts presented in the preliminary assessment but underlined that it had not intended to 'undermine the powers of the EDPS or breach its own obligations as data controller under the Regulation 2018/1725.'
18. Furthermore, EDA reiterated that it had demonstrated its intention to comply with the obligation laid down in Article 44(8) of the Regulation to obtain the administrative consent of the EDPS for the dismissal of [REDACTED] and stressed that the request had been communicated to the EDPS 'as soon as the respective internal procedures under the EDA Staff Regulation [had been] initiated.'
19. EDA requested that the EDPS duly consider the particular circumstances of the case, in particular the fact that it did not have previous experience in the area, and that 'specific instructions or steps to be followed had to be explored by the Agency [REDACTED]

[REDACTED] that were presented to the EDPS in the dedicated staff level meeting of [REDACTED] 2025.

20. In this respect, EDA highlighted the difficulties in aligning the procedure under Article 44(8) of the Regulation with the [REDACTED]  
[REDACTED]
21. Finally, EDA clarified that it had not intended to undermine the ongoing procedure before the EDPS by appointing a new DPO prior to the closure of the procedure under Article 44(8) of the Regulation. It highlighted that the EDPS had not provided any specific counterindication in that regard and expressed that it would welcome detailed practical guidelines on the implementation of Article 44(8) of the Regulation ‘to facilitate full future compliance.’
22. The EDPS has carefully examined EDA’s observations on the preliminary assessment and have taken them into account in its assessment.

## **5. Legal assessment**

23. The EDPS finds that EDA infringed Article 44(8) of the Regulation by dismissing the staff member from his position of DPO before his term of appointment, without obtaining the consent of the EDPS.

### ***a) Applicable legal framework***

24. EDA was established by Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency (‘the Council Decision’).<sup>3</sup>
25. In accordance with Article 31 of the Council Decision (CFSP) 2015/1835, the Regulation applies to the processing of personal data by the Agency: that provision refers to the rules laid down in Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies. Given that Regulation (EC) No 45/2001 was repealed by Regulation (EU) 2018/1725, with effect from 11 December 2018, any references to this act must be construed as references to the Regulation, in accordance with Article 99 of the Regulation.

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<sup>3</sup> OJ L 266 13.10.2015, p. 55.

26. Article 43(4) of the Regulation provides that the ‘data protection officer shall be a staff member of the Union institution or body.’ In accordance with Article 44(3) of the Regulation, ‘[t]he Union institutions and bodies shall ensure that the data protection officer does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by the controller or the processor for performing his or her tasks (...).’ Article 44(8) of the Regulation provides that ‘[t]he data protection officer shall be designated for a term of three to five years and shall be eligible for reappointment. The data protection officer may be dismissed from the post by the Union institution or body which designated him or her if he or she no longer fulfils the conditions required for the performance of his or her duties and only with the consent of the European Data Protection Supervisor.’
27. It follows that once an EU institution, body, office or agency (‘EUI’) has designated a DPO, the latter may only be dismissed from their post if two cumulative conditions are met:
- the Union institution or body which designated the DPO has received the consent of the EDPS prior to the dismissal; and
  - the DPO no longer fulfils the conditions required to perform their duties.<sup>4</sup>

***b) Formal requirement: Consent of the EDPS***

28. It is undisputed that EDA is an EUI (more specifically, an EU agency) within the meaning of Article 3(10) of the Regulation,<sup>5</sup> that [REDACTED] is an EDA staff member within the meaning of Article 43(4) of the Regulation<sup>6</sup> and that EDA designated him as DPO of EDA as of [REDACTED] in line with Article 43(1) and (4), and Article 44(8) of the Regulation.
29. It is equally undisputed that EDA did not obtain the consent of the EDPS, as required by Article 44(8) of the Regulation, prior to adopting the dismissal decision of [REDACTED] 2025.
30. On [REDACTED] 2025, EDA requested the EDPS’ consent to the envisaged dismissal of the staff member as DPO, as required by Article 44(8) of the Regulation.
31. However, EDA then proceeded with dismissing [REDACTED] by decision of [REDACTED] 2025, without providing the EDPS with the information and documents necessary for its assessment of the situation, and without waiting for the EDPS decision giving its consent.

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<sup>4</sup> See also [EDPS Position Paper on the role of the DPO in EUIs](#), p. 12.

<sup>5</sup> Article 1 of Council Decision (CFSP) 2015/1835 of 12 October 2015.

<sup>6</sup> [REDACTED] was employed by EDA as [REDACTED] DPO.

32. In its email of [REDACTED] 2025, EDA explicitly recognised that it had dismissed [REDACTED] ahead of obtaining the consent of the EDPS.
33. In its observations on the preliminary assessment, EDA confirmed the facts as presented above. Moreover, the EDPS notes that EDA in its observations essentially reiterates the elements already presented to the EDPS,<sup>7</sup> including at the staff level meeting on [REDACTED] 2025, and that these had consequently already been considered by the EDPS in the preliminary assessment.
34. The legal requirement to obtain the EDPS' consent is an important factor in ensuring the functional independence of the DPO, in line with Article 44(3) of the Regulation, which provides that the DPO 'shall not be dismissed or penalised by the controller or the processor for performing his or her tasks.'<sup>8</sup> This requirement does not aim to interfere with the organisational autonomy of the EULs, but to reinforce accountability through a specific requirement to demonstrate that the dismissal is in line with the provisions of the Regulation on the DPO's independence. The obligation to involve the EDPS applies each time an EUL considers dismissing a DPO, i.e. prior to a planned dismissal.
35. Obliging EULs to involve the EDPS when they intend to terminate the DPO mandate before the expiration of the term, regardless of the reason(s), ensures that Article 44(8) of the Regulation has an *effet utile* in light of Article 16(2) TFEU and 8(3) of the Charter of Fundamental Rights and contributes to an effective supervision.<sup>9</sup>
36. Adopting an interpretation of Article 44(8) of the Regulation to the contrary would effectively confer upon EULs the discretion to determine by themselves whether to request the consent of the EDPS, based solely on their own assessment of the circumstances. Such an approach risks undermining the procedural safeguards envisaged by the Regulation. This could lead EULs to attempt to circumvent Article 44(8) of the Regulation by not providing (adequate) reasoning for the dismissal.

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<sup>7</sup> E.g. lack of experience of the procedure under Article 44(8) of the Regulation, no intention to undermine the supervisory powers of the EPDS, [REDACTED] intention to comply with its obligations under Article 44(8) of the Regulation, [REDACTED] etc.

<sup>8</sup> See [EDPS Position Paper on the role of the DPO in EULs](#), sections 4.3. and 4.6. See also relevant case law on the corresponding provisions of Regulation (EU) 2016/679 (GDPR): CJEU, 22 June 2022, *Leistriz*, C-534/20, paragraph 28 (EU:C:2022:495) and CJEU, 9 February 2023, *ZS*, C-560/21, paragraph 22 (EU:C:2023:81).

<sup>9</sup> CJEU, 21 June 2022, *Ligue des droits humains*, C-817/19, ECLI:EU:C:2022:491, paragraph 86: '(...) in accordance with a general principle of interpretation, an EU act must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole and, in particular, with the provisions of the Charter. Thus, if the wording of secondary EU legislation is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with primary law rather than to the interpretation which leads to its being incompatible with primary law (judgment of 2 February 2021, *Consob*, C-481/19, EU:C:2021:84, paragraph 50 and the case-law cited).'

37. In conclusion, the EDPS finds that by not obtaining the EDPS' consent before dismissing the staff member as DPO, EDA infringed Article 44(8) of the Regulation. The elements put forward by EDA in its observations on the preliminary assessment do not change this finding.

***b) Substantial requirement: the DPO no longer fulfils the conditions for the performance of their tasks***

38. Given that EDA did not comply with the formal requirement of Article 44(8) of the Regulation to obtain the EDPS' prior consent, it is not necessary to examine whether the substantial requirement of the provision has been met in the context of this investigation. As explained above, this issue is assessed under the case file [REDACTED].

## **6. Conclusion**

39. In conclusion, the EDPS has found that EDA infringed:

- Article 44(8) of the Regulation by dismissing the staff member from his position of DPO before the term of his designation, without obtaining the prior consent of the EDPS.

## **7. Corrective powers**

40. Under Article 52(3) of the Regulation, the EDPS is responsible for monitoring and ensuring the application of the provisions of the Regulation and of any other Union act granting protections to natural persons whose data are processed by EUIs. To that end, the EDPS carries out the tasks set out in Article 57 of the Regulation and exercises the powers granted in Article 58 of the Regulation, including corrective powers under Article 58(2) of the Regulation.

41. In view of the findings of infringement in paragraphs 28 to 37, and having considered EDA's observations in paragraphs 17 to 22, the EDPS has decided to exercise the following corrective power:

- **issue a reprimand** to EDA under Article 58(2)(b) of the Regulation for not having obtained the EDPS' consent prior to adopting Decision [REDACTED] 2025, [REDACTED] dismissing him from his role as DPO.

42. In identifying the applicable corrective power, the EDPS has taken into account the following factors:

- The DPO function is fundamental in ensuring compliance with the Regulation within EULs;
  - The conditional dismissal of the DPO under Article 44(8) of the Regulation is an important factor in ensuring the functional independence of the DPO in line with Article 44(3) of the Regulation, and an effective supervision in light of Article 16(2) TFEU and Article 8(3) of the Charter of Fundamental Rights;
  - Safeguarding the independence of the DPO role across the EU public administration is not just a legal duty; it is a matter of systemic trust in data protection governance;
  - As a mitigating factor, the EDPS has considered the fact that EDA requested the EDPS' prior consent, although it did not wait for such consent before adopting the dismissal decision. In addition, EDA acknowledged its failure to comply with the requirement laid down in Article 44(8) of the Regulation to obtain the EDPS' prior consent, and apologised for this shortcoming;
  - As an aggravating factor, the EDPS has considered the fact that EDA appointed a new DPO for a term of four years as of [REDACTED] 2025, without having obtained the EDPS' consent prior to the dismissal of the former DPO.
43. The EDPS considers that in light of the above circumstances, a reprimand would be an appropriate and necessary corrective measure. The observations on the preliminary assessment made by EDA are not such as to change the EDPS' position in this regard.
44. As there are no equally effective corrective measures available, the envisaged corrective measure is appropriate, necessary and proportionate in relation to the infringement of Article 44(8) of the Regulation found that it seeks to remedy. The evidence before the EDPS indicates that the processing cannot be brought into compliance with the Regulation without it.
45. This is without prejudice to any follow-up or other supervisory actions the EDPS might undertake in the future.
46. Pursuant to Article 59 of the Regulation, EDA must inform the EDPS of its views and describe the measures it has taken in response to the EDPS' remarks within three months of the date of this decision.

## **8. Judicial remedy**

47. Pursuant to Article 64 of the Regulation, EDA and any party which could be adversely affected by the EDPS decision may bring an action for annulment against this decision



before the Court of Justice of the European Union, within two months from the adoption of the present Decision and according to the conditions laid down in Article 263 TFEU.

Done at Brussels, 24 November 2025

*[e-signed]*

Wojciech Rafał WIEWIÓROWSKI