

From:

To:

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Subject:

RE: last version of the nRoP - time extension for contribution and redrafting

Date:

05 April 2019 15:04:07

Attachments:

[for the Task Force.h.12.00.LAST VERSION nRoP.05.04.2019.docx](#)

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Dear colleagues, turned into members of the nRoP Task Force,

This is to:

Thank you (a lot) for your fantastic work on this project.

Send you the last version after this morning's cut-off date. This version (with few suggestions from Director, in TCs in the text) has been sent today for discussion **to the MB of 8 April**. We'll have time and occasions for further work on this, including **next DM** but, for now...

Enjoy your week end and let's enjoy the well-deserved holidays!! :-))

With the best regards,

Yours,

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From:

Sent: 03 April 2019 16:19

To:

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**Subject:** last version of the nRoP - time extension for contribution and redrafting

Dear colleagues,

If fine with ■

I would extend **to next Friday at noon** the deadline for sending your further edits and comments.

Please find the last 'state of play' doc.

Please, make changes only into the \*'last version' doc in the shared drive (unless you have comments ready to share already on a previous version).

As usual, I'll try to incorporate and accommodate everything and asap, please double check if nothing from your suggestions so far went lost.

Thank you,

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Brussels, 4 July 2019 (v. 5 April 2019, h.12.00)

**Decision of the European Data Protection Supervisor establishing the Rules of Procedure of the EDPS pursuant to Article 57(1)(q) of Regulation (EU) 2018/1725<sup>1</sup> and repealing the Decision of the European Data Protection Supervisor of 12 December 2012 on the adoption of Rules of Procedure (2013/504/EU)<sup>2</sup>.**

## **PREAMBLE**

### **THE EUROPEAN DATA PROTECTION SUPERVISOR,**

Having regard to 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 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 [...], and in particular Article 57(1)(q) thereof,

whereas:

(1) Article 8 of the Charter of Fundamental Rights and Article 16 of the Treaty on the Functioning of the European Union provide that compliance with the rules relating to the protection of individuals with regard to the processing of personal data concerning them by Union institutions, bodies, offices and agencies shall be subject to control by an independent authority.

(2) Regulation (EU) 2018/1725 provides for the establishment of an independent authority, referred to as the European Data Protection Supervisor, responsible for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to privacy, with respect to the processing of personal data, are respected by the Union institutions and bodies.

(3) Regulation (EU) 2018/1725 also provides for the duties and powers of the European Data Protection Supervisor, as well as for the appointment of the European Data Protection Supervisor.

(4) Regulation (EU) 2018/1725 further provides that the European Data Protection Supervisor shall be assisted by a Secretariat and lays down a number of provisions concerning staff and budgetary matters.

(5) Other provisions of Union law provide for additional duties and powers for the European Data Protection Supervisor, in particular, Regulation (EU) 2016/679<sup>3</sup>, Directive (EU) 2016/680<sup>4</sup>, Regulation (EU) 2016/794 on Europol<sup>5</sup>, Regulation 2018/1727 on Eurojust<sup>6</sup> and Regulation 2017/1939 on the establishment of the European Public Prosecutor's Office<sup>7</sup>.

(6) These Rules of Procedure provide the rules implementing and integrating the provisions of the Regulation (EU) 2018/1725 in accordance with the latter. At the same time, these Rules of Procedure may be further detailed by other instruments by the EDPS.

<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 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.

<sup>2</sup> Decision of the European Data Protection Supervisor of 12 December 2012 on the adoption of Rules of Procedure (2013/504/EU), OJ L 273, 15.10.2013, p. 41.

<sup>3</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

<sup>4</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89.

<sup>5</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53.

<sup>6</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, OJ L 295, 21.11.2018, p. 138.

<sup>7</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1.

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

## TITLE I - MISSION, ORGANIZATION AND GUIDING PRINCIPLES

### Article 1

#### Tasks and powers of the European Data Protection Supervisor

1. The European Data Protection Supervisor shall perform the tasks set out and exercise the powers granted in the Regulation and other provisions of Union law.
2. These Rules of Procedure provide for the necessary and relevant specifications on the performance of these tasks and the exercise of these powers in accordance with the applicable provisions of Union law.

### Article 2

#### Definitions

In these Rules:

- (a) 'the Regulation' means Regulation (EU) 2018/1725;
- (b) 'the GDPR' means Regulation (EU) 2016/679;
- (c) 'the institution' means a Union institution, body, office or agency subject to Regulation (EU) 2018/1725;
- (d) 'the EDPS' means the European Data Protection Supervisor as an institution;
- (e) 'the Supervisor' means, unless otherwise specified, the person holding the office of European Data Protection Supervisor;
- (f) 'administrative measure' means an act of an institution of general application other than a legislative measure, relating to the processing of personal data carried out by the institution.

### Article 3

#### Independence and good administrative behaviour

1. In accordance with Article 55 of the Regulation, the Supervisor will act in complete independence in the performance of his or her duties.
2. The EDPS will follow the European Code of Good Administrative Behaviour and will act in the public interest on the basis of expertise and pragmatism. The Supervisor will follow the Code of good conduct for the Supervisor.
3. The EDPS will be accountable by documenting and publishing strategies and other policy statements setting out its short and medium term aims, priorities and way of working. It will be open, transparent and accessible to the views of all stakeholders including civil society, industry and academia.
4. The EDPS, as a data controller, will lead by example in respecting the spirit of, as well as complying with the letter of, applicable law on the protection of personal data.
5. The EDPS will continually review its internal policies and practices to ensure an ethos which respects people - whether employees, individuals subject to its supervision, or stakeholders - in their full diversity, including racial or ethnic origin, age, gender and gender identity, religion, physical abilities, socio-economic background, sexual orientation and physical and mental health.
6. The EDPS in its internal policies and practices on the management of resources will aim to promote sustainability including minimising waste and energy consumption.

Commented [A1]: Director's suggestion.

### Article 4

#### Role of Supervisor

The Supervisor shall be responsible for the adoption in particular of strategies and policies in the performance of the tasks referred to in Article 1.

### Article 5

#### EDPS Secretariat

1. In accordance with Article 54(4) of the Regulation, the Supervisor shall be assisted by a Secretariat, the tasks and working methods of which shall be defined by the Supervisor.
2. The Supervisor may delegate certain tasks to individual members of staff, with the possibility of replacement by other staff members.
3. The Supervisor shall establish a number of Units and Sectors forming the EDPS Secretariat to assist in the preparation and performance of the tasks referred to in Article 1. Each Unit or Sector shall be headed by a Head of Unit or Sector.
4. The organisational aspects referred to in paragraph 3 of this Article of the Rules of Procedure are made public through the publication of the organigramme of the EDPS on the website of the EDPS.

Commented [A2]: Director's suggestion.

[NEW Article 6]

#### **EDPB Secretariat**

1. In accordance with Article 75(1) of the GDPR, and under the terms of the Memorandum of Understanding signed between the EDPS and the European Data Protection Board (EDPB), including any updated version, established and published pursuant to Article 75(4) of the GDPR, the EDPS provides the Secretariat of the EDPB.
2. The Secretariat of the EDPB is established as a separate Unit or a Sector within the EDPS organigram.
3. The Secretariat of the EDPB shall be headed by a Head of Unit or Sector and provides analytical, administrative and logistical support to the EDPB under the exclusive instructions of the Chair of the EDPB and is not subject to Article 5 of the Rules of Procedure.

#### **Article 6**

##### **Secretary General**

1. The EDPS Secretariat shall be headed by a Secretary General, assisted by the Director. The Secretary General shall take all measures necessary to ensure the proper functioning of the EDPS Secretariat and the efficient use of resources, including his/her replacement in case of absence or inability to act. He will interact with the Supervisor and the Director on the high management of the EDPS.
2. The Secretary General shall be responsible for:
  - (a) the preparation and implementation of policies of the EDPS together with the Director in the context of the application of the Regulation and other EU acts where the EDPS is competent;
  - (b) the preparation and implementation of decisions related to the supervision of Europol, the European Public Prosecutor's Office and Eurojust, as well as EU large-scale IT systems and the monitoring of developments of information technologies;
  - (c) implementing the cooperation with National Supervisory Authorities in the EDPB, coordinated supervision bodies and in other networks and international *fora*;
  - (d) contributing to solid and cohesive relationships with EDPS stakeholders and partners, in particular in the context of the implementation of the Regulation, facilitating an integrated approach to all internal and external communications.
3. The Secretary General may carry out the tasks referred in Article 4, in case of the absence or inability to act of the Supervisor.
4. The Secretary General shall delegate his/her tasks to the Director in case of absence or inability to act.

#### **Article 7**

##### **Director**

1. Upon delegation by the Secretary General, the Director will represent the EDPS as Head of Administration in inter-institutional meetings.
2. He/she will be responsible for the tasks referred to in Articles 9 and 10, and for budget, human resources and administration matters in general and will carry out other tasks and responsibilities delegated to him or her by the Secretary General, such as the coordination of the management team or decision-making or the representation of the EDPS in its supervisory or policy capacity.
3. The Secretary General, acting in close cooperation with the Director, shall determine the delegation of powers and tasks to the Director in a document that will be published on the Intranet of the EDPS and will be updated regularly.

#### **Article 8**

##### **Management Board**

1. The Management Board shall comprise the Supervisor, the Secretary General and the Director. The Board shall meet at regular intervals, normally once a week, to discuss general strategies and policies and other important matters and contribute to a good coordination of relevant activities.
2. The Extended Management Board, comprised of the Supervisor, the Secretary General, the Director and the middle managers (Heads of Units/Sectors) shall meet upon request of the Management Board to discuss specific strategies and policies or any other matters of specific importance for the EDPS. The Head of the EDPB Secretariat shall take part in the Extended Management Board if there are issues relating to Human Resources, Budget, Finance or Administrative matters relevant for the functioning of the EDPB or the EDPB Secretariat.
3. The Director shall ensure the proper functioning of the EDPS Secretariat of the Management Board and of the Extended Management Board.



## Article 9

### Director's Meeting

1. The Director shall meet at regular intervals with all the Heads of Unit and Sector to ensure coordination and planning of activities and the preparation and implementation of strategies and policies. The Head of the EDPB Secretariat shall take part in the Director's meeting for those agenda points addressing, if there are issues relating to Human Resources, Budget, Finance or Administrative matters relevant for the functioning of the EDPB or the EDPB Secretariat.
2. The Director shall ensure the proper functioning of the Director's Meeting.

## Article 10

### Appointing authority

1. Upon delegation by the Secretary General, the Director shall exercise the powers vested in the appointing authority within the meaning of Article 2 of the Staff Regulations of officials of the European Union<sup>8</sup> and the powers vested in the authority authorised to conclude contracts of employment within the meaning of Article 6 of the Conditions of Employment of other servants of the European Union, as well as any other related powers resulting from other administrative decisions both internal to the EDPS or of an inter-institutional nature, insofar as the decision of the Supervisor on the exercise of the powers vested in the appointing authority and in the authority authorised to conclude contracts of employment does not otherwise provide. This power also applies to the staff of EDPB Secretariat without prejudice to the application of the Memorandum of Understanding concluded between the EDPS and the EDPB.
2. The Director may delegate the exercise of the powers referred to in paragraph 1 to the official responsible for the management of human resources.

## Article 11

### Authorising officer and accounting officer

1. The powers of authorising officer shall be exercised by the Supervisor. The powers of authorising officer by delegation and authorising officer by sub-delegation shall be exercised by those appointed by the Supervisor in accordance with the charter of tasks and responsibilities of authorising officers by delegation and the charter of tasks and responsibilities of authorising officers by sub-delegation.
2. As regards matters relating to the EDPB, the authorising officer shall ensure the respect of the Memorandum of Understanding concluded between the EDPS and the EDPB.
3. The accounting officer of the Commission shall be the accounting officer of the EDPS.

## Article 12

### Delegation of tasks and powers of the Supervisor

1. The Supervisor may delegate to the Secretary General or to the Director the authority to perform certain of his or her tasks under Article 57 of the Regulation.
2. Where authority has been delegated pursuant to paragraph 1, the Secretary General or the Director will allocate responsibility to the designated senior official in the EDPS Secretariat. That official may in turn further delegate.
3. The designated senior official will be accountable to the Secretary General or the Director, depending on who has been given the delegation and delegated further pursuant to paragraphs 1 and 2 of this Article of the Rules of Procedure, for the manner in which he or she performs the delegated authority.
4. Delegations of authority under paragraph 1 of this Article of the Rules of Procedure will be properly documented, may be on an ad-hoc basis or set out in the Annual Management Plan or otherwise in writing.
5. The final decision or opinion of the EDPS in the exercise of his or her tasks or powers under Article 57 and Article 58 of the Regulation, where approved by the Supervisor, may be signed by the Secretary General or the Director or another official delegated by the Secretary General or the Director on behalf of the Supervisor.
6. In particular, the opinions and comments issued by the EDPS pursuant to Article 42 of the Regulation, where approved by the Supervisor, may be signed by the Secretary General or the Director or another official delegated by the Secretary General or the Director on behalf of the Supervisor.

**Commented [A3]:** Director's suggestion: "for those agenda point addressing". Justification: the Director's meeting works on the basis of 'agenda points' to ensure predictability and transparency of discussions, to allow all participants to prepare for issues to be addressed. If a point is not on the agenda, it will not be tackled in that meeting.

**Commented [A4]:** deleted and replaced with wording suggested by the Director: "Delegations of authority under paragraph 1 of this Article of the Rules of Procedure will be properly documented."

<sup>8</sup> Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P45, 14.6.1962, p. 1385.

#### Article 13

##### **Deputising**

1. Where urgently required, in the absence of the Supervisor or where they are prevented from exercising their functions, the Secretary General or, upon delegation by the Secretary General, the Director shall perform the tasks and exercise of the powers of the Supervisor.
2. Further to paragraph 1, in the absence of the Secretary General or the Director, tasks and powers shall be exercised by a senior official in accordance with the delegations made under Article 12, or, in the absence of that senior official, by the official present with the highest grade and the highest seniority in that grade.

#### Article 16

##### **Guiding principles and core values**

1. The EDPS shall act in the public interest as an expert, independent, reliable, proactive and authoritative body in the field of data protection, at the level of the Union. The interventions of the EDPS shall be based on impartiality, integrity, transparency and pragmatism.
2. The EDPS shall engage constructively with stakeholders in order to reinforce cooperation and balance data protection and other interests while encouraging harmonised data protection practices on highest standards and generating a shared understanding of data protection and privacy as core values central to protecting human dignity, autonomy and the democratic functioning of societies.
3. Supervision of the institutions shall be based on effective protection of peoples' fundamental rights and freedoms. The EDPS promotes public awareness and understanding of the risks posed by the processing of personal data to people's rights and freedoms as well as to society at Union level. The EDPS exercises its supervisory powers considering the evolution of technologies and the principle that accountability for compliance lies primarily with the controllers themselves.
4. ~~The EDPS shall engage in deliberations on new ethical questions concerning digital technologies, data protection and privacy and encourage future-oriented, long-term and proactive thinking among stakeholders.~~

**Commented [A5]:** Deleted by the Director.

#### Article 14

##### **Annual Management Plan**

1. In accordance with the principles of good administration and good financial management, the EDPS shall establish each year an Annual Management Plan. That plan shall translate the long term strategy of the EDPS into general and specific objectives. Performance indicators and targets shall be defined and measured twice a year to monitor and track achievements.
2. A risk analysis of EDPS planned activities shall be incorporated in the Annual Management Plan, which shall include identified risks and risk mitigation planning.
3. The EDPS will publish an executive summary of the Annual Management Plan.

**Commented [A6]:** Inserted by the Director.

#### Article 15

##### **Annual Report**

1. In accordance with Article 60 of the Regulation, the EDPS will submit an annual activities report ('Annual Report') to the European Parliament, the Council and the Commission and forward it to the other institutions.
2. The Annual Report will be submitted and published on the EDPS website no later than 1 July of the following year.
3. The EDPS will consider the comments which are submitted by other institutions and bodies referred to under Article 60(2) of the Regulation with a view to subsequent possible examination of the report by the European Parliament.
4. As specified under recital 75 of the Regulation, the decisions of the EDPS regarding exemptions, guarantees, authorisations and conditions relating to data processing operations, as defined in the Regulation, will be published in the Annual Report.

## TITLE II - LEGISLATIVE AND POLICY CONSULTATION

### Article 17

#### **Mandatory consultation**

1. In accordance with Article 42(1) of the Regulation, where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS shall be consulted by the Commission on:

- (a) legislative proposals or recommendations or proposals for an international agreement, following their adoption;
  - (b) implementing acts and delegated acts, before the College of Commissioners takes a decision to adopt them.
2. A proposal, recommendation, implementing and delegated act is deemed as having an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data where it implies the processing of personal data, whether or not by an institution.

### Article 18

#### **Informal consultation**

In line with Recital 60 of the Regulation, when the Commission is preparing legislative proposals or recommendations or proposals for an international agreement, having an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS should be consulted before the College of Commissioners takes a final decision to adopt such proposal or recommendation, including on any preparatory documents such as consultation papers and communications.

### Article 19

#### **Other consultations and own initiative documents**

1. The EDPS may be consulted:

- in accordance with Article 57(1)(g) of the Regulation, by all institutions on legislative measures relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data;
  - in accordance with Article 58(3)(c) of the Regulation, on any issue related to the protection of personal data.
2. In accordance with Articles 57(1)(g) and 58(3)(c) of the Regulation, the EDPS may, on its own initiative, issue opinions, formal comments or other documents on legislative measures relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data or on any issue related to the protection of personal data.

### Article 20

#### **Request and time-limit for consultation**

1. Requests for consultation shall be addressed preferably to the EDPS functional-mailbox.
2. When consulted under Article 42(1) of the Regulation, the EDPS shall provide the advice in writing in principle within eight weeks, starting from receipt of the request and the complete file in accordance with paragraph 1.
3. This time period may be shortened by the Commission in urgent cases or if otherwise appropriate. In such case, the EDPS shall make its best efforts to respect the time-limit. Such consultation shall take place in full respect of the principle of mutual sincere cooperation, which implies that:
  - as far as possible, prior to the determination of such time-limit, the Commission endeavours to agree with the EDPS on a suitable time-limit; and
  - in any case, as far as possible, sufficient information and time are provided for an in-depth analysis of the submitted documents.
3. When consulted pursuant to a legal basis other than Article 42 of the Regulation, the EDPS shall endeavour to respect the time-limits proposed by the consulting institutions, so far as is reasonable and practicable, on a best efforts basis.
4. Automatic transmission of adopted legislative proposals by the Commission shall be considered as requests pursuant to paragraph 1. Unless otherwise stipulated at the time of the transmission, the EDPS shall apply the eight weeks time limit by default.



#### Article 21

##### **Joint opinion of the EDPB and the EDPS**

1. Where the EDPB is consulted in accordance with Article 42(2) of the Regulation, the EDPS shall endeavour to issue a joint opinion with the EDPB, within the set time-limit in accordance with Article 20 of these Rules of Procedure and in compliance with the cooperation rules set out in the Memorandum of Understanding between the EDPB and the EDPS.

2. Where, however, despite EDPS' best efforts, a joint opinion of the EDPB and the EDPS cannot be issued within the set time-limit, the EDPS shall issue an opinion, if possible still within the set time-limit for the joint opinion, and in any case, no later than ten working days after the conclusion was reached that no joint opinion will be issued.

#### Article 22

##### **Content and publicity of EDPS opinions and comments**

1. In response to consultations under Article 17(1)(a) and (2) of these Rules of Procedure, the EDPS shall issue an opinion or comments in accordance with Article 22 of these Rules of Procedure.

In response to consultations on draft implementing acts or delegated acts under Article 17(1)(b) and Article 18 of these Rules of Procedure, the EDPS shall issue informal comments.

In all other cases, the EDPS may provide opinions, comments or other documents.

2. An opinion shall analyse the data protection aspects of the document in relation to which it is issued.

In principle, a summary of the opinion shall be published in the Official Journal of the European Union (C Series) and the unabridged version of the opinion shall be published on the website of the EDPS.

3. EDPS comments shall focus on specific data protection aspects of the document in relation to which they are issued. Only formal comments will in principle be published on the website of the EDPS.

4. In any event, when deciding on the publicity to be given to an opinion or comments, the EDPS shall respect the confidentiality of the applicable decision-making process, in accordance with the applicable rules as established under the EU Treaties and EU secondary legislation.

#### Article 23

##### **Decision not to draw up an opinion or comments**

1. Where the EDPS considers that a consultation referred to the EDPS under Article 42(1) of the Regulation is not relevant, for example because there is no impact on the right to data protection or is not of political importance, or for reasons of priority or because relevant opinions have already been adopted by the EDPS in the recent past, a new opinion is not considered necessary, the EDPS may decide not to issue an opinion or comments.

2. In this case, the EDPS may decide to inform the institution about this decision by means of a motivated letter signed by the Supervisor. The letter shall be prepared by the Policy and Consultation Unit.

3. Where the EDPS is consulted under Articles 18 and 19 of these Rules of Procedure, the Head of the Policy and Consultation Unit may decide not to draw up an opinion or comments, on the basis of one of the grounds referred to in paragraph 1 of this Article. The relevant institution shall be informed about this decision.

#### Article 24

##### **Follow up to opinions and formal comments**

1. The EDPS shall be available to provide advice to the institutions involved during all stages of the decision-making process.

2. The EDPS shall be available to orally present and discuss the opinions and comments in a meeting with the institution concerned or to provide any other requested contribution, as appropriate.

3. During the decision-making process, the EDPS may consider submitting further advice in the form of an opinion, comments or any other instrument deemed appropriate.



## **TITLE III - MONITORING COMPLIANCE WITH DATA PROTECTION RULES AND PRINCIPLES OF EU INSTITUTIONS AND BODIES PROCESSING PERSONAL DATA**

### **Chapter 1 - Principles**

#### **Article 25**

##### **Monitoring data protection compliance**

The EDPS carries out regular monitoring exercises in order to ensure an appropriate overview of data protection compliance within institutions, including within the EDPS itself.

2. Visits may be carried out by the EDPS to engage commitment from senior management of an institution to foster compliance with the Regulation.
3. Compliance visits may be based on a lack of commitment to comply with the Regulation, or on a lack of communication, as well as to raise awareness on data protection issues.
4. Consultancy visits may take place to advise the institutions on how to protect the rights and freedoms of individuals and ensure compliance with the Regulation and other applicable provisions of Union law.

#### **Article 26**

##### **Enforcement**

1. The EDPS shall enforce data protection obligations using the powers granted in Article 58 of the Regulation as well as in other applicable provisions of Union law. Those powers shall be used to their fullest extent in cases of serious, deliberate or repeated instances of non-compliance.
2. The EDPS shall use its powers in an effective manner, considering necessity and proportionality in ensuring compliance with the Regulation and other applicable provisions of Union law. The EDPS shall take into account the circumstances of each individual case, the gravity of the infringement, the risk to the rights and freedoms of the data subject, the impact on other private or public interests concerned and respect the right to be heard before any enforcement measure is taken.

### **Chapter 2 - Consultations and authorizations**

#### **Article 27**

##### **Consultations by institutions regarding their own processing of personal data**

1. The EDPS shall advise institutions, in response to a consultation, on all matters concerning the processing of personal data. In principle, the EDPS shall only take into consideration consultations which have been submitted to the Data Protection Officer of the institution concerned. The EDPS may also reply to consultations submitted directly to the EDPS.
2. Consultations, in principle, shall be submitted by institutions to the EDPS before the launch of the processing operation that forms the object of the consultation. Prior consultations based on Article 40(2) of and 90 of the Regulation, Article 39 of Regulation 2016/794 and Article 72 of Regulation 2017/1939 shall be submitted early enough, usually at least two months before the start of the processing, taking into account the applicable time-limits.
3. The EDPS provides advice to consultation based on a clear question and accompanied by the relevant supporting documentation. The EDPS may establish the forms to be used by institutions for submitting the requests for consultation to the EDPS.
4. The opinion of the EDPS provides the necessary recommendations and may require the institution to inform the EDPS within a set time-limit on the follow-up provided to the recommendations made by the EDPS.

#### **Article 28**

##### **Decisions from the EDPS authorising transfers of personal data to a third country or an international organization pursuant to Article 48(3) of the Regulation**

1. Authorisation requests shall be submitted by institutions through their DPO in due time before the signing by the institution of the administrative arrangement or of the ad hoc contract clauses referred to under Article 48(3) of the Regulation and Article 25(6) of Regulation 2016/794.
2. The authorisation decision by the EDPS in reply to these authorisation requests may contain conditions for their applicability, such as the implementation of recommendations or reference to other opinions of the EDPS setting out conditions for the processing of personal data.

#### Article 29

##### Transparency on consultations

1. The EDPS publishes to the extent possible and with full respect of confidentiality requirements replies to consultations to provide guidance on compliance with the Regulation also for institutions other than the one who consulted the EDPS.
2. The EDPS will inform the Union institution or body that submitted the consultation beforehand and provide the text to be published. The EDPS may use the general content of the consultations in public materials.
3. The EDPS publishes replies to prior consultations to the extent possible. The EDPS may notably redact parts of the replies to the consultations related to information security, and otherwise redact part of the replies to take into account in particular security of the institutions, its public interest mission and the protection of personal data of the persons concerned. The EDPS will inform the institution that submitted the prior consultation beforehand and provide the text of the reply as edited for publication.
4. The EDPS will publish the decisions authorising transfers of personal data to a third country or an international organization pursuant to Article 48(3) of the Regulation.

Commented [A7]: Director's input.

#### Article 30

##### Time-limits and suspensions for replies to consultations and authorisation requests

1. Without prejudice to different time-limits as established by Union legislation, the EDPS aims to provide replies to consultations and authorisation requests referred to in this Chapter of these Rules of Procedure within two months.
2. Without prejudice to the Regulation and other applicable provisions of Union law, the EDPS may request all further information needed to reply to the consultation or authorization request, suspending the respectively applicable time-limit. The suspension takes effect on the day following the request for further information and is lifted on the day following receipt of all requested information by the EDPS.

### Chapter 3 – Investigations and audits

#### Article 31

##### Investigative powers

The EDPS shall exercise its investigative powers in line with the principles set out in Article 16 of these Rules of Procedure.

#### Article 32

##### Investigations

The EDPS shall carry out investigations whenever on the spot verification is considered necessary to establish facts, to handle complaints or to verify compliance on the application of the Regulation.

#### Article 33

##### Audits

1. The EDPS shall decide to carry out an audit whenever on-the-spot verification is considered necessary for the performance of supervisory tasks or for compliance with a legal obligation. Audits not based on a legal obligation are carried out on the basis of an annual risk-assessment exercise.
2. The EDPS shall set forth in the audit report the findings made during the audit. Audit reports will in principle not be made public. The Annual Report of the EDPS, published in accordance with the Regulation and Article 15 of these Rules of Procedure, as well as press releases, newsletters will contain general information relating to the inspections and the follow-up actions carried out during the reporting period.

## Chapter 4 - Corrective powers and administrative fines

### Article 34

#### Corrective powers

1. The EDPS will exercise its corrective powers in line with the principles set out in Article 16.
2. The EDPS makes use of its corrective powers according to a progressive approach. For minor infringements of the Regulation or other applicable provisions of Union law, the EDPS shall first use warnings and reprimands, followed by an order to bring the processing operation into compliance with the applicable data protection rules within a set time-limit. In case of non-compliance with the order the EDPS may issue fines.
3. For serious infringements of the Regulation, the EDPS shall issue orders and, in case of non-compliance with the orders, may issue a fine as specified under Article 35 of these Rules of Procedure.
4. Without prejudice to other corrective measures, the EDPS may also order the suspension of data flows by the institutions or their processors to recipients, or impose a temporary or definitive limitation, including a ban, on the processing of personal data by the institution or their processors.

### Article 35

#### Administrative fines

1. In accordance with Article 66 of the Regulation, the EDPS may, by decision of the Supervisor, impose administrative fines on institutions, depending on the circumstances of each individual case and as sanction of last resort, where the institution fails to comply with an order by the EDPS pursuant to points (d) to (h) and (j) of Article 58(2) of the Regulation.
2. The EDPS further details its policy on administrative fines under the EDPS Guidelines on administrative fines, ensuring in particular that the rights of defence of the parties concerned, including the right to access to the EDPS' file as set out under Article 66(6) of the Regulation, are fully respected in the proceedings.
3. The powers conferred to the EDPS by Article 58(1)(j) and Article 66 shall be subject to the limitation period of five years. Time shall begin to run on the day on which the infringement is committed. However, in cases of continued or repeated infringements, time shall begin to run on the day on which the infringement ceases.
4. Pursuant to Article 66(7) of the Regulation funds collected by imposition of the administrative fines are the income of the general budget of the Union. The execution of the EDPS' decision imposing a fine and the recovery of the fine will be carried out in accordance with the rules set out in the Financial Regulation.<sup>9</sup> ~~For this purpose, the EDPS will enter into the necessary agreement with the Commission.~~

**Commented [A8]:** Director's input: too detailed. Delete. No need for 'self-obliging' the EDPS, committing to this here in the RoP.

## Chapter 5 - Cooperation with the Data Protection Officers of the Institutions

### Article 36

#### Cooperation with Data Protection Officers

1. The EDPS will cooperate with Data Protection Officers, both on a bilateral basis and by regularly participating in the meetings organised by the network of Data Protection Officers.
2. The EDPS will provide support and guidance to Data Protection Officers, where necessary for the performance of their duties.

### Article 37

#### Register of appointed Data Protection Officers

1. In accordance with Article 44(9) of the Regulation, the EDPS shall keep a register of the appointments of Data Protection Officers notified to the EDPS. The register shall include, in particular, information on the duration of the mandate of each Data Protection Officer.
2. The EDPS publishes a list of all Data Protection Officers on its website indicating only their name and surname, office contact details and their respective institution.
3. The institutions shall inform the EDPS of any new appointment so that the EDPS can update the register and the list referred to, respectively, under paragraph 1 and 2 of this Article.

<sup>9</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 PE/13/2018/REV/1 OJ L 193, 30.7.2018, p. 1–222.

## **Chapter 6 - Complaints to the EDPS**

### **Article 38**

#### **Lodging a complaint**

1. A complaint shall identify the person making the complaint.
2. A complaint shall be submitted in writing in any official language of the Union and provide all information necessary to understand its subject matter.
3. A complaint shall in principle be lodged within two years of the date on which the complainant had knowledge of the facts on which it is based.
4. If a complaint relating to the same facts has been lodged with the European Ombudsman, the EDPS shall examine its admissibility in the light of the provisions of the Memorandum of Understanding concluded between the EDPS and the European Ombudsman.
5. Complaints submitted to the EDPS shall not suspend time-limits for actions in parallel administrative or judicial proceedings.

### **Article 39**

#### **Handling of complaints**

1. The EDPS shall decide on the most appropriate form and means to handle a complaint, taking into account:
  - (a) the nature and gravity of the alleged breach of data protection rules;
  - (b) the importance of the prejudice that one or more data subjects have or may have suffered as result of the breach;
  - (c) the potential overall importance of the case, also in relation to other public and/or private interests involved;
  - (d) the likelihood of establishing that the breach has occurred;
  - (e) the exact date when: the underlying events occurred, the conduct in question stopped yielding effects, the effects were removed or an appropriate guarantee of such a removal was provided.
2. Where the EDPS considers that a submitted complaint amounts to an abuse of communication or process, it may decide to refuse to act on the request.
3. The handling of the complaint by the EDPS may consist in particular of written requests to provide information, interviews with relevant persons, on the spot inspections or forensic examination of the relevant devices. Where appropriate the EDPS shall facilitate an amicable settlement of the complaint.
4. The EDPS may decide to suspend the investigation of a complaint pending a ruling by a court or a decision of another body on the same matter.
5. The EDPS shall disclose the identity of the complainant only to the extent necessary for the proper conduct of the investigation. The EDPS shall not disclose any documents related to the complaint, excluding anonymised excerpts or summaries of the final decision, to third parties, unless the persons concerned consents to such disclosure or if the EDPS is under a legal obligation to do so.
6. Information about the complaint shall be published by the EDPS only in a form which does not allow the complainant or other data subjects involved to be identified.
7. In accordance with Article 61, 62 as well as Article 51(b) of the Regulation and other applicable provisions providing for the involvement of national supervisory authorities, the EDPS shall cooperate with national supervisory authorities and similar bodies in the Member States to the extent necessary for their respective duties, including through the EDPB.

### **Article 40**

#### **Outcome of complaints**

1. The EDPS shall inform the complainant as soon as possible of the outcome of a complaint and the action taken.
2. Where a complaint is found to be inadmissible or its consideration is terminated, the EDPS shall, where appropriate, advise the complainant to refer to another authority.
3. The EDPS may decide to discontinue an investigation at the request of the complainant. This shall not prevent the EDPS from investigating the subject matter of the complaint further.
4. The EDPS may close an investigation where the complainant has failed to provide any requested information or any requested comments.



#### Article 41

##### **Review and judicial remedies**

1. The complainant and the institution concerned may request the EDPS in writing to review the decision of the EDPS on a complaint.
2. A request for review shall be lodged within one month of the date of receipt of the decision of the EDPS and shall be limited to new elements or legal arguments which have not been taken into account by the EDPS.
3. Independently of the possibility to request the EDPS to review its decision on a complaint, the decision of the EDPS may be challenged before the Court of Justice of the European Union in accordance with the conditions laid down in Article 263 of the Treaty on the Functioning of the European Union.
4. Where the EDPS, following a request for review, issues a revised decision which relies on substantial new elements, this new decision, that is, a not merely confirmatory decision, shall be subject to the same possibilities of judicial remedy as specified in paragraph 3 of this Article of these Rules of Procedure.

#### **TITLE IV - COOPERATION WITH NATIONAL SUPERVISORY AUTHORITIES IN THE EU AND IN THE EEA**

#### Article 42

##### **Cooperation with national supervisory authorities under Article 61 of the Regulation**

In accordance with Article 61 of the Regulation, the EDPS will cooperate with national supervisory authorities and with the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA<sup>10</sup> in particular to:

- (a) exchange all relevant information, such as information relating to best practices, as well as in relation to requests to exercise monitoring, investigative and enforcement powers by competent national supervisory authorities;
- (b) develop and maintain contacts with relevant members and staff of the national supervisory authorities;
- (c) where relevant, participate in meetings of joint supervisory authorities, with the aim of ensuring a consistent practice.

2. Where relevant, the EDPS may take part in joint operations with national supervisory authorities. Each authority will act in joint operations within the scope of their respective competences and to the extent necessary for the performance of their respective duties and will supervise compliance according to the data protection rules applicable to the processing operation or to the investigated entity (the Regulation, the GDPR, Directive (EU) 2018/680 or a specific data protection regime, such as Regulation (EU) 2016/794.

The EDPS may take part upon invitation in investigation by a supervisory authority (e.g. as expert in an investigation team). The EDPS may invite a supervisory authority to take part in EDPS' investigation.

In case of the EDPS taking part in investigation by a supervisory authority or a supervisory authority taking part in EDPS' investigation, the invitee will follow the procedural rules applicable to the investigating authority and apply the applicable data protection rules.

#### Article 43

##### **European Data Protection Board**

1. Irrespective of the role as providing the Secretariat of the EDPB, the EDPS is a full member of the EDPB and as such shall actively contribute to the discussions and drafting of documents published by the EDPB which aim at providing a common interpretation of data protection law and expert advice to the Commission. Where appropriate in such cases, the EDPS shall strive to put forward the Union perspective.
2. The EDPS shall participate on a regular basis in the plenary and subgroup meetings of the EDPB.

<sup>10</sup> Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes, OJ L 323, 10.12.2009, p. 20.

#### Article 44

##### **Coordinated supervision by the EDPS and national supervisory authorities of large scale IT systems and of Union bodies, offices and agencies**

1. The EDPS shall take part with national supervisory authorities in the coordinated supervision of large scale IT systems and of Union bodies, offices and agencies, as provided under Union law, including Article 62 of the Regulation where applicable.
2. Where Article 62 of the Regulation does not apply and the EU law provides so, the EDPS shall organise the coordination meetings and provide the secretariat of coordinated supervision groups.
3. The EDPS shall cooperate also with individual national supervisory authorities to the extent necessary and according to their priorities, with a view to ensuring coordinated supervision of the national and central unit of large-scale IT systems and of data processing involving at the same time institutions and entities subject to supervision of national supervisory authorities.

#### Article 45

##### **Cooperation with Union bodies, offices and agencies**

1. The EDPS shall take part with national supervisory authorities in cooperation groups set up by Union law.
2. Within these groups, the EDPS shall closely cooperate with the national supervisory authorities on specific issues requiring national involvement and to ensure the consistent application of the applicable Union law throughout the Union.
3. The cooperation shall include exchanging relevant information, and assisting each other in carrying out audits and inspections, examining difficulties of interpretation or application of the relevant Union law, studying problems relating to the exercise of independent supervision or the exercise of the rights of data subject as well as promoting awareness of data protection rights.
4. Where provided by Union law, the EDPS shall organise cooperation meetings and provide the secretariat of the cooperation groups.

## **TITLE V - INTERNATIONAL COOPERATION**

#### Article 46

##### **International cooperation**

1. In accordance with Article 51 of the Regulation, the EDPS shall take part, in particular, in the annual Spring Conference of European Data Protection Commissioners, in the annual International Conference of Data Protection and Privacy Commissioners and the International Working Group on Data Protection and Telecommunications (Berlin Group).
2. The EDPS shall participate in relevant regional and international privacy networks, such as the Consultative Committee of the Convention 108 of the Council of Europe.
3. The EDPS shall contribute to the organisation of workshops with representatives of international organisations and various stakeholders with a view to sharing best practices and developing a strong data protection culture in these organisations.
4. The EDPS shall promote cooperation and dialogue at the international level with all relevant stakeholders from third countries and international organisations in order to promote EU data protection standards, the values of the European Union as enshrined in particular in the Charter of Fundamental Rights of the European Union, and the European approach to privacy and data protection as central to safeguarding human dignity, autonomy and the democratic functioning of society.
5. Where relevant and appropriate, the EDPS will cooperate in accordance with Article 51 of the Regulation with supervisory authorities of third countries or international organisations to provide international mutual assistance in the enforcement of legislation for the protection of personal data, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms.

## TITLE VI - COURT PROCEEDINGS

### Article 47

#### Action against Institutions for breach of the Regulation

In accordance with Article 58(4) of the Regulation, where necessary, in case of non-compliance by an institution with the Regulation, in particular where the EDPS has not been consulted in cases provided for by Article 42(1) of the Regulation and in case of failure to effectively respond to enforcement action taken by the EDPS under Article 58 of the Regulation, the EDPS shall make use of the power to refer the matter to the Court of Justice under the conditions provided for in the Treaties establishing the EU.

### Article 48

#### Court Interventions

1. In accordance with Article 58(4) of the Regulation, Article 85(2)(g) of Regulation (EU) 2017/1939 and Article 43(3)(i) of Regulation (EU) 2016/794, the EDPS may intervene in actions brought before the Court of Justice of the European Union.

2. The EDPS shall apply for leave to intervene in proceedings if the case is of particular data protection importance or if formally invited to do so by the Court.

3. For all other cases, the decision by the EDPS to request leave to intervene before the Court will take into account in particular:

- (a) whether the EDPS has been directly involved in the facts of the case in the performance of supervisory tasks;
- (b) whether the data protection issue constitutes a substantial part of the case; and
- (c) whether an intervention by the EDPS is likely to provide added value to the proceedings relating to the case *sub judice*.

## TITLE VII - TECHNOLOGY MONITORING; RESEARCH; PERSONAL DATA BREACH NOTIFICATIONS TO THE EDPS

### Article 49

#### Technology monitoring

1. In accordance with Article 57(1)(h) of the Regulation, the EDPS shall monitor the development of information and communication technologies insofar as they have an impact on the protection of personal data. In carrying out this task, the EDPS shall aim at identifying emerging trends, establishing contacts with relevant stakeholders, raising awareness of possible data protection impacts and providing advice on how to include data protection concerns in relevant projects, promoting in particular the principles of data protection by design and data protection by default.

2. The Information and Technology Policy Unit of the EDPS shall advise the Management Board on the implications of technological developments for the exercise of the tasks of the EDPS.

### Article 50

#### Research

1. The EDPS may decide to contribute to the Union's Framework Programmes, by participating in advisory committees in research, assisting the Commission in the evaluation process of proposals or any other means, where appropriate.

2. The EDPS may decide to contribute to individual EU funded research, technological development and demonstration activities.

#### Article 51

##### **Notification of a personal data breach to the EDPS by institutions**

1. The Information and Technology Policy Unit of the EDPS, in cooperation with the Supervision and Enforcement Unit of the EDPS will handle the notification of the personal data breach verifying compliance with Articles 34, 35, 92 and 93 of the Regulation.
2. The EDPS shall provide a secured notification platform for the notification of a personal data breach to the EDPS by institutions and implement specific security measures for the exchange of information regarding personal data breaches. The EDPS will acknowledge receipt of the notification on the personal data breach and register the notification internally.
3. The EDPS will verify if the controller has correctly assessed the level of risk for individuals affected by the breach in particular in relation to the notification of the personal data breach to the EDPS and the communication of the breach to the data subject(s). Where that is not the case, the EDPS may use its powers laid down in Articles 58 of the Regulation, in particular ordering the institution to communicate the personal data breach to the data subject(s).

### **TITLE VIII - INFORMATION AND COMMUNICATION**

#### Article 52

##### **Information and Communication**

1. The EDPS will raise awareness of data protection and inform the public on their rights related to data protection and privacy. To this end, the EDPS may use a number of communication tools (e.g. website, newsletter, social media and awareness-raising events), liaise with interested parties (e.g. study visits to the EDPS office, replies to information requests) and participate in public events, meetings and conferences.
2. The EDPS will inform the media about major events related to data protection, personal data breaches and important opinions or publications, through, among others, press releases, interviews and press conferences.
3. The EDPS Unit/Sector in charge of information and communication will advise and support the Supervisor, the Secretary General, the Management Board and all Units and Sectors on matters related to the promotion of the activities and outreach of the EDPS.
4. Internal communication will be ensured through regular staff meetings, announcements as well as via the use of the dedicated Intranet website.

### **TITLE IX - GOOD MANAGEMENT, ADMINISTRATIVE COOPERATION ON STAFF AND BUDGETARY ISSUES, STAFF REPRESENTATION, SECURITY**

#### Article 53

##### **Quality management**

1. The EDPS shall put in place appropriate mechanisms to ensure adequate quality management, such as Internal Control Standards, risk management and an Annual Activity Report.
2. The Internal Control Coordinator reports to the Management Board on any audit or quality management issues.

#### Article 54

##### **Ethics Framework**

1. The EDPS' Ethics Framework ensures the ethical functioning of the services of the EDPS for the performance of the tasks of the institution, taking also into account the principles of good governance, good administrative behaviour and good management.
2. The Ethics Officer of the EDPS shall ensure the institution's internal control on ethics and shall report directly to the Management Board on the implementation of the Ethics Framework.



#### Article 55

##### Staff and budget-related administrative cooperation with other institutions

1. Upon sub-delegation by the Secretary-General, and without prejudice to the Memorandum of Understanding between the EDPS and the EDPB, the Director, as Head of the EDPS Secretariat, shall represent the EDPS in the various inter-institutional fora, and may delegate this representation to the officials in charge of human resources, budget and administration.

2. Given the size of the EDPS in comparison with the other institutions, and with a view to good management and budgetary economy, the EDPS shall actively pursue cooperation agreements, memoranda of understanding and service level agreements as well as the participation to framework contracts with other institutions. As regards matters relating or affecting the EDPB, the EDPS will ensure the respect of Point VI.2 of the Memorandum of Understanding concluded between the EDPS and the EDPB.

#### Article 56

##### Staff Committee

1. A Staff Committee representing the staff of the EDPS shall be consulted in good time on draft decisions relating to the implementation of the Staff Regulations of officials of the European Union and on any other question of general interest concerning the staff. The Staff Committee will meet regularly and at least twice per year with the Director.

shall be informed of any question related to the execution of its tasks. It shall issue its opinions within fifteen working days from the day on which it receives the request for opinion or, in case of justified urgency properly motivated by the Director, within an earlier time-limit.

2. The Staff Committee shall contribute to the good functioning of the EDPS by making proposals on organisational matters and working conditions.

3. The Staff Committee shall be composed of three to five members and three to five deputies, and elected for a period of two years by the General Assembly.

4. At least one member and one deputy shall be working within the EDPB Secretariat.

Commented [A9]: Director's input.

Commented [A10]: Director's input.

#### Article 57

##### Security

1. In accordance with Article 56 of the Regulation, the Supervisor and the members of the EDPS staff shall, both during and after their term of office, be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

2. As regards the sharing of information between the EDPS and the EDPB, the EDPS staff will respect Point V.8 of the terms of the Memorandum of Understanding concluded between the EDPS and the EDPB.

3. The EDPS, in accordance with its Decision 429 of 18 February 2014 on the protection of EUCI, appoints one or more staff members with specific responsibility for security issues, concerning the various fields of activities: namely, the Local Security Officer (LSO), responsible in particular for staff-related security issues and physical security; the Local Information Security Officer (LISO), in charge of information security.

When they consider it appropriate to prevent, mitigate or address the security risks for the EDPS, the staff members so appointed shall report directly to the Secretary General or, upon delegation, to the Director. They shall ensure the respect of Point V.10 of the Memorandum of Understanding concluded between the EDPS and the EDPB.

4. A separate Local Information Security Officer (LISO) shall be appointed within the EDPB Secretariat. A separate function within the EDPB Secretariat could also be appointed for the management of information including EUCI and the management of requests for security clearances.

5. The Security Committee established pursuant to Section 4.2. of the Annex I to the EDPS Decision 429 of 18 February 2014 will decide on EDPS EUCI security matters and may be consulted on other security related issues.

6. The EDPS may sign service level and cooperation agreements with major institutions to provide for ordinary and extraordinary security needs.

7. The security rules of the EDPS shall be continuously adapted to reflect the evolution of security needs and shall be consistent with the standards set in the security rules of the Council of the European Union, of the Commission and of the European Parliament.

## TITLE X - THE DATA PROTECTION OFFICER OF THE EDPS

### Article 58

#### Data Protection Officer

1. In accordance with Article 43 of the Regulation, the EDPS shall appoint a Data Protection Officer (DPO) who shall report directly to the Secretary General or, upon delegation, to the Director.
2. Pursuant to Art. 44(5) of the Regulation, referring to the DPO and his or her staff, the EDPS may establish a DPO Office that may include an Assistant DPO.
3. In accordance with Article 45(3) of the Regulation, the EDPS has adopted further implementing rules concerning the tasks, duties and powers of the DPO by Decision of [...] <sup>11</sup>
4. In particular, the DPO will be consulted, among other cases, when the EDPS as controller intends to apply a restriction based on Article 25 of the Regulation in accordance with the EDPS Decision of ... <sup>[12]</sup> establishing the internal rules of the EDPS on the application of these restrictions. Pursuant to the Regulation and these internal rules of the EDPS, the decision on the application of the restriction will be taken by the Secretary General or, upon delegation by the Secretary General, by the Director.:
- ~~4. The DPO of the EDPS shall not cover the activities of the EDPB and the EDPB Secretariat and shall respect the Point IV.4 of the Memorandum of Understanding concluded between the EDPS and the European Data Protection Board (EDPB).~~
4. As provided for under Point IV.4 of the Memorandum of Understanding concluded between the EDPS and the EDPB, the EDPB has its own DPO.

**Commented [A11]:** Director's input: replace, to simplify: "and that the DPO will be assisted by an Assistant DPO" with "that may include an Assistant DPO."

## TITLE XI - GENERAL PROVISIONS

### Article 59

#### Languages and working languages

1. The language of proceedings conducted by the EDPS shall be one of the languages mentioned in Article 55(1) of the Treaty on European Union and Article 358 of the Treaty on the Functioning of the European Union.
2. The EDPS may decide to make recourse to the use of the English language as internal working language arrangement.
3. Any person may write to the EDPS in one of the languages of the Treaties, on any matter falling within the EDPS's competence. The EDPS shall reply in the same language.
4. A complaint may be submitted to the EDPS in one of the languages of the Treaties. The EDPS shall communicate with the complainant in the same language.
5. The legislative opinions and the most important acts of the EDPS shall be published on the EDPS website at least in English, French and German.

**Commented [A12]:** Alternative wording for para. 5, suggested by the Director. No modification on substance. It's about further clarity, simplification of language, putting in 'positive' rather than in 'negative' terms. To be agreed with EDPB SEC.  
Idem for the possible alternative wording for Article 64.4.

### Article 60

#### Authentication of decisions of the EDPS and validity of electronic documents

1. Decisions shall be authenticated by the apposition of the Supervisor's signature. Such signature may be written or in electronic form.
2. In case of delegation in accordance with Article 12 of these Rules of Procedure, the decisions will be authenticated by the apposition of the signature of the delegated person.
3. EDPS documents may be prepared, signed and distributed in electronic form.
4. The Management Board shall decide on the technical specifications, and on the presentation, of the electronic form, including that of the signature referred to in paragraph 1 as well as the conditions of validity of electronic documents, electronic procedures and electronic means of transmission for the purposes of the EDPS.

### Article 61

#### Rules for calculation of time limits

Save as otherwise provided by the applicable rules under the Treaties and secondary EU law, the EDPS will apply the rules for calculation of time limits established under Regulation (EEC, EURATOM) 1182/71 of the Council of 3 June 1971<sup>13</sup>.

<sup>11</sup> Decision of the EDPS, published in the OJ ...

<sup>12</sup> Decision of the EDPS published in the OJ ...

<sup>13</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, OJ L 124, 8.6.1971, p. 1.



#### Article 62

##### **Publication in the Official Journal of documents of the EDPS**

1. The following documents of the EDPS shall be published in the Official Journal of the European Union, as considered appropriate by the EDPS:

- (a) opinions of the EDPS referred to under Article 17 of these Rules of Procedure;
- (b) other documents considered relevant by the EDPS, in particular the replies to consultations and decisions referred to under Title III, Chapter 2, of these Rules of Procedure.

#### Article 63

##### **Public access to documents and transparency officer of the EDPS**

1. The EDPS shall designate a transparency officer to ensure compliance with Regulation (EC) 1049/2001<sup>14</sup>.
2. The transparency officer shall report to the Secretary General or, upon delegation by the Secretary General, to the Director.
3. Pursuant to Article 52(4) of the Regulation, the EDPS shall adopt detailed rules for applying Regulation (EC) 1049/2001 with regard to documents held by the EDPS, in particular with regard to documents relating to different cases handled by the EDPS referred to under Title III of these Rules of Procedure. Such rules will further detail the position and tasks of the transparency officer.

#### Article 64

##### **Records and archives management**

1. The EDPS shall keep accurate and authentic records of its activities, as reliable and legally verifiable source of evidence of decisions and actions.
2. Records and documents related to specific activities shall be organised in case files.  
The EDPS shall establish and maintain a filing plan where case files shall be logically accessible per type of activity.
3. The EDPS shall establish and maintain a retention schedule, detailing for how long the different types of case files shall be preserved, to comply with legal obligations and administrative rules. After expiration of the retention period, the case files shall be appraised and archived or eliminated, in accordance with the provisions on archiving adopted by the EDPS.
4. ~~The EDPS record management shall not cover the activities of the EDPB and of the EDPB Secretariat.~~
4. The EDPB Secretariat has a separate records and archive management.

**Commented [A13]:** Alternative wording for para. 5, suggested by the Director. No modification on substance. It's about further clarity, simplification of language, putting in 'positive' rather than in 'negative' terms. In addition, this wording takes into account the technical remarks made by [REDACTED]

## **TITLE XII - FINAL PROVISIONS**

#### Article 65

##### **Repeal of EDPS Decision of 17 December 2012 on the adoption of Rules of Procedure (2013/504/EU) and transitional measures**

1. These Rules of Procedure shall repeal the EDPS Decision of 17 December 2012 on the adoption of Rules of Procedure with effect as from the date of entry into force of these Rules of Procedure.
2. However, these Rules of Procedure will not affect in any way the provisions on transitional measures under Article 100 of the Regulation, in particular having regard to the position and tasks of the current Assistant Supervisor until the end of his term of Office.
3. Accordingly, Article 8 of these Rules of Procedure shall not apply and Article 4 and 7 of the EDPS Decision of 17 December 2012 shall continue to apply until the end of the term of Office of the Assistant Supervisor.

#### Article 66

##### **Entry into force**

These Rules of Procedure shall enter into force on the day following their signature and shall be published in the Official Journal of the European Union.

Done at Brussels, 4 July 2019

Giovanni BUTTARELLI

<sup>14</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).