

**From:**

[Redacted]

**Sent at:**

14/06/19 17:48:50

**Subject:**

2.0

Dear all,

As confirmed by the Private Office, I've been volunteered for the drafting of the new Rules of Procedure ;- ) (tried to escape)

Therefore, and in accordance with instructions on substance by the Supervisor already flagged, I'm sending you the new version (2.0) for your feedback **by Thursday 20 June at h12,00.**

Intention is to send the new version to the Supervisor **by Friday 21 next week,** for signature by 4 July, as originally planned.

As you can see, it has been slimmed down drastically from 20 ages to almost 11. Please tell me in particular if there's something of the old version 1.0 you'd absolutely want to have back.

Apologize for absence of track changed version and for the very short delay.

*Please, 'don't shoot the messenger' ;-)*

Kindly yours,

[Redacted]

P.s. the version 2.0 is also saved in the EDPS-EDPB shared drive.

**From:** [REDACTED]  
**Sent:** 06 June 2019 12:24  
**To:** [REDACTED]

**Subject:** [REDACTED] from the Supervisor  
**Importance:** High

*Dear colleagues,*

This is to inform you that last Tuesday 4 June pm Christian and me received a **first feedback from the Supervisor** on the version on the nRoP we submitted on 5 April.

The novelties are:

- The **Private Office** ([REDACTED]) from now on **takes the lead** on this.

- On timing, tentatively **by Friday 14 June** a new version will be submitted to Giovanni.

- On **substance**: changes to be implemented are as follows (I indicate the main ones, a 'top 10'):

- (i) reduce the number of pages of about the half (from 20 to 10);
- (ii) delete redundancies, delete re to articles of regulation 1725;
- (iii) merge articles 3 and 15 (article on principles) and redraft looking at EDPS EDPS MoU principles;
- (iv) new article 3 bis on organization, organizational principles (to be drafted)
- (v) clearer demarcation of roles of Supervisor, Secretary General, Director; shorten article 7;
- (vi) rename and de-institutionalise MB and DM ([REDACTED] is in charge in particular of these articles, including finding new names: 'jour fix'/'special jour fix', for instance)
- (vii) simplify, shorten, redraft Title II
- (vii) administrative fines: further highlight EDPS not obliged not impose them
- (ix) simplify, shorten, redraft Title II (only added value specifications; no list of EDPS tasks and competences)
- (x) add article on EDPS as privacy ambassador ([REDACTED] in charge).

Please note, on the positive side, that the overall architecture of the nRoP has been



Yours,

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**From:** █

**Sent:** 03 April 2019 16:19

**To:** █

**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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**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>.

**HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:**

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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 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 L119, 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 L135, 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 L295, 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.

## TITLE I - MISSION, ORGANIZATION AND GUIDING PRINCIPLES

### Article 1

#### Subject matter and objectives

These Rules of Procedure contain rules on the guiding principles, organization and activities of the European Data Protection Supervisor and on the exercise of the tasks and powers of the European Data Protection Supervisor.

### 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) 'the EDPB' means the European Data Protection Board.

### Article 3

#### Guiding principles

##### Principle of independence and impartiality

The Supervisor shall act impartially and in complete independence when performing his or her tasks or exercising his or her powers.

##### Principle of good governance, integrity and good administrative behavior

The EDPS shall act in accordance with the principles of good governance, integrity and good administrative behaviour.

The EDPS shall act in the public's interest as expert, independent, reliable, proactive and authoritative body in the field of data protection.

The Supervisor shall follow the Code of good conduct for the Supervisor. The EDPS shall follow the European Code of Good Administrative Behaviour.

##### Principle of accountability

The EDPS shall be accountable in particular by documenting and publishing the strategy setting out its priorities and policy documents.

The EDPS, as a data controller, shall lead by example in respecting the spirit of, as well as complying with the letter of, applicable law on the protection of personal data.

##### Principle of transparency

In accordance with the principle of transparency, the EDPS shall operate as openly as possible, in particular engaging openly and transparently with stakeholders and explaining its activities to the public in a clear language.

##### Principle of efficiency and effectiveness

The EDPS shall operate ensuring the efficiency and effectiveness of its actions, in particular using the best available information technologies, bringing efficiencies to the working methods and to the administrative support of its core activities.

##### Principle of cooperation

In accordance with the principle of cooperation, the EDPS shall promote cooperation with supervisory authorities and endeavour to operate by consensus.

##### Principle of scalability of enforcement

The EDPS shall supervise compliance by the institutions with the Regulation and other applicable law according to a progressive approach. This means that the EDPS, based on its discretionary power, shall tailor the use of corrective measures, choosing the instrument which is more appropriate to the circumstances of the case.

#### Article 3 bis

#### **Principles relating to the internal organization**

##### Principle of efficiency

The internal organization of the EDPS shall take into account the operational needs for the fulfillment of its tasks and the corresponding needs of its Units and Sectors, with the aim, in particular, of ensuring the highest level of synergies.

##### Principle of staff valorization and delegation of tasks

The Supervisor shall decide to delegate the performance of certain of his or her tasks, taking into account in particular the specific expertise and experience of the delegated EDPS staff person on the exercise of this task.

##### Principle of activities' planning and risk management

The Supervisor shall define the main objectives of the EDPS in accordance with the strategic priorities. Key performance indicators shall be used for the reporting on the achievement of these objectives.

##### Principle of coordination and due reporting

In accordance with the principle of coordination, periodic meetings at different management levels shall take place to ensure the effectiveness of the EDPS internal communication and, in particular, accurate, complete and timely information and reporting to the Supervisor.

#### Article 4

#### **Role of the Supervisor**

The Supervisor shall adopt in particular the strategies setting out the priorities of the EDPS and the policy documents responding to the main objectives of the EDPS.

#### Article 5

#### **EDPS Secretariat**

1. The Supervisor shall be assisted by a Secretariat, the tasks and working methods of which are defined by the Supervisor.
2. The Supervisor shall establish a number of Units and Sectors forming the Secretariat of the EDPS. Each Unit or Sector shall be headed by a Head of Unit or Sector. The organigramme of the EDPS shall be published on the website of the EDPS.

#### Article 6

#### **Secretariat of the EDPB**

1. The EDPS shall provide the Secretariat of the EDPB in accordance with the Memorandum of Understanding between the EDPS and the EDPB.
2. The Secretariat of the EDPB shall be established as a separate Unit or a Sector within the organigramme of the EDPS.
3. The Secretariat of the EDPB shall be headed by a Head of Unit or Sector and provide analytical, administrative and logistical support to the EDPB under the exclusive instructions of the Chair of the EDPB.

#### Article 7

#### **Secretary General**

1. The EDPS Secretariat shall be headed by a Secretary General.
2. The Secretary General shall take all measures necessary to ensure the efficient functioning of the EDPS Secretariat and, in particular, its effective support to the Supervisor to implement its strategic and policy objectives.

#### Article 8

#### **Director**

1. The Director shall be responsible in particular for budget, human resources and administration matters.
2. The Director may carry out other tasks and responsibilities delegated to him or her by the Secretary General.

#### Article 9

## **Periodic meetings at different management levels and periodic reporting to the Supervisor at the “Jour Fixe” meetings.**

1. In accordance with the principle of coordination and reporting, periodic meetings at different management level shall be organised to fully ensure synergies and efficiency of actions of the Units and Sectors of the EDPS.
2. "Jour Fixe" meetings between the Supervisor and the management of the services that report to him/her on the main issues shall take place each trimester to ensure the implementation of the policy planning.

### **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.
2. In accordance with the Memorandum of Understanding between the EDPS and the EDPB, this power shall also apply to the staff of Secretariat of the EDPB.

### **Article 11**

#### **Authorising officer and accounting officer**

1. The Supervisor shall delegate the powers of authorising officer in accordance with the charter of tasks and responsibilities concerning budget and administration.
2. As regards budget matters relating to the EDPB, the authorising officer shall exercise its function in accordance with the Memorandum of Understanding between the EDPS and the EDPB.
3. The function of accounting officer of the EDPS, in accordance with a specific agreement between the EDPS and the Commission, shall be performed by the accounting officer of the Commission.

### **Article 12**

#### **Delegation of tasks**

In accordance with the principle of staff valorization and delegation of tasks, certain tasks may be delegated by the Supervisor or by the Secretary General, according to the circumstances of the case, to the Director, the Head of Unit or the Head of Sector, or to another official, taking in particular into account the specific expertise and experience of the delegated EDPS staff person.

### **Article 13**

#### **Deputising**

In the absence of the Secretary General, certain tasks may be exercised by the Director, a Head of Unit or Sector or by another official in accordance with the delegations made under Article 12 of these Rules of Procedure.

### **Article 14**

#### **Annual Management Plan**

In accordance with the principles of good governance, integrity and good administrative behavior, as well as with the principle of accountability, the EDPS shall establish each year an Annual Management Plan.

### **Article 15**

#### **Annual Report**

The EDPS shall submit an annual activities report (‘Annual Report’) to the European Parliament, the Council and the Commission and shall publish it on the EDPS website no later than 1 July of the year following the calendar year to which the Annual Report refers.

## **TITLE II - LEGISLATIVE AND POLICY CONSULTATION**

### **Article 16**

#### **EDPS as advisor of institutions on legislative and policy consultations**

1. The EDPS shall ordinarily reply to legislative and policy consultations issuing an opinion. 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.
2. The EDPS may however reply issuing formal comments, informal comments, position papers, depending on the nature of the consultation, the article of the Regulation on the basis of which the consultation request is made, and all other relevant circumstances of the consultation.

<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.

Formal comments shall be published on the website of the EDPS. Informal comments shall not be published. When deciding on the publication of opinions or comments, the EDPS shall fully respect the confidentiality of the decision-making process, in accordance with the applicable primary and secondary law of the European Union.

#### Article 17

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

1. As a rule, the EDPS shall provide its reply to the requests for legislative consultation under Article 42(1) of the Regulation within eight weeks starting from receipt of the request for consultation by the EDPS.
2. The EDPS, in accordance with the principle of sincere cooperation, shall handle on a best-effort basis the requests for legislative consultation for which the Commission has indicated to the EDPS a shorter deadline.
3. When consulted pursuant to a legal basis other than Article 42 of the Regulation, the EDPS shall also provide its advice on a best-efforts basis within the deadline proposed by the institution consulting the EDPS.

#### Article 18

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

The EDPS may advise the institutions during all stages of the legislative decision-making process.

#### Article 19

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

In case a joint opinion of the EDPB and the EDPS cannot be issued within the set deadline, the EDPS, where appropriate, may issue an opinion on the same subject matter.

#### Article 20

##### **EDPS own-initiative policy documents**

1. The EDPS may, on its own initiative, issue opinions, position papers or other documents on any issue, also not directly linked to a legislative initiative, relating to the protection of natural persons with regard to the processing of personal data.
2. The EDPS, where appropriate, may submit its policy guidance documents to public consultation before its final adoption by the Supervisor.

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

### **Chapter 1 - Principles relating to oversight activities**

#### Article 21

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

1. The EDPS shall perform regular monitoring exercises to check compliance by institutions, including by the EDPS itself, with data protection principles and rules.
2. The EDPS shall perform visits to institutions to engage commitment from the top management to foster compliance with the Regulation.
3. The EDPS shall perform consultancy visits to advise the institutions on how to ensure a high level of protection of the right to privacy and to the protection of personal data.

#### Article 22

##### **Enforcement**

1. The EDPS shall use its enforcement powers to ensure compliance with the Regulation taking into account necessity and proportionality of the enforcement measures.
2. When deciding, in accordance with its discretionary power, whether to impose an enforcement measure or not, the EDPS shall take into account in particular the circumstances of each case, the gravity of the infringement, the risks to the rights and freedoms of the persons concerned and the impact of the infringement on other private or public interests.
3. The EDPS may decide not to issue the enforcement measure, and in particular an administrative fine, when the institution concerned has promptly taken all necessary action to remedy the infringement.

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

#### Article 23

### **EDPS replies to consultations by institutions on the processing of personal data**

1. In principle, the EDPS shall reply to consultation requests on the processing of personal data by the institution which have first been submitted to the Data Protection Officer of the institution concerned.
2. The EDPS, also in order to provide advice that can be more effectively followed up by the institution, shall reply to requests for consultation that have been submitted to it in due time before the implementation of the data processing that forms the object of the consultation.
3. By its advice, the EDPS may provide recommendations to ensure compliance with the Regulation and to enhance the level of protection of personal data and may require the institution to inform the EDPS on the follow-up to be provided by the institution to the recommendations within a set deadline.

#### Article 24

### **EDPS decisions authorising transfers of personal data to a third country or to an international organization**

1. The EDPS, also in order to provide advice that can be more effectively followed up by the institution, shall handle requests for the authorization submitted by an institution through its Data Protection Officer to the EDPS in due time before the stipulation of the administrative arrangement or contractual clauses referred to under Article 48(3) of the Regulation and Article 25(6) of Regulation 2016/794.
2. The EDPS decisions issued in reply to the authorisation requests may contain recommendations, concerning in particular the implementation of further safeguards, upon which the authorization of the EDPS is made conditional.

#### Article 25

### **Publication of EDPS replies to consultation requests**

1. The EDPS shall publish its replies to the requests for consultations to the extent possible and with full respect of the confidentiality requirements.
2. The EDPS, before the publication, shall submit the text of its reply to the institution concerned and may redact in particular parts of the reply related to information security or to take into account the protection of personal data of the persons concerned.

#### Article 26

### **Time-limits and suspension of time-limits for replies to consultations and authorisation requests**

1. Without prejudice to different time-limits as established by Union law, the EDPS shall provide its reply to the requests for consultation and authorisation within two months from the day of receipt of the request by the EDPS.
2. Without prejudice to the applicable provisions of Union law, the EDPS may request all relevant information to reply to the request for consultation or authorization. The request for information by the EDPS shall suspend the time-limit applicable to the consultation. This suspension shall take effect on the day following the EDPS request for further information and shall be lifted on the day following receipt of all requested information by the EDPS.

## **Chapter 3 - Investigations and audits**

#### Article 27

### **Investigations**

The EDPS shall carry out investigations when on the spot verification is considered necessary in particular to establish facts, for instance in the handling of complaints.

#### Article 28

### **Audits**

The EDPS shall perform audits when on the spot verification is considered necessary for the performance of its supervisory tasks as established by Union law, and, in particular, to verify the overall compliance, or compliance with reference to certain processing activities, of the institution concerned with the Regulation and other applicable data protection principles and rules.

## **Chapter 4 - Corrective powers and administrative fines**

#### Article 29

### **Corrective powers**

1. The EDPS shall make use of its corrective powers according to a progressive approach.

2. As a rule, the EDPS shall first use warnings and reprimands to the institution concerned, 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 administrative fines.

3. Without prejudice to other corrective measures, the EDPS may also order the suspension of data flows by the institution 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 30

##### **Administrative fines**

1. 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 shall further detail 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, 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.

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

#### Article 31

##### **Cooperation with the Data Protection Officers**

The EDPS shall constantly cooperate with and provide guidance to the Data Protection Officers, in particular by regularly participating in the meetings organised by the network of the Data Protection Officers of the institutions.

#### Article 32

##### **Register and list of the appointed Data Protection Officers**

The EDPS shall keep a register of the appointments of Data Protection Officers notified by the institutions to the EDPS. The EDPS shall also publish on its website and constantly update the list of the the Data Protection Officers of the institutions.

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

#### Article 33

##### **Lodging a complaint**

1. The EDPS shall not handle anonymous complaints. This means that a complaint, to be handled as such, shall identify the person making the complaint.

2. The EDPS shall handle complaints submitted in writing in any official language of the Union and providing the necessary elements for the identification and appreciation of its subject matter by the EDPS.

3. A complaint shall in principle be lodged within two years from the date on which the complainant has knowledge of the facts on which the complaint is based.

4. If a complaint relating to the same facts has been lodged by the complainant with the European Ombudsman, the EDPS shall examine its admissibility in accordance with the Memorandum of Understanding between the EDPS and the European Ombudsman.

5. Complaints submitted to the EDPS shall not suspend the time-limits for actions in administrative or judicial proceedings.

#### Article 34

##### **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 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 generating effects, the effects were removed or an appropriate guarantee of such a removal was provided.

2. Where the EDPS, taking into account all circumstances of the case, considers that a complaint amounts to an abuse of communication or process, it may decide not to open an investigation and shall inform the complainant of this decision.
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 and forensic examinations of the relevant devices.
4. Where appropriate, the EDPS shall facilitate the amicable settlement of the complaint.
5. The EDPS may decide to suspend the investigation of a complaint pending a ruling by a court or a decision of another judicial or administrative body on the same matter.
6. 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 document related to the complaint, excluding anonymised excerpts or summaries of the final decision, unless the person concerned consents to such disclosure or if the EDPS is under a legal obligation to do so.
7. The EDPS shall publish information about the complainant only in a form which does not allow the complainant or other data subjects involved to be identified.
8. If required by the circumstances of the complaint, the EDPS shall cooperate with oversight authorities, in particular with the national supervisory authorities of the Member States, each acting within the scope of its respective competences.

#### Article 35

##### **Outcome of complaints**

1. The EDPS shall inform the complainant as soon as possible of the outcome of a complaint and of 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 further investigating the subject matter of the complaint.
4. The EDPS may close an investigation where the complainant has failed to provide any requested information. The EDPS shall inform the complainant about this decision.

#### Article 36

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

1. The EDPS shall handle the request by the complainant or by the institution concerned, submitted in writing to the EDPS, to review the EDPS decision on the complaint.
2. The EDPS shall handle requests for review lodged within one month of the date of receipt of the decision of the EDPS by the complainant or by the institution concerned and based on new factual elements or new legal arguments which have not been taken into account by the EDPS in the decision.
3. The EDPS in its decision on the complaints shall inform the complainant that, without prejudice to the possibility to request the EDPS to review its decision on a complaint, the latter may be challenged before the Court of Justice of the European Union in accordance with Article 263 of the Treaty on the Functioning of the European Union.
4. Where the EDPS, following the request for review, issues a revised decision which relies on substantial new elements, this new decision ('not merely confirmatory decision') may also be challenged before the Court of Justice of the European Union in accordance with Article 263 of the Treaty on the Functioning of the European Union.

## **TITLE IV - COOPERATION WITH NATIONAL SUPERVISORY AUTHORITIES**

#### Article 37

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

1. The EDPS is a full member of the EDPB and as such shall actively contribute to its work activities, in particular to the drafting of documents aiming at providing a common interpretation of data protection law and expert advice to the institutions, notably the Commission, the European Parliament and the Council, on legislative initiatives having an impact on privacy and on the protection of personal data.
2. The EDPS shall participate on a regular basis in the plenary and in the expert subgroup meetings of the EDPB.

#### Article 38

##### **Coordinated supervision of institutions including the monitoring of large scale IT systems**

1. The EDPS, as authority responsible for the supervision of compliance with data protection rules and principles by the institutions, shall monitor in particular compliance by the ones in charge of the central units of large scale IT systems, cooperating with the national supervisory authorities supervising the national authorities using the large scale IT systems.
2. The EDPS shall cooperate with national supervisory authorities on all matters that require a coordinated response, in particular when a data protection issue can more effectively be addressed by a joint action of the EDPS and of the national supervisory authorities.
3. The EDPS shall organise and provide the secretariat of the meetings with the national supervisory authorities to ensure coordinated supervision.

## **TITLE V - INTERNATIONAL COOPERATION**

### **Article 39**

#### **International cooperation**

1. The EDPS shall operate to advance convergence and synergies on the protection of personal data in relation to third countries and organizations. Accordingly, the international activity shall be a strategic priority of the EDPS and specific actions shall be implemented in this regard, in particular promoting cooperation and dialogue at the international level with all relevant stakeholders.
2. The EDPS shall participate in relevant regional and international privacy networks and conferences.
3. The EDPS shall contribute to the organisation of workshops with representatives of international organisations with a view to sharing best practices and developing a high level of data protection.
4. Where appropriate, the EDPS shall cooperate with supervisory authorities of third countries or international organisations to provide international mutual assistance in the enforcement of data protection law.

## **TITLE VI - COURT PROCEEDINGS**

### **Article 40**

#### **Action against institutions for breach of the Regulation**

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.

### **Article 41**

#### **EDPS intervention in actions brought before the Court of Justice of the European Union**

1. The EDPS may intervene in actions brought before the Court of Justice of the European Union 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.
2. The EDPS may 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 of Justice of the European Union.
3. The decision by the EDPS to request leave to intervene before the Court of Justice of the European Union shall 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, NOTIFICATIONS OF PERSONAL DATA BREACHES**

### **Article 42**

#### **Technology monitoring**

The EDPS shall monitor the impact of information and communication technologies on the protection of personal data. In carrying out this task, the EDPS shall raise awareness of the possible data protection risks and provide advice on the implementation in particular of the principles of data protection by design and data protection by default.

### **Article 43**

## **Research projects**

The EDPS may decide to contribute to the Union's Framework Programmes, participating in the advisory committees on research projects.

### Article 44

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

1. The EDPS shall handle the notification of a personal data breach verifying compliance with the Regulation by the institutions in particular via a close coordination between the EDPS Unit in charge of information technology and the Unit in charge of supervision.
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.
3. The EDPS shall acknowledge receipt of the notification on the personal data breach to the institution concerned and register the notification internally.

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

### Article 45

#### **Information and communication**

1. In raising awareness on the right to privacy and to the protection of personal data, the EDPS shall in particular inform the media about EDPS opinions or publications and on major events related to data protection, through, among others, press releases, interviews and press conferences, newsletter, the EDPS website.
2. Internal communication shall be ensured in particular via the use of the EDPS Intranet website.

## **TITLE IX - QUALITY MANAGEMENT, STAFF COMMITTEE, CONFIDENTIALITY AND SECURITY**

### Article 46

#### **Quality management**

The EDPS shall implement appropriate mechanisms and tools to ensure the highest level of quality management, such as internal control standards, a risk management process and the annual activity report.

### Article 47

#### **Ethics Framework**

1. The EDPS shall perform its activities in accordance with the Ethics Framework ensuring the ethical functioning of the services of the EDPS for the fulfillment of its institutional mission, in accordance with the principles of good governance, good administrative behaviour and good management.
2. The Ethics Officer of the EDPS shall monitor compliance with the Ethics Framework.

### Article 48

#### **Cooperation with other institutions on services supporting the activities of the EDPS**

1. With a view to ensuring good management, the EDPS may enter into cooperation agreements, service level agreements and framework contracts with other institutions for the provision of support services.
2. The EDPS shall act in accordance with Point VI.2 of the Memorandum of Understanding between the EDPS and the EDPB for services relating to the EDPB.

### Article 49

#### **Staff Committee**

1. A Staff Committee representing the staff of the EDPS shall be consulted in good time on any question of general interest concerning the staff.
2. 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. At least one member and one deputy shall be working within the Secretariat of the EDPB.

### Article 50

#### **Confidentiality and Security**

1. The Supervisor and 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 shall act in compliance with Point V.8 of the Memorandum of Understanding between the EDPS and the EDPB.
3. The EDPS shall appoint a Local Security Officer (LSO), in charge of staff-related and physical security issues, and a Local Information Security Officer (LISO), in charge of information security.
4. A distinct Local Information Security Officer (LISO) shall be appointed within the EDPB Secretariat. A separate function within the EDPB Secretariat may be appointed for the management of information and of requests for security clearance.

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

### **Article 51**

#### **Data Protection Officer**

1. The EDPS shall appoint a Data Protection Officer (DPO) who shall report directly to the Secretary General or, upon delegation by the Secretary General, to the Director.
2. The DPO shall be consulted, in particular, when the EDPS as controller intends to apply a restriction based on Article 25 of the Regulation.
3. The Secretary General or, upon delegation by the Secretary General, the Director, shall issue the EDPS decision on the application of the restriction pursuant to the Regulation.
4. In accordance with Point IV.4 of the Memorandum of Understanding between the EDPS and the EDPB, the EDPB has its own DPO.

## **TITLE XI - GENERAL PROVISIONS**

### **Article 52**

#### **Languages and working languages**

1. The language of proceedings conducted by the EDPS is one of the official languages of the Union.
2. The EDPS may decide to make recourse to the use of the English language as internal working language arrangement depending on the circumstances of the case.
3. The EDPS shall reply to any person addressing the EDPS on a matter falling within the competence of the EDPS in the same language used by this person.

### **Article 53**

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

1. The decisions of the EDPS 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 shall be authenticated by the apposition of the signature of the delegated person.

### **Article 54**

#### **Rules for the calculation of time limits**

Save as otherwise provided by the applicable rules under the primary and secondary law of the European Union, the EDPS shall apply the rules for calculation of time limits established under Regulation (EEC, EURATOM) 1182/71 of the Council of 3 June 1971<sup>9</sup>.

### **Article 55**

#### **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:
  - (a) the Opinions of the EDPS referred to under Article 16(1) of these Rules of Procedure;
  - (b) other documents considered relevant by the EDPS, in particular the replies to consultations and the decisions referred to under Title III, Chapter 2, of these Rules of Procedure.

### **Article 56**

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

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<sup>9</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.

1. The EDPS shall designate a transparency officer to ensure compliance with Regulation (EC) 1049/2001<sup>10</sup>.
2. The transparency officer shall report to the Secretary General or, upon delegation by the Secretary General, to the Director.

#### Article 57

##### **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 shall be organised in case files and made accessible according to a filing plan per type of activity.
3. The EDPS shall establish and maintain a retention schedule for the different types of case files to comply with the applicable legal obligations and administrative rules. The case files shall be archived or eliminated following a case by case appraisal at the expiration of the retention period.
4. The EDPB Secretariat has a separate records and archive management.

## **TITLE XII - FINAL PROVISIONS**

#### Article 58

##### **Repeal of EDPS Decision of 17 December 2012 on the adoption of Rules of Procedure**

1. These Rules of Procedure 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. These Rules of Procedure do 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.

#### Article 59

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

These Rules of Procedure 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

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<sup>10</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).