

**Decision of the Steering Committee of
the European Education and Culture Executive Agency
laying down implementing rules concerning the Data Protection Officer**

THE STEERING COMMITTEE OF THE EUROPEAN EDUCATION AND CULTURE EXECUTIVE AGENCY

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 249(1) thereof,

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 the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC¹, and in particular Article 45(3) thereof,

Having regard to Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes²,

Having regard to the Commission Implementing Decision (EU) 2021/173 of 12 February 2021 establishing the European Climate, Infrastructure and Environment Executive Agency, the European Health and Digital Executive Agency, the European Research Executive Agency, the European Innovation Council and SMEs Executive Agency, the European Research Council Executive Agency, and the European Education and Culture Executive Agency and repealing Implementing Decisions 2013/801/EU, 2013/771/EU, 2013/778/EU, 2013/779/EU, 2013/776/EU and 2013/770/EU;

Having regard to the Commission Decision C(2021)951 of 12 February 2021 delegating powers to the European Education and Culture Executive Agency with a view to the performance of tasks linked to the implementation of Union programmes in the field of education, audiovisual and culture, citizenship and solidarity comprising, in particular, implementation of appropriations entered in the general budget of the Union delegating powers to EACEA for the management of programmes in the MFF 2021-2027.

Having regard to the Steering Committee Decision of 22 October 2020 on the internal rules concerning restrictions of certain rights of data subjects in relation to the processing of personal data in the framework of activities carried out by EACEA (Agency),

Whereas:

¹ OJ L 295/39 of 21.11.2018.

² OJ L 11/1 of 16.1.2003.

- (1) In order to ensure that the data protection officer ('DPO') can properly exercise his/her function, it is necessary to determine in details his/her tasks, duties and powers. In compliance with Article 45(3) of Regulation (EU)2018/1725, the Agency shall then adopt implementing rules.
- (2) The purpose of the implementing rules is to lay down procedures, which will enable data subjects to exercise their rights and all persons within the Agency who are involved in the processing of personal data to fulfil their obligations.
- (3) Regulation (EU) 2018/1725 assigns clear responsibilities to data controllers, in particular vis-à-vis the data subjects. With a view to ensuring that the Agency, as a controller, operates in a uniform and transparent manner with regard to its responsibilities, rules should be set out on how to identify who in the Agency is responsible for a processing operation which is carried out on behalf of the Agency.
(4) In case the Agency carries out a processing operation jointly with the Commission services or other Agencies, specific arrangements should be put in place in order to determine in a transparent manner their respective responsibilities under Regulation (EU) 2018/1725, in particular responsibilities vis-à-vis the data subjects, notification to the European Data Protection Supervisor ('EDPS') and record keeping.
- (5) The Agency processes several categories of personal data for the purpose of the monitoring, investigative, auditing and consultative activities of the DPO. In particular, the Agency processes identification data, contact data, professional data and data relating to proceedings and procedures. Those data can be retained for five years after the activities are closed in accordance with the Common Commission-Level Retention List³.
- (6) In order to comply with Articles 14, 15 and 16 of Regulation (EU) 2018/1725, the Agency should inform all individuals of the monitoring, investigative, auditing or consultative tasks of the DPO that involve processing of their personal data and of their rights pursuant to Regulation (EU) 2018/1725. The Agency should inform those individuals in a transparent and coherent manner, in the form of the data protection notices published on Agency website, as well as inform each data subject concerned by a monitoring, investigative, auditing or consultative activity of the DPO.
- (7) The decision of the Steering Committee of the Agency on internal rules concerning restrictions of certain rights of the data subjects in line with Article 25 of Regulation (EU) 2018/1725 applies also to data processing operations carried out in the framework of the monitoring, investigative, auditing or consultative tasks of the DPO set out in Article 45 of that Regulation. They should apply to processing operations carried out prior to the opening of an investigation or audit, during the course of an investigation or audit, and during the monitoring of the follow-up to their outcome. Those internal rules should also apply to processing operations which form part of the tasks linked to the investigative or auditing function of the DPO, such as complaint processed and conducted by the DPO. The rules should also apply to the monitoring of the DPO and the consultations of the DPO, when the DPO provides assistance and cooperation to services outside of its administrative investigations and audits.

³ SEC(2019)900/2.

HAS ADOPTED THIS DECISION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Decision provides rules and procedures for the application of Regulation (EU) 2018/1725 by the Agency, and sets out implementing rules concerning its Data Protection Officer ('DPO') and if applicable, Deputy DPOs, in compliance with Article 45(3) of the mentioned Regulation.
2. This Decision supplements the provisions of Regulation (EU) 2018/1725, relating to the Data Protection Officer's designation, as well as to his or her tasks, duties and powers, including the monitoring, investigative, auditing or consultative tasks of the DPO.

Article 2

Controllership

For the purposes of this Decision, the Agency shall be considered to be the Controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725.

Article 3

Definitions

For the purpose of this Decision, the following definitions apply:

1. 'Data Protection Officer' (DPO) means the person whom the Agency has designated pursuant to Article 43 of Regulation (EU) 2018/1725;
2. 'Deputy Data Protection Officer (DDPO)' means the person whom the Agency has designated to support the DPO in his/her tasks;
3. 'EDPS' means European Data Protection Supervisor as referred to in Article 1(3) of Regulation (EU) 2018/1725;
4. 'DPO tasks' means the DPO tasks referred to in Article 45 of Regulation (EU) 2018/1725, in particular the monitoring, investigative, auditing and consultative tasks of the DPO;
5. 'Controller' is the Head of unit or Head of department responsible for the operational process whereby personal data is processed.
6. 'Informant' means an individual who brings a matter alleging that a breach of the provisions of Regulation (EU) 2018/1725 has taken place to the attention of the Controller or DPO, or requests that the DPO investigates matters and occurrences directly relating to the DPO's tasks, which that individual brings to the DPO's attention directly.

CHAPTER 2

DATA PROTECTION OFFICER

Article 4

Designation and position

1. The DPO shall be selected from the staff of the Agency on the basis of his/her professional qualities, including a sound knowledge of the Agency structure, and its administrative rules and procedures and proven knowledge on data protection issues.
2. The Director of the Agency shall appoint the DPO for a renewable term of office of 3 to 5 years, publish his/her contact details and register the DPO with the European Data Protection Supervisor.
3. The Director of the Agency will:
 - (a) ensure that the DPO is involved, properly and in a timely manner, in all issues that relate to the protection of personal data;
 - (b) support the DPO in performing the tasks referred to in Article 45 by providing resources necessary to carry out those tasks, including support from internal IT experts and access to personal data and processing operations, and to maintain his or her expert knowledge up to date (via access to trainings, etc.);
 - (c) ensure that the DPO can carry out his or her tasks and duties in an independent manner in accordance with Article 44(3) of Regulation (EU) 2018/1725;
 - (d) if the DPO fulfils other tasks and duties, ensure that any such tasks and duties do not result in a conflict of interests.
4. Without prejudice to such independence, the DPO:
 - (a) must be a statutory staff member of the Agency;
 - (b) could be assigned to a specific Unit or its equivalent, for administrative purposes;
 - (c) will be assessed annually by the Agency Director on the performance of his/her tasks and duties as DPO;
 - (d) may request the Agency Director to require feedback from the EDPS on the DPO's performance in the context of his or her co-operation with other DPOs.
5. Any Controller must ensure that the DPO is kept informed without delay:
 - (a) when an issue arises that has, or might have, data protection implications;
 - (b) in respect of all Agency management communications with internal and external parties relating to the application of Regulation (EU) 2018/1725, notably any interaction with the EDPS.
6. The Director of the Agency may designate a DDPO, to whom paragraphs 1 and 2 will apply. The DDPO will support the DPO in carrying out DPO tasks and duties, and will deputise in the event of the DPO's absence.
7. Any staff providing support to the DPO in relation to data protection issues will act solely on the DPO's instructions.

Article 5
Tasks and duties

1. Without prejudice to the tasks described in Article 45 of the Regulation (EU) 2018/1725, the DPO and DDPO shall:
 - (a) make recommendations and give advice to responsible staff and processors on matters concerning the application of the Regulation;
 - (b) contribute to creating a culture of protection of personal data within the Agency to ensure that who carries out processing operations implying personal data within the Agency, is informed of his/her obligations and responsibilities. To this purpose, the DPO may organise training activities or awareness raising sessions, prepare templates and develop internal policies and procedures to provide guidance;
 - (c) ensure in an independent manner the internal application in the Agency of Regulation (EU) 2018/1725 and to monitor its implementation and compliance of the policies adopted by the Controller or processor in relation to the protection of personal data in the Agency;
 - (d) assist responsible staff in the preparation of their records of processing activities. In performing their duties, the DPO/DDPO shall have access at all times to the data forming the subject-matter of processing activities and to all offices, data-processing installations and data carriers, including those of processors. The DPO shall keep the Agency's records of processing activities in a central register and shall make it publicly accessible pursuant to Article 31(5) of the Regulation.
 - (e) keep an internal register of personal data breaches within the meaning of Article 3(16) of Regulation (EU) 2018/1725.
 - (f) provide advice and assist, when requested, the responsible staff to assess the data protection risks of the processing activities under their responsibility. This includes also to provide advice and support when carrying out a data protection impact assessment, to monitor its performance pursuant to Article 39 of Regulation (EU) 2018/1725, and to consult the European Data Protection Supervisor in case of doubt regarding the need for a data protection impact assessment. The DPO will also advise on what methodology to use and contribute to selecting safeguards to apply to mitigate the risks to the rights and freedom of the data subjects, as well as on the correct implementation of the DPIA;
 - (g) provide advice, when requested, about the need for prior consultation of the EDPS pursuant to Article 40 of Regulation (EU) 2018/1725 and consulting the EDPS in case of doubt regarding the need for such a consultation;
 - (h) provide advice, when requested, about the necessity for a notification or a communication of personal data breach pursuant to Articles 34 and 35 of Regulation (EU) 2018/1725;
 - (i) respond to requests from the EDPS and, within the sphere of his or her competence, cooperate and consult with the EDPS, at the latter's request, or on his or her own initiative;
 - (j) ensure that Controllers or a designated staff acting on his/her behalf inform data subjects of their rights and obligations pursuant to the Regulation in the context of processing activities. In addition, the DPO shall support the Controller or a designated staff acting on his/her behalf in ensuring that the rights and freedoms of the data

subjects are unlikely to be adversely affected by the processing operations and ensure that the data subjects are informed of their rights and obligations;

- (k) handle queries or complaints on his or her own initiative or at the request of the Controller or the processor, the Staff Committee concerned or any individual, investigate matters and occurrences directly relating to their tasks and that come to their notice, and report back to the person who commissioned the investigation ('requester') or to the Controller or the processor. The DPO may keep also a confidential inventory of requests from individuals that wish to reveal their identity only to the DPO when lodging enquiries or complaints;
2. The DPO may be asked to represent the Agency on any issues relating to the internal application of the provisions of the Regulation. In the performance of his/her functions, the DPO shall cooperate with the data protection officers designated by the other Union institutions, agencies and bodies, in particular with the DPO of the Commission, the DPC of the parent DGs or any relevant DG and the DPOs of other Executive Agencies, in particular by exchanging experience and best practices. The DPO/DDPO shall participate in the dedicated network(s) of DPOs.
 3. The DPO shall be considered to be the Controller for the purpose of handling personal data when performing his/her own monitoring, investigative, auditing or consultative tasks in relation to processing operations as DPO.

Article 6 *Powers*

In performing their tasks, the DPO and the DDPO :

- (a) shall, where necessary for their tasks have access to the data relating to the matter subject to the processing operations on personal data and to all offices, data processing installations and data carriers;
- (b) may request legal opinions from the Legal Team of the Agency;
- (c) may, in the event of conflict between them and the controller relating to the interpretation or implementation of Regulation (EU) 2018/1725, inform the Director of the Agency;
- (d) may assign files to the Department or Unit or Services concerned for appropriate follow-up;
- (e) may perform investigations on request, or upon their own initiative, into matters and occurrences directly relating to their tasks;
- (f) may, when making recommendations and rendering advice:
 - call upon the Controller or the processor to comply with a data subject's request for the exercise of his or her rights pursuant to Regulation (EU) 2018/1725;
 - issue warnings to the Controller or the processor when a processing operation infringes provisions of Regulation (EU) 2018/1725, and call upon them to bring processing operations into compliance, where appropriate, in a specified manner and within a specified period;

- without prejudice to the EDPS's duties and powers, propose to the Director administrative measures and issue general recommendations on the appropriate application of data protection provisions;
 - call upon the Controller or the processor to suspend data flows to a recipient in a Member State, to a third country or to an international organisation;
 - request the Controller or the processor to report within a set deadline to the DPO on the follow-up given to the DPO's recommendation or advice;
- (g) may bring to the attention of the Director any failure of a Controller or a processor to comply with the obligations under Regulation (EU) 2018/1725 and, where appropriate, recommend that an administrative investigation be launched in view of the possible application of Article 69 of Regulation (EU) 2018/1725.
- (f) shall be consulted before decisions on requests for access to documents held by their own initiative under Regulation (EC) 1049/2001 of the European Parliament and of the Council⁴.

CHAPTER 3

CONTROLLER

Article 7

Role of the Controller

1. The Controller shall act on behalf of the Agency and in particular shall implement appropriate technical and organisational measures to ensure that the processing operations carried out by the Agency are performed in accordance with Regulation (EU) 2018/1725.
2. In particular, the Controller:
 - (a) may consult the DPO, on the compliance of processing operations, in particular in the event of doubt;
 - (b) shall receive and process all requests from data subjects and report to the DPO, on the handling of any request received from a data subject for the exercise of his or her rights;
 - (c) shall in a timely manner inform the DPO whenever an issue is under consideration that has, or might have, data protection implications;
 - (c) shall immediately inform the DPO in case of personal data breaches, and notify the data subject, when relevant. Following a risk assessment, s/he shall also notify the EDPS, if needed;
 - (d) shall prepare a record of the processing operations performed by the Agency under its responsibility under Article 31 of Regulation (EU) 2018/1725 and submit such record to the DPO in order to be included in the central register of records of the Agency;

⁴ 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).

- (e) shall facilitate the finalisation and ensure the proper implementation of any arrangements concluded under Article 28 of Regulation (EU) 2018/1725;
- (f) shall use only external providers who can provide sufficient guarantees to implement appropriate technical and organisational measures to comply with Regulation (EU) 2018/1725 and shall conclude proper arrangements with them in particular with regards to international transfers.

CHAPTER 4

OTHER OBLIGATIONS AND PROCEDURES

Article 8 Information

The Controller shall inform the DPO when it consults or informs the EDPS in accordance with Regulation (EU) 2018/1725, and in particular pursuant to Articles 40 and 41 of that Regulation. In addition, the Controller shall inform the DPO of any other direct interactions with EDPS related to the implementation of Regulation (EU) 2018/1725.

Article 9 Agency Staff

1. Any member of Agency staff will contribute to the application of the organisational and technical measures, the confidentiality and security rules for the processing of personal data as provided for by Regulation (EU) 2018/1725 and in line with the requirement of the Staff Regulations and Commission Decision 2017/46 of 10 January 2017 on the security of communications and information systems in the European Commission. No member of the Agency staff with access to personal data will process such data other than on instructions from the Controller, unless required to do so by national or European Union law.
2. Any member of the Agency staff may address directly to the DPO his or her requests/queries and raise concerns regarding an alleged breach of the provisions of Regulation (EU) 2018/1725.
3. The Agency's staff members are encouraged to consult the DPO before lodging a complaint with the EDPS pursuant to Article 68 of Regulation (EU) 2018/1725. No one will suffer prejudice on account of having lodged a complaint with the EDPS or having brought an alleged breach of the provisions of Regulation (EU) 2018/1725 to the attention of the DPO.
4. In addition to the remedies laid down in Articles 63 and 64 of Regulation (EU) 2018/1725, which are available to all data subjects, the remedies laid down in the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the European Union remain available to data subjects who are Agency staff members.

Article 10 Register of the personal data processing operations

1. With the support of the DPO, the Agency will keep a central register (the 'Personal Data Processing Operations Register' hereinafter the 'Register') of records of processing activities performed upon personal data.

2. The Register will contain at least the information referred to in Article 31(1)(a) to (g) of Regulation (EU) 2018/1725 and, for reasons of transparency, will be made public. The information will be entered and updated by the Controllers and kept by the DPO. The Register will be published and regularly updated on the Agency's intranet and on the Agency's public website. However, the information in the Register may exceptionally be limited when it is necessary to safeguard the security of a specific processing operation.
3. The Register will serve as an index of all the personal data processing operations conducted in the Agency, providing information to data subjects and facilitating the exercise.
4. The DPO shall receive support from the relevant Agency Services to ensure that the Register is accessible through the public website of the Agency and on the Agency's Intranet.

Article 11
Investigation procedure

1. The requests for an investigation referred to in Article 6(e) hereabove shall be addressed to the DPO in writing. Within 15 working days following receipt, the DPO shall send an acknowledgement of receipt to the person who commissioned the investigation, and verify whether the request is to be treated as confidential, unless the data subjects concerned gives their unambiguous consent for the request to be handled otherwise. In the event of manifest abuse of the right to request an investigation, the DPO shall not be obliged to report to the requester.
2. The DPO shall request a written statement on the matter from the Controller who is responsible for the data-processing operation in question. The Controller shall provide their response to the DPO at the latest within 15 working days. The DPO may request complementary information from the Controller, the processor or other parties within 15 working days.
3. The DPO shall report back to the person who commissioned the investigation no later than three months following the receipt of the request. This period may be suspended until the DPO has obtained all necessary information that he/she may have requested.
4. No one shall suffer prejudice on account of a matter brought to the attention of the DPO alleging a breach of the provisions of Regulation (EU) 2018/1725.

CHAPTER 5

DATA SUBJECTS' RIGHTS

Article 12
Exercise of data subjects' rights

1. Data Subjects shall be informed about their rights and means to exercise them through the related Data Protection Notice (DPN) drafted by the Controller and published or made available to them.
2. Further to their right to be informed about any processing of their personal data, data subjects may approach the Controller to exercise their rights pursuant to Articles 17 and 24 of Regulation (EU) 2018/1725.

3. In order to exercise their rights vis-à-vis the Agency, the data subjects:
- (a) may also exercise their rights via their duly authorised representative. All information in this respect will be provided by the Controller free of charge;
 - (b) will address the requests to exercise their rights in writing to the Controller who will inform the DPO about this request as soon as possible. Upon advice from the DPO, the Controller will only grant the request if the requester's identity and, if relevant, his or her entitlement to represent the data subject have been appropriately verified. The Controller will without delay, and in any case within 1 month of receipt of the request, provide information to the data subject in writing on the action taken. That period may be extended by a further 2 months where necessary, taking into account the complexity and number of requests. The Controller will inform the data subject of any such extension within 1 month of receipt of the request, together with the reasons for the delay. If the Controller does not take action on the data subject's request, the Controller will inform the data subject without delay, and at the latest within 1 month of receipt of the request, of the reasons for not taking action and the possibility of lodging a complaint with the data protection officer and the EDPS and of seeking a judicial remedy;
 - (c) may contact the DPO in the event that the Controller does not respect either of the time limits in paragraph (b) above. If the Controller considers that the request by a data subject in exercising his or her rights is an obvious abuse, the Controller may refer the request to the DPO, who will advice on the merits of the request and the appropriate follow-up. In the event of disagreement between the data subject and the Controller, both parties will have the right to consult the DPO.

Article 13

Applicable exceptions and restrictions to data subjects' rights

1. Where the Agency exercises its duties with respect to data subjects' rights pursuant to Regulation (EU) 2018/1725, it shall consider whether any of the exceptions laid down in that Regulation apply.
2. Any restriction of the application of rights and obligations of data subjects shall be implemented in accordance with the Steering Committee Decision of 22 October 2020 on internal rules concerning restrictions of certain rights of data subjects in relation to the processing of personal data in the framework of activities carried out by the Agency⁵ and shall be necessary and proportionate, taking into account the risks to the rights and freedoms of data subjects.
3. Where the Controller concludes that a data subject's right should be restricted, the DPO shall be informed and be provided with access to the full record of the Controller's decision to restrict the data subject's right in a specific case and any documents containing underlying factual and legal elements.
4. The DPO may request that the Controller reviews the application of the restrictions of the data subject's right in a specific case. The Controller concerned shall inform the DPO in writing about the outcome of the requested review.
5. Where the Controller restricts the communication of a personal data breach to the data subject, as referred to in Article 35 of Regulation (EU) 2018/1725, it shall record and

⁵ OJ L 92, 17.3.2021, p. 6–14

register the reasons for the restriction in accordance with the above mentioned Decision of the Steering Committee.

CHAPTER 6

FINAL PROVISIONS

Article 14 *Repeal*

Decision of the Steering Committee of the Agency of 25 November 2009 adopting implementing rules under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁶ is repealed.

Article 15 *Entry into force*

This Decision shall enter into force on the day of its adoption.

Done in Brussels,

For the Steering Committee

Themis CHRISTOPHIDOU
Chair

⁶ Official Journal L 008 , 12/01/2001 P. 0001 – 0022 : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001R0045>