



DECISION OF THE MANAGEMENT BOARD

Cedefop's implementing rules concerning the Data Protection Officer pursuant to Article 45(3) of Regulation (EU) 2018/1725

THE MANAGEMENT BOARD,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 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 data ⁽¹⁾, and in particular Article 45(3),

Whereas:

- (1) Regulation (EU) No 2018/1725, hereinafter referred to as 'the Regulation', sets out the principles and rules applicable to all Union institutions, bodies, offices and agencies with regard to personal data protection and provides for the appointment by each institution and body of a Data Protection Officer.
- (2) Article 45(3) of the Regulation requires that further implementing rules concerning the Data Protection Officer shall be adopted by each Union institution or body. The implementing rules shall in particular concern the tasks, duties and powers of the Data Protection Officer.
- (3) Article 23 of Regulation (EU) 2019/128 ⁽²⁾ stipulates that the Management Board shall, within six months of the date of its first meeting, establish measures for the application of Regulation (EU) 2018/1725 by Cedefop, including those concerning the appointment of a Data Protection Officer.

HAS DECIDED AS FOLLOWS:

¹ OJ L 295, 21.11.2018, p. 39

² OJ L 30, 31.1.2019, p. 90–105 / Regulation (EU) 2019/128 of the European Parliament and of the Council of 16 January 2019 establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Council Regulation (EEC) No 337/75

Article 1

Definitions

For the purpose of this Decision and without prejudice to the definitions provided for by the Regulation:

- (1) 'Agency' shall mean the European Centre for the Development of Vocational training (hereinafter referred to as 'Cedefop')
- (2) 'responsible staff' shall mean staff responsible on behalf of Cedefop for activities processing personal data in the Agency.

Article 2

Scope

This Decision further defines the rules and procedures for the implementation of the function of Data Protection Officer (hereinafter referred to as the 'DPO') at Cedefop pursuant to Article 45(3) of the Regulation. It shall apply to all activities in relation to the processing of personal data by or on behalf of the agency. DPO shall mean the Data Protection Officer and, if applicable, the Deputy Data Protection Officer, forming the Data Protection Office of Cedefop.

Article 3

Designation, Status and Independence

1. The DPO shall be designated based on his or her professional qualities and registered with the EDPS ⁽³⁾ by the Executive Director. A Deputy DPO may be designated in accordance with the same procedure and for the same term, to support the DPO in all his or her duties and to ensure the continuity of the function in his or her absence.
2. The term of office of the DPO shall be for a period of three up to five years by decision of the Executive Director after consulting with the Management of Cedefop to ensure independence. The DPO shall be eligible for reappointment. The DPO shall ensure in an independent manner the internal application of the provisions of the Regulation and shall not be instructed regarding the exercise of his or her other tasks. The Executive Director shall ensure that the DPO tasks do not result in a conflict of interests with any other official tasks and duties conferred to the DPO. The DPO tasks and responsibilities shall be detailed in the DPO's job description.
3. The DPO shall be selected from the staff of Cedefop and must have expert knowledge of data protection law and practices as well as a sound knowledge of Cedefop's services, its structure, and its administrative rules

³ European Data Protection Supervisor – the supervisory authority for EU institutions and agencies

and procedures. A call for expression of interest may be circulated to help identify interested staff.

4. Without prejudice to the provisions of the Regulation concerning his or her independence and obligations, the DPO shall report directly to the Executive Director of Cedefop. This reporting obligation shall be taken into account in the context of the annual performance appraisal of the staff member appointed as DPO (in particular with regard to the specific DPO duties), for which the Executive Director shall ensure an equal and fair treatment.
5. The DPO shall not suffer any prejudice on account of the performance of his or her duties.
6. The DPO shall be involved properly and in a timely manner in all issues which relate to data protection at Cedefop.
7. In accordance with the Regulation, the DPO and, if applicable, the Deputy DPO may be dismissed from the post of DPO or Deputy DPO only with the consent of the European Data Protection Supervisor, if they no longer fulfil the conditions required for the performance of their duties or at the request of the DPO for reasons that do not compromise the exercise of his or her functions.

Article 4

Tasks and Duties

1. Without prejudice to the tasks as described in Article 45 of the Regulation, the DPO shall raise awareness on applicable data protection law and encourage a culture of protection of personal data and accountability within the services involved in the processing of personal data.
2. The DPO shall monitor the implementation of the Regulation in the agency and issue a yearly report as described in Article 7(3) hereof.
3. The DPO shall assist responsible staff in the preparation of their records of processing activities. In performing their duties, the DPO 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.
4. Pursuant to Article 31(5) of the Regulation and building on the records provided by the responsible staff, the DPO shall keep a register of the processing activities carried out by the Agency. The DPO shall make the register publicly accessible.
5. The DPO shall help responsible staff to assess the data protection risks of the processing activities under their responsibility. The DPO shall provide

advice and assist responsible staff when carrying out a data protection impact assessment (DPIA) pursuant to Article 39 of the Regulation. He or she shall monitor its performance and consult the European Data Protection Supervisor in case of doubt as to the need for a DPIA. 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 freedoms of the data subjects, as well as on the correct implementation of the DPIA.

6. The DPO shall assist responsible staff on the need for prior consultation of the EDPS pursuant to art. 40 of the Regulation.
7. The DPO shall provide advice where requested as regards the necessity for a notification or a communication of a personal data breach pursuant respectively to Article 34 and 35 of the Regulation.
8. The DPO shall ensure that responsible staff inform data subjects of their rights and obligations pursuant to the Regulation in the context of processing activities. He/she shall support responsible staff in ensuring that the rights and freedoms of the data subjects are unlikely to be adversely affected by the activities processing personal data.
9. The DPO may keep a confidential inventory of requests from individuals who, when lodging enquiries or complaints, wish to reveal their identity only to the DPO. Enquiries pursuant to Articles 17 to 24 of the Regulation may not remain anonymous.
10. The DPO may make recommendations and give advice to responsible staff and processors on matters concerning the application of the Regulation. The DPO may perform investigations on request, or upon their own initiative, into matters and occurrences directly relating to their tasks, and report back to the person who commissioned the investigation or to the controller, in accordance with the procedure described in Article 10 hereof. If the applicant is a data subject asking for an investigation on the processing of their personal data, or if the applicant acts on behalf of the data subject concerned, the DPO must, to the extent possible, ensure confidentiality on the request, unless the data subject concerned gives his or her unambiguous consent for the request to be handled otherwise.
11. Without prejudice to the independence of the DPO, the Executive Director may ask the DPO to represent Cedefop on any issues relating to the internal application of the provisions of the Regulation, including participation in interinstitutional committees and bodies.
12. In addition to their tasks within Cedefop, the DPO shall cooperate with the DPOs of other institutions and bodies in carrying out their functions, in particular by exchanging experience and best practices and with particular attention to the DPOs of other Agencies that are engaged in similar

activities to those of Cedefop. He or she shall participate in the dedicated network(s) of DPOs.

13. For processing operations on personal data under his or her responsibility the DPO shall act as responsible staff.

Article 5

Powers

1. In performing his or her tasks and duties as DPO and without prejudice to the powers conferred by the Regulation, the DPO:
 - (a) May request legal guidance from Cedefop's available sources of legal advice;
 - (b) May, in the event of disagreement with the responsible staff on the interpretation or implementation of the Regulation, inform the competent management level and the Executive Director before referring the matter to the European Data Protection Supervisor;
 - (c) May, after informing the staff member and their manager and suggesting safeguards to prevent future similar incidents, bring to the attention of the Executive Director any failure of a staff member to comply with the obligations under the Regulation and with Internal Control Principles specifically related to the obligations under the Regulation;
 - (d) May investigate matters and occurrences directly relating to the tasks of the DPO, applying the appropriate principles for inquiries and audits at Cedefop and the procedure described in Article 10 hereof;
 - (e) The DPO shall be able to obtain access to the data forming the subject matter of processing operations on personal data and to all offices, data-processing installations and data carriers, including those of processors;
 - (f) The DPO shall have the support and assistance of the IT services of Cedefop, including those provided to Cedefop by external organisations, and may request technical opinions from the Local Informatics Security Officer;
 - (g) The DPO shall participate in internal committees and working groups whenever issues relating to the processing of personal data are involved. The DPO may propose relevant points in the agenda of those committees and working groups.
2. In exercising his or her powers, the DPO will take account of the Guidelines issued by the EDPS in the different fields.

3. Without prejudice to applicable confidentiality or security rules, every responsible staff and any other Cedefop staff shall assist the DPO in performing his or her duties and give information in reply to questions.

Article 6

Resources

The Agency shall provide the DPO with the necessary resources to carry out his or her tasks and duties. The DPO shall have access to the necessary training and the opportunity to maintain his or her knowledge up-to-date with regard to the legal and technical aspects of data protection.

Article 7

Information and cooperation

1. The DPO shall respond to requests for advice from the staff of the Agency.
2. The DPO shall be informed, as appropriate, about opinions and position papers of the EDPS directly relating to the internal application of the provisions of the Regulation, as well as about opinions concerning the interpretation or implementation of other legal acts related to the protection of personal data and access to personal data.
3. The DPO shall inform the Executive Director by means of reports and dedicated meetings. The DPO shall submit to the Executive Director an annual report on his or her activities and on the state of play as regards the data protection activities and compliance of the agency.
4. The DPO shall contribute to the Consolidated Annual Activity Report (CAAR) of Cedefop.

Article 8

Staff responsible for activities processing personal data

1. Responsible staff shall ensure that all processing operations involving personal data within their area(s) of responsibility comply with the Regulation.
2. Without prejudice to the provisions of the Regulation concerning their obligations, responsible staff shall:
 - (a) maintain a record of activities processing personal data under their responsibility and seek advice to the DPO to establish the record. They will transmit the records to the DPO to create the register as referred to in Art. 31(5) of the Regulation;

- (b) notify and involve, as appropriate, the DPO as of the planning phase of any activity processing personal data;
 - (c) perform an assessment of risks for the fundamental rights and freedoms of data subjects and document it in the record. If the conditions of Article 39 of the Regulation apply, this assessment shall take the form of a Data Protection Impact Assessment. They shall seek the advice of the DPO in performing this assessment;
 - (d) implement, as an outcome of this assessment, technical and organisational measures to adequately protect data subjects and comply with the Regulation; they shall seek the advice of the DPO in selecting these measures;
 - (e) seek the advice of the DPO in case a prior consultation of the EDPS is needed, based on Article 40 of the Regulation;
 - (f) inform the DPO on direct interactions between them and the EDPS in its supervisory capacity regarding the internal application of the relevant Articles of the Regulation.
3. In case of a personal data breach, the Local (Informatics) Security Officer shall inform the responsible staff as well as DPO without undue delay, including when they have doubts on whether personal data are affected by the security breach. The Local (Informatics) Security Officer shall provide the DPO with all the necessary information enabling him or her to ensure that the Agency complies with the Regulation and more specifically with the obligation on personal data breach notifications and communications of Articles 34 and 35.

Article 9

Processors

1. Contracts with external processors shall contain the specific requirements mentioned in Article 29(3) of the Regulation. Responsible staff shall consult the DPO regarding the use and interpretation of data protection contractual clauses.
2. Each processor shall maintain a record of all categories of processing activities carried out on behalf of the Agency and shall communicate it to the Agency upon request. The contract with them shall establish a duty, among others, to provide the Agency with the necessary information to create the Agency's records referred to in Art. 31(1) of the Regulation.

Article 10
Joint controllers

Formal arrangements shall be concluded with joint controllers to allocate responsibilities for compliance with the Regulation. Responsible staff shall consult the DPO on those draft agreements.

Article 11
Register

1. The register mentioned in Article 4(4) hereof is a repository of the Agency which contains all the records of activities processing personal data submitted by the responsible staff.
2. The register shall be accessible in electronic format in the Agency's premises. The electronic format shall also be published on the Cedefop website.
3. Any individual can request an extract of the register in writing to the DPO, who shall reply within 15 working days.

Article 12
Investigation Procedure

1. The requests for an investigation mentioned in Article 4(10) hereof shall be addressed to the DPO in writing. Within 15 days upon receipt, the DPO shall send an acknowledgment of receipt to the person who commissioned the investigation and verify whether the request is to be treated as confidential. In the event of manifest abuse of the right to request an investigation, for example where it is repetitive, abusive and/or pointless, the DPO shall inform the applicant that the request is not being pursued and give account of the reasons.
2. The DPO shall request a written statement on the matter from the responsible staff for the data processing activity in question. The responsible staff shall provide a response to the DPO within 15 working days. The DPO may request complementary information from the responsible staff and/or from other parties within 15 working days. If appropriate, the DPO may request guidance on the issue from Cedefop's available sources of legal advice. The DPO shall be provided with the guidance within 20 working days.
3. The DPO shall report back to the person who requested the investigation no later than three months following its receipt.
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 the Regulation.

Article 13
Exercise of Rights by Data Subjects

When data subjects contact the Agency to exercise their rights pursuant to Articles 17 to 24 of Regulation:

- (a) The responsible staff shall consult the DPO before acting in reply to the data subject's request.
- (b) The DPO may act as responsible staff for managing data subjects' requests on behalf of the Agency. If this is the case, it shall be detailed in an operational manual.

Article 14
Restrictions Article 25

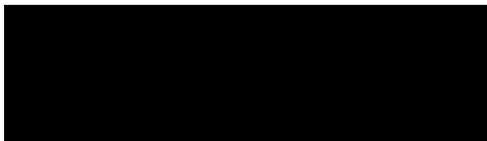
The data subject rights provided by Articles 14 to 22 of the Regulation as well as by Articles 35 and 36 may be restricted based on Cedefop internal rules under Art. 25(1). Responsible staff shall seek the advice of the DPO when planning to apply these restrictions.

Article 15
Entry into Force

1. This Decision shall enter into force on the day of its adoption.
2. After entry into force, this Decision shall be published on Cedefop's website.

Done on 6 May 2020

For the Management Board



Barbara Dorn

Chairperson of the Management Board