

# RULES CONCERNING THE DATA PROTECTION OFFICER OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') ('the EPPO Regulation'), and in particular Article 78(5) 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 and bodies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('the Data Protection Regulation'), and in particular Article 45(3) thereof,

Whereas:

(1) Article 16 of the Treaty on the Functioning of the European Union enshrines the right to the protection of personal data,

(2) The EPPO Regulation sets out the principles and rules applicable to processing of operational personal data by the EPPO. The Data Protection Regulation is applicable to the processing of administrative personal data by the EPPO,

(3) The EPPO Regulation provides for the designation of a Data Protection Officer,

(4) The Data Protection Regulation sets out the principles and rules applicable to all Union institutions, bodies, offices and agencies and provides for the designation by each Union institution and Union body of a Data Protection Officer,

(5) Article 78(5) of the EPPO Regulation require the College to adopt further implementing rules concerning the Data Protection Officer, and in particular the selection procedure for the position of the Data Protection Officer and the Officer's dismissal, tasks, duties and powers

and safeguards for independence of the Data Protection Officer. In addition, Article 45(3) of the Data Protection Regulation requires that further implementing rules concerning the Data Protection Officer shall be adopted by each Union institution or body,

(6) The European Data Protection Supervisor was consulted and provided its opinion on these rules on 7 October 2020,

The following rules apply:

## Article 1

### *Subject-matter and scope*

1. These rules provide the framework for implementation of the function of Data Protection Officer (hereinafter referred to as the 'DPO') within the EPPO.
2. These rules shall apply to all activities in relation to the processing of personal data by the EPPO.

## Article 2

### *Designation and status*

1. In accordance with Article 77 (1) of the EPPO Regulation, the College shall designate a member of the staff of the EPPO as DPO, based on a proposal of the European Chief Prosecutor.
2. The DPO shall be selected on the basis of his/her professional qualities and, in particular, his/her expert knowledge of data protection law and practice. In addition to the requirements of Article 77 of the EPPO Regulation, the DPO shall have a sound knowledge of the EPPO's operational activities, its structure and administrative rules and procedures.
3. The DPO shall be appointed for a period of 4 years and shall be eligible for reappointment up to a maximum total term of 8 years, in line with Article 77(4) of the EPPO Regulation.
4. The DPO shall act independently and shall not receive any instructions regarding the carrying out of his/her tasks.

5. The DPO shall directly report to the European Chief Prosecutor.

6. Without prejudice to the relevant provisions of the EPPO Regulation and the Data Protection Regulation, the DPO shall be subject to the rules and regulations applicable to officials of the European Union.

7. The DPO shall not be dismissed by the College or in any way penalised for performing his/her tasks. The DPO can only be dismissed by the College, and with the agreement of the EDPS, if he/she does no longer fulfil the conditions required for the performance of his/her duties.

8. No later than 6 months before the end of the first term of the DPO, the European Chief Prosecutor shall submit to the College an evaluation of the performance of the DPO for its approval. If deemed appropriate, the College can add any observations and at the request of the College, or if requested by the DPO, hear the DPO before it adopts a decision on the evaluation report.

9. On the basis of the adopted evaluation report, the European Chief Prosecutor may propose to the College that the appointment of the DPO will be extended up to 4 additional years. If the European Chief Prosecutor decides not to propose to the College the extension of the appointment, he/she shall inform the College immediately and set in motion the procedure for recruitment of a new DPO.

## Article 3

### *Tasks and Duties of the DPO*

1. In addition to the tasks laid down in Article 79 of the EPPO Regulation and Article 45 of the Data Protection Regulation, the DPO shall also have the task of contributing to creating a culture of protection of personal data based on risk assessment and accountability. The DPO shall provide trainings to the Central Office, the European Delegated Prosecutors and the staff of the EPPO.

2. Pursuant to Article 79 of the EPPO Regulation and Article 45 of the Data Protection Regulation, the DPO shall ensure in an independent manner the internal application of the data protection provisions in the EPPO Regulation and of the Data Protection Regulation and monitor the EPPO's compliance with these rules, with other applicable Union law containing data protection provisions, including related internal rules and guidelines, and with the EPPO's policies in relation to the protection of personal data.

3. The DPO shall:

- (a) keep the register of records for processing activities of personal data;
- (b) hold the documentation regarding breaches of personal data required by Article 74(4) of the EPPO Regulation and Article 34(6) of the Data Protection Regulation respectively; the registers shall not be publicly accessible.

4. In accordance with Article 79(1)(c) of the EPPO Regulation and Article 45(2) of the Data Protection Regulation, the DPO may make recommendations and give advice on matters concerning the application of data protection provisions to the management and to staff.

5. The DPO shall provide advice to and assist the EPPO when carrying out a data protection impact assessment pursuant to Article 71 of the EPPO Regulation and/or 39 of the Data Protection Regulation. He/she may consult the EDPS in case of doubt as to the need for a data protection impact assessment.

6. The DPO may assist the EPPO in assessing the existence of the need for prior consultation of the EDPS pursuant to Article 72 of the EPPO Regulation and/or Article 40 of the Data Protection Regulation.

7. The DPO shall assist, in line with the Decision of the College on the processing of personal data by the EPPO, in the determination of the existence and impact of any personal data breaches, including the existence of a need to communicate with the EDPS and / or the data subjects in relation to any personal data breach.

8. The DPO shall carry out further tasks and duties specified in the implementing rules adopted by the College in relation to data protection aspects ("the internal rules").

9. The DPO shall ensure the following:

- the rights and freedoms of data subjects are not unduly affected by processing operations;
- the data subjects are informed of their rights and obligations in accordance with and subject to the EPPO Regulation and the Data Protection Regulation;

– requests from data subjects under Article 78(4) of the EPPO Regulation and Article 44(4) of the Data Protection Regulation to the DPO are handled in timely manner and in line with the principles of good administration.

10. The DPO shall respond to requests from the EDPS and, within the sphere of his/her competence, cooperate and consult with the EDPS at the latter's request or on his or her own initiative. The DPO shall keep the EPPO informed of any exchange in this respect.

11. The EPPO may ask the DPO to represent it in data protection issues. However, such representation shall not include tasks which may interfere with the independence of the DPO; in particular the DPO may not represent the EPPO before the Courts or any other supervisory body in data protection related cases.

12. The DPO shall provide an annual report to the European Chief Prosecutor, the College and the European Data Protection Supervisor. To the extent no operational or sensitive information is contained, the report submitted by the DPO shall be published on the EPPO's website.

13. The DPO shall be internally responsible for processing operations on personal data under his or her responsibility.

14. The DPO may participate in discussions and cooperate with other DPOs, especially in the field of Justice and Home Affairs Agencies, in order to discuss developments in the fields of relevance to the EPPO, exchanging best practices, etc. These exchanges however may not contain any operational data.

## Article 4

### *Powers of the Data Protection Officer*

In performing his/her tasks and duties, and without prejudice to the powers conferred to him/her by the EPPO Regulation and by the Data Protection Regulation, the DPO shall be entitled to exercise the following powers:

- (a) in relation to personal data, to have access at all times to all such personal data and all relevant information,
- (b) to investigate upon request, or on his/her own initiative, matters and occurrences directly related to the DPO's tasks, in accordance with the Article 10 of the present rules;

- (c) in relation to data subjects' rights:
  - (i) to advise the controller or processor on the handling of a data subject's request;
  - (ii) to request a review of the restrictions imposed in accordance with the internal rules;
  
- (d) to issue recommendations on the following:
  - (i) processing operations;
  - (ii) data flows to a third country or an international organisation;
  
- (e) to request information about the follow-up given to his/her recommendations;
  
- (f) to bring to the attention of the European Chief Prosecutor any failure to comply with the obligations under the Regulation by the Central Office, the European Delegated Prosecutors of the staff of the EPPO;
  
- (g) to restrict data subjects' rights in accordance with the provisions of the internal rules in the framework of his/ her own investigation conducted in accordance with Article 11;
  
- (h) in the event of conflict relating to interpretation or implementation of that Regulation, to inform the European Chief Prosecutor if he/she intends to refer the matter to the EDPS.

## Article 5

### *Information to the Data Protection Officer*

1. In addition to the information to be provided to the DPO in accordance with procedures established by the internal rules on the exercise of data subjects' rights, members of the Central Office, European Delegated Prosecutors and staff of the EPPO shall inform the DPO whenever an issue, which has data protection implications, is under consideration.

2. The DPO shall be informed of any correspondence/interaction between the EPPO and the EDPS.

## Article 6

### *Resources*

The EPPO shall provide the DPO with the necessary resources to carry out the tasks and duties and exercise the powers of the DPO. Resources shall be sufficient to ensure, at a minimum, staffing proportional to the general data protection activities, production of awareness-raising materials, and training of the DPO and the staff.

## Article 7

### *Duty to cooperate*

Controllers, processors and members of the staff of the EPPO designated by the EPPO to be in charge of a particular processing operation in relation to personal data and internally responsible for it shall cooperate with the DPO in all matters falling within the competence of the DPO.

## Article 8

### *Obligation on staff members*

1. Without prejudice to the responsibility of the controller, the members of the staff of the EPPO designated by the EPPO to be in charge of a particular processing operation in relation to personal data and internally responsible for it shall ensure that all processing operations involving personal data within their area of responsibility comply with the EPPO and / or Data Protection Regulation, as applicable.

2. Without prejudice to the provisions of the EPPO Regulation and of the data protection regulation concerning the obligations of the controller, these persons shall fulfil the following obligations:

- (a) to notify, without undue delay, any possible data breach to the controller;
- (b) to maintain records of processing activities related to administrative personal data pursuant to Article 31(1) of the Data Protection Regulation and include such records in the register referred to in Article 9 of these rules;
- (c) to participate in training and information sessions regarding data protection issues.

3. The listing of the responsibilities of the controller under this Article are non-exhaustive. Further, also staff members not designated as controllers are under certain obligations as regards their duty of care when processing personal data.

## Article 9

### *Register*

1. The register of records of processing activities referred to in Article 3(3)(a) shall comprise a database of information on all the processing operations carried out by the EPPO in relation to administrative personal data. It shall be made publicly accessible on the EPPO's website.

2. The members of the staff of the EPPO designated by the EPPO to be in charge of a particular processing operation in relation to personal data and internally responsible for it shall submit the records of processing activities to the DPO pursuant to Article 8(2)(b).

## Article 10

### *DPO Investigations*

1. Requests for an investigation referred to in Article 4(b) shall be addressed to the DPO in writing. Within 15 working days upon receipt, the DPO shall send an acknowledgement of receipt to the requester, and verify whether the request is to be treated as confidential. In the event of manifest abuse of the right to request an investigation, the DPO shall not be obliged to report back to the requester, but may inform him/her that the request will not be pursued.

2. The DPO shall request a written statement on the matter from the relevant member of the Central Office, European Delegated Prosecutor or designated person in charge of the processing activity in question. The latter shall reply to the DPO within 15 working days. The DPO may request to receive complementary information from that designated person and/or other parties within 15 working days.

3. The DPO shall report back to the requester no later than three months following receipt of the request. This period may be suspended until the DPO has obtained any further relevant information. In that case, the DPO shall inform the requester accordingly.

4. If the request for investigation concerns processing of operational personal data the reply of the DPO to the request shall be phrased, wherever necessary, in such manner as to safeguard the confidentiality and integrity of ongoing criminal investigations, including by



stating exclusively that the request has been received and appropriate investigations conducted.

5. 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 EPPO and / or Data Protection Regulation.

## Article 11

### *Entry into force*

The provisions of these rules and any amendment thereof shall enter into force on the date of their adoption.

Done at Luxembourg on 21 October 2020.

**On behalf of the College,**

**Laura Codruța KÖVESI**  
**European Chief Prosecutor**