

# RULES CONCERNING THE PROCESSING OF PERSONAL DATA BY 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'),

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'),

Having regard to the Internal Rules of Procedure of the EPPO ('the IRP'), adopted by the College of the EPPO on 12 October 2020,

Whereas:

- (1) The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are provided for in Directive (EU) 2017/1371,
- (2) Article 16 of the Treaty on the Functioning of the European Union enshrines the right to the protection of personal data,
- (3) 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.
- (4) Further implementing rules should be adopted, specifying the condition and modalities for the exercise of data subjects' rights in relation to operational and administrative personal data, as well as the conditions under which the EPPO may restrict the application of those rights,
- (5) Implementing rules should also be adopted in relation to the processing by the EPPO of special categories of personal data, to the transfers of personal data by the EPPO, as well as to temporary processing of personal data for operational purposes,

(6) In application of Article 48(2) EPPO Regulation, it is necessary to determine the storage limits for administrative personal data,

(7) The European Data Protection Supervisor was consulted and provided its opinion on these rules on 17 September 2020,

The following rules apply:

## Chapter I

### GENERAL RULES

#### Article 1

##### *Subject matter and scope*

1. These rules implement the provisions on data protection of the EPPO Regulation<sup>1</sup> where so foreseen and required.
2. These rules lay down rules to inform data subjects of the processing of their data as well as the conditions under which the EPPO may restrict the application of data subjects' rights.
3. As regards operational personal data, these rules further specifically implement the provisions concerning the exercise of data subject's rights as included in the EPPO Regulation, and restrictions to those rights.
4. As regards administrative personal data, these rules further specifically implement the provisions concerning the rights of data subjects as contained in Regulation 2018/1725<sup>2</sup>, as well as restrictions thereto, without prejudice to the dedicated decision by the College on the exercise of any restrictions to data subjects' rights in line with Article 25 of Regulation 2018/1725.
5. For the purposes of these rules, in line with Articles 2(17) and 2(18) of the EPPO Regulation, administrative personal data shall be defined as all personal data processed by the EPPO apart from operational personal data, and operational personal data shall be defined as all personal data processed by the EPPO for the purposes laid down in Article 49 of the EPPO Regulation.

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<sup>1</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

<sup>2</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 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/EC, OJ L 295, 21.11.2018

## Chapter II

### OPERATIONAL PERSONAL DATA

#### Article 2

##### *Recording of processing activities*

1. The Case Management System ("CMS") of the EPPO as defined in Article 44 of the EPPO Regulation shall serve wherever possible as the record of all processing activities mentioned in Article 49 of the EPPO Regulation in as far as operational personal data is concerned. Whenever this is not possible, such as due to technical or operational circumstances, an alternative auditable record recording any such processing shall be made, such as physical logs.
2. The CMS shall contain a full record of transmission and receipt of operational personal data making it possible to establish any transmission of operational personal data and the identification of the authority, organisation or third country or international organisation which transmitted or received such information to/from the EPPO.
3. The rules concerning the operation of and access to the CMS are further elaborated in the Internal Rules of Procedure.

#### Article 3

##### *Special categories of data*

1. The EPPO shall take appropriate technical measures to ensure that the Data Protection Officer is automatically informed, via the CMS, of processing by the EPPO of the special categories of personal data referred to in Article 55 of the EPPO Regulation. If the processing does not occur within the CMS, or the notification cannot be undertaken technically, the notification of the Data Protection Officer shall be undertaken in any other appropriate manner without undue delay.
2. The decision to process such data, along with the grounds therefore, shall be documented.

#### Article 4

##### *Information to Data Subjects*

1. Where the EPPO processes personal data of a given data subject, the European Delegated Prosecutor shall ensure that the individual is informed in line with Article 58 of the EPPO Regulation. Prior to making the information available or giving it to the individual however, the European Delegated Prosecutor shall assess whether any grounds exist



under national procedural law or in the EPPO Regulation concerning the ability to omit, restrict or delay the provision of such information.

2. In circumstances where operational personal data is processed by the EPPO, and there is no European Delegated Prosecutor assigned to the file, this obligation shall be taken over by the respectively competent European Prosecutor.
3. Where there is neither a supervising European Delegated Prosecutor nor a competent European Prosecutor, the individual undertaking the processing by the EPPO, shall inform the European Chief Prosecutor, who shall ensure the execution of the obligations from the EPPO Regulation, including as further specified in paragraph 1.
4. It shall be possible within the CMS to identify at any moment in time, whether or not the data subject has been informed, including a copy of that information, as well as if not, the reasons for the delay or omission.
5. Once the reasons for the suspension or delay of informing the data subject are no longer valid, the subject shall be provided with the information to which they are entitled which had not previously been provided, unless the information continues to fall under one of the exceptions.
6. Where the rights of the data subject foreseen in this Article are restricted, Article 9 of these rules shall also apply.

## Article 5

### *Right of Access*

1. Data subjects shall be entitled to obtain from the EPPO confirmation as to whether or not operational personal data concerning them are being processed and information on that processing, in line with Article 59 of the EPPO Regulation.
2. Requests for exercising this right shall be dealt with through the Data Protection Officer.
3. Where a request for a right of access is received by any person subject to these rules other than the Data Protection Officer, the request shall be forwarded by the recipient to the Data Protection Officer, and the applicant informed accordingly.
4. The Data Protection Officer shall, upon receipt of such a request, assess whether the EPPO is processing the personal data in question. Where this is not the case, the applicant shall be informed thereof by the Data Protection Officer.



5. Where the Data Protection Officer establishes that personal data which are the subject of the request for right of access are being processed by the EPPO, he/she shall request a decision by the responsible European Delegated Prosecutor on the matter, including their opinion on the applicability of any national procedural laws, including as relates to the possibilities to omit, restrict or delay such access. The responsible European Delegated Prosecutor is the one handling the case in which the particular personal data to which access has been requested is processed.
6. The European Delegated Prosecutor shall provide his/her decision to the Data Protection Officer within a reasonable period of time, and in any event, no later than 2 months after receipt of the request. Where the personal data in question was provided to the EPPO by a third party other than a private party or person, the original provider of the personal data shall also be consulted, in line with Article 9 of these rules.
7. Based on the decision the Data Protection Officer received under paragraph 6 above, the Data Protection Officer shall either grant the request, if no restriction applies, or inform the data subject in conformity with Articles 60 (1) and (2) of the EPPO Regulation.
8. Replies in case there is no personal data being processed by the EPPO shall be indistinguishable from replies in case a restriction on the right of access applies.
9. Where the Data Protection Officer either has doubts as to the correctness of the decision received from the European Delegated Prosecutor, receives no opinion at all from the European Delegated Prosecutor, or cannot identify a competent European Delegated Prosecutor, he/she shall liaise with the supervising European Prosecutor instead. Where also a supervising European Prosecutor is not identifiable, the Data Protection Officer shall address themselves to the European Chief Prosecutor, who shall take the final decision.
10. Where, in application of paragraph 5, more than one European Delegated Prosecutor is requested to take a decision and no agreement can be found between them, the European Chief Prosecutor shall be informed and shall decide whether to grant, refuse or restrict access. Where the European Delegated Prosecutors concerned are from the same Member State, the Supervising European Prosecutor shall take the decision.
11. In reply to all applicants, the rights of the applicant for redress shall be stated clearly.
12. The performance of the above tasks is without prejudice to the powers of the Data Protection Officer provided for in Article 79(4) of the EPPO Regulation.
13. All decisions under this Article shall be documented, including the factual or legal reasons on which the decisions are based. These shall be made available to the EDPS on request.

14. Where the rights of the data subject foreseen in this Article are restricted, Article 9 of these rules shall also apply.
15. To ensure that personal data is released only to those individuals to whom they belong, any requests by data subjects shall be accompanied by a suitable proof of their identity, such as through provision of a copy of a valid identification document accepted under the national law of the applicant. If the applicant is acting through a legal agent in the exercise of their rights, additional to the proof of identity, a copy of the power of attorney shall be provided.

## Article 6

### *Right of rectification, erasure and restriction of processing*

1. Notwithstanding the general obligation of the EPPO to immediately address any instance in which it comes to believe that data processed by it may be incorrect, or should be erased or its processing restricted, especially as foreseen in the internal rules of procedure, data subjects shall have the right to obtain the rectification of inaccurate data relating to them, as well as the right to obtain from the EPPO the erasure of data related to them which is being processed unlawfully by the EPPO, or where the EPPO is under a legal obligation to do so.
2. Article 5, paragraphs 2, 3, 4, 6 and 8 to 13 of these rules shall apply, mutatis mutandis.
3. The Data Protection Officer shall obtain the decision of the competent European Delegated Prosecutor as to whether or not the data are indeed inaccurate or their accuracy cannot be ascertained, or if any of the exceptions under the national procedural law, or those of Article 61 of the EPPO Regulation, are applicable and the request should not be granted. Additionally, where erasure of personal data is concerned, the Data Protection Officer shall also consult the European Delegated Prosecutor as to the need to maintain the data, but restrict its processing as per Article 61 of the EPPO Regulation.
4. In case of the granting of a request, any parties to whom the EPPO has transferred the personal data, shall be informed, and where appropriate, they too shall correct, erase or restrict the processing of the personal data in question.
5. Where the rights of the data subject foreseen in this Article are restricted, Article 9 of these rules shall also apply.

## Article 7

### *Exercise of rights by the data subject and verification by the EDPS*

The provisions of these rules shall be without prejudice to the ability for the data subject rights to be exercised through the European Data Protection Supervisor, in line with Article 62(1) of the EPPO Regulation. The EPPO shall equally inform the data subjects of this ability, in line with Article 62(2) thereof.

## Article 8

### *Communication of a personal data breach to the data subject and the EDPS*

1. In the case of a personal data breach, the European Chief Prosecutor, a representative of the service responsible for processing the affected personal data, a representative of the information security service and whomever else the European Chief Prosecutor decides should be involved as per the circumstances of the case, shall liaise with the Data Protection Officer to assess whether the breach is likely to result in a risk to the rights and freedoms of individual persons, and if so, whether there is high risk to the rights and freedoms of individual persons. In case of a risk or a high risk being identified, the EDPS shall be informed in accordance with Article 74 of the EPPO Regulation, including with an explanation for any delay going beyond 72 hours after the discovery of the breach.
2. In case the consultation under paragraph 1 results in the assessment that there is a high risk to the rights and freedoms of individual persons, the EPPO shall assess whether any of the provisions of Article 75(3) of the EPPO Regulation apply. Where this is not the case, the respectively competent European Delegated Prosecutors, or if they cannot be identified or are not contactable, the respectively competent European Prosecutor(s), or in their absence, the European Chief Prosecutor, shall be consulted as regards the applicability of any of the exceptions in Article 60(1) of the EPPO Regulation apply, in line with Article 75(5) thereof.
3. Where no objections are identified in line with the application under paragraph 2, the data subject shall be informed in accordance with Article 75 of the EPPO Regulation. The provision of any such information shall be done in any manner, allowing for subsequent review and demonstration of compliance with Article 75 of the EPPO Regulation.
4. Where the rights of the data subject foreseen in this Article are restricted, Article 9 of these rules shall also apply, including the obligation to document any such decision.
5. Where the personal data concerned by a breach in line with paragraph 1 of this Article, have been transmitted by a controller to the EPPO, or transmitted to another controller, that controller shall also be informed appropriately, taking into account the circumstances of the case.



6. A log shall be maintained of any breaches under this Article, including the actions undertaken by the EPPO in this respect and under this Article.

## Article 9

### *Applicable exceptions and restrictions*

1. Where the EPPO exercises its duties with respect to the data subjects' rights pursuant to the EPPO Regulation and Articles 4, 5, 6 and 8 of these rules, it shall only utilise any of the exceptions foreseen in the EPPO Regulation where this is a necessary and proportionate measure in a democratic society.
2. Any decision to exceptionally and temporarily restrict the exercise of the rights of a data subject shall only be made following an assessment of its necessity and proportionality. This assessment shall form part of the decision, and be made available to the EDPS upon request.
3. Any decision under paragraph 2 shall be assessed for their continued applicability no later than once every 6 months. Where the grounds are no longer found to apply, the restrictions shall be lifted.
4. Where no grounds exist under national procedural law, taking into account Article 49 (6) of the EPPO Regulation, the EPPO may restrict the application of Articles 57 to 62 and 75 thereof, where the exercise of those rights and obligations would jeopardise the purpose of its investigative activities, including by revealing its investigative tools and methods, or of criminal investigations in the Member States which are connected to an investigation of the EPPO, the national or public security of the Member States or would adversely affect the rights and freedoms of others.
5. Subject to Articles 4, 5, 6 and 8 of these rules, the EPPO may additionally restrict the rights and obligations referred to in paragraph 4 of this Article, where:
  - (a) both the other Union institution, body, agency or office that communicated the personal data is entitled to restrict the exercise of those rights and obligations on the basis of their founding acts or other acts provided for in Article 25 or Chapter IX of Regulation 2018/1725, and the purpose of such a restriction by that Union institution, body, office or agency would be jeopardised were the EPPO not to apply an equivalent restriction in respect of the same personal data,

- (b) both the competent authorities of Member States on the basis of acts referred to in Article 23 of Regulation 2016/679 <sup>3</sup>, or under national measures transposing Articles 13(3), 15(3) or 16(3) of Directive 2016/680 <sup>4</sup>, or otherwise existing national law, are entitled to restrict the exercise of those rights and obligations, and the purpose of such a restriction by that Union institution, body, office or agency would be jeopardised were the EPPO not to apply an equivalent restriction in respect of the same personal data,
  - (c) the exercise of those rights and obligations would jeopardise the EPPO's cooperation with third countries or international organisations in the conduct of its tasks.
- 6. Before applying restrictions in the circumstances referred to in points (a) and (b) of paragraph 5 above, the EPPO shall consult the relevant Union institutions, bodies, agencies, offices or the competent authorities of Member States, unless it is clear to the EPPO that the application of a restriction is provided for by one of the acts referred to in those points.
- 7. Point (c) of paragraph 5 above does not apply where the interest of the EPPO to cooperate with third countries or international organisations is overridden by the interests or fundamental rights and freedoms of the data subjects. Where the Data Protection Officer, or any other EPPO staff involved in the process, believes there are grounds which give rise to specific or general concerns that this may be the case, they shall raise the matter with the European Chief Prosecutor for a decision.
- 8. In line with these Rules, the Data Protection Officer shall be involved as foreseen in these Rules in any decisions restricting data subject rights under this Article, or reviews thereof. Additionally, the Data Protection Officer may give advice at his / her own initiative, or at the request of the party undertaking the restriction / review, unless otherwise foreseen by these Rules.

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

<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 of 4.5.2016

## Article 10

*Transfers to institutions, bodies, officer or agencies of the Union and non-participating Member States' competent authorities*

1. A decision on the transfer of personal data to institutions, bodies, officer or agencies of the Union and non-participating Member States' competent authorities in accordance with Article 99 of the EPPO Regulation shall be taken by the handling European Delegated Prosecutor.
2. A record of any transfer under this Article, together with the recipient, reasons and justification shall be maintained in the CMS, and be available to the Data Protection Officer and upon request to the EDPS.

## Article 11

*General provisions on transfers to third countries or international organisations*

1. Where the European Delegated Prosecutor intends to transfer personal data and has not received, or been unable to obtain, prior authorisation for such transfer if required under Article 80(1)(c) of the EPPO Regulation, the supervising European Prosecutor shall be immediately consulted and requested to give permission for a transfer in the absence of prior authorisation under the conditions of Article 80(2) of the EPPO Regulation. The European Delegated Prosecutor shall outline the grounds underlying and addressing the criteria to proceed in the absence of prior authorisation, including the immediacy and the seriousness of the threat to be prevented. Where the immediacy permits this shall be done in a documentable manner, and if not, any oral explanations must be documented as soon as practicable after the transfer has occurred. The authorisation of the supervising European Prosecutor shall be documented. The European Delegated Prosecutor shall inform the authority responsible for giving its prior authorisation without delay of any such transfer.
2. A decision on the transfer of personal data to a third country or international organisation shall be taken by the handling European Delegated Prosecutor in case of the existence of an adequacy decision pursuant to Article 81 of the EPPO Regulation.
3. Any transfer under paragraph 1 of this Article may only occur if the transfer of the operational personal data is necessary for the prevention of an immediate and serious threat to public security of a Member State of the European Union or a third country or to essential interests of a Member State of the European Union and the prior authorisation cannot be obtained in good time.
4. A record of any transfer under this Article, together with the recipient, reasons and justification shall be maintained in the CMS, and be available to the Data Protection Officer and upon request to the EDPS.



## Article 12

### *Transfers to third countries or international organisations subject to appropriate safeguards*

1. A decision on the transfer of personal data to third countries or international organisations in accordance with Article 82 of the EPPO Regulation shall be taken by the handling European Delegated Prosecutor, in line with this Article. In case someone other than the handling European Delegated Prosecutor wishes to perform a transfer under this Article, the person or office responsible for the transmission shall request the assent of the European Prosecutor supervising the case in which the data is contained. In case no supervising European Prosecutor exists, the European Chief Prosecutor shall be requested for his / her consent.
2. Where the transfer is to be based on Article 82(1)(a), and there is any doubt as regards the existence of a suitable instrument, the Data Protection Officer may be consulted as to the existence of a legally binding instrument fulfilling the requirements.
3. Where the transfer is to be based on Article 82(1)(b), an assessment shall be carried out by the Data Protection Officer. Where the assessment of the Data Protection Officer does not conclude that safeguards for the protection of personal data exist with the intended recipient, which are appropriate for the personal data to be transferred, the European Delegated Prosecutor may not transfer the personal data under the present Article. This is notwithstanding the possibility to transfer the personal data under Article 13 of these rules and Article 83 of the EPPO Regulation.
4. The assessment referred to in paragraph 3 shall be provided by the Data Protection Officer as soon as possible. Where it concerns an intended recipient who has been subject to a previous assessment under paragraph one by the Data Protection Officer, the Data Protection Officer shall confirm its continued applicability upon request by a European Delegated Prosecutor, within five working days. When necessary for reasons of urgency, indicated by the European Delegated Prosecutor concerned, the assessment shall be provided within a given deadline.
5. The assessment by the Data Protection Officer shall in particular address the issues referred to in Recitals 71 of Directive 2016/680.
6. A record of any transfer under this Article, together with the recipient, reasons and justification shall be maintained in the CMS, and be available to the Data Protection Officer and upon request to the EDPS.

## Article 13

### *Transfers to third countries or international organisations subject to derogations for specific situations*

1. When it becomes necessary to transfer personal data to a third country or an international organisation in the cases set out in Article 83 of the EPPO Regulation, the person or office responsible for the transmission shall request the assent of the European Prosecutor supervising the case in which the data is contained in writing. The supervising European Prosecutor shall grant the assent in the cases set out by Article 83(1) of the EPPO Regulation. If the transfer is based on Article 83(1)(d), the supervising European Prosecutor may consult the Data Protection Officer, assigning a deadline for the reply. Where no supervising European Prosecutor exists, the European Chief Prosecutor shall take his / her place for the purposes of this Article.
2. A documentation of the transfer as well as its reasons shall be created and maintained in the CMS.
3. This Article and the provisions of Article 83 of the EPPO Regulation should be interpreted restrictively and should not allow frequent, massive and structural transfers of personal data, or large-scale transfers of data, but should be limited to data strictly necessary.

## Article 14

### *Transfers to recipients established in third countries*

1. A decision on the transfer of personal data to recipients established in third countries in accordance with Article 84 of the EPPO Regulation shall be taken by the handling European Delegated Prosecutor, having obtained the assent of the European Prosecutor supervising the case in which the data is contained. In the submission to the supervising European Prosecutor, the grounds for the belief of the European Delegated Prosecutor that the conditions of Art. 84(1)(a) and (c) are met shall be outlined.
2. Prior to giving such consent, the supervising European Prosecutor shall determine that no fundamental rights and freedoms of the data subject concerned override the public interest necessitating the transfer in the case at hand. In this assessment, the supervising European Prosecutor, if deemed appropriate, may consult the Data Protection Officer.
3. Where the supervising European Prosecutor permits the transfer, the European Delegated Prosecutor shall ensure that the conditions of Article 84(1)(d) (if decided applicable by the supervising European Prosecutor when providing the authorisation for the transfer) and Article 84(1)(e) are complied with.
4. A record of any transfer under this Article, together with the recipient, reasons and justification shall be maintained in the CMS, and be available to the Data Protection

Officer and upon request to the EDPS. Where there is no supervising European Prosecutor, the European Chief Prosecutor shall take his/her place for the purposes of this Article.

## Article 15

### *Access to operational personal data*

The provisions governing access to the CMS and the operational personal data processed therein are provided for in Title IV of the Internal Rules of Procedure. Those rules and principles shall apply mutatis mutandis to access to operational personal data to the extent it is not processed within the CMS.

## Article 16

### *Joint Controllers and Processors*

The EPPO in its processing operations shall ensure it takes due account of the provisions of Articles 64 (Joint Controllership), 65 (Processor) and 66 (Processing under the authority of the controller or processor) of the EPPO Regulation, and ensure that under no circumstances data subjects are hindered in the exercise of their rights through the application of these provisions. Where appropriate, the College may adopt a dedicated decision on the circumstances to which joint controllership is applicable and any consequences thereof.

## Article 17

### *Processing prior to insertion into the CMS*

1. Where the EPPO receives personal data from a private person, it shall, prior to inserting it into the CMS in line with Article 38(7) of the Internal Rules of Procedure, assess whether the personal data received is manifestly outside of the competence of the EPPO. Where the personal data is found to be manifestly outside of the competence, the personal data shall not be inserted into the CMS, but transmitted to the respectively competent authority if identifiable, or if not, deleted. The provider of the information shall be informed accordingly, if possible.
2. During this process, the personal data may be processed exclusively for the purpose of paragraph 1, or for the purposes of the exercise of data subject's rights and related supervision.
3. Personal data processed for this purpose shall not be stored longer than necessary for the assessment and transfer in line with paragraph 1 to occur, and in any event, no longer than 6 months after receipt by the EPPO, at which point they shall be automatically deleted and / or destroyed.



4. The assessment under paragraph 1 shall be undertaken by a European Delegated Prosecutor or a European Prosecutor, or in case the assessment is performed by another staff member of the EPPO, the assessment shall be validated by a European Delegated Prosecutor or a European Prosecutor.
5. In relation to personal data received which is not inserted into the CMS by virtue of being manifestly outside of the competence of the EPPO, an appropriate log may be kept by the EPPO at a central level of the name of the sender (if available), and a record of the action taken as per paragraph 1, including the name of the EDP or EP having made or validated the assessment.

## Article 18

### *Time limits for the storage of operational personal data*

Operational personal data may only be stored in compliance with Article 50 of the EPPO Regulation, taking in to account the foreseen periodicity for reviews of the continued need, and the need to document and justify decisions in this respect.

## Article 19

### *Automated data files*

Where required for the fulfilment of its tasks, the EPPO may process operational personal data other than in case files, in line with Article 44(5) of the Regulation. Where the EPPO sees a need for such processing, the European Chief Prosecutor shall make a proposal to the College for its adoption, for the rules applicable to such processing, having consulted the European Data Protection Supervisor.

## Chapter III

### ADMINISTRATIVE PERSONAL DATA

## Article 20

### *Records of processing activities*

Records of processing activities of administrative personal data, in accordance with Article 31 of Regulation 2018/1725, shall be kept in a central register under the supervision of the Data Protection Officer.

## Article 21

### *Special categories of data*

1. The EPPO shall take appropriate technical measures to ensure that the Data Protection Officer is immediately informed of processing by the EPPO, for administrative purposes, of the special categories of personal data referred to in Article 10 of Regulation 2018/1725.
2. The decision to process such data, and the reasons therefore, shall be documented.

## Article 22

### *Information to Data Subjects*

Where the EPPO commences the processing of administrative personal data of a given data subject, the Head of Unit of the unit processing the personal data shall ensure that the individual is informed thereof in line with Articles 15 and 16 of Regulation 2018/1725.

## Article 23

### *Exercise of data subjects' rights*

1. The Data Protection Officer shall be responsible for dealing with requests to exercise data subjects' rights under Articles 17, 18, 19, 20, 22, 23, 24 of Regulation 2018/1725.
2. The Data Protection Officer shall, upon receipt of such a request, assess whether the EPPO is processing the personal data in question. Where this is not the case, the applicant shall be informed.
3. Where the Data Protection Officer establishes that administrative personal data which are the subject of the request for right of access, rectification or erasure, are being processed by the EPPO, he/she shall request a decision by the Administrative Director, including as relates to the possibilities to omit, restrict or delay the exercise of such rights in line with Article 25 of Regulation 2018/1725 or these rules.
4. The Head of Unit of the unit processing the personal data shall provide their position to the Administrative Director, who shall provide his/her decision to the Data Protection Officer within a reasonable period of time, and in any event, no later than 3 weeks after receipt of the request. Where the personal data in question was provided to the EPPO by a third party, the original provider of the personal shall also be consulted.
5. Where the Data Protection Officer either has doubts as to the correctness of the opinion received from the Administrative Director, or receives no decision at all, he/she shall address themselves to the European Chief Prosecutor, who shall take the final decision.

6. In the reply by the Data Protection Officer to all applicants, the rights of the applicant for redress either through involvement of the EDPS or judicial review, shall be stated clearly.
7. The performance of the above tasks is without prejudice to the powers of the Data Protection Officer provided in Article 79(4) of the EPPO Regulation.

## Article 24

### *Communication of a personal data breach to the data subject*

1. In the case of a personal data breach, the European Chief Prosecutor and the Administrative Director, and anyone else they determine relevant, shall liaise with the Data Protection Officer to assess whether the breach is likely to result in a risk to the rights and freedoms of individual persons, and if so, whether there is high risk to the rights and freedoms of individual persons. In case of a risk or a high risk being identified, the EDPS shall be informed in accordance with Article 34 of Regulation 2018/1725, including with an explanation for any delay going beyond 72 hours after the discovery of the breach.
2. In case the consultation under paragraph 1 results in the assessment that there is a high risk to the rights and freedoms of individual persons, the consultation shall continue to also assess whether any of the provisions of Article 35(3) of Regulation 2018/1725 apply.
3. Where no objections are identified in line with the application under paragraph 2, the data subject shall be informed by the Data Protection Officer in accordance with Article 35 of Regulation 2018/1725.
4. A log shall be maintained of any breaches under this Article, including the actions undertaken by the EPPO in this respect and under this Article.

## Article 25

### *Applicable exceptions and restrictions*

1. Where the EPPO exercises its duties with respect to the data subjects' rights pursuant to Regulation 2018/1725 and Articles 20 and 21 of these rules, it shall consider whether any of the exceptions laid down in that Regulation apply.
2. Without prejudice to the grounds for restricting the exercise of data subjects rights foreseen in Article 25 of Regulation 2018/1725, the EPPO may apply the provisions of the College Decision on the implementation of Article 25 of Regulation 2018/1725, only where such a restriction respects the essence of the fundamental rights and freedoms and is necessary and proportionate in a democratic society.



3. When exercising restrictions the EPPO shall ensure that this is only done following an assessment of the necessity and proportionality on the need for the restriction and ensuring that the restriction is applied as restrictively as possible and only to the extent necessary to protect the interest giving rise to the exception.
4. The process for the exercise of any restrictions, their grounds and the procedures and safeguards to be followed are contained in a dedicated decision by the College on the exercise of these restrictions.

## Article 26

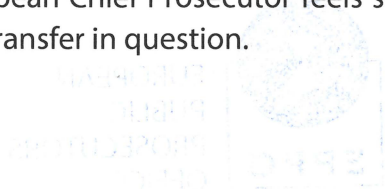
### *Transfers to third countries or international organisations subject to appropriate safeguards*

1. A decision on the transfer of administrative personal data to third countries or international organisations in accordance with the Article 48 of Regulation 2018/1725 shall be taken by the Administrative Director. Where the Administrative Director is unsure about the existence of fulfilment of any of the criteria under Article 48(2) authorising such a transfer, he/she may consult the Data Protection Officer, who shall be informed of any such transfers in any event. The consultation and involvement of the Data Protection Officer shall be mandatory as regards obtaining the authorisation of the European Data Protection Supervisor under Article 48(3).
2. Any transfer under this Article shall be duly documented, together with the reasons, recipient(s) and grounds for the transfer, including any advice received from the Data Protection Officer.
3. The documentation under paragraph 2 shall be maintained in a manner accessible to the Data Protection Officer.

## Article 27

### *Transfers to third countries or international organisations subject to derogations for specific situations*

1. When it becomes necessary to transfer personal data to a third country or an international organisation in the cases set out in Article 50 of Regulation 2018/1725, the assent of the European Chief Prosecutor shall be requested in writing. Prior to the European Chief Prosecutor assenting, an opinion of the applicability of one of the grounds of Article 50 permitting the transfer may be requested from the Data Protection Officer, if the European Chief Prosecutor feels such an opinion would assist him/her in the decision on the transfer in question.



2. Any transfer under this Article shall be duly documented, together with the reasons, recipient(s) and grounds for the transfer, including any advice received from the Data Protection Officer.
3. The documentation under paragraph 2 shall be maintained in a manner accessible to the Data Protection Officer.

## Article 28

### *Time limits for the storage of administrative personal data*

1. Administrative personal data processed by the EPPO shall be kept no longer than necessary, for the purposes for which they are processed, and, once the purpose has been achieved, shall be deleted, unless further storage is required by other legislation and policies binding on the EPPO such as regarding auditing, compliance or other legal obligations inherent upon the EPPO pertaining to the obligation to record-keeping.
2. The EPPO shall periodically review the need for the continued storage of the administrative personal data, unless the continued processing is obviously still necessary, such as current staff records. Unless in circumstances where the obligatory retention period is pre-defined in absolute terms, the reasons for continued storage shall be recorded and the data reviewed no later than 3 years thereafter. If no decision is taken on the continued storage of administrative personal data, those data shall be deleted by default.

## Article 29

### *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 28 October 2020.

**On behalf of the College,**

**Laura Codruța KOVESI**  
European Chief Prosecutor

