



## EUROPEAN DEFENCE AGENCY

### DECISION N° 19/02

#### **adopting Implementing Rules concerning the Data Protection Officer and the protection of personal data at the European Defence Agency**

#### **THE CHIEF EXECUTIVE,**

Having regard to Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency (hereinafter referred to as "*the Council Decision*"),<sup>1</sup> notably Articles 10 and 31 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/EC<sup>2</sup> (hereinafter referred to as "*Regulation 2018/1725*"), and in particular Article 45(3) thereof.

Whereas:

- (1) The Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union, and in particular Article 16 and Article 8 thereof respectively, provide for the right to the protection of personal data;
- (2) Regulation 2018/1725 applies to the handling of personal data by the European Defence Agency ("EDA" or "the Agency");
- (3) Regulation 2018/1725 sets out the principles and rules applicable to all Union institutions and bodies and provides, under Article 43.1, for the designation of a Data Protection Officer ("DPO") by each Union institution and body.
- (4) Article 45(3) of Regulation 218/1725 provides 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 DPO.

**HAS DECIDED AS FOLLOWS:**

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<sup>1</sup> OJ L 266, 13.10.2015, p.55

<sup>2</sup> OJ L295/39, 21.11.2018

**SECTION ONE  
GENERAL PROVISIONS**

**Article 1  
Subject matter and scope**

1. This Decision lays down the rules and procedures for the implementation of Regulation 2018/1725 within EDA. It supplements the provisions in Regulation 2018/1725 relating to the DPO's designation tasks, duties and powers.
2. The Decision also clarifies, pursuant to Section 3 below, the roles, tasks and duties of the Data Controllers, (hereinafter "Controllers"), including the procedure for notifying a processing operation to the DPO.
3. Finally, the Decision sets out how the Agency will ensure that data subjects can exercise their rights.

**SECTION TWO  
THE DATA PROTECTION OFFICER**

**Article 2  
Designation, Status and Independence**

1. The Chief Executive shall designate a DPO and register him/her with the European Data Protection Supervisor (hereinafter "EDPS"). The contact details of the DPO shall be published on the EDA website.
2. The DPO shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 45 of Regulation 2018/1725.
3. The term of office for the DPO shall be 4 years, with the possibility of reappointment. During his/her term, he/she may be dismissed from the post only if he/she no longer fulfils the conditions required for the performance of her/his duties and only with the consent of the EDPS. The EDPS' consent shall be sought in writing and a copy of the letter shall be sent to the DPO.
4. The DPO may fulfil other tasks and duties provided that they do not result in a conflict of interest situation with the role of the DPO, particularly in relation to the application of the provisions laid down in the Regulation.
5. The DPO is bound by secrecy or confidentiality concerning the performance of his/her tasks and shall remain so once he/she ceased his/her duties.
6. The DPO shall be independent in the performance of his/her duties. He/she may not receive instructions with respect to the performance of the duties of DPO. Additionally, the DPO shall refrain from any act which is incompatible with the nature of his/her duties.
7. In accordance with Article 44.2 of Regulation 2018/1725, the Agency shall support the DPO in performing his/her tasks set out in Article 45 of Regulation 2018/1725 and Article 3 of this Decision.

**Article 3  
Tasks and Duties**

1. With a view to ensure that the provisions of Regulation 2018/1725 are effectively applied within EDA, the DPO shall:

- (a) Inform and advise the Chief Executive, the Controllers, processors and employees who carry out processing operations on matters concerning the application of data protection rules in accordance with Regulation 2018/1725 and other Union data protection provisions;
  - (b) Inform Controllers and data subjects as regards their rights and obligations under Regulation 2018/1725 and facilitate the exercise of those rights and the fulfilment of those obligations, in particular to ensure that the rights and freedoms of data subjects are not adversely affected by the processing operations;
  - (c) Ensure in an independent manner the internal application of Regulation 2018/1725; to monitor compliance with it, with other applicable Union law containing data protection provisions and with the policies of the Controller or processor in relation to the protection of personal data, including the assignment of responsibilities, the raising of awareness and training of EDA staff involved in processing operations, and the related audits;
  - (d) Keep a centralised and publicly available record of processing activities as recorded by the Controllers, in line with Article 31.5 of Regulation 2018/1725;
  - (e) Advise, where requested, on the necessity for a notification or a communication of a personal data breach pursuant to Articles 34 and 35 of Regulation 2018/1725 and Decision 18/29 of 13 December 2018 adopting the Agency's policy on handling personal data breaches;
  - (f) Advise, where requested, on the data protection impact assessment (hereinafter "DPIA"), including consulting the EDPS in case of doubt as to the need for a DPIA, and monitor its performance pursuant to Article 39 of Regulation 2018/1725 and the DPO Guidelines on performing DPIA<sup>3</sup> and;
  - (g) Advise, where requested, as regards the need for prior consultation of the EDPS pursuant to Article 40 and consult the EDPS in case of doubt as to the need for a prior consultation;
  - (h) Respond to requests from the EDPS within the sphere of his/her competence and cooperate with the EDPS at the latter's request or on his/her own initiative.
2. The DPO may be consulted at any time by the Chief Executive, any Controllers concerned, the Staff Committee and, in particular, by data subjects, without going via official channels, in respect of any matter relating to the interpretation or application of Regulation 2018/1725.
  3. The DPO shall represent EDA in matters – excluding court cases - relating to the protection of personal data. He/she may, inter alia, attend the EU DPO networking meetings as well as meetings of committees or bodies at international level.

#### **Article 4** **Powers**

1. In order to perform his/her tasks and in accordance with the conditions laid down in Regulation 2018/1725, the DPO may:
  - (a) On his/her own initiative, make recommendations to the Chief Executive, the Controller and/or the processor for the practical improvement of data protection and advise on matters concerning the application of data protection provisions as set out in Regulation 2018/1725 or included in these implementing rules;

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<sup>3</sup> Available on Data Protection Portal.

- (b) On his/her own initiative or at the request of the Controller or the processor, the Staff Committee or any data subject investigate matters and occurrences directly relating to his/her tasks, which come to his/her notice, and report back to the person who commissioned the investigation, or to the Controller, or the processor;
  - (c) Request clarifications from any EDA Directorate or unit on any matter related to DPO tasks and duties;
  - (d) On his/her own initiative, issue an opinion on the lawfulness of actual or proposed data processing operations and on the measures required in order to ensure that such operations are lawful, and on the suitability or inadequacy of data or security measures;
  - (e) Report any breach, including personal data breach, of the provisions of Regulation 2018/1725 to the Chief Executive;
  - (f) Regularly attend meetings with the EDPS and/or the DPOs of the other Union institutions and bodies with a view to establishing a mutual exchange of information, engaging inter-institutional cooperation and harmonising the application of the procedures in force;
  - (g) Draw up an annual activity report/work programmes for the Chief Executive concerning activities relating to the protection of personal data within EDA. These reports will have the objective presenting the results achieved in terms of raising awareness, inventory, records, prior consultation, on the one hand, of defining priorities and challenges on the other. The DPO shall make the reports available to all EDA staff;
  - (h) Keep an anonymous inventory of the written requests from data subjects for the exercise of their rights referred to in Articles 14 to 24 included of Regulation 2018/1725.
2. The DPO shall have access at all times to all types of data which is being processed and to all offices, data processing installations and data carriers.
  3. The DPO may decide to carry out monitoring of the procedures and/or audits in accordance with the DPO Methodology for Data Protection Audits<sup>4</sup> at any time, in order to ensure proper implementation of Regulation 2018/1725 by and within EDA.
  4. The DPO should be informed whenever EDA consults the EDPS under Article 41 or 57(g) (and more widely, be informed of any correspondence with the EDPS), he/she should be informed of direct interactions between the Controllers and the EDPS.

**Article 5**  
**Investigations by the DPO**

1. Any request for an investigation under Article 4.1(b) of this Decision shall be addressed to the DPO in writing.
2. The DPO shall send an acknowledgment of receipt to the requestor within five working days of the receipt.
3. The DPO may investigate the matter on site and request a written statement from the Controller. The Controller shall provide a response to the DPO within 15 working days at the latest, if no shorter deadline has been indicated by the DPO. The DPO may ask for additional information or assistance

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<sup>4</sup> Available on Data Protection Portal.

from any directorate or unit of EDA to be provided within 15 working days at the latest of the DPO's request, if no shorter deadline applies.

4. The DPO shall report back to the requestor within 1 month of the receipt of the request at the latest. If the DPO deems it appropriate, he or she may inform all other parties concerned accordingly.

**Article 6**  
**Assistance to the DPO**

Any staff member providing assisting the DPO in relation to data protection issues shall act solely on the DPO's instructions and shall be bound by the same duty of secrecy and confidentiality as the DPO as regards any confidential documents or information obtained in the course of their duties.

**SECTION THREE**  
**THE DATA CONTROLLERS**

**Article 7**  
**Appointment, tasks and duties**

1. In line with Article 3(8) of Regulation 2018/1725, in the context of EDA, the Controller is the Agency and any organisational entity, staff member, SNE or other person acting for the Agency, which, alone or jointly, determines the purpose and means of the processing of personal data.
2. The Controller shall ensure and be able to demonstrate that all processing operations involving personal data performed within their area of responsibility comply with the provisions of Regulation 2018/1725.
3. To this end the Controller shall:
  - (a) Implement appropriate technical and organisational measures and give the EDA staff members (or other persons under their authority) suitable instructions for ensuring that processing is confidential and done at an appropriate level of security in view of the risks which the processing entails (data protection by design);
  - (b) Implement appropriate technical and organisational measures ensuring that only personal data which are necessary for each specific purpose of the processing are processed. This obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default, personal data are not made accessible to an indefinite number of natural persons (data protection by default);
  - (c) Inform the DPO any data processing operation without delay, and in any case before undertaking it, and record the processing activities under its responsibility in the designated IT tool available on the Data Protection Portal;
  - (d) Assist the DPO and the EDPS in the performance of their tasks and, in particular, provide full information to them, grant access to the personal data and respond to questions within 1 month of the receipt of the request at the latest, if no shorter deadline applies to a specific case;
  - (e) Ensure that any operations delegated to a processor are processed in compliance with the requirements of Articles 29 and 30 of Regulation 2018/1725.
4. In particular, the relevant Controller shall ensure that the DPO is kept informed without any delay:

- (a) When an issue arises that has, or might have, data protection implications and, in particular, in the cases of personal data breach, and;
- (b) In respect of all contacts with external parties relating to the application of Regulation 2018/1725, notably any interactions with external stakeholders and the EDPS.

**Article 8**  
**Joint Controllers**

1. In line with Article 86 of Regulation 2018/1725, where two or more Controllers or, one or more Controllers together with one or more controllers, other than Union institutions and bodies jointly determine the purposes and means of processing, they shall be joint controllers.
2. They shall in a transparent manner determine their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercising of the rights of the data subjects and their respective duties to provide the information referred to in Articles 15 and 16 of Regulation 2018/1725, by means of an arrangement between them, unless the respective responsibilities of the joint controllers are determined by Union or Member State law to which the joint controllers are subject.
3. The arrangement shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. Irrespective of the terms of the arrangement, the data subject may exercise his/her rights under Regulation 2018/1725 in respect of and against each of the controllers.

**Article 9**  
**Records of personal data processing activities and Register**

1. Each Controller shall record the processing activities under its responsibility. The record shall contain all of the information listed under Article 31(1) of Regulation 2018/1725.
2. Within EDA personal data processing activities are to be recorded electronically via the established IT tool available on the Data Protection portal.
3. EDA shall maintain all records of processing activities in a central register, kept by the DPO. The register and the public part of each record (Part I - items 1 to 13) shall be publicly accessible on the EDA website.
4. If the DPO deems it necessary, he/she may take action to rectify the data contained in the register, with a view to ensure that data is accurate.

**SECTION FOUR**  
**DATA SUBJECT'S RIGHTS**

**Article 10**  
**General rules governing the exercise of rights by data subjects**

1. The data subjects' rights listed in Articles 15 to 23 of Regulation 2018/1725 may be exercised by the data subject or his/her duly authorised representative only.
2. Requests to exercise one of those rights shall be addressed to the respective Controller. The request should indicate:
  - The first name and surname of the data subject and, if the request is submitted via a representative, the names' of the latter;

- An indication of the specific right that the data subject would like to exercise;
- The category or categories of data concerned;
- The applicant's signature and the date of the request.

The request may be submitted electronically or by internal or external post. Should the request contain any error or omissions, the Controller may ask for additional information. The Controller shall verify the applicant's identity in line with the principles set out in the applicable record and related Privacy Statement.

3. The Controller shall respond to any and all requests for exercise of rights. An acknowledgment of receipt shall be sent to the applicant within five working days of the receipt of the request. However, the Controller shall not be required to send an acknowledgment of receipt if a substantial reply to the request is provided within the same time limit of five working days. The reply shall be sent by the same means of communication as used by the data subject and in the language of the request, if it has been submitted in one of the EU official languages.
4. The Controller shall inform the data subject about the available means of redress, namely about the possibility to lodge a complaint with the EDPS if that person considers that the rights granted to him/her under Article 16 of the Treaty on the Functioning of the European Union were infringed when his/her personal data were processed.
5. The data subject may exercise any of his/her rights free of charge.
6. Requests to exercise a right may be rejected in the cases referred to in Article 25 of Regulation 2018/1725, subject to application of Article 25(6) thereof.
7. Data subjects may access their personal data by any of the following means:
  - On-site consultation;
  - Issue of a certified copy drawn up by the Controller;
  - Issue of an electronic copy;
  - Other means available to the Controller and suited to the configuration of the file.
8. Data subjects should be duly informed of the processing of their personal data and be provided with all the elements listed in Articles 15 and 16 of Regulation 2018/1725.
9. Data subjects may contact the DPO in case they have any questions or queries concerning data protection at EDA or when the deadline for response set out in this decision has not been respected by the Controller.
10. In the event of abuse by the data subject in exercising his/her rights, the Controller may refer the matter to the DPO. In this case, the DPO shall decide on the merit of the request and on the appropriate follow-up.
11. In the event of disagreement between the data subject and the Controller, both parties shall have the right to consult the DPO.

### **Article 11**

#### ***Special provisions for data subjects working within EDA***

1. In addition to the remedies laid down in Regulation 2018/1725, any person employed by EDA may file a complaint with EDPS. EDA staff are advised to contact the DPO in advance of lodging a

complaint. Lodging such a complaint shall not have any effect of stopping time running for the purposes of lodging a complaint pursuant to the relevant provisions of the EDA Staff Regulations.

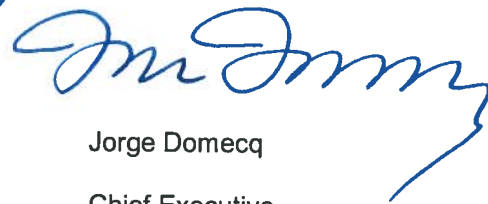
2. Irrespective of the right referred to in paragraph 1, any person employed by EDA may lodge, with the authority authorised to conclude contracts, a complaint, pursuant to the relevant provisions of the Staff Regulations of EDA governing appeals, in respect to a matter relating to the processing of personal data. In that case, the DPO shall be consulted.

**SECTION FIVE  
FINAL PROVISIONS**

**Article 12  
Entry into force**

1. Decisions No 11/19 of 30 September 2011 and 12/01 of 6 February 2012 are hereby repealed.
2. The present Decision shall enter into force on the date of adoption.

Done at Brussels, on 25<sup>th</sup> January 2015



Jorge Domecq

Chief Executive