

INTERNAL RULES

CONCERNING RESTRICTIONS OF CERTAIN DATA-SUBJECT RIGHTS IN RELATION TO THE PROCESSING OF ADMINISTRATIVE PERSONAL DATA IN THE FRAMEWORK OF ACTIVITIES CARRIED OUT BY THE EPPO

Having regard to the Treaty on the Functioning of the European Union,

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/EC36 (hereinafter "the Regulation"), and in particular Article 25 thereof,

Having consulted the European Data Protection Supervisor and received their opinion on 7 October 2020,

Whereas:

- (1) The EPPO Regulation foresees that the EPPO processes two distinct types of personal data, namely administrative personal data and operational personal data, with operational personal data being personal data processed for the purposes of Article 49 of the EPPO Regulation, and administrative personal data being all other personal data than operational personal data, as per Articles 2 (17) and 2(18) of the EPPO Regulation,
- (2) These rules apply only to administrative personal data, and do not impact or contribute in any way to the legal environment of processing of operational personal data,
- (3) These rules and the examples provided herein shall not be used to indicate or derive or support any determination of whether or not personal data processed by the EPPO is administrative or operational personal data,
- (4) The EPPO is bound to applying the Regulation only to its processing of administrative personal data,
- (5) The EPPO has adopted internal rules of processing on personal data, which foresee a dedicated College decision on the application of Article 25 of the Regulation,
- (6) The EPPO is empowered to conduct administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings, in accordance with the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ('Staff Regulations'),

- (7) The EPPO can also conduct internal inquiries into potential breaches of security rules for European Union classified information ('EUCI'), based on its security rules for protecting EUCI,
- (8) The EPPO is subject to both internal and external audits concerning its activities,
- (9) In the context of such administrative inquiries, audits and investigations, the EPPO may cooperate with other Union institutions, bodies, offices and agencies,
- (10) The EPPO can cooperate with third countries' national authorities and international organisations, either at their request or on its own initiative, other than in the context of operational cooperation,
- (11) The EPPO can also cooperate with EU Member States' public authorities, either at their request or on its own initiative, other than in the context of operational cooperation,
- (12) The EPPO is involved in cases before the Court of Justice of the European Union when it either refers a matter to the Court, defends a decision it has taken and which has been challenged before the Court, or intervenes in cases relevant to its tasks. In this context, the EPPO might need to preserve the confidentiality of personal data processed as administrative personal data by the EPPO contained in documents obtained by the parties or the interveners,
- (13) To fulfil its tasks, the EPPO collects and processes information and several categories of administrative personal data, including identification data of natural persons, contact information, professional roles and tasks, information on private and professional conduct and performance, and financial data. The EPPO acts as data controller,
- (14) Under the Regulation, the EPPO is therefore obliged to provide information to data subjects on those processing activities involving administrative personal data and to respect their rights as data subjects,
- (15) The EPPO might be required to reconcile those rights with the objectives of administrative inquiries, audits, investigations and court proceedings. It might also be required to balance a data subject's rights against the fundamental rights and freedoms of other data subjects. To that end, Article 25 of the Regulation gives the EPPO the possibility to restrict, under strict conditions, the application of Articles 14 to 22, 35 and 36 of the Regulation, as well as its Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 20. Unless restrictions are provided for in a legal act adopted on the basis of the Treaties, it is necessary to adopt internal rules, under which the EPPO is entitled to restrict those rights,
- (16) The EPPO might, for instance, need to restrict the information it provides to a data subject about the processing of his or her administrative personal data during the preliminary assessment phase of an administrative inquiry or during the inquiry itself, prior to a possible dismissal or at the pre-disciplinary stage. In certain circumstances, providing such information might seriously affect the EPPO's capacity to conduct the inquiry in an effective way, whenever, for example, there is a risk that the person concerned might destroy evidence or interfere with potential witnesses before they are interviewed. The EPPO might also need to protect the rights and freedoms of witnesses as well as those of other persons involved,
- (17) It might be necessary to protect the anonymity of a witness or whistle-blower who has asked not to be identified. In such a case, the EPPO might decide to restrict access to the

identity, statements and other of such persons, in order to protect their rights and freedoms. These rules however do not govern or apply to such witnesses or whistle-blowers as concerns the operational activities of the EPPO,

(18) It might be necessary to protect confidential information concerning a staff member in the context of a harassment procedure. In such cases, the EPPO might need to restrict access to the identity, statements and other personal data of the alleged victim, the alleged harasser and other persons involved, processed as administrative personal data by the EPPO, in order to protect the rights and freedoms of all concerned,

(19) The EPPO should apply restrictions only when they respect the essence of fundamental rights and freedoms, are strictly necessary and are a proportionate measure in a democratic society. The EPPO should give reasons explaining the justification for those restrictions,

(20) In application of the principle of accountability, the EPPO should keep a record of its application of restrictions,

(21) When processing administrative personal data exchanged with other organisations in the context of its tasks, the EPPO and those organisations should consult each other on potential grounds for imposing restrictions and the necessity and proportionality of those restrictions, unless this would jeopardise the activities of the EPPO,

(22) Article 25(6) of the Regulation obliges the controller to inform data subjects of the principal reasons on which the application of the restriction is based and of their right to lodge a complaint with the EDPS,

(23) Pursuant to Article 25(8) of the Regulation, the EPPO is entitled to defer, omit or deny the provision of information on the reasons for the application of a restriction to the data subject if this would in any way cancel the effect of the restriction. The EPPO should assess on a case-by-case basis whether the communication of the restriction would cancel its effect,

(24) The EPPO should lift the restriction as soon as the conditions that justify the restriction no longer apply, and assess those conditions on a regular basis,

(25) To guarantee utmost protection of the rights and freedoms of data subjects and in accordance with Article 44(1) of the Regulation, the DPO should be consulted in due time of any restrictions that may be applied and verify their compliance with this Decision,

(26) Articles 16(5) and 17(4) of the Regulation provide for exceptions to data subjects' right to information and right of access. If these exceptions apply, the EPPO does not need to apply a restriction under this Decision,

(27) Where the EPPO adopts internal rules on i.a. anti-harassment and whistleblowing, this Decision shall be reviewed and amended accordingly, if appropriate.

the following rules apply:

Article 1

Subject-matter and scope

1. These rules relate to the conditions under which the EPPO may restrict the application of Articles 4, 14 to 22, 35 and 36, pursuant to Article 25 of the Regulation.
2. The EPPO, as the controller, is represented by the Administrative Director.
3. These rules apply to the processing of administrative personal data only, and do not impact on the EPPO's processing of operational personal data, nor shall they be used to determine the processing purpose of any personal data processed by the EPPO.

Article 2

Restrictions

1. The EPPO may restrict the application of Articles 14 to 22, 35 and 36, and Article 4 the Regulation in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 20 thereof:

(a) pursuant to Article 25(1) (a), (b), (c), (d), (e), (f), (g) and (h) of the Regulation, when conducting administrative investigations, administrative inquiries, pre-disciplinary, disciplinary or suspension proceedings under Article 86 and Annex IX of the Staff Regulations and the respectively applicable EPPO Decisions, and when notifying cases to OLAF;

(b) pursuant to Article 25(1)(h) of the Regulation, when ensuring that EPPO staff members may report facts confidentially where they believe there are serious irregularities, as set out in the EPPO Decision on internal rules concerning whistleblowing;

(c) pursuant to Article 25(1)(h) of the Regulation, in the context of a harassment procedure;

(d) pursuant to Article 25(1)(c), (g) and (h) of the Regulation, when conducting internal audits in relation to activities or departments of the EPPO;

(e) pursuant to Article 25(1)(c), (d), (g) and (h) of the Regulation, when providing or receiving assistance to or from other Union institutions, bodies, offices and agencies or cooperating with them in the context of activities under points (a) to (d) of this paragraph and pursuant to relevant service level agreements, memoranda of understanding and cooperation agreements;

(f) pursuant to Article 25(1)(c), (g) and (h) of the Regulation, when providing or receiving assistance to or from third countries national authorities and international organisations or cooperating with such authorities and organisations, either at their request or on its own initiative;

(g) pursuant to Article 25(1)(c), (g) and (h) of the Regulation, when providing or receiving assistance and cooperation to and from EU Member States' public authorities, either at their request or on its own initiative;

- (h) pursuant to Article 25(1)(e) of the Regulation, when processing administrative personal data in documents obtained by the parties or interveners in the context of proceedings before the Court of Justice of the European Union;
 - (i) pursuant to Article 25(1) (a)-(i) of the Regulation, when prohibited from doing so by virtue of a court decision or order;
2. Any restriction shall respect the essence of fundamental rights and freedoms and be necessary and proportionate in a democratic society.
 3. A necessity and proportionality test shall be carried out on a case-by-case basis before restrictions are applied. Restrictions shall be limited to what is strictly necessary to achieve their objective.
 4. For accountability purposes, the EPPO shall draw up a record describing the reasons for restrictions that are applied, which grounds among those listed in paragraph 1 apply and the outcome of the necessity and proportionality test. Those records shall be part of a register, which shall be made available on request to the EDPS. The EPPO shall prepare periodic reports on the application of Article 25 of the Regulation.
 5. When processing administrative personal data received from other organisations in the context of its tasks, the EPPO shall consult those organisations on potential grounds for imposing restrictions and the necessity and proportionality of the restrictions concerned, unless this would jeopardise the activities of the EPPO.

Article 3

Risks to the rights and freedoms of data subjects

1. Assessments of the risks to the rights and freedoms of data subjects of imposing restrictions and details of the period of application of those restrictions shall be registered in the record of processing activities maintained by the EPPO under Article 31 of the Regulation. They shall also be recorded in any data protection impact assessments regarding those restrictions conducted under Article 39 of the Regulation.
2. Whenever the EPPO assesses the necessity and proportionality of a restriction it shall consider the potential risks to the rights and freedoms of the data subject.

Article 4

Safeguards and storage periods

1. The EPPO shall implement safeguards to prevent abuse and unlawful access or transfer of the administrative personal data in respect of which restrictions apply or could be applied. Such safeguards shall include technical and organisational measures and be detailed as necessary in EPPO internal decisions, procedures and implementing rules. The safeguards shall include:
 - (a) a clear definition of roles, responsibilities and procedural steps;

- (b) if appropriate, a secure electronic environment which prevents unlawful and accidental access or transfer of electronic data to unauthorised persons;
- (c) if appropriate, secure storage and processing of paper-based documents;
- (d) due monitoring of restrictions and a periodic review of their application.

The reviews referred to in point (d) shall be conducted at least every six months.

- 2. Restrictions shall be lifted as soon as the circumstances that justify them no longer apply.
- 3. Administrative personal data shall be retained in accordance with the applicable EPPO retention rules, to be defined in the data protection records maintained under Article 31 of the Regulation. At the end of the retention period, administrative personal data shall be deleted, anonymised or transferred to archives in accordance with Article 13 of the Regulation.

Article 5

Involvement of the Data Protection Officer

- 1. The EPPO DPO shall be informed without undue delay whenever data subject rights are restricted in accordance with this Decision. He / she shall be given access to the associated records and any documents concerning the factual or legal context.
- 2. The EPPO DPO may request a review of the application of a restriction. The EPPO shall inform its DPO in writing of the outcome of the review.
- 3. The EPPO shall document the involvement of the DPO in the application of restrictions, including what information is shared with him or her.

Article 6

Information to data subjects on restrictions of their rights as relates to administrative personal data processed by the EPPO

- 1. The EPPO shall include a section in the data protection notices as regards administrative personal data processed by the EPPO published on its website/intranet providing general information to data subjects on the potential for restriction of data subjects' rights pursuant to Article 2(1) as regards administrative personal data processed by the EPPO. The information shall cover which rights may be restricted, the grounds on which restrictions may be applied and their potential duration.
- 2. The EPPO shall inform data subjects individually, in writing and without undue delay of ongoing or future restrictions of their rights as regards administrative personal data processed by the EPPO. The EPPO shall inform the data subject of the principal reasons on which the application of the restriction is based, of their right to consult the DPO with a view to challenging the restriction and of their rights to lodge a complaint with the EDPS.
- 3. The EPPO may defer, omit or deny the provision of information concerning the reasons for a restriction and the right to lodge a complaint with the EDPS for as long as it would cancel the effect of the restriction. Assessment of whether this would be justified shall take place on

a case-by-case basis. As soon as it would no longer cancel the effect of the restriction, the EPPO shall provide the information to the data subject.

Article 7

Communication of a personal data breach of administrative personal data to the data subject

1. Where the EPPO is under an obligation to communicate a data breach of administrative personal data under Article 35(1) of the Regulation, it may, in exceptional circumstances, restrict such communication wholly or partly. It shall document in a note the reasons for the restriction, the legal ground for it under Article 2 and an assessment of its necessity and proportionality. The note shall be communicated to the EDPS at the time of the notification of the personal data breach.
2. Where the reasons for the restriction no longer apply, the EPPO shall communicate the personal data breach of administrative personal data to the data subject concerned and inform him or her of the principal reasons for the restriction and of his or her right to lodge a complaint with the EDPS.

Article 8

Confidentiality of electronic communications

1. In relation to these rules concerning administrative personal data, in exceptional circumstances, the EPPO may restrict the right to confidentiality of electronic communications under Article 36 of the Regulation. Such restrictions shall comply with Directive 2002/58/EC of the European Parliament and of the Council.
2. Where the EPPO restricts the right to confidentiality of electronic communications, it shall inform the data subject concerned by the administrative personal data, in its reply to any request from the data subject, of the principal reasons on which the application of the restriction is based and of his or her right to lodge a complaint with the EDPS.
3. The EPPO may defer, omit or deny the provision of information concerning the reasons for a restriction and the right to lodge a complaint with the EDPS for as long as it would cancel the effect of the restriction. Assessment of whether this would be justified shall take place on a case-by-case basis.

Article 9

Entry into force

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



EUROPEAN
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PROSECUTOR'S
OFFICE

COLLEGE DECISION 006/2020

Done at Luxembourg on 21 October 2020.

On behalf of the College,

Laura Codruța KÖVESI

European Chief Prosecutor



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