



EUROPEAN COMMISSION
EUROPEAN ANTI-FRAUD OFFICE (OLAF)

The Director-General

DECISION of the Director General of the European Anti-Fraud Office (OLAF)

adopting implementing rules concerning the Data Protection Officer for OLAF and the Secretariat of the Supervisory Committee

THE DIRECTOR GENERAL OF OLAF,

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/EC¹, and in particular Article 45(3) and the Annex thereof,

Having regard to Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999², and in particular Article 10(4) 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) Regulation (EU) 2018/1725 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.
- (3) Article 45(3) of Regulation (EU) 2018/1725 requires that further implementing rules concerning the Data Protection Officer shall be adopted by each Union institution or body.
- (4) Commission Decision (EU) 2018/1962 of 11 December 2018³ lays down internal rules concerning the processing of personal data by OLAF in relation to the provision of information to data subjects and the restriction of certain of their rights in accordance with Article 25 of Regulation (EU) 2018/1725.
- (5) The Decision of the Director General of OLAF of 31 January 2002 (01159*4.2.2002) created the post of Data Protection Officer for OLAF.
- (6) Article 18 of the Rules of Procedure of the OLAF Supervisory Committee set outs the principles and rules applicable to the processing of personal data by the Supervisory Committee.
- (7) The OLAF Supervisory Committee provided its positive opinion on 25 June 2019.

¹ OJ, L 295, 21.11.2018, p. 39.

² OJ L 248, 18.9.2013, p. 1.

³ OJ L 315, 12.12.2018, p. 41.

- (8) The European Data Protection Supervisor provided its opinion on 20 June 2019.

HAS DECIDED AS FOLLOWS:

Article 1
Definitions

For the purpose of this Decision and without prejudice to the definitions provided for by Regulation (EU) 2018/1725 (hereinafter ‘the Regulation’), the following definitions shall apply:

- (1) ‘controller’ means the European Anti-Fraud Office (OLAF), represented by its Director General, and the secretariat of the OLAF Supervisory Committee, represented by the Head of the Secretariat;
- (2) ‘designated person’ means a staff member designated by the controller to be in charge of a particular processing operation and internally responsible for it.

Article 2
Subject-matter and scope

1. This Decision provides the framework for implementation of the function of Data Protection Officer (hereinafter referred to as the ‘DPO’) within OLAF and in the secretariat of the OLAF Supervisory Committee.
2. This Decision shall apply to all activities in relation to the processing of personal data by the controllers.

Article 3
Designation and status

1. The Director General of OLAF (hereinafter ‘the Director General’) shall designate a DPO, after consulting the OLAF Supervisory Committee, and register him/her with the European Data Protection Supervisor (hereinafter referred to as the ‘EDPS’). The contact details of the DPO shall be published on OLAF's website and communicated to the EDPS.
2. The term of office of the DPO shall be five years and may be renewed.
3. The DPO shall be selected from EU staff subject to Staff Regulations on the basis of his or her professional qualities and, in particular, his or her expert knowledge of data protection law. In addition to the requirements of Article 43(3) of the Regulation, the DPO shall have a sound knowledge of the controller's activities, its structure and administrative rules and procedures.
4. Where the Director General intends to dismiss the DPO from the post in accordance with Article 44(8) of the Regulation, he/she shall notify the EDPS of the reasons of the envisaged dismissal. He/she shall also notify the Supervisory Committee of these reasons. After obtaining the consent of the EDPS, the Director General shall take the decision specifying the reasons of dismissal. If not indicated otherwise in the decision, the DPO is considered dismissed the day following that of the decision.
5. The DPO shall act in an independent manner with regard to the internal application of the provisions of the Regulation and may not receive any instructions with respect

to the performance of his/her function. Without prejudice to the relevant provisions of the Regulation, the DPO shall be subject to the rules and regulations applicable to officials of the European Union. The DPO shall be administratively attached to the Director General.

6. The Director General may designate from OLAF staff a Deputy DPO in accordance with the same procedure and for the same term, as laid down in paragraphs 1 to 4. The Deputy DPO shall exercise, where necessary, the DPO's tasks and duties during the absence of the DPO or where the DPO is otherwise prevented from exercising certain tasks and duties.

Article 4 *Tasks and Duties of the DPO*

1. Without prejudice to the tasks laid down in Article 45 of the Regulation, the DPO shall contribute to creating a culture of protection of personal data based on risk assessment and accountability. The DPO shall provide trainings to designated persons and to all other staff members.
2. Pursuant to Article 45 of the Regulation, the DPO shall ensure in an independent manner the internal application of the Regulation and monitor compliance with the Regulation, with other applicable Union law containing data protection provisions, including related internal rules and guidelines, and with the controllers' policies in relation to the protection of personal data.
3. The DPO shall keep:
 - (a) the register of records for processing activities and shall make it publicly accessible;
 - (b) a register of data breaches referred to in point 16 of Article 3 of the Regulation; the register shall not be publicly accessible.
4. In accordance with Article 45(2) of the 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 and assist the controller when carrying out a data protection impact assessment pursuant to Article 39 of the Regulation. He/she shall monitor its performance and consult the EDPS in case of doubt as to the need for a data protection impact assessment.
6. DPO shall assist the controller on the need for prior consultation of the EDPS pursuant to Article 40 of the Regulation.
7. The DPO shall ensure the following:
 - the rights and freedoms of data subjects are not adversely affected by processing operations;
 - the data subjects are informed of their rights and obligations in accordance with the Regulation;
 - requests from data subjects under Article 44(4) of the Regulation to the DPO are handled in timely manner and in line with the principles of good administration.

8. The DPO shall cooperate in the discharge of his/her functions with the DPOs of the other Union institutions and bodies. Without prejudice to OLAF's specific legal framework, the DPO shall, in particular, cooperate with the DPO of the European Commission to ensure a consistent approach to personal data protection.
9. The DPO shall respond to requests from the EDPS and, within the sphere of his or her competence, to cooperate and consult with the EDPS at the latter's request or on his or her own initiative.
10. The controller 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 controller before the Courts or any other supervisory body in data protection related cases.
11. The DPO shall regularly report to the controller on the status of implementation of data protection rules. Any report submitted by the DPO shall be published on the controllers' respective intranets.
12. For processing operations on personal data under his or her responsibility the DPO shall act as designated person.

Article 5 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 Regulation, the DPO shall be entitled to exercise the following powers:

- (a) to have access at all times to all personal data, all relevant information, all data processing installations and data carriers;
- (b) to investigate upon request, or on his/her own initiative, matters and occurrences directly relating to the DPO tasks, in accordance with the Article 11 of the present Decision;
- (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 recipient in a Member State, 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 controller any failure of a staff member to comply with the obligations under the Regulation;
- (g) to restrict data subjects' rights in accordance with the provisions of Commission Decision (EU) 2018/1962 in the framework of his/ her own investigation conducted in accordance with Article 11;
- (i) in the event of conflict relating to interpretation or implementation of that Regulation, to inform the controller before referring the matter to the EDPS.

Article 6
Information to the Data Protection Officer

1. The controller shall inform the DPO whenever an issue, which has data protection implications, is under consideration at the latest prior to taking any decision.
2. The DPO shall be informed of any correspondence/interaction between the controller and the EDPS.

Article 7
Resources

1. The controller 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.
2. Data protection correspondents may be appointed in each Unit to assist the DPO in disseminating data protection related information.

Article 8
Duty to cooperate

Controllers, designated persons and other staff, as well as processors shall cooperate with the DPO in all matters falling within the competence of the DPO.

Article 9
Designated Persons

1. Without prejudice to the responsibility of the controller, the designated persons shall ensure that all processing operations involving personal data within their area of responsibility comply with the Regulation.
2. Without prejudice to the provisions of the Regulation concerning the obligations of the controller, the designated persons shall fulfil the following obligations:
 - (a) to consult the DPO on the processing operations, in particular in the event of doubt as to their conformity and the need for a data protection impact assessment or a prior consultation with the EDPS;
 - (b) to notify, without undue delay, any possible data breach to the DPO;
 - (c) to maintain records of processing activities pursuant to Article 31(1) of the Regulation and include such records in the register referred to in Article 10 of this Decision;
 - (d) to participate in training and information sessions regarding data protection issues.

Article 10
Register

1. The register of records of processing activities referred to in Article 4(3) shall comprise a database of information on all the processing operations carried out by the controller. It shall be made publicly accessible on the controllers' respective websites.

2. The designated persons shall use the online notification system to submit the records of processing activities to the DPO pursuant to Article 9(2)(a).

Article 11
DPO Investigations

1. Requests for an investigation referred to in Article 5(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 designated person in charge of the processing activity in question. The latter shall reply to the DPO within 15 working days. The DPO may wish 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. No one shall suffer prejudice on account of a matter brought to the attention of the DPO alleging a breach of the provisions of the Regulation.

Article 12
Entry into force

This Decision shall enter into force on the day of its adoption.

Done in Brussels,

Ville ITALIA
Director General of OLAF