

Decision No 20 of the Management Board of the European Foundation for the improvement of living and working conditions (Eurofound) adopting implementing rules concerning the Data Protection Officer pursuant to Article 45(3) of Regulation (EU) No 2018/1725

THE MANAGEMENT BOARD OF THE EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS (EUROFOUND),

Having regard to Regulation (EU) No 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 data¹, and in particular Article 45(3),

Having regard to Regulation (EU) 2019/127 of the European Parliament and of the Council of 16 January 2019 establishing the European Foundation for the improvement of living and working conditions, and repealing Council Regulation (EEC) No 1365/75², and in particular Article 24(4),

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Regulation (EU) 2018/1725 (hereinafter referred to as “the Regulation”) sets out the principles and rules applicable to all Union institutions, bodies, offices and agencies with regard to protection of personal data and provides for the appointment by each Union institution or body of a Data Protection Officer.
- (2) Article 45(3) of the Regulation requires 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 Data Protection Officer.
- (3) Article 24(4) of Regulation (EU) No 2019/127 (hereinafter referred to as “Eurofound’s Founding Regulation”) stipulates that the processing of personal data by Eurofound shall be subject to the Regulation and requires the Management Board to establish, within six months of the date of its first meeting and after consulting the European Data Protection Supervisor, measures for the application of that Regulation by Eurofound, including measures concerning the appointment of a Data Protection Officer.

HAS ADOPTED THIS DECISION:

¹. OJ L 295, 21.11.2018, p. 39-98.

². OJ L 30, 31.1.2019, p. 74-89.

Article 1

Definitions

For the purpose of this Decision and without prejudice to the definitions provided for by the Regulation:

- (1) “Agency” shall mean the European Foundation for the improvement of living and working Conditions (Eurofound).
- (2) “(data) controller” shall be the Executive Director of Eurofound, or the Head(s) of Unit or other management staff of the Agency acting on behalf of the Executive Director in relation to one or more activities processing personal data in the Agency.
- (3) “responsible staff” shall mean staff responsible on behalf of Eurofound for activities processing personal data in the Agency.

Article 2

Scope

This Decision further defines the rules and procedures for the implementation of the function of Data Protection Officer (hereinafter referred to as the “DPO”) at Eurofound pursuant to Article 45(3) of the Regulation. It shall apply to all activities in relation to the processing of personal data by or on behalf of the Agency. “DPO” shall mean the Data Protection Officer and, if applicable, the Deputy Data Protection Officer, forming the Data Protection Office of the Agency.

Article 3

Designation, status and independence

1. The DPO shall be designated on the basis of his or her professional qualities and registered with the European Data Protection Supervisor (hereinafter referred to as the “EDPS”). A Deputy DPO may be designated in accordance with the same procedure and for the same term, to support the DPO in all his or her duties and to ensure the continuity of the function in his or her absence.
2. The term of office of the DPO shall be for a period of between three (3) and to five (5) years by decision of the Executive Director to ensure independence. The DPO shall be

eligible for reappointment. The DPO shall ensure in an independent manner the internal application of the provisions of the Regulation and shall not be receive any instructions regarding the exercise of his or her other tasks. The Executive Director shall ensure that the DPO tasks do not result in a conflict of interests with any other official tasks and duties conferred on the DPO.

3. The DPO shall be selected from the staff of Eurofound. He or she must have expert knowledge of data protection law and practices and a sound knowledge of Eurofound's services, its structure and its administrative rules and procedures. A call for expression of interest may be circulated internally to help identify interested staff.
4. Without prejudice to the provisions of the Regulation concerning his or her independence and obligations, the DPO shall report directly to the Executive Director in the performance of his or her duties as DPO. This reporting obligation shall be taken into account in the context of the annual performance appraisal of the staff member appointed as DPO (in particular with regard to the specific DPO duties), for which the Executive Director shall ensure an equal and fair treatment.
5. The DPO shall not suffer any prejudice on account of the performance of his or her duties.
6. The DPO shall be involved properly and in a timely manner in all issues which relate to the protection of personal data Eurofound.
7. In accordance with the Regulation, the DPO may be dismissed from the post of DPO if he or she no longer fulfils the conditions required for the performance of his or her duties and only with the consent of the EDPS. The DPO may also be removed from the post of DPO at his or her request for reasons that do not compromise the exercise of his or her functions.

Article 4

Tasks and duties

1. The DPO shall raise awareness on applicable data protection law and encourage a culture of protection of personal data and accountability within the services involved in the processing of personal data.
2. The DPO shall monitor the implementation of the Regulation in the Agency and issue an annual report as described in Article 7(3) of this Decision.

3. The DPO shall assist responsible staff in the preparation of their records of processing activities. In performing his or her duties, the DPO shall have access at all times to the data forming the subject matter of processing activities and to all offices, data-processing installations and data carriers, including those of processors.
4. Pursuant to Article 31(5) of the Regulation and building on the records provided by the responsible staff, the DPO shall keep a register of the processing activities carried out by the Agency. The DPO shall make the register publicly accessible.
5. The DPO shall help responsible staff to assess the data protection risks of the processing activities under their responsibility. The DPO shall provide advice and assist responsible staff when carrying out a data protection impact assessment (DPIA) pursuant to Article 39 of the Regulation. He or she shall monitor its performance and consult the EDPS in case of doubt as to the need for a DPIA. The DPO shall also advise on what methodology to use and contribute to selecting safeguards to apply to mitigate the risks to the rights and freedoms of the data subjects, as well as on the correct implementation of the DPIA.
6. The DPO shall assist responsible staff on the need for prior consultation of the EDPS pursuant to Article 40 of the Regulation.
7. The DPO shall provide advice, where requested, as regards the necessity for a notification or a communication of a personal data breach pursuant to Articles 34 and 35 of the Regulation respectively.
8. The DPO shall ensure that responsible staff inform data subjects of their rights and obligations pursuant to the Regulation in the context of processing activities. He or she shall support responsible staff in ensuring that the rights and freedoms of the data subjects are unlikely to be adversely affected by the activities processing personal data.
9. The DPO may keep a confidential inventory of requests from individuals who, when lodging enquiries or complaints, wish to reveal their identity only to the DPO. Enquiries pursuant to Articles 17 to 24 of the Regulation may not remain anonymous.
10. The DPO may make recommendations and give advice to responsible staff and processors on matters concerning the application of the Regulation.
11. The DPO may perform investigations on request, or upon his or her own initiative, into matters and occurrences directly relating to his or her tasks, and report back to the person who commissioned the investigation or to the controller, in accordance with the procedure described

in Article 13 of this Decision. If the applicant is a data subject asking for an investigation on the processing of his or her personal data, or if the applicant acts on behalf of the data subject concerned, the DPO must, to the extent possible, ensure confidentiality on the request, unless the data subject concerned gives his or her unambiguous consent for the request to be handled otherwise.

12. Without prejudice to his or her independence, the DPO may be requested by the Executive Director to represent Eurofound on any issues relating to the internal application of the provisions of the Regulation, including participation in interinstitutional committees and bodies.

13. In addition to his or her tasks within Eurofound, the DPO shall cooperate, in carrying out his or her functions, with the DPOs of other Union institutions and bodies, especially by exchanging experience and best practices and with particular attention to the DPOs of other Union agencies that are engaged in similar activities to those of Eurofound. He or she shall also participate in the dedicated network(s) of DPOs. The DPO is also encouraged to exchange, as much as possible, experience and practices with DPOs of other organisations.

14. The DPO shall respond to requests from the EDPS and, within the sphere of his or her competence, cooperate and consult with the EDPS at the latter's request or on his or her own initiative.

15. For processing operations on personal data under his or her responsibility, the DPO shall act as responsible staff.

16. The tasks of the DPO listed in paragraphs 1-15 above are without prejudice to the tasks assigned to him or her under the Regulation.

Article 5

Powers

1. In performing his or her tasks and duties as DPO and without prejudice to the powers conferred on him or her by the Regulation, the DPO:

- (a) may request legal guidance from Eurofound's available sources of legal advice;

- (b) may, in the event of disagreement with the responsible staff on the interpretation or implementation of the Regulation, inform the competent management level and the Executive Director, before referring the matter to the EDPS;
 - (c) may, after informing the staff member concerned and their manager and suggesting safeguards to prevent future similar incidents, bring to the attention of the Executive Director any failure of a staff member to comply with the obligations under the Regulation and with those Internal Control Principles of the Agency's Internal Control Framework³ specifically related to the obligations under the Regulation;
 - (d) may investigate matters and occurrences directly relating to the tasks of the DPO, applying the appropriate principles for inquiries and audits at the Agency and the procedure described in Article 13 of this Decision;
 - (e) shall be able to obtain access at any time to the data forming the subject matter of processing operations on personal data and to all offices, data-processing installations and data carriers, including those of processors;
 - (f) shall have the support and assistance of the ICT services of Eurofound, including those provided to Eurofound by external organisations, and may request technical opinions from the Local Informatics Security Officer (LISO);
 - (g) shall participate in internal committees and working groups whenever issues relating to the processing of personal data arise. He or she may propose relevant points in the agenda of those committees and working groups.
2. In exercising his or her powers, the DPO shall take account of the Guidelines issued by the EDPS in the different fields.
 3. Without prejudice to the applicable confidentiality or security rules, all responsible staff and any other Eurofound staff shall assist the DPO in performing his or her duties and give information in reply to questions.

³. Decision of 16 November 2018 of the Governing Board of Eurofound adopting the Internal Control Framework of Eurofound.

Article 6

Resources

The Agency shall provide the DPO with the necessary resources to carry out his or her tasks and duties. The DPO shall have access to the necessary training and the opportunity to maintain his or her expert knowledge up-to-date with regard to the legal and technical aspects of data protection.

Article 7

Information and cooperation

1. The DPO shall respond to requests for advice from and cooperate with the staff of the Agency.
2. The DPO shall be informed, as appropriate, about opinions and position papers of the EDPS directly relating to the internal application of the provisions of the Regulation, as well as about opinions concerning the interpretation or implementation of other legal acts related to the protection of personal data and access to personal data.
3. The DPO shall inform the Executive Director by means of reports and dedicated meetings. The DPO shall submit to Eurofound's Management Board an annual report on his or her activities and on the state of play as regards the data protection activities and compliance of the Agency. The DPO shall produce a summary of this report to contribute to the Consolidated Annual Activity Report of Eurofound.
4. The DPO shall contribute to the Annual Work Programme of Eurofound.

Article 8

Staff responsible for activities processing personal data

1. Responsible staff shall ensure that all processing operations involving personal data within their area(s) of responsibility comply with the Regulation.
2. Without prejudice to the provisions of the Regulation concerning their obligations, responsible staff shall:
 - (a) maintain a record of activities processing personal data under their responsibility and seek advice from the DPO to establish the record. They shall transmit the records to the DPO to create the register as referred to in Article 31(5) of the Regulation.

- (b) notify and involve, as appropriate, the DPO as of the planning phase of any activity processing personal data.
- (c) perform an assessment of risks for the fundamental rights and freedoms of data subjects and document it in the record. If the conditions of Article 39 of the Regulation apply, this assessment shall take the form of a data protection impact assessment (DPIA). The advice of the DPO shall be sought in performing this assessment.
- (d) implement, as an outcome of this assessment, technical and organisational measures to adequately protect data subjects and comply with the Regulation; they shall seek the advice of the DPO in selecting these measures;
- (e) seek the advice of the DPO in case a prior consultation of the EDPS is needed pursuant to Article 40 of the Regulation.
- (f) inform the DPO of any direct interactions between them and the EDPS regarding the internal application of the relevant provisions of the Regulation.

Article 9

Personal Data Breach

1. In case of a personal data breach, the Local Informatics Security Officer (LISO) shall inform the responsible staff and the DPO without undue delay, including when he or she has doubts on whether personal data are affected by the security breach.
2. The Local Informatics Security Officer and/or the responsible staff shall provide the DPO with all the necessary information enabling him or her to ensure that the Agency complies with the Regulation and in particular with the obligation on personal data breach notifications and communications laid down in Articles 34 and 35 of that Regulation.

Article 10

Processors

1. Contracts shall be concluded with external processors. Such contracts shall contain the specific requirements mentioned in Article 29(3) of the Regulation. Responsible staff shall consult the DPO regarding the draft data protection contractual terms.

2. Each processor shall maintain a record of all categories of processing activities carried out on behalf of the Agency and shall communicate it to the Agency upon request. Contracts with processors shall establish a duty, among others, to provide the Agency with the necessary information to create the Agency's records referred to in Article 31(1) of the Regulation.

Article 11

Joint Controllers

Formal arrangements shall be concluded with joint controllers to allocate responsibilities for compliance with the Regulation. Responsible staff shall consult the DPO on those draft agreements.

Article 12

Register

1. The register mentioned in Article 4(4) of this Decision is a repository of the Agency which contains all the records of activities processing personal data submitted by the responsible staff.
2. The register shall be accessible in electronic format in the Agency's premises. This electronic format shall also be published on Eurofound's website.
3. Any individual may request an extract of the register in writing from the DPO, who shall reply within fifteen (15) working days.

Article 13

Investigation Procedure

1. The request for an investigation mentioned in Article 4(11) of this Decision shall be addressed to the DPO in writing. Within fifteen (15) working days upon receipt, the DPO shall send an acknowledgement of receipt to the person who commissioned the investigation and verify whether the request is to be treated as confidential. In the event of manifest abuse of the right to request an investigation, in particular where it is repetitive, abusive and/or pointless, the DPO may refuse to act on the request. In this case, he or she shall inform the applicant accordingly by setting out the reasons for his or her decision.

2. The DPO shall request a written statement on the matter from the responsible staff for the data processing activity in question. The responsible staff shall provide a response to the DPO within fifteen (15) working days. The DPO may request complementary information from the responsible staff and/or from other parties within fifteen (15) working days. If appropriate, the DPO may request guidance on the issue from Eurofound's available sources of legal advice. The DPO shall be provided with the requested guidance within twenty (20) working days.
3. The DPO shall report back to the person who requested the investigation no later than three (3) months following its receipt.
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 14

Exercise of rights by data subjects

When the data subjects contact the Agency to exercise their rights pursuant to Articles 17 to 24 of the Regulation:

- (a) the responsible staff shall consult the DPO before acting in response to the data subject's request.
- (b) the DPO may act as responsible staff for managing data subjects' requests on behalf of the Agency. If this is the case, it shall be detailed in an operational manual.

Article 15

Restrictions under Article 25 of the Regulation

The data subjects' rights provided for in Articles 14 to 22, 35 and 36, as well as Article 4 of the Regulation, in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22 of the Regulation, may be restricted on the basis of internal rules laid down by Eurofound pursuant to Article 25(1) of that Regulation. Responsible staff shall seek the advice of the DPO when planning to apply these restrictions.

Article 16

Repeal

The Decision of the Director of Eurofound of 1 January 2012 adopting implementing rules concerning data protection at Eurofound pursuant to Article 24(8) of Regulation (EC) No 45/2001⁴ shall be repealed with effect from the date of entry into force of the present Decision.

Article 17

Entry into force

1. This Decision shall enter into force on the day following that of its adoption by the Management Board.
2. Following its entry into force, this Decision shall be published on Eurofound's website.

Done by written procedure on 20 December 2019

For the Management Board

The Chairperson

⁴. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1-22.