



**Decision No 04/2023  
of 16 June 2023  
of the Management Board  
on implementing rules concerning the Data Protection Officer of the European Labour  
Authority pursuant to Article 45(3) of Regulation (EU) 2018/1725**

THE MANAGEMENT BOARD OF THE EUROPEAN LABOUR AUTHORITY,

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/EC, ('Regulation (EU) 2018/1725' or 'Regulation'), and in particular Article 45 thereof,

Having regard to Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/3441 ('the founding Regulation') and in particular Article 36 thereof,

Having consulted 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 36(2) of the founding Regulation stipulates that the Management Board shall establish measures to comply with the obligations laid down in Regulation (EU) 2018/1725.

(4) The European Data Protection Supervisor was informed and consulted in accordance with Article 41(1) and (2) of Regulation (EU) 2018/1725 and delivered an opinion on 20 March 2023. The opinion was incorporated into the draft decision.

HAS DECIDED AS FOLLOWS:

## *Article 1*

### Scope

1. This Decision provides rules and procedures for the application of Regulation (EU) 2018/1725 by the European Labour Authority, and sets out implementing rules concerning the Data Protection Officer for the Authority ('DPO').
2. This Decision lays down the rules to be followed by the Authority, in relation to the monitoring, investigative, auditing or consultative tasks of the DPO, and to inform data subjects of the processing of their personal data in accordance with Articles 14, 15 and 16 of Regulation (EU) 2018/1725.

## *Article 2*

### Controllershship

For the purposes of this Decision, the European Labour Authority shall be considered to be the controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725. The controller is represented by its Executive Director.

## *Article 3*

### Definitions

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

- (a) 'Data Protection Officer' means the person whom the European Labour Authority has designated pursuant to Article 43 of Regulation (EU) 2018/1725;
- (b) '(Data) controller' means the European Labour Authority, represented by its Executive Director. The Executive Director may delegate his or her tasks ("delegate/operational controller") to reflect the operational responsibilities to ensure compliance with the Regulation in relation to specific processing operations carried out by ELA.

## *Article 4*

### Designation, status and independence

1. The DPO shall be selected from the staff of the Authority on the basis of his or her professional qualities, including a sound knowledge of the Authority's services, its structure, and its administrative rules and procedures. 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 the office of the DPO shall be for a period of 3 up to 5 years by the decision of the Executive Director to ensure independency and registered with the European Data Protection Supervisor (hereinafter referred to as the 'EDPS'). 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 instructed regarding the exercise of his or her other tasks. The ELA shall ensure that the DPO tasks do not result in a conflict of interests with any other official tasks and duties conferred to the DPO.

3. Without prejudice of 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 also extended to the Management Board of the Authority through an annual report on his or her activities and on the state of play as regards the data protection activities and compliance of the Authority. 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 Director shall ensure an equal and fair treatment.
4. The DPO shall not suffer any prejudice on account of the performance of his or her duties.
5. The DPO shall be involved properly and in a timely manner in all issues which relate to the protection of personal data in the Authority.
6. In accordance with the Regulation, the DPO and/or Deputy DPO may be dismissed from the post if he or she no longer fulfils the conditions required for the performance of his or her duties and only with the approval of the Management Board, after consultation of the EDPS. The DPO and/or Deputy DPO may also be removed from the post at his or her request for reasons that do not compromise the exercise of his or her functions.

#### *Article 5*

##### Tasks and duties

1. The DPO shall contribute to creating a culture of protection of personal data within the Authority based on risk assessment and accountability, and raise awareness on applicable data protection law.
2. The DPO shall monitor the implementation of Regulation (EU) 2018/1725 in the Authority by, inter alia, annually issuing a report as described in Article 8 of this Decision and participating in the Authority's Annual Work Programme and Consolidated Annual Activity.
3. The DPO shall keep the register of the Authority's records of processing operations in a central register and shall make it publicly accessible.

The DPO shall keep an internal register of personal data breaches within the meaning of Article 3(16) of Regulation (EU) 2018/1725.

The DPO shall also keep an internal confidential register 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. Anonymous reports will be made by the DPO as part of the annual plan revision to ensure a correct follow-up of the cases.

4. The DPO shall assist controller 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 the processors.

5. The DPO may make recommendations and advise controller and processors on matters concerning the application of the Regulation.
6. The DPO shall help controller to assess the data protection risks of the processing activities under their responsibility. The DPO shall provide advice and assist controller 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 will advise on what methodology to use and contribute to selecting safeguards to apply to mitigate the risks and freedoms of the data subjects, as well as on the correct implementation of the DPIA.
7. The DPO shall assist controller on the need for prior consultation of the EDPS pursuant to Article 40 of the Regulation.
8. The DPO shall provide advice, where requested, as regards the necessity for a notification or communication for a personal data breach pursuant to Articles 34 and 35 of the Regulation respectively.
9. The DPO shall ensure that the controller informs data subjects of their rights and obligations pursuant to the Regulation in the context of ELA processing activities. The DPO shall support the controller in ensuring that the rights and freedoms of the data subjects are not adversely affected by the activities requiring the processing of personal data.
10. The DPO shall be informed without undue delay before any decision to restrict data subjects' rights is taken in accordance with the Regulation, ELA internal rules and Article 16 of this Decision. The DPO shall be given access to the associated records and any documents concerning the factual or legal context.
11. The DPO may perform investigations on request, or upon his or her initiative, into matters 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 procedures described in Article 14 of this Decision.
12. The DPO shall respond to requests, cooperate and consult the EDPS, within the sphere of his or her competence, at the latter's request on his or her own initiative.
13. For processing operations on personal data under his or her responsibility, the DPO shall be considered to be an "operational" controller as delegated by the Executive Director.
14. In the discharge of his or her functions, the DPO shall cooperate with the DPOs designated by the other Union institutions and bodies, and, in particular, the DPOs of other Union agencies that are engaged in similar activities to those of the Authority<sup>1</sup>. The DPO is also encouraged to exchange, as much as possible, experience and practices with DPOs of other organisations. He or she shall participate in the dedicated network(s) of EUI DPOs.

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<sup>1</sup> According to ELA Regulation: the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND), the European Centre for the Development of Vocational Training (CEDEFOP), the European Agency for Safety and Health at Work (EU-OSHA), and the European Training Foundation (ETF), as well as, as regards the fight against organised crime and trafficking in human beings, with the European Union Agency for Law Enforcement Cooperation (EUROPOL) and European Union Agency for Criminal Justice Cooperation (EUROJUST).

15. The tasks of the DPO listed in this Article are without prejudice to the tasks assigned to him or her under the Regulation.

## *Article 6*

### **Powers**

1. In performing the DPO tasks, and without prejudice to the powers conferred by the Regulation, the DPO:
  - (a) shall, where necessary for his or her tasks have access to the data forming the subject matter of processing operations on personal data and to all offices, data processing installations and data carriers, including also those of processors;
  - (b) may request legal guidance from the Authority's available sources of legal advice;
  - (c) may, in the event of a conflict between the DPO and the controller or processor relating to the interpretation or implementation of Regulation (EU) 2018/1725, inform the Executive Director in his or her role as controller of the Authority and the Management Board, before referring the matter to the EDPS;
  - (d) may bring to the attention of the Executive Director any failure of a staff member to comply with the obligations under the Regulation. The Executive Director may be notified after the DPO informed the concerned staff members and their manager and suggested them safeguards to prevent similar future incidents;
  - (e) shall have support and assistance of the ICT services of the Authority, including those provided to the Authority by external organisations and may request technical opinions from the ELA ICT and Facilities Sector and the Document Management Officer (DMO);
  - (f) shall participate in internal committees, expert panels and working groups whenever issues relating to the processing of personal data arise. The DPO may propose relevant points in the agenda of those committees, expert panels and working groups;
  - (g) may perform investigations on request, or upon the DPO's own initiative, into matters and occurrences directly relating to the DPO tasks in accordance with the procedure set out in Article 14 of this Decision;
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, controller and any other Authority staff shall assist the DPO in performing his or her duties and give information in reply to questions.

## *Article 7*

### **Resources**

The Authority 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 8*

### **Information and cooperation**

1. The DPO shall respond to requests for advice from and cooperate with the staff of the Authority.
2. The DPO shall inform the Executive Director by means of reports and dedicated meetings. The DPO shall submit to the Authority'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 Authority.
3. The DPO shall contribute to the Annual Work Programme of the Authority and any other relevant documentation related to the strategic and resources programming activity of the Authority.

### *Article 9*

#### Controller

1. Controller 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, controller 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 and Article 13 of this Decision;
  - b) consult the DPO on the conformity of processing operations, in particular in the event of doubt as to conformity;
  - c) notify and involve, as appropriate, the DPO as of the planning phase of any activity processing personal data;
  - d) report to the DPO, on the handling of any request received from a data subject for the exercise of his or her rights;
  - e) perform an assessment of risks for the fundamental rights and freedoms of the 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;
  - f) 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;
  - g) seek the advice of the DPO in case a prior consultation of the EDPS is needed, pursuant to Article 40 of the Regulation;
  - h) notify the EDPS in case of personal data breaches;
  - i) inform the DPO of any interactions between them and the EDPS regarding the internal application of the relevant provisions of the Regulation.

### *Article 10*

#### Personal data breach

1. In case of a personal data breach, the ELA ICT and Facilities Sector shall inform the controller and the DPO without undue delay, including when there is no certainty on whether personal data are affected by the security breach.
2. The ELA ICT and Facilities Sector and/or the controller shall provide the DPO with all the necessary information enabling him or her to ensure that the Authority complies with the Regulation and in particular with the obligation on personal data breach notification and communications laid down in Articles 34 and 35 of that Regulation. The specific procedures approved by the Authority shall apply<sup>2</sup>.
3. The DPO shall keep an internal register of these personal data breaches, as specified in Article 13 of this Decision, and produce anonymised statistics of personal data breaches managed by the Authority, specifying the total number of personal data breaches, the number of personal data breaches notified to the EDPS and the number of personal data breaches communicated to data subjects.

#### *Article 11*

##### Processors

1. Formal contracts shall be concluded with external processors. Such contracts shall contain the specific requirements mentioned in Article 29(3) of the Regulation.

Controller shall consult the DPO regarding the draft of data protection contractual terms.

2. Contracts with processors shall include specific instructions to comply with a data subject's request for the exercise of his or her rights pursuant to Regulation (EU) 2018/1725.
3. Contracts with processors shall include specific instructions to comply with the correct notification and communication of personal data breaches.
4. Each processor shall maintain a record of all data categories of processing activities carried out on behalf of the Authority and shall communicate it to the Authority upon request. Contracts with processors shall establish a duty, among others, to provide the Authority with the necessary information to create the Authority's records referred to in Article 31(1) of the Regulation.

#### *Article 12*

##### Joint Controllers

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

#### *Article 13*

##### Register

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<sup>2</sup> ELA Standard Operating Procedure on personal data breaches: ELA SOP 6/2022.

1. The register mentioned in Article 5(3) of this Decision is a repository of the Authority which contains all the records of activities processing personal data submitted by the controller.
2. The DPO shall ensure that the register of processing operations of the Authority is accessible through the website of the Authority's Intranet and the website of the Authority on the Europa website.

#### *Article 14*

##### Investigation procedure

1. The request for an investigation mentioned in Article 5(10) of this Decision, shall be addressed to the DPO in writing. Within fifteen working days upon receipt, the DPO shall send an acknowledgement of receipt to the person who commissioned the investigation and verify whether the request should 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 this decision.
2. The DPO shall request a written statement on the matter from the controller for the data processing activity in question. The controller shall provide a response to the DPO within 15 working days. The DPO may request complementary information from the controller and/or from other parties within 15 working days. If appropriate, the DPO may request guidance on the issue from the Authority's available sources of legal advice. The DPO shall provide the requested guidance within 20 working days.
3. The DPO shall report back to the person who requested the investigation no later than three 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 provisions of the Regulation.

#### *Article 15*

##### Exercise of rights by data subjects

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

- a) the controller shall consult the DPO before acting in response to the data subject's request;
- b) the DPO may act as controller for managing data subjects' requests on behalf of the Authority. In this case, it should be followed the relevant procedure(s)<sup>3</sup> approved by the Authority.

#### *Article 16*

##### Restrictions under Article 25 of Regulation

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<sup>3</sup> ELA Standard Operating Procedure for handling data subjects' requests: ELA SOP 7/2022.



1. 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 provision corresponds to the rights and obligations provided for in Articles 14 to 22 of the Regulation, may be restricted on the basis of internal rules<sup>4</sup> laid down by the Authority pursuant to Article 25(1) of the Regulation.
2. Any restriction of the application of rights and obligations derived from the Regulation shall be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects. Restrictions shall be limited to what is strictly necessary to achieve their objective.
3. A necessity and proportionality test shall be carried out on a case-by-case basis before restrictions are applied. This test should be performed by the controller, with the assistance of the DPO.

#### *Article 17*

##### Entry into force

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

Done by written procedure, 16 June 2023

For the Management Board

Tom BEVERS

Chair of the Management Board

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<sup>4</sup> Decision No 20/2022 of 24 November 2022 of the Management Board on internal rules concerning restrictions of certain data subject rights in relation to the processing of personal data in the framework of activities carried out by the European Labour Authority.