

DECISION OF THE SINGLE RESOLUTION BOARD

Date	05/12/2022
Title	Implementing rules concerning the Data Protection Officer pursuant to Article 45(3) of Regulation (EU) 2018/1725 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) N° 45/2001, OJ L 295, 21.11.2018, p. 39.
Reference	(SRB/CH/2022/48)

(Only the English text is authentic)

THE CHAIR OF THE SINGLE RESOLUTION BOARD,

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 and bodies and the free movement of such data, and in particular Article 45,

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010,

Whereas

- (1) Regulation (EU) 2018/1725, (the 'Regulation') sets out the principles and rules on the processing of personal data applicable to all Union institutions, bodies, offices and agencies,
- (2) Pursuant to Article 43 of the Regulation, each Union institution, body, office and agency shall designate a Data Protection Officer (the 'DPO').
- (3) Pursuant to Article 45 (3) of the Regulation, each Union institution, body, office and agency shall adopt further implementing rules concerning the DPO.

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

- (1) "controller" shall mean the SRB, represented by its Chair, itself, which alone or jointly with others determines the purposes and means of the processing of personal data and is legally responsible for such processing activity.
- (2) "responsible staff" shall mean staff responsible on behalf of the SRB for activities of processing personal data in the SRB.
- (3) "data protection representative" shall mean the staff of the SRB who assists the DPO in fulfilling his or her tasks and responsibilities according to the Regulation and this Decision.
- (4) For the purposes of the Decision, the definitions set out in Article 3 of the Regulation shall apply.

Article 2

Scope

- (1) The Decision defines the rules and procedures for implementing the function of the DPO within the SRB, without prejudice to the Regulation. The Decision shall apply to all activities concerning the processing of personal data by or on behalf of the SRB.
- (2) The Decision specifies the roles, tasks and duties of the controller and the data protection representatives and implements the rules governing the exercise by data subjects of their rights according to Articles 17 to 24 of the Regulation.

Article 3

Appointment, status and independence of the DPO

- (1) The Chair shall appoint the DPO from amongst the staff of the SRB to fulfil the tasks referred to in Article 45 of the Regulation and the Decision. The DPO shall have expert knowledge of data protection law and practices as well as a sound knowledge of the SRB's mandate, its structure, its administrative rules and procedures. The SRB 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, in another capacity.
- (2) The term of office of the DPO shall be for a period of three up to five years by Decision of the Chair. The DPO shall be eligible for reappointment.
- (3) The Chair shall register the DPO with the European Data Protection Supervisor ('EDPS') in accordance with Article 44 (9) of the Regulation.
- (4) The DPO shall ensure independently the internal application of the provisions of the Regulation and shall not seek or accept instructions regarding the exercise of his or her other tasks. The DPO shall not suffer any prejudice on the account of the performance of his or her duties.
- (5) Without prejudice to the provisions of the Regulation concerning his or her independence and obligations, the DPO shall report directly to the Chair in the performance of his or her duties as DPO.
- (6) The DPO may be dismissed from the post of DPO only with the consent of the EDPS if he or she no longer fulfils the conditions required for the performance of his or her duties.
- (7) The DPO shall maintain, including once he or she has ceased his or her duties, professional secrecy as regards any confidential documents or information that he or she obtains in the course of his or her duties.

Article 4

Tasks and duties of the DPO

Without prejudice to Article 45 of the Regulation, the DPO shall have the following tasks and duties:

- (1) Information and awareness raising function: the DPO shall raise awareness on applicable data protection law and foster a culture of protection of personal data within the SRB.
- (2) Advisory function: the DPO shall make recommendations and give advice to responsible staff on matters related the application of the Regulation, by:
 - (a) supporting responsible staff in ensuring that the rights and freedoms of data subjects are not adversely affected by the activities of processing personal data. In particular, the DPO shall ensure that responsible staff inform data subjects of their rights and obligations according to the Regulation in the context of processing activities. The DPO shall assist responsible staff in the preparation of their records of processing activities;

- (b) helping responsible staff to assess the data protection risks of the processing activities under their responsibility. The DPO shall provide advice and assist the responsible staff when they carry out a Data Protection Impact Assessment ('DPIA') according to Article 39 of the Regulation. The DPO 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 shall contribute to selecting safeguards to apply to mitigate the risks to the rights and freedoms of data subjects, as well as to the correct implementation of the DPIA;
 - (c) assisting responsible staff on the need for prior consultation of the EDPS according to Article 40 of the Regulation;
 - (d) advising, where requested, as regards the necessity for a notification or communication of a personal data breach pursuant respectively to Articles 34 and 35 of the Regulation;
 - (e) being consulted by any individual on any matter concerning the interpretation or application of the Regulation.
- (3) Organisational function: the DPO shall keep a register of the processing activities including the records provided by responsible staff and a register of personal data breaches.
- (4) Cooperative function: 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 initiative. The DPO shall facilitate cooperation between the EDPS and the SRB, notably in the framework of investigations, complaint handling, DPIAs and prior consultations under Article 40 of the Regulation. The DPO shall also cooperate with the DPOs of other European institutions, agencies and bodies, in particular by exchanging experience and best practices and participating in the dedicated network(s) of DPOs.
- (5) Monitoring compliance: the DPO shall monitor the implementation of the Regulation in the SRB and issue a mid-year and an annual report as described in Article 7(5) of this Decision.
- (6) Handle queries or complaints: the DPO may perform investigations on request, or upon his or her initiative, into matters and occurrences directly relating to his or her tasks, and report back to the person who requested the investigation or to the responsible staff, following the procedure described in Article 13 of this Decision.

Article 5

Powers of the DPO

- (1) In performing the tasks and duties of the DPO and without prejudice to the powers conferred by the Regulation, the DPO:

- (a) may request guidance/consultation from the EDPS;
 - (b) may, in the event of disagreement with the responsible staff on the interpretation or implementation of the Regulation, inform the Chair, before referring the matter to the EDPS;
 - (c) may, where a SRB staff member fails to comply with the obligations under the Regulation, bring this matter to the attention of the Chair;
 - (d) shall obtain access at any time to the information, forming the subject matter of processing activities on personal data and to all offices, data processing installations and data carriers;
 - (e) may, with the agreement of the Chair, represent the SRB in relevant discussions relating to personal data protection issues, excluding litigation proceedings. The DPO may in particular attend meetings of inter-institutional committees and bodies;
- (2) Without prejudice to the applicable confidentiality or security rules, responsible staff shall assist the DPO in performing his or her duties and give information in reply to questions from the DPO.

Article 6

Resources of the DPO

- (1) The SRB shall provide the DPO with the necessary resources to carry out his or her tasks and duties.
- (2) The DPO may be assisted in his or her day-to-day activities by a Deputy DPO and other SRB staff necessary to carry out his or her tasks.
- (3) The Chair may appoint a Deputy DPO to whom Article 3 of this Decision shall apply. The Deputy DPO shall assist the DPO in carrying out the DPO tasks and duties and deputise in the event of the DPO absence.
- (4) Any SRB staff assisting the DPO concerning data protection issues shall act solely on the DPO's instructions and shall be bound by professional secrecy and confidentiality in accordance with Article 44 (5) of the Regulation.
- (5) The DPO, the Deputy DPO and SRB staff assisting the DPO shall benefit from the necessary training and shall have the opportunity to update their knowledge with regard to the legal and technical aspects of data protection.

Article 7

Information and cooperation

- (1) The DPO shall be involved properly and in a timely manner in all issues related to data protection at the SRB.
- (2) The DPO shall be informed when responsible staff receive any request or complaint related to data protection matters.
- (3) The DPO shall update the SRB Chair on data protection matters at the SRB through regular meetings.
- (4) The DPO shall cooperate closely with the SRB network of data protection representatives (DPRs), who assist their Unit or Team in informing the DPO of upcoming processing activities and breaches of personal data. The DPO shall meet the DPRs regularly to discuss relevant topics, inter alia, EDPS Guidelines, case law, and new SRB processing activities.
- (5) The DPO shall submit a mid-year and an annual report and contribute to the annual activity report of the SRB.

Article 8

Tasks and duties of responsible staff

- (1) Responsible staff shall ensure that all processing activities performed within their area of responsibility comply with the provisions of the Regulation.
- (2) Without prejudice to the obligations under the Regulation, responsible staff shall:
 - (a) maintain records of personal data for processing activities under their responsibility in accordance with Article 31 of the Regulation and seek advice from the DPO to produce the record. They shall submit their records of processing activities to the DPO who shall keep the records in a central register;
 - (b) notify and involve the DPO in the planning phase of any personal data processing activity;
 - (c) perform under their responsibility a DPIA if conditions of Article 39 of the Regulation apply. They shall document it in the record and seek advice from the DPO in performing the DPIA;
 - (d) implement, as an outcome of the DPIA, 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, based on Article 40 of the Regulation;
 - (f) inform the DPO of direct interactions or correspondence between them and the EDPS in particular, whenever responsible staff consult the EDPS under Articles 34 and 40 of the Regulation.
 - (g) after becoming aware of any personal data breach or other incident concerning personal data protection, notify and involve the DPO in their evaluation without undue delay. Responsible staff shall maintain records of personal data breaches occurred in their area of responsibility and seek the advice of the DPO to establish the records. They shall submit the final records to the DPO who shall keep the register of personal data breaches.

Article 9

Data protection representatives (DPRs)

- (1) DPRs shall assist responsible staff in fulfilling their obligations under the Regulation.
- (2) DPRs shall assist the DPO in:
 - (a) identifying the relevant responsible staff for personal data processing activities;
 - (b) promoting and raising awareness of the DPO's advice;
 - (c) supporting the responsible staff in maintaining the records of processing activities in accordance with Article 31 of the Regulation and ensuring that the records are accurate and up to date;
 - (d) addressing other matters concerning the DPO's tasks as agreed between the DPO and the DPRs' management.

Article 10

Processors

- (1) Contracts with external processors shall contain the requirements set out in Article 29 (3) of the Regulation. Responsible staff shall consult the DPO on the draft provisions on personal data protection.
- (2) Each processor shall maintain a record of all categories of processing activities carried out on behalf of the SRB and shall communicate it to the SRB upon request. The contract shall lay down a duty for the

processor to provide the SRB with the necessary information to create the SRB's records referred to in Article 31 (1) of the Regulation.

Article 11

Joint controllers

- (1) In the exercise of its mandate, the SRB may act as a joint controller together with one or more controllers as referred to in Article 28 of the Regulation.
- (2) If the SRB acts as a joint controller together with one or more controllers, the responsibilities of the joint controllers for compliance with data protection obligations shall be determined by arrangement between them unless and in so far as those responsibilities are determined by Union or Member State law to which the joint controllers are subject. Where applicable, responsible staff shall consult the DPO on the draft arrangements.

Article 12

Central register of processing activities

- (1) The central register shall contain, at least, the information referred to in points (a) to (g) of Article 31 (1) of the Regulation. The central register shall serve as a repository of all personal data processing activities conducted at the SRB.
- (2) A version of the central register without confidential information shall also be made public on the SRB's website. The central register shall constitute a source of information for data subjects and facilitate the exercise of their rights under Articles 17 to 24 of the Regulation.

Article 13

Investigation procedure

- (1) The request for an investigation mentioned in Article 4(6) hereof shall be addressed to the DPO in writing. Within 15 working days of receipt, the DPO shall send an acknowledgment of receipt to the person who requested the investigation and verify whether the request is to be treated as anonymous.
- (2) The DPO shall request a written statement on the matter from the responsible staff for the data processing activity under investigation. The responsible staff shall provide response to the DPO within 15 working days. The DPO may request complementary information from the responsible staff and/or from other parties within 15 working days. If appropriate, the DPO may request an opinion on the issue from the relevant Head of Unit. The DPO shall be provided with the opinion 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. This period may be suspended until the DPO has obtained any further information that may have been requested.

In the event of manifest abuse of the right to request an investigation, in particular where it is repetitive, abusive or pointless, the DPO may inform the applicant that the request will not be pursued.

Article 14

General rules governing the exercise of rights by data subjects

- (1) Data subjects may contact the relevant responsible staff to exercise their rights according to Articles 17 to 24 of the Regulation.
- (2) Data subjects' rights may only be exercised by the data subject or their duly authorised representative. Such persons may exercise any of these rights free of charge.

- (3) Upon receiving a request to exercise his or her rights from a data subject, the relevant responsible staff shall send an acknowledgment of receipt to the data subject within five working days of receiving the request.
- (4) If the relevant responsible staff has reasonable doubts concerning the identity of the data subject, or their authorised representative, the relevant responsible staff may request additional information necessary to identify the data subject or their authorised representative. The relevant responsible staff may request further information from the data subject to clarify the data subject's request and effectively address it.
- (5) In accordance with Article 14 (3) and (4) of the Regulation, the relevant responsible staff shall provide information to the data subject on any action taken in relation to a request without undue delay and, at the latest within one month of receiving the request. Where necessary, this period may be extended by two further months, taking into account the complexity and number of data subjects' requests received by the relevant responsible staff. The latter shall inform the data subject of the extension within one month of receiving the request and shall provide the reasons for the extension.
- (6) The relevant responsible staff shall respond to the data subject's request in writing, if appropriate, and if the data subject's request was submitted by electronic means, the relevant responsible staff shall provide the requested information by electronic means.
- (7) The data subject may at any point contact the DPO, in particular, if:
- (a) the relevant responsible staff does not comply with the time limits set out in paragraphs 3 and 5; or
 - (b) the data subject is dissatisfied with the action taken by the relevant responsible staff.
- (8) Where requests from a data subject are manifestly unfounded or excessive, in particular, because of their repetitive character, the relevant responsible staff may, having consulted the DPO, refuse to act on the request in accordance with Article 14 (5) of the Regulation and shall inform the data subject accordingly.
- (9) The data subject rights provided by Articles 14 to 22 of the Regulation as well as by Articles 35 and 36, may be restricted based on the SRB's internal rules under Article 25 (1) of the Regulation. Responsible staff shall seek the advice of the DPO when planning to apply these restrictions.

Article 15

Final provisions

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

Done at Brussels,
For the Single Resolution Board,

The Chair
Elke KÖNIG