

DECISION OF THE EXECUTIVE DIRECTOR

laying down implementing rules concerning the Data Protection Officer in application of Regulation (EU) 2018/1725 of the European Parliament and of the Council

Having regard to Council Regulation (EU) No 2021/2085 (herein referred to as the “Single Basic Act”) of 19 November 2021 establishing the Joint Undertakings under Horizon Europe and repealing Regulations (EC) No 219/2007, (EU) No 557/2014, (EU) No 558/2014, (EU) No 559/2014, (EU) No 560/2014, (EU) No 561/2014 and (EU) No 642/2014, and in particular Articles 35, 157 and 158 thereof,¹ and the Treaty on the Functioning of the European Union, and in particular Article 249(1) thereof,

Having regard to Regulation (EU) 2018/1725² (hereinafter referred to as “the Regulation”) 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, and in particular Articles 43 and 45(3),

Having regard to Decision n° GB(D)06-2021³ (hereinafter referred to as “Decision on Restrictions”) of the Governing Board laying down internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of the SESAR 3 Joint Undertaking (hereinafter SESAR 3 JU),

Having regard to Decision S3JU/ED/9 of 22nd March 2022 of the Executive Director appointing the SESAR 3 Joint Undertaking data protection officer,

Having regard to the “Position paper on the role of Data Protection Officers of the EU institutions and bodies” of the European Data Protection Supervisor⁴,

Whereas:

- (1) In order to ensure the proper functioning of the office of SESAR 3 Joint Undertaking’s data protection officer (hereinafter referred to as “DPO”), it is necessary to determine in detail the tasks, duties and powers of the DPO.
- (2) The Regulation assigns clear responsibilities to data controllers, in particular vis-à-vis the data subjects. With a view to ensuring that the SESAR 3 JU, as a controller, operates in a uniform and transparent manner with regard to its responsibilities, rules should be set out on how to identify who in the SESAR 3 JU is responsible for a processing operation which is carried out on behalf of the SESAR 3 JU.

¹ OJ L 427, 30.11.2021, p. 17–119

² OJ L 295, 21.11.2018, p. 39

³ OJ L 136, 13.5.2022, p. 112–118

⁴ https://edps.europa.eu/sites/edp/files/publication/18_09_30_dpo_position_paper_en.pdf

- (3) Article 45(3) of the Regulation requires that further implementing rules concerning the DPO 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. In accordance with Article 43 of the Regulation, the SESAR 3 JU may decide to externalise fully or partially the DPO function on the basis of a service contract concluded with an individual or an organisation outside the controller's organisation.
- (4) In certain cases, the SESAR 3 JU, other Commission services or International Organisations such as EUROCONTROL may jointly carry out a processing operation in order to fulfil their mission. In such cases, they should ensure that internal arrangements or appropriate safeguards are in place in order to determine in a transparent manner their respective responsibilities under Regulation (EU) 2018/1725, in particular responsibilities vis-à-vis the data subjects, notification to the European Data Protection Supervisor ('EDPS') and record keeping.
- (5) The SESAR 3 JU processes several categories of personal data for the purpose of the monitoring, investigative, auditing and consultative activities of the DPO. In particular, the SESAR 3 JU processes identification data, contact data, professional data and case involvement data. Those data are retained for five years after the activities are closed in accordance with the SESAR 3 JU internal rules.
- (6) The internal rules should apply to all data processing operations carried out by the SESAR 3 JU in the performance of the monitoring, investigative, auditing or consultative tasks of the DPO. They should apply to processing operations carried out prior to the opening of an investigation or audit, during the course of an investigation or audit, and during the monitoring of the follow-up to their outcome. Those rules should also apply to processing operations which form part of the tasks linked to the investigative or auditing function of the DPO, such as complaint processes conducted by the DPO.
- (7) In order to comply with Articles 14, 15 and 16 of the Regulation, the SESAR 3 Joint Undertaking should inform all individuals of the monitoring, investigative, auditing or consultative tasks of the DPO that involve processing of their personal data and of their rights pursuant to the Regulation. The SESAR 3 JU should inform those individuals in a transparent and coherent manner, in the form of data protection notices published on the SESAR 3 JU website, as well as inform each data subject concerned by a monitoring, investigative, auditing or consultative activity of the DPO.
- (8) In certain circumstances, it is necessary to reconcile the rights of data subjects pursuant to the Regulation with the need for the SESAR 3 JU to perform the monitoring, investigative, auditing or consultative tasks of the DPO, and the need for confidentiality of exchanges of information with other services, as well as with full respect for fundamental rights and freedoms of other data subjects. To that effect, the Decision on Restrictions applies.
- (9) Furthermore, the SESAR 3 JU should protect the identity of informants, who should not suffer negative repercussions as a consequence of their cooperation with the DPO.
- (10) In line with Article 157 of the Single Basic Act, the SESAR 3 JU and EUROCONTROL shall establish an administrative agreement describing EUROCONTROL's tasks,

responsibilities and contribution to the activities of the SESAR 3 JU, including the provision of back office arrangements with a possible impact on the processing of personal data.

- (11) In certain cases, the SESAR 3 JU and EUROCONTROL, may jointly carry out processing operations in order to fulfil their mission. In such cases, appropriate safeguards shall be provided in line with Article 48 of the Regulation.
- (12) The EDPS was informed and consulted in accordance with Article 41(1) and (2) of the Regulation and delivered an opinion on 4 March 2021,

I, ACTING IN MY QUALITY OF LEGAL REPRESENTATIVE OF THE CONTROLLER OF THE SESAR 3 JOINT UNDERTAKING, HEREBY DECIDE TO:

Article 1

Adopt the SESAR 3 JU DPO Implementing Rules, set out in Annex I.

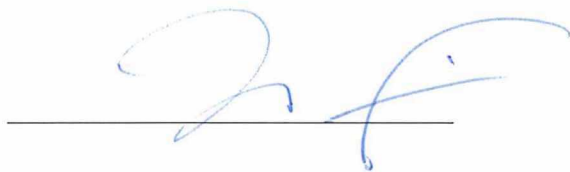
Article 2

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

Article 3

Decision SJU/ED/225 is repealed.

Done in Brussels, on 01/06/ 2022



Richard Frizon
Legal representative of the Controller
Executive Director ad interim of SESAR 3 JU

ANNEX I
DPO IMPLEMENTING RULES

Article 1

Subject matter and scope

1. This Decision provides rules and procedures for the application of Regulation (EU) 2018/1725 by the SESAR 3 JU, and sets out implementing rules concerning the Data Protection Officer for SESAR 3 JU (“DPO”).
2. This Decision applies to the processing of personal data by or on behalf of the SESAR 3 JU for the purpose of or in relation to the tasks of the DPO referred to in Article 45 of the Regulation.

Article 2

Controllership

For the purposes of this Decision, the SESAR 3 JU shall be considered to be the controller within the meaning of Article 3(8) of the Regulation.

Article 3

Definitions

For the purpose of this Decision, the following definitions apply:

- a) ‘Data Protection Officer’ or ‘DPO’ means the person whom the SESAR 3 JU has designated pursuant to Article 43 of the Regulation;
- b) ‘DPO tasks’ means the DPO tasks referred to in Article 45 of the Regulation (EU), in particular the monitoring, investigative, auditing and consultative tasks of the DPO;
- c) ‘internal arrangement’ means a service-level agreement between the SESAR 3 JU and one or more Directorates-General or Services to determine their respective responsibilities regarding a processing operation for which they jointly determine the purposes and means of processing and coordinate the keeping of a record of processing;
- d) ‘informant’ means an individual who brings a matter alleging that a breach of the provisions of the Regulation has taken place to the attention of the DPO, or requests that the DPO investigate matters and occurrences directly relating to the DPO’s tasks, which that individual brings to the DPO’s notice.
- e) ‘Responsible staff’ means member of the staff on behalf of the SESAR 3 Joint Undertaking in charge of the activities involving processing of personal data.
- f) A ‘service provider’ means the natural or legal person to whom the SESAR 3 Joint Undertaking has decided to externalise fully or partially the DPO function or some DPO tasks on the basis of a service contract concluded with an individual or an organisation outside the SESAR 3 Joint Undertaking’s organisation.

Article 4
Designation

1. The term of office of the DPO shall be five years. The DPO may be reappointed for further periods of up to five years.
2. The DPO shall be selected from the staff of the SESAR 3 JU on the basis of his or her professional qualities, including a sound knowledge of the SESAR 3 JU's work, structure, and administrative rules and procedures.
3. In order to ensure business continuity, the DPO may appoint a deputy who shall assist the DPO in carrying out his or her tasks.
4. Upon appointment of the DPO, the EDPS shall be informed of the name and term of the DPO, and where applicable, the DPO assistant.
5. The DPO may be dismissed from the post by the SESAR 3 JU 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.
6. In case SESAR 3 JU decides to fully or partially outsource the DPO function or some DPO tasks to an external service provider, the SESAR 3 JU shall ensure that the service provider has adequate knowledge of the functioning of the SESAR 3 JU, its mandate, processing operations, staff and management. The service provider shall ensure the same high level of confidentiality that could be best maintained with an in-house DPO. In any event, the DPO function should always be attributed to a designated physical person that would serve as lead contact and be in charge for the SESAR 3 Joint Undertaking. A minimum physical presence should be guaranteed to ensure the efficiency of day-to-day interaction.

Article 5
Position

1. The SESAR 3 JU shall ensure that the DPO is involved, properly and in a timely manner, in all issues relating to the protection of personal data.
2. The SESAR 3 JU 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 knowledge up-to-date with regard to the legal and technical aspects of data protection.
3. The SESAR 3 JU shall ensure that the DPO does not receive any instructions regarding the exercise of those tasks. He or she shall not be dismissed or penalised by SESAR 3 JU for performing his or her tasks. The DPO shall directly report to the Executive Director.

4. Data subjects may contact the DPO with regard to all issues related to processing of their personal data and to the exercise of their rights under the Regulation.
5. The DPO and his or her staff shall be bound by secrecy or confidentiality concerning the performance of their tasks, in accordance with Union law.
6. The DPO may fulfil other tasks and duties. The SESAR 3 JU shall ensure that any such tasks and duties do not result in a conflict of interest.

Article 6
Tasks and duties

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

1. The DPO shall contribute to creating a culture of protection of personal data within the SESAR 3 JU based on risk assessment and accountability.
2. The DPO shall monitor implementation of the Regulation in the SESAR 3 JU.
3. The SESAR 3 JU shall publish, on its website, data protection notices that inform all data subjects of the DPO tasks involving the processing of their personal data.
4. The SESAR 3 JU shall individually inform, in an appropriate format, any natural person whom it considers a person concerned by the DPO tasks or an informant. The DPO shall assist responsible staff in the preparation of their records of processing activities.
5. Pursuant to Article 31(5) of the Regulation and building on the records provided by the responsible staff, the DPO shall keep SESAR 3 JU's records of processing activities in a central register and shall make it publicly accessible through SESAR 3 JU's website.
6. For processing operations on personal data under his or her responsibility, the DPO shall act as the responsible staff.
7. 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 (hereinafter referred to as "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.
8. The DPO shall assist responsible staff on the need for prior consultation of the EDPS pursuant to Article 40 of the Regulation.

9. The DPO may make recommendations and give advice to responsible staff and processors on matters concerning the application of the Regulation.
10. The DPO shall also keep an internal register of personal data breaches related to the SESAR 3 JU within the meaning of Article 3(16) of the Regulation.
11. The DPO shall provide advice when requested as regards the necessity for a notification or a communication of a personal data breach pursuant to Article 34 and 35 of the Regulation respectively.
12. 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. They 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.
13. The DPO may keep a confidential inventory of requests from individuals that wish to reveal their identity only to the DPO when lodging enquiries or complaints. Enquiries pursuant to Articles 17 to 24 of the Regulation may not remain anonymous.
14. The DPO shall keep a register for restrictions of the rights foreseen in Articles 14 to 17, 19, 20, 35 and 36 of Regulation based on the provisions of the Decision on Restrictions.
15. Throughout his or her term of office and in the discharge of his or her functions, the DPO shall cooperate with the DPOs designated by the other Union institutions and bodies. He or she shall participate in the dedicated network(s) of DPOs. The DPO is also encouraged, where possible, to exchange experience and practices with the DPOs of other organisations. In particular, the DPO shall maintain close cooperation with the DPO of EUROCONTROL in light of the SESAR 3 JU – EUROCONTROL Agreement.
16. The DPO shall be in charge of the preparation of internal arrangements with other European Commission services or EUIs, and appropriate safeguards with International Organisations, in particular with EUROCONTROL. The DPO will be responsible, to consult the EDPS in line with Article 41 of the Regulation in case of internal arrangements, either individually or jointly with other DPOs in case of joint internal arrangements, and to submit for authorisation of the EDPS in line with Article 48 (3) of the Regulation in case of appropriate safeguards.

Article 7
Powers

1. In performing the DPO tasks, the DPO:
 - a) May request legal guidance from the relevant Head of Unit of the EDPS;

- b) 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;
- c) 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 11;
- d) 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;
- e) May, after informing the staff member 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;
- f) Shall ensure that internal arrangements with Commission Directorates-General or Services are in place, where SESAR 3 JU carries out processing operations jointly with those Directorates-General or Services or where those Directorates-General or Services carry out a part of SESAR 3 JU's processing operations.

Shall advice on the need for the provisions of appropriate safeguards in case of international transfers, and when necessary consult the EDPS in line with Articles 41 and 48(3) of the Regulation.

- 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 applicable confidentiality or security rules, every responsible staff and any other staff of the SESAR 3 JU shall assist the DPO in performing his or her duties and give information in reply to questions.

Article 8
Information and cooperation

- 1. The DPO shall respond to requests for advice from the SESAR 3 JU's staff and cooperate with the SESAR 3 JU's staff at the latter's request.
- 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 brief the Management Board of the SESAR 3 JU at least

annually on his or her activities and on the state of play regarding the data protection activities and compliance of the SESAR 3 JU.

Article 9

Staff responsible for activities involving processing of 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 to the DPO to establish the record. They will transmit the records to the DPO to create the register as referred to in Art. 31(5) of the Regulation;
 - b) notify and involve, as appropriate, the DPO 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. They shall seek the advice of the DPO 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, based on Article 40 of the Regulation;
 - f) inform the DPO on direct interactions between them and the management of the EDPS in its supervisory capacity regarding the internal application of the relevant Articles of the Regulation.
3. In case of a personal data breach, the staff member concerned shall inform the responsible staff as well as the DPO and the LISO and IT Officer when necessary and without undue delay, including when they have doubts on whether personal data is affected by a security breach. The staff member concerned shall provide the DPO with all the necessary information enabling him or her to ensure that the SESAR 3 JU complies with the Regulation and more specifically with the obligation of personal data breach notifications and communications outlined in Articles 34 and 35 of the Regulation.

Article 10

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. Responsible staff shall consult the DPO on 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 SESAR 3 JU and shall communicate it to SESAR 3 JU upon request. The contract with them shall establish a duty, among others, to provide SESAR 3 JU with the necessary information to create SESAR 3 JU records referred to in Art. 31(1) of the Regulation.

Article 11

Investigation procedure

1. The requests for an investigation referred to in Article 7(c) shall be addressed to the DPO in writing. Within 15 working days following 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 to ensure confidentiality governing the request, unless the data subjects concerned give their unambiguous consent for the request to be handled otherwise. In the event of manifest abuse of the right to request an investigation, the DPO shall not be obliged to report to the requester.
2. The DPO shall report back to the person who commissioned the investigation no later than three months following the receipt of the request. This period may be suspended until the DPO has obtained all the necessary information that he or she may have requested.
3. 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

Exercise of Rights by Data Subjects

When data subjects contact the SESAR 3 JU to exercise their rights pursuant to Articles 17 to 24 of Regulation:

- a) The responsible staff shall consult the DPO before acting in reply to the data subject's request.
- b) The DPO may act as the responsible staff for managing data subjects' requests on behalf of the SESAR 3 JU. If this is the case, it shall be detailed in a specific guidance.

- c) 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 Decision on Restrictions in accordance with Art. 25(1) of the Regulation. Responsible staff shall seek the advice of the DPO when planning to apply these restrictions.