

DECISION No GB/2023/3

**of the European Cybersecurity Industrial, Technology and Research Competence Centre
Governing Board**

**on implementing rules concerning the tasks, duties and powers of the Data Protection
Officer pursuant to article 45(3) of Regulation (EU) 2018/1725**

THE GOVERNING BOARD,

Having regard to the Treaty on the Functioning of the European Union,

Regulation (EU) 2021/887 of the European Parliament and of the Council, of 20 May 2021, establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres;

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, and in particular article 45(3) thereof,

Whereas:

- 1) Regulation (EU) 2018/1725, hereinafter referred to as the “Data Protection Regulation”, lays down the data protection principles and rules applicable to all European Union institutions and bodies and provides for a Data Protection Officer (hereinafter “DPO”) to be appointed by each European Union institution and body;
- 2) Pursuant to article 45(3) of the Data Protection Regulation, each European Union institution and body must adopt further implementing rules concerning the DPO in accordance with the provisions of that Regulation. The implementing rules shall in particular concern the tasks, duties and powers of the DPO;
- 3) According to article 31 of the Data Protection Regulation, all Union institutions and bodies have an obligation to maintain records of their processing activities. These records shall be kept in a central register. The register shall be made publicly accessible.

HAS DECIDED AS FOLLOWS:

Article 1: Definitions

1. Without prejudice to the definitions provided in article 3 of the Data Protection Regulation, the following definitions shall apply:
 - i. “Controller” shall mean the ECCC (as represented by its Executive Director), which alone or jointly with others determines the purpose and means of the processing of personal data and is legally responsible for such processing activity.
 - ii. “Staff responsible for data processing activities” shall mean the persons responsible in practice for internally managing a data processing activity at the ECCC, as delegated by the Controller.
 - iii. “Data subject” shall mean any identified or identifiable natural person whose personal data are processed by the ECCC; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
 - iv. “Data Protection Officer” shall mean the ECCC staff member or person designated on the basis of a service contract in accordance with Section 6 of the Data Protection Regulation.
 - v. “Data Protection Coordinator” shall mean the ECCC staff member who will support the DPO and whose tasks are described in Article 3(6) and (7) of this Decision.

Article 2: Subject matter and scope

1. This Decision lays down specific rules and procedures for the implementation of the function of the DPO at the ECCC pursuant to article 45(3) of the Data Protection Regulation. It shall apply to all activities in relation to the processing of personal data by or on behalf of the ECCC.
2. This Decision also clarifies certain rules with regard to responsibilities of the Controller and staff responsible for data processing activities with regard to the function of the DPO.

Article 3: Appointment, status and independence of the Data Protection Officer and appointment and tasks of the Data Protection Coordinator

1. The Executive Director shall appoint the DPO pursuant to article 43 and in order to fulfil the tasks laid out in article 45 of the Data Protection Regulation and register him or her with the European Data Protection Supervisor (hereinafter “EDPS”).

2. The Executive Director may also appoint Deputy DPO(s). The role of a deputy DPO will be to support the DPO in carrying out his or her tasks and deputise in the event of the DPO's absence. The provisions of this Decision shall also apply in their entirety to a Deputy DPO.
3. The term of office of the DPO shall be for a period of three to five years in accordance with article 44 of the Data Protection Regulation. This term may be renewed.
4. The DPO may be dismissed from his or her post only with the consent of the EDPS and only if he or she no longer fulfils the conditions required for the performance of his or her duties. The EDPS shall be consulted in writing by the Controller and a copy will be sent to the DPO.
5. The DPO may be a staff member of the ECCC or may be appointed on the basis of a service contract in accordance with the provisions of article 44(4) of the Data Protection Regulation. He or she shall be appointed on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred in article 45 of the Data Protection Regulation and article 4 of this Decision. The DPO shall also have adequate knowledge of the organisation, structure and functioning of the ECCC, in particular adequate understanding of the ECCC's data processing activities.
6. In the event that the DPO is designated on the basis of a service contract pursuant to article 43(4) of the Data Protection Regulation, the Executive Director of the ECCC will also designate a Data Protection Coordinator (DPC) who will be a staff member of the ECCC. The function of the DPC may be combined with other functions which must be compatible with the function of the DPC. The DPC function shall be part of the job description of each member of staff appointed as the DPC. Reference to their responsibilities and achievements shall be made in the annual appraisal report.
7. Within a reasonable timeframe from his or her tasks appointment, the newly appointed DPC has to complete trainings proposed by the DPO and shall have the possibility to follow external trainings on data protection in order to acquire the necessary competences for the role of the DPC. Throughout his or her tasks appointment, the DPC shall be able to follow trainings on data protection proposed by the DPO in order to advance his or her competences for the role of the DPC.
8. The DPC shall support the work of the DPO, in particular as regards internal communication and awareness raising within the ECCC, management of data subject requests and complaints, maintenance of the data processing register, as well as and overall co-ordination of the DPO service.
9. The DPO shall act in an independent manner with regard to the internal application of the provisions of the Data Protection Regulation. The DPO shall refrain from any act that is incompatible with the nature of his or her duties.
10. The DPO may be consulted by the Controller, the staff responsible for data processing activities, the ECCC staff committee or any individual, without going through the official channels, on any matter concerning the interpretation or application of the Data Protection Regulation. No one should suffer prejudice on account of a matter brought to the attention of the DPO alleging a breach of that

Regulation. The data subjects may contact the DPO with regard to all issues related to the processing of their personal data and to the exercise of their rights.

11. The DPO (and the DPC where relevant) shall be bound by secrecy or confidentiality concerning the performance of his or her tasks, in accordance with Union law.
12. The DPO (and the DPC where relevant) shall have resources necessary to carry out his or her tasks and to maintain his or her knowledge.
13. Taking into consideration the nature and the number of data processing activities at the ECCC, the DPO function may be carried out on a part time basis. In such case, it should be ensured that any other tasks or duties that the DPO fulfils do not result in a conflict of interest with the DPO tasks.
14. The DPO shall report directly to the ECCC's Executive Director.

Article 4: Tasks and duties of the Data Protection Officer

1. Without prejudice to the tasks described in article 45 of the Data Protection Regulation, the DPO shall:
 - a. Monitor the implementation of the Data Protection Regulation.
 - b. Provide advice to the Controller and the staff responsible for data processing activities or any other staff member with regard to all matters related to the internal compliance with the Data Protection Regulation.
 - c. Advise where requested the Controller and the staff responsible for data processing activities or any other staff member in the conduction of data protection impact assessments, as well as the prior consultation with the EDPS pursuant to articles 39 and 40 respectively of the Data Protection Regulation.
 - d. Advise where requested the Controller and the staff responsible for data processing activities or any other staff member in responding to data subjects' requests pursuant to articles 17 to 24 of the Data Protection Regulation.
 - e. Advise where requested the Controller and the staff responsible for data processing activities or any other staff member in the handling of personal data breaches, in particular with regard to the assessment of the likelihood and severity of the risk to the rights and freedoms of data subjects, and to the notification or communication of a personal data breach pursuant to articles 34 and 35 of the Data Protection Regulation.
 - f. Act as the main point of contact of the Controller for the EDPS and co-operate with the EDPS at the latter's request or on his or her own initiative, particularly as regards dealing with complaints and carrying out inspections. The DPO shall inform the EDPS regarding any significant development at the ECCC which has a bearing on the protection of personal data.
 - g. Keep the central register of records of processing activities maintained by the staff responsible for data processing activities, as provided for in Article 31 of the Data

Protection Regulation, and provide advice for the staff responsible for data processing activities with regard to the maintenance of these records.

- h. Provide advice to the data subjects with regard to the exercise of their rights pursuant to articles 17 to 24 of the Data Protection Regulation, as well as with regard to relevant restrictions of these rights pursuant to article 25 of that Regulation.
 - i. Encourage, support, and implement a sensible and sound data protection culture within the ECCC and among its staff by organising regular awareness raising sessions (trainings) in data protection, in particular to new staff joining the ECCC, and by promoting protection of personal data as a key aspect of data processing activities at the ECCC.
 - j. Cooperate with the DPOs of other European Union institutions and bodies, in particular by exchanging experience and sharing know-how and representing the ECCC in discussions relating to data protection issues. To this end, the DPO shall regularly attend meetings with the EDPS and/or the DPOs of other European Union institutions and bodies (DPOs network) with a view to exchange best practices and harmonize the application of the Data Protection Regulation across the Union institutions and bodies.
2. In the event that the DPO is designated by a service contract pursuant to article 43(4) of the Data Protection Regulation, the DPC shall support the DPO in all tasks referred under paragraph (1) and in accordance with article 3(6) of this Decision.
 3. In the first quarter of each calendar year, the DPO shall submit an annual report to the Executive Director in relation to data protection issues addressed in the previous year and a work plan for the forthcoming year.

Article 5: Powers of the Data Protection Officer

1. In performing the tasks and duties of the DPO and without prejudice to the powers conferred by the Data Protection Regulation, the DPO may:
 - a. On his or her own initiative, make recommendations to the Controller and the staff responsible for data processing activities on issues concerning the application of the provisions relating to data protection at the ECCC.
 - b. Issue opinions on the compliance of actual or proposed data processing activities at the ECCC with the Data Protection Regulation.
 - c. Perform, on his/her own initiative or at the request of the Controller, the staff responsible for data processing activities, the ECCC staff committee or any individual, investigations directly relating to his or her tasks and which come to his or her notice and report back to the person who commissioned the investigation or to the Controller, in accordance with article 45(2) of the Data Protection Regulation. The procedure for the DPO's investigation will be delivered by a Decision of the ECCC's Executive Director (ED Decision).

- d. Bring to the attention of the Executive Director any breach of the provisions laid down in the Data Protection Regulation and failure of a staff member to comply with the obligations under that Regulation.
2. The DPO, and the DPC where relevant, shall be involved properly and in a timely manner in all issues involving data protection. The DPO shall have access at all times to the data forming the subject matter of processing operations on personal data and to all offices, data-processing installations and data storage devices.
3. The staff responsible for data processing activities and any member of the ECCC's staff shall be required to assist the DPO and the DPC where relevant in performing his or her duties, especially for the conduct of investigations referred to in point 1(c) above, without requiring further authorisation.

Article 6: Controller and staff responsible for data processing activities

1. The Controller will ensure that the DPO is involved properly and in a timely manner in all issues relating to the protection of personal data at the ECCC.
2. Without prejudice to the responsibility of the Controller, the staff responsible for data processing activities shall ensure that all processing operations involving personal data within their area(s) of responsibility comply with the Data Protection Regulation. For that purpose, the staff responsible for data processing activities shall:
 - a. Inform the DPO when an issue arises that has data protection implications, especially in the event of a personal data breach. The DPO shall also be informed before the adoption of any opinion, document, internal policy or internal decision that may have impact on the ECCC's data protection compliance.
 - b. Inform the DPO when a data subject exercises his or her rights vis-à-vis the Controller where the articles 17 to 24 of the Data Protection Regulation are specifically invoked.
 - c. Consult the DPO with regard to compliance with the Data Protection Regulation of any data processing activity in their area of responsibility. The DPO shall also be consulted in the planning phase of any new data processing activity or change in existing data processing activities.
 - d. Maintain the records of data processing activities in their area of responsibility pursuant to article 31 of the Data Protection Regulation and co-operate with the DPO in the maintenance of the central register of data processing activities, as laid out in article 7 of this Decision.

Article 7: Central Register

1. The staff responsible for data processing activities shall submit their records of processing activities pursuant to article 31 of the Data Protection Regulation to a central register. The DPO shall keep and manage the central register.

2. The central register shall serve as a repository of the personal data processing activities conducted at the ECCC. It shall provide information to data subjects and facilitate the exercise of their rights in line with articles 17 to 24 of the Data Protection Regulation. The central register shall be publicly accessible. The central register shall contain at least the information referred to in article 31(1)(a) to (g) of the Data Protection Regulation.

Article 8: Final Provisions

1. The Executive Director may adopt measures necessary to implement this decision by way of an ED Decision, having regard to the procedures for the DPO's investigation and any guidelines issued by the EDPS.
2. This Decision shall take effect on the day following that of its adoption.

Done at Warsaw, on 17 March 2023

For the European Cybersecurity Industrial,
Technology and Research Competence
Centre

(e-signed)

Pascal Steichen
Chairperson of the Governing Board