

## **Decision No MB/2019/14**

### **of the Management Board adopting implementing rules on data protection**

#### **THE MANAGEMENT BOARD**

Having regard to Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009<sup>1</sup>, and in particular Article 36(4) thereof,

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<sup>2</sup>, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC in particular Article 45(3) thereof,

Whereas:

- (1) Article 36(4) of Regulation (EU) 2018/1971 requires the Management Board to establish measures for the application of Regulation (EU) 2018/1725.
- (2) 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 and provides for the appointment by each institution and body of a Data Protection Officer (‘DPO’).
- (3) Article 45(3) of the Regulation requires that further implementing rules concerning the DPO shall be adopted by each Union institution or body.
- (4) The implementing rules shall in particular concern the tasks, duties and powers of the DPO.
- (5) Those rules shall be established after consulting the European Data Protection Supervisor.
- (6) The European Data Protection Supervisor has been consulted on 27 May 2019.

**HAS DECIDED:**

#### **Article 1**

#### **Definitions**

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<sup>1</sup> OJ L 321, 17.12.2018, p.1.

<sup>2</sup> OJ L 295, 21.11.2018, p. 39.

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

- (1) 'responsible staff' shall mean the responsible staff on behalf of the BEREC Office for activities processing personal data in the BEREC Office.

## **Article 2**

### **Scope**

This Decision further defines the rules and procedures for the implementation of the function of DPO of the BEREC Office 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 BEREC Office. 'DPO' shall mean the Data Protection Officer and the Deputy Data Protection Officer.

## **Article 3**

### **Designation, Status and Independence**

1. The DPO shall be designated by the Director based on his or her professional qualities and registered with the European Data Protection Supervisor ('EDPS'). A Deputy Data Protection Officer may be designated in accordance with the same procedure and for the same term, to support the Data Protection Officer 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 three up to five years by decision of the Director. 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 BEREC Office 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. The DPO shall be selected from the staff of the BEREC Office or from another Union institution or body and may be shared with other Union institutions and bodies. The DPO must have expert knowledge of data protection law and practices as well as a sound knowledge of the BEREC Office's services, its structure, its administrative rules and procedures.
4. Without prejudice to the provisions of the Regulation concerning his or her independence and obligations, the DPO shall report directly to the Director. 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.
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 data protection at the BEREC Office.
7. In accordance with the Regulation, 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 or at the request of the DPO for reasons that do not compromise the exercise of his or her functions.

## Article 4

### Tasks and Duties

1. Without prejudice to the tasks as described in Article 45 of the Regulation, 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 BEREC Office and issue a yearly report as described in Article 7(3) hereof.
3. The DPO shall assist the 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 BEREC Office. The DPO shall make the register publicly accessible.
5. The DPO shall help the 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 will 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 respectively to Article 34 and 35 of the Regulation.
8. The DPO shall ensure that the responsible staff informs data subjects of their rights and obligations pursuant to the Regulation in the context of processing activities. The DPO shall support the 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 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.
10. The DPO may make recommendations and give advice to responsible staff and processors on matters concerning the application of the Regulation. The DPO may perform investigations on request, or upon his/her own initiative, into matters and occurrences directly relating to his/her tasks, and report back to the person who commissioned the investigation or to the controller, in accordance with the procedure described in Article 10 hereof. If the applicant is a data subject asking for an investigation on the processing of their 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.

11. Without prejudice to the independence of the DPO, the Director may ask the DPO to represent the BEREC Office on any issues relating to the internal application of the provisions of the Regulation, including participation in interinstitutional and interagency committees and bodies.
12. In addition to his/her tasks within the EDPS, the DPO shall cooperate with the DPOs of other institutions and bodies in carrying out his or her functions, in particular by exchanging experience and best practices. He or she shall participate in the dedicated network(s) of DPOs. The DPO is also encouraged, as possible, to exchange experience and practices with DPOs of other organisations.
13. For processing operations on personal data under his or her responsibility the DPO shall act as the responsible staff.

## **Article 5**

### **Powers**

1. In performing his or her tasks and duties of DPO and without prejudice to the powers conferred by the Regulation, the DPO:
  - (a) May request legal guidance from the relevant Head of Unit of the BEREC Office;
  - (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 Director before referring the matter to the EDPS;
  - (c) May, after informing the staff member and their manager(s) and suggesting safeguards to prevent future similar incidents, bring to the attention of the Director any failure of a staff member to comply with the obligations under the Regulation and with those BEREC Office's Internal Control Standards more 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 BEREC Office and the procedure described in Article 10 hereof;
  - (e) The DPO shall be able to obtain 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 those of processors;
  - (f) The DPO shall have the support and assistance of the IT services of the BEREC Office, including those provided to the BEREC Office by external organisations, and may request technical opinions from the Local Information Security Officer;
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 BEREC Office shall assist the DPO in performing his or her duties and give information in reply to questions.

## **Article 6**

### **Resources**

The BEREC Office 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.

## **Article 7**

### **Information and cooperation**

1. The DPO shall respond to requests for advice from the BEREC Office and cooperate with the BEREC Office 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 Director by means of reports and dedicated meetings. The DPO shall submit to the 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 institution. The DPO shall produce a summary of this report to contribute to the Consolidated Annual Activity Report of the BEREC Office.

## **Article 8**

### **Staff responsible for activities processing personal data**

1. The 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, the 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 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 DPIA. 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 BEREC Office in its supervisory capacity regarding the internal application of the relevant articles of the Regulation.
3. In case of a personal data breach, the Local Information Security Officer shall inform the responsible staff as well as DPO without undue delay, including when he or she has doubts on whether personal data are affected by the security breach. The Local Information Security Officer shall provide the DPO with all the necessary information enabling his or her to ensure that the BEREC Office complies with the Regulation and more specifically with the obligation on personal data breach notifications and communications of Articles 34 and 35.

## **Article 9**

### **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. The 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 BEREC Office and shall communicate it to the BEREC Office upon request. The contract with them shall establish a duty, among others, to provide the institution with the necessary information to create the BEREC Office's records referred to in Article 31(1) of the Regulation.

## **Article 10**

### **Joint controllers**

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

## **Article 11**

### **Register**

1. The register mentioned in Article 4(4) hereof is a repository of the BEREC Office 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 BEREC Office's premises. The electronic format shall also be published on the BEREC website.
3. Any individual can request an extract of the register in writing to the DPO, who shall reply within 15 working days.

## **Article 12**

### **Investigation Procedure**

1. The requests for an investigation mentioned in Article 4(10) hereof shall be addressed to the DPO in writing. Within 15 days upon receipt, the DPO shall send an acknowledgment 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, for example where it is repetitive, abusive and/or pointless, the DPO shall inform the applicant that the request is not being pursued and give account of the reasons.
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 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 guidance on the issue from the relevant Head of Unit of the BEREC Office. The DPO shall be provided with the 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 the provisions of the Regulation.

### **Article 13**

#### **Exercise of Rights by Data Subjects**

When data subjects contact the BEREC Office to exercise their rights pursuant to Articles 17 to 24 of the 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 BEREC Office subject to a prior written agreement between the DPO and the Director.

### **Article 14**

#### **Restrictions Article 25**

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 BEREC Office'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**

#### **Entry into Force**

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

Done on 10 September 2019

**For the Management Board**

**Jeremy GODFREY**

## Chairperson of the Management Board