

EDPS comments on a draft Decision of the Management Board of the European Insurance and Occupational Pensions Authority on internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of EIOPA

1. Introduction

- These comments refer to the draft Decision of the Management Board of the European Insurance and Occupational Pensions Authority (EIOPA) on internal rules concerning restrictions of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of EIOPA, herein after the 'draft internal rules'. Our comments refer to the document submitted on 26 April 2019.
- We give these comments in accordance with Article 41(2) of Regulation (EU) 2018/1725 (hereinafter 'the Regulation')¹.

2. General comments

- The EDPS takes note that the rules are written in a **clear and precise way**.
- Concerning the right to information, we take note that the EIOPA is going to publish data protection notices on its website and intranet informing all data subjects of the potential restrictions of their rights related to personal data processing.
- The EDPS also takes note of the fact that the EIOPA will perform a **necessity and proportionality test** on the need for the restriction of data subjects' rights, according to several provisions of the internal rules.
- The EDPS welcome that the EIOPA is documenting the restrictions for accountability purposes, namely to make the files available to the EDPS upon request.

3. EDPS recommendations

- The preamble to the EIOPA draft internal rules **should not refer to the EDPS opinion from 22 March 2019. The opinion did not concern the draft internal rules at stake** and was issued informally, on the staff level, following the request for consultation on the model internal rules concerning restrictions of certain rights of data subjects in the context of Article 25 of the Regulation.
- The EDPS **calls for limiting the ground for restriction listed in Article 3 of draft internal rules. These grounds should only reflect the specific processing operations, as justifying the restrictions.** For instance, administrative inquiries or disciplinary proceedings fall **exclusively under the Article 25 (1) b of the Regulation.** Therefore, the reference to all grounds listed in Art. 25 of the

¹ OJ L 295, 21.11.2018, p. 39.

Regulation should be limited to those justified in the light of specific processing operations performed by EIOPA, linking each specific purpose of processing with the applicable ground for restricting data subjects' rights.

- The EDPS takes note that the necessity and proportionality test is provided in the draft internal rules. However, the wording of Article 3 (3) of draft internal rules implies that such test assesses whether given restriction is proportionate to the risks to the rights and freedoms of data subject. The **EDPS underlines that the necessity and proportionality test will imply assessing the risks to the rights and freedoms of the data subjects, but is broader than that assessment: it is about assessing whether the risks caused by the restriction are justified and proportionate in the light of the right or interest that the restriction is intended to protect.** As such, the necessity and proportionality criterion aims at balancing the scope of the restriction of the fundamental right at stake. **Changing the sentence “Any restriction shall be necessary and proportionate to the risks to the rights and freedoms of data subjects” to “Any restriction shall be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects [...]” would help to clarify this.** This recommendation follows from the general principle that any limitation on the exercise of the fundamental rights protected by the Charter of Fundamental Rights of the European Union must be provided by law, respect the essence of the rights, genuinely meet objectives of general interest recognised by the Union or protect the rights and freedoms of others, be necessary and proportional.
- In relation to the necessity principle, the EDPS underlines that **restrictions should be temporary and be lifted when their causes no longer apply.** Therefore, the EDPS welcomes the fact that restrictions will be **reviewed every six months**, and reminds that in such cases a necessity/proportionality assessment should be conducted. Nevertheless, in some situations, the EIOPA will only assess the need to maintain the restriction on an annual basis, which appears to be too long. **The EIOPA should apply the six months review cycle in all situations.**
- According to the Article 4 of the draft internal rules, the DPO will be informed without undue delay of each restriction of the data subject's rights applied pursuant to the internal rules and when the restriction has been lifted. The EDPS recommends the EIOPA to **document the involvement of the DPO** along all the procedures, and not only when applying or reviewing a restriction.
- The EDPS would like to remind that, according to Article 25(5) of the Regulation, this decision should be **signed at the highest management level.**

Brussels,

