

EDPS comments on the European Union Agency for Law Enforcement Training (CEPOL) draft internal rules concerning restrictions of certain rights of data subjects in the framework of the functioning of CEPOL

1. Introduction

- These comments refer to the European Union Agency for Law Enforcement Training (CEPOL) draft internal rules concerning the restriction of certain rights of data subjects in relation to processing of personal data in the framework of the functioning of CEPOL (hereinafter ‘the internal rules’). Our comments refer to the document submitted on 7 June 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 also take note that CEPOL is going to publish data protection notices on its website informing all data subjects of the potential restrictions of their rights related to personal data processing.
- The EDPS welcomes the fact that CEPOL 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 proposed internal rules will serve as CEPOL’s legal basis to impose restrictions under Article 25 of the Regulation, in the absence of a legal act adopted on the basis of the Treaties. As these restrictions seek to temporarily render unavailable certain rights that lie at the heart of the right to data protection, such as the right to information and the right to erasure, their legal basis should be well defined. Therefore, CEPOL should assess whether its internal rules accurately reflect the specific processing operations it performs or expects to perform. In doing so, it should consider making a link between the different categories of processing operations in which restrictions may be imposed in Article 1 (2) and the corresponding grounds for restrictions in Article 3(1). Where CEPOL only expects to rely on a certain ground in the light of a specific set of processing operations it performs, it could further clarify this in the internal rules.

3. EDPS recommendations

- According to Article 4 (as well as Recital 15) of the 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 CEPOL to **document the involvement of the DPO** along all the procedures, and not only when applying or reviewing a restriction.

¹ OJ L 295, 21.11.2018, p. 39.

- Article 8 of the internal rules allows CEPOL to restrict the communication of personal data breaches to the data subject in the framework of its anti-harassment procedures. However, in this context it is unclear which of the grounds in Article 25(1) of the Regulation would require restricting communication of personal data breaches. **Therefore, the EDPS recommends removing Article 8 (1) (d) from the internal rules.**
- Regarding the restriction of access of data subjects to their own medical file in Article 6 of the internal rules, the EDPS emphasizes that the general rule in all cases, whether they concern mental or physical conditions, remains direct access. However, *ex* Article 25(1)(h) of the Regulation, the access to data of psychological or psychiatric nature may exceptionally be provided indirectly, if an assessment made on a case by case basis reveals that indirect access is necessary for the protection of the data subject, given the circumstances at stake. As such, **the EDPS recommends that the internal rules clarify that the restriction of data subjects' access rights is limited to direct access to the documents of a psychological or psychiatric nature.** Regarding the indirect access by the data subject, the intermediary physician of his or her choice should be given access to all the information and discretionary power to decide how and what access to provide to the data subject.

Brussels, 20 June 2019

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