

## EDPS comments on the draft internal rules concerning restrictions of data subject rights by the Translation Centre for Bodies of the European Union

### 1. Introduction

- These comments refer to the draft internal rules of the Translation Centre for Bodies of the European Union (the CDT) concerning restrictions of data subject rights (hereinafter ‘the draft internal rules’). Our comments refer to the document submitted on 10 July 2019.
- We provide these comments under Article 41(2) of Regulation (EU) 2018/1725 (hereinafter ‘the Regulation’)<sup>1</sup>.

### 2. General comments

- Concerning the **right to information**, we welcome the CDT’s intention 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.
- In relation to the **necessity principle**, the EDPS underlines that restrictions should be temporary and lifted when their causes no longer apply. In this regard, the EDPS welcomes the CDT’s intention to review restrictions every six months, even after closure of the relevant inquiry, procedure or investigation.
- The EDPS welcomes the CDT’s intention to perform a **necessity and proportionality test** on the need for any restriction of data subjects’ rights (Article 3(4) of the draft internal rules). The EDPS recalls that this test should be repeated in the context of the above-mentioned periodic review, following assessment of whether the factual and legal reasons for a restriction still apply.
- The draft internal rules will serve as the CDT’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 temporarily to 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. The EDPS welcomes the fact that the draft internal rules reflect the **specific processing operations** it performs or expects to perform.
- The EDPS notes that the rules are **generally well drafted**. The EDPS is aware that the CDT’s draft internal rules are closely aligned with those developed earlier by other EU institutions, bodies and agencies. However, following reflection we believe it is in the interest of the data subject to address certain drafting aspects below. In this sense, the EDPS welcomes any further contribution to **the clarity and precision** of the text prior to adoption.

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

### 3. EDPS recommendations

- **Grounds for restriction:** In Article 3(2) the CDT should consider moving the following wording out of the chapeau: “in relation to personal data exchanged with Commission services or other Union institutions, bodies, agencies and offices, competent authorities of Member States or third countries or international organisations”.

Including this wording in the chapeau rather than in the list that follows could be read to allow the CDT to, for example, restrict rights in respect of personal data obtained from the Commission in circumstances where a Member State authority has a legal basis for restricting rights in respect of an entirely different set of personal data.

**We suggest clarifying that the CDT wishes to be able to restrict data subjects’ rights where both of the following apply:**

- the Commission or another Union institution, body or agency is entitled to restrict the exercise of a given right; and
  - the purpose of such a restriction by that Union institution, body or agency would be jeopardised were the CDT not to apply an equivalent restriction in respect of the same personal data.
- With regard to Article 3(2)(c), we recommend clarifying that the CDT may restrict where there is clear evidence that cooperation **is likely** to be jeopardised, rather than where this is simply possible.
  - **Accountability:** The EDPS welcomes the CDT’s intention to document restrictions for accountability purposes, namely to make the files available to the EDPS upon request for the purpose of investigating cases. This is especially clear from the draft provisions regarding restriction of the rights of information and access. Nonetheless, **we recommend clarifying that this accountability obligation applies in its entirety where any right is restricted.**

For example, Article 7(2) refers back to the obligation to register the record of a restriction in Article 6(3). There is no reference to the need also to make that record available to the EDPS on request (the second obligation in Article 6(3)). A similar, partial reference is made in Article 8(3).

We suggest that the CDT either include the entire accountability obligation in Article 3 of the draft internal rules, or make a reference to the whole of the obligation in Articles 7(2) and 8(3) of the draft.

- **Data protection officer:** The EDPS welcomes the review of restrictions by the DPO provided for in Article 4 of the draft internal rules. Under that provision, the DPO will be informed without undue delay of each restriction of the data subject’s rights applied pursuant to the draft internal rules and when the restriction has been lifted. The EDPS recommends that the CDT also **provide for involvement of the**

**DPO throughout all the relevant procedures** – not only when applying or reviewing a restriction – and for that involvement to be documented.

- **Data breach communication:** Article 8 of the draft internal rules allows the CDT 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. As a result, **the EDPS recommends removing Article 8(1)(d) from the internal rules.**
- **Entry into force:** Article 9 provides for entry into force of the decision on the day following its publication in the *Official Journal*. We note that this represents a departure from standard practice that is justified only in exceptional cases of urgency. The reasons justifying it are also usually documented in a recital. **We recommend checking whether urgent entry into force is necessary.** If it is, we recommend inserting an explanatory recital.

**1 8 DEC 2019**

Brussels,