

EDPS comments on the EPPO’s draft internal rules of procedure [2020-0781]

1. Introduction

- These comments refer to the draft internal rules of procedure (‘the draft RoP’). Our comments refer to the document submitted to the EDPS on 18 August 2020.
- We provide these comments in accordance with Article 85(2)(d) of Regulation (EU) 2017/1939 (‘the EPPO Regulation’)¹.

2. EDPS recommendations

The EDPS welcomes this timely consultation on the draft internal rules of procedure. The EDPS trusts that the EPPO will implement the following recommendations prior to adoption of the draft RoP by the College.

- **Recommendation 1 (Translation modalities):** [REDACTED]
- **Recommendation 2 (Temporary processing):** As regards **temporary processing**, we take note of the explanation provided in the email submitting this consultation request on 18 August, namely that ‘[REDACTED]’ Therefore, the EDPS recommends that the EPPO further reflects on the workflow and the processing of personal data before concluding as to whether the personal data received or acquired by the EPPO falls within its mandate. As a result, we thus recommend that the draft RoP make reference to temporary processing, in line with Article 49(4) EPPO Regulation, ‘further specify[ing] the conditions relating to the [temporarily] processing of such operational personal data, in particular with respect to access to and the use of the data, as well as time limits for the storage and deletion of the data.’ More detailed rules on temporary processing should be included in the internal rules on processing of personal data. The EDPS would like to recall the principle of accountability and the obligation to ensure compliance with the applicable data protection framework, including with regards to the exercise of the data subjects rights and the principle of storage limitation, including during temporary processing for relevance checking.
- **Recommendation 3 (Temporary processing):** As regards **information that falls outside the mandate of the EPPO**, Article 41(7) of the draft RoP mentions that ‘[REDACTED]’ Furthermore, Article 24(8) of the EPPO Regulation stipulates that ‘Where it comes to the knowledge of the EPPO that a criminal offence outside of the scope of the competence of the EPPO may have been committed, it shall without undue delay inform the competent national authorities and forward all relevant evidence to them.’ The EDPS recommends that the provisions of draft RoP be aligned with Article 24(8) of the EPPO Regulation and more specifically that Article 37(6) of the draft RoP provide also for the possibility to inform the competent national authorities and forward all relevant evidence to them.

¹ OJ L 283, 31.10.2017, p. 1–71

- **Recommendation 4 (Categories of personal data and data subjects):** Article 40(2) of the draft RoP contain provisions referring to **the categories of personal data and data subjects** that can be processed by the EPPO in the index referred to in the Article 44(4)(b) of the EPPO Regulation. The EDPS recommends that the provisions of draft RoP reflect the categories of personal data and data subjects included in the delegated acts adopted by the European Commission in accordance with Article 49(3) of the EPPO Regulation. The EDPS also recommends that the draft RoP clarify the formulation ‘[REDACTED]’ included in Article 40(2) of the draft RoP.
- **Recommendation 5 (Data protection principles):** Article 62 of the draft RoP includes a list of **data protection principles**. As the principle of purpose limitation is missing, the EDPS recommends that the list of the data protection principles include all data protection principles as listed in Article 47 of the EPPO Regulation. Furthermore, the EDPS recommends that the draft RoP make reference and supplement the provisions of Article 67 of the EPPO Regulation on the data protection by design and by default.
- **Recommendation 6 (Access to CMS):** Article 60 of the draft RoP provides for rules **regarding access to the CMS**. The EDPS recommends that the draft RoP contain also provisions as regards to the fact that the EPPO shall implement appropriate technical and organisational measures to ensure the protection of the personal data stored in the EPPO’s CMS.
- **Recommendation 7 (Data Protection Officer):** Article 62(7) of the draft RoP provide that ‘[REDACTED]’ As provided in Article 79(1)(a) of the EPPO Regulation, the DPO is called to ensuring, in an independent manner, the EPPO’s compliance with the data protection provisions not solely with the EPPO Regulation, but also with Regulation 2018/1725 as regards administrative data ‘and of the relevant data protection provisions in the internal rules of procedure of the EPPO’. Therefore, the EDPS recommends aligning the provisions of Article 62(7) of the draft RoP with Article 79(1)(a) of the EPPO Regulation.
- **Recommendation 8 (Working arrangements):** Article 65(4) of the draft RoP (‘**General Rules on Working Arrangements and Agreements**’) provide that ‘[REDACTED]’ Article 99(1) of the EPPO Regulation specifies the entities with which the EPPO may conclude working arrangements. While the EPPO Regulation provides that the EPPO may conclude an agreement with the Commission (Article 103(1)), the agreement referred to in Article 106(2) of the EPPO Regulation is of a different nature - ‘Headquarters Agreement to be concluded between the EPPO and Luxembourg’ and it is not included under Chapter X: ‘Provisions on the relations of the EPPO with its partners’ but under Chapter XI: ‘General provisions’. As a result, the EDPS recommends that Article 65 of the draft RoP be modified accordingly.
- **Recommendation 9 (Entry into force):** With regards to the **entry into force** of the RoP, the EDPS recommends a longer *vacatio legis*, namely 20 days after its adoption.