



EDPS comments on the EPPO’s draft decision on application of Article 25 of Regulation (EU) 2018/1725 [2020-0805]

1. Introduction

- These comments refer to the draft decision on application of Article 25 of Regulation (EU) 2018/1725 at EPPO (‘the draft rules’). Our comments refer to the document submitted on 27 August 2020.
- We provide these comments in accordance with in accordance Article 41(2) of Regulation (EU) 2018/1725 (‘the Regulation’)¹.

2. General comments

- We take note that the draft decision is based on the template included in the EDPS Guidance on Article 25 of the Regulation (version 24 July 2020)² and that only minor adaptations, required by the EPPO’s particular situation, have been included in the draft decision.
- We take particularly note of the EPPO’s intention to underline in the text of the draft rules the difference between the two categories of personal data processed by the EPPO (operational and administrative) and that these rules apply only to the processing of administrative personal data.

3. EDPS recommendations

The EDPS trusts that EPPO will implement the following recommendations prior to adoption of the draft rules.

Recommendation 1: We take note that the draft rules do not refer to specific rules on whistleblowing and psychological and sexual harassment, which is due, as highlighted in the message accompanying the consultation request, that the EPPO does not have for the time being such specific rules. However, the draft rules refer to ‘confidential counsellors in the context of a harassment procedure’. As a result, we recommend that the EPPO update the draft rules to reflect the current situation at the EPPO (for example, whether such confidential counsellors exist or not). Furthermore, we recommend that the EPPO update the draft rules as soon as internal rules on anti-harassment and whistleblowing are in place. Please note that the EDPS

¹ OJ L 295, 21.11.2018, p. 39–98

² Available on the EDPS website via: https://edps.europa.eu/data-protection/our-work/publications/guidelines/guidance-art-25-regulation-20181725_en

has published guidance on processing personal information within a whistleblowing procedure³.

Recommendation 2: Article 2(1)(a) refers to the possibility to apply restrictions ‘when conducting investigations or prosecutions, administrative inquiries, pre-disciplinary, disciplinary or suspension proceedings under Article 86 and Annex IX of the Staff Regulations’. While Article 86(2) of the Staff Regulations (‘Disciplinary measures’) refers to ‘administrative investigations’, the legal provisions referring to in the draft rules (Article 86 and Annex IX of the Staff Regulations) do not contain provisions referring to prosecutions, which do not fall within the scope of the EUIs competences as regards their staff. Considering the clear delineation made in the draft rules between administrative and operational personal data and that the draft rules specify in Article 1(3) that ‘These rules apply to the processing of administrative personal data only, and do not impact on the EPPO’s processing of operational personal data’, the EDPS recommends clarifying that the scope of the investigations refers only to administrative investigations and deleting any reference to prosecutions.

Recommendation 3: Given that the draft rules do not contain provisions on its entry into force, we recommend including such provisions and to allow for an appropriate *vacatio legis*.

Brussels, 7th October 2020

³ Available on the EDPS website via: https://edps.europa.eu/data-protection/our-work/publications/guidelines/guidelines-processing-personal-information-within_en