

CPVO DECISION

Implementing Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 in the Community Plant Variety Office 17 December 2018 Office

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The President of the Community Plant Variety Office (the Office),

Having regard to the Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, and in particular Article 42(2)(c) thereof,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) 45/2001 and Decision No 1247/2002/EC (hereinafter – Regulation (EU) No 2018/1725), and in particular Article 41 thereof,

Whereas Regulation (EU) 2018/1725 lays down the data protection principles and rules applicable to all Union institutions, bodies, offices and agencies and provides for a Data Protection Officer (DPO) to be designated by each Union institution, office and agency;

Whereas pursuant to Article 45 (3) of Regulation (EU) 2018/1725, each Union institution, office and agency shall adopt further implementing rules concerning the Data Protection Officer and his/her tasks, duties and powers,

HAS ADOPTED THE FOLLOWING DECISION:

SECTION 1

GENERAL PROVISIONS

Article 1

Purpose and scope

1. This Decision lays down the general rules implementing Regulation (EU) 2018/1725 for the Community Plant Variety Office ('CPVO' or 'the Office'). In particular, it supplements the provisions of Regulation (EU) 2018/1725, relating to the Data Protection Officer's designation, as well as to his/her tasks, duties and powers.

2. This Decision also clarifies the roles, tasks and duties of the controllers and the data protection coordinator and implements the rules pursuant to which data subjects may exercise their rights.

Article 2

Definitions

For the purposes of this Decision, and without prejudice to the definitions laid down in Regulation (EU) 2018/1725, the following definitions shall apply:

- (a) 'EDPS' means European Data Protection Supervisor as referred to in Article 1(3) of Regulation (EU) 2018/1725;
- (b) 'DPO' means the data protection officer, designated by the CPVO as stipulated in Article 43 of Regulation (EU) 2018/1725;
- (c) 'controller' means the CPVO Head of Unit who determines the purposes and means of the processing of personal data;
- (d) 'processor' means any entity or individual who carries out the processing on behalf of a controller;
- (d) 'data protection coordinator' means the CPVO staff member in charge of internal control and who is designated to assist the controller in his/her collaboration with the DPO.
- (e) 'data subject' means any identified or identifiable natural person to whom personal data processed by the CPVO relates.

SECTION 2

DATA PROTECTION OFFICER

Article 3

Designation, position and organisational matters

1. The President of the Office shall:
 - (a) designate the DPO from amongst CPVO staff members, or from another EU agency;
 - (b) set a term of office for the DPO of between three and five years which may be renewed; and
 - (c) publish the contact details of the DPO and register the DPO with the European Data Protection Supervisor.
2. The President of the Office shall:
 - (a) ensure that the data protection officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data;
 - (b) support the data protection officer in performing the tasks referred to in Article 45 by providing resources necessary to carry out those tasks and access to personal data and processing operations, and to maintain his or her expert knowledge;
 - (c) ensure that the DPO can carry out DPO tasks and duties in an independent manner in accordance with Article 45(1) of Regulation (EU) 2018/1725;
 - (d) in case the DPO fulfils other tasks and duties, ensure that any such tasks and duties do not result in a conflict of interests.
3. Without prejudice to such independence:
 - (a) the DPO shall be a statutory staff member of the Office, or of another EU agency;
 - (b) for administrative purposes, the DPO shall be assigned to the President or its equivalent;

and



- (c) The DPO's performance of his/her tasks and duties shall be assessed annually. The procedure to be followed will be agreed on separately between the CPVO President and the Executive Director of EUIPO.
- 4. The controllers shall ensure that the DPO is kept informed without delay:
 - (a) when an issue arises that has, or might have, data protection implications; and
 - (b) in respect of all CPVO management communication with internal and external parties relating to the application of Regulation (EU) 2018/1725, notably any interaction with the EDPS.
- 5. The President of the Office may designate a Deputy DPO, to whom paragraphs 1 and 2 shall apply. The Deputy DPO shall support the DPO in carrying out DPO's tasks and duties, and shall deputise in the event of the DPO's absence.
- 6. The CPVO Internal Control Coordinator shall provide support to the DPO in relation to data protection issues. He/she shall act solely on the President's instructions, while taking into consideration the DPO's opinion.

Article 4

Data Protection Officer's tasks and duties

1. The DPO shall:

- (a) ensure that the controller or the processor and the employees who carry out processing are informed of their obligations and responsibilities and the data subjects are informed of their rights and obligations pursuant to Regulation (EU) 2018/1725. In the discharge of this task, he/she shall in particular provide information and training; consult interested parties and raise the general awareness of data protection issues;
- (b) ensure in an independent manner the internal application of the Regulation (EU) 2018/1725 and to monitor compliance with this Regulation, with other applicable Union law containing data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, the raising of awareness and training of staff involved in processing operations, and the related audits. The DPO may prepare templates and develop internal policies and procedures to provide guidance to controllers;
- (c) provide advice where requested as regards the necessity for a notification or a communication of personal data breach pursuant to Article 35 of Regulation 2018/1725;
- (d) provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 39 of Regulation 2018/1725 and to consult the European Data Protection Supervisor in case of doubt as to the need for a data protection impact assessment;
- (e) provide advice where requested as regards the need for prior consultation of the European Data Protection Supervisor pursuant to Article 40 of Regulation 2018/1725 and to consult the European Data Protection Supervisor in case of doubt as to the need for a prior consultation;
- (f) maintain a central register of processing operations to perform his/her task of monitoring compliance, informing and advising the controller or the processor;
- (g) respond to requests from the EDPS and, within the sphere of his/her competence, cooperate and consult with the EDPS at the latter's request or on his/her own initiative;
- (h) ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations.



Article 5

Additional Duties

1. In addition to his/her general tasks, the DPO shall:
 - (a) act as an advisor to the President and to the controller and the processor on matters concerning the application of data protection provisions. The DPO may be directly consulted by the Appointing Authority, the controller, and the CPVO Staff Committee and by any individual, on any matter concerning the interpretation or application of Regulation (EU) 2018/1725;
 - (b) handle queries or complaints and on his/her own initiative or at the request of the Appointing Authority, the controller or the processor, the Staff Committee concerned or any individual, investigate matters and occurrences directly relating to his/her tasks and which come to his/her notice, and report back to the person who commissioned the investigation ('requester ') or to the Appointing Authority, the controller or the processor. If deemed appropriate, all other parties concerned should be informed accordingly. If the requester is an individual, or in the case that the requester acts on behalf of an individual, the DPO must, to the extent possible, ensure confidentiality of the request. This confidentiality may only be waived if the data subject concerned gives his/her explicit and unambiguous consent to treat the request otherwise;
 - (c) cooperate in the discharge of his/her functions with the Data Protection Officers of other Community institutions and bodies, in particular by exchanging experience and best practices;
 - (d) report on his/her activities to the President of the Office and if requested, make it available to all CPVO staff.
2. Without prejudice to Articles 4(1)(g), and 5(1)(b) and (c) hereof, the DPO and his/her staff shall not divulge information or documents which they obtain in the course of their duties.

Article 6

Powers

In performing his/her tasks and duties, the DPO:

- (a) shall have access at all times to the data forming the subject-matter of processing operations and access to all CPVO offices, data-processing installations and data carriers;
- (b) may without prejudice to the EDPS's duties and powers propose to the President administrative measures and issue general recommendations on the appropriate application of data protection provisions;
- (c) may make, in specific cases, any other recommendation for practical improvements relating to data protection to the President and/or to all other parties concerned;
- (d) may bring to the attention of the President any failure of an CPVO staff member to comply with the obligations under Regulation (EU) 2018/1725 and, where appropriate, recommend that an administrative investigation be launched in view of the possible application of Article 69 of Regulation (EU) 2018/1725.



SECTION 3

CONTROLLER AND DATA PROTECTION COORDINATOR

Article 7

Tasks and duties of the controller and data protection coordinator

1. The controller shall ensure that all processing operations involving personal data that are performed within his/her area of responsibility comply with Regulation (EU) 2018/1725.
2. The controller shall be a Head of Unit of the Office.
3. The controller shall have the obligation to assist the DPO and the EDPS in the performance of his/her duties. In carrying out this duty, the controller shall provide full information to the DPO and the EDPS, grant them access to all personal data within his/her control and respond to their questions.
4. In particular, the controller shall:
 - (a) keep the DPO duly informed on any personal data processing operation or set of such operations intended to serve a single purpose or several related purposes, as well as of any substantial change of an existing personal data processing operation;
 - (b) assist the DPO and the EDPS to perform their respective duties, in particular by giving information in reply to their requests within no later than 10 days;
 - (c) implement appropriate technical and organisational measures and give adequate instructions to Office's staff to ensure both the compliance of the processing with the data protection principles and the level of security appropriate to the risks represented by the processing. The controllers shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects;
 - (d) where appropriate, consult the DPO and/or the IT Team leader concerning issues relating to the confidentiality of the personal data processing operations and on the processing security measures taken pursuant to Article 33 of Regulation (EU) 2018/1725;
 - (e) where processing is to be carried out on behalf of a controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject;
 - (f) maintain records of his/her processing activities under its responsibility and insert his/her records of processing activities in a central register as stipulated in Article 31 of the Regulation (EU) 2018/1725. The register will be maintained by the DPO and made publicly accessible by the CPVO;
 - (g) in the case of a personal data breach, the controllers shall inform the data protection officer about it and without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the EDPS, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons;
 - (h) document any personal data breaches, comprising the facts relating to the personal data breach, its effects and the remedial actions taken to demonstrate compliance;
 - (i) when the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay;



- (j) where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controllers shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data ('data protection impact assessment' as described in Article 39 of the Regulation (EU) 2018/1725). Where a data protection impact assessment indicates that the processing would, in the absence of safeguards, security measures and mechanisms to mitigate the risk, result in a high risk to the rights and freedoms of natural persons and the controllers are of the opinion that the risk cannot be mitigated by reasonable means in terms of available technologies and costs of implementation, the controllers shall consult the European Data Protection Supervisor prior to processing. In both cases, the controllers shall seek the advice of the data protection officer about the need for data protection impact assessment and the need of it to be followed by prior consultation.
5. Without prejudice to the responsibilities of the controller and the DPO, the data protection coordinator shall:
- (a) keep an inventory of all existing processing of personal data in the Office and maintain records of all processing operations;
 - (b) where appropriate, facilitate communication between the DPO and the controller;
 - (c) assist the DPO to ensure that controller or the processor and the employees who carry out processing are informed of their obligations and responsibilities and the data subjects are informed of their rights and obligations pursuant to Regulation (EU) 2018/1725. In the discharge of this task, he/she shall in particular provide information and training; consult interested parties, respond queries and raise the general awareness of data protection issues.

SECTION 4

RIGHTS AND OBLIGATIONS OF OTHER ACTORS IN THE FIELD OF DATA

PROTECTION

Article 8

Appointing Authority

1. In the case of a complaint within the meaning of Article 90 of the Staff Regulations relating to a violation of Regulation (EU) 2018/1725, the President shall consult the DPO, who should deliver his/her opinion in writing no later than 10 days after receipt of the request. If, after the end of this period, the DPO has not provided his/her opinion to the President, it is no longer required. The President shall not be bound by the DPO's opinion.
2. The DPO shall be informed whenever an issue is under consideration which has, or might have, data protection implications.



Article 9

CPVO staff

1. All CPVO staff shall contribute to the application of the organisational and technical measures and confidentiality and security rules for the processing of personal data as provided for by Regulation (EU) 2018/1725. No member of the CPVO staff with access to personal data shall process such data other than on instructions from the controller, unless required to do so by national or Union law.
2. Any member of CPVO staff may address his/her requests/queries to and raise his/her concerns regarding an alleged breach of the provisions of Regulation (EU) 2018/1725 before the DPO.
3. Any member of CPVO staff may lodge a complaint with the EDPS regarding an alleged breach of the provisions of Regulation (EU) 2018/1725 governing the processing of personal data, without acting through official channels, as specified by the Rules set by the EDPS.

SECTION 5

DATA SUBJECTS' RIGHTS

Article 10

Content and purpose of the Personal Data Processing Operations Register

1. The CPVO shall keep a central register (the 'Personal Data Processing Operations Register' hereinafter the 'Register') of records of processing activities performed upon personal data.
2. The Register shall, for reasons of transparency, be made public. The information in the register shall be entered and updated by the controllers and kept by the DPO. The Register shall be published and regularly updated on the CPVO's intranet and on the CPVO website. However, the information in the Register may exceptionally be limited when it is necessary to safeguard the security of a specific processing operation.
3. The Register shall serve as an index of all the personal data processing operations conducted at the CPVO, providing information to data subjects and facilitating the exercise of their rights as set out in Articles 17 to 24 of Regulation (EU) 2018/1725.

Article 11

Exercise of data subjects' rights

1. Further to their right to be informed about any processing of their personal data, data subjects may approach the controller to exercise their rights pursuant to Articles 17 and 24 of Regulation (EU) 2018/1725. In relation to the rights of the CPVO data subjects:
 - (a) these rights may also be exercised by the data subjects via their duly authorised representative. All information in this respect shall be obtained from the controller free of charge;



- (b) requests to exercise these rights shall be addressed in writing to the controller. The controller shall only grant the request if the requester's identity and, if relevant, their entitlement to represent the data subject have been appropriately verified. The controller shall without delay and in any case within one month of the receipt of the request provide information to the data subject in writing on the action taken. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with the data protection officer, the EDPS and seeking a judicial remedy;
- (c) data subjects may contact the DPO in the event that the controller does not respect either of the time limits in paragraph (b) above. If the controller is of the view that the request by a data subject in exercising his/her rights is an obvious abuse, the controller may refer the request to the DPO. If the request is referred to the data protection officer, the DPO shall decide on the merits of the request and the appropriate follow-up. In the event of disagreement between the data subject and the controller, both parties shall have the right to consult the DPO.
2. CPVO staff members are encouraged to consult the DPO before lodging a complaint with the EDPS pursuant to Article 68 of Regulation (EU) 2018/1725.
3. No one shall suffer prejudice on account of having lodged a complaint with the EDPS or having brought a matter to the attention of the DPO alleging a breach of the provisions of Regulation (EU) 2018/1725.

Article 12

Exemptions and restrictions

1. The controllers may restrict the rights referred to in Articles 14 to 22, 34 and 38, as well as Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 22, of Regulation (EU) 2018/1725 in accordance with internal rules adopted pursuant to Article 25 of Regulation (EU) 2018/1725.
2. Any affected person may ask the EDPS to apply Article 59(2)(h) of Regulation (EU) 2018/1725.

Article 13

Investigation procedure

1. Any request for an investigation under Article 5 (1) (b) or 11 (1) (c) above shall be addressed to the DPO in writing.
2. The DPO shall ensure sending an acknowledgement of receipt to the requester within 2 working days of receipt of the request.
3. The DPO may investigate the matter on-site and request a written statement from the controller. The controller shall provide his/her response to the DPO within 10 days of the controller's receipt of the DPO's



request. The DPO may ask for additional information or assistance from any CPVO Unit. That Unit shall provide such additional information or assistance within 10 days of the DPO's request.

4. The DPO shall ensure reporting back to the requester within one calendar month of receipt of the request. This period might be extended with two months depending on the nature and complexity of the complaint and the outcome of the internal inquiry.

Article 14

Remedies

In addition to the remedies laid down in Articles 63 and 64 of Regulation (EU) 2018/1725, which are available to all data subjects, the remedies laid down in the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the European Union shall be available to data subjects who are CPVO staff members.

SECTION 6

ENTRY INTO FORCE

Article 15

Final provision

This Decision entered into force on 11 December 2018

Done at Angers, 17 December 2018.



Martin EKVAD

President

