



EDPS comments on the APPF's draft decision concerning the implementing rules relating to Regulation (EU) 2018/1725 [2021-0335]

1. Introduction

These comments relate to the draft decision of the Authority for European Political Parties and European Political Foundations (APPF) concerning the implementing rules relating to Regulation (EU) 2018/1725, including restrictions of certain rights of data subjects pursuant to Article 25 of Regulation (EU) 2018/1725¹ (hereinafter 'the Regulation').

The EDPS' comments refer to the document submitted on 22 March 2021 (hereinafter 'the draft rules'). We issue these comments in accordance with Article 41(2) of the Regulation.

We would also like to highlight the updated EDPS Guidance on Article 25 of the Regulation², published on 24 June 2020.

2. General comments

- We take note that the draft rules build on the implementing rules on restrictions to data subject rights under Article 25 of the Regulation, previously adopted by the European Parliament³.
- We welcome that APPF will only restrict data subject rights based on the draft rules, which provide a clear legal basis thereto.

¹ Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons 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) No 45/2001 and Decision No 1247/2002/EC.

² Available on the EDPS website via: [20-06-24 edps guidance on article 25 of the new regulation and internal rules en.pdf \(europa.eu\)](#)

³ EDPS case file 2019-0407. The EDPS issued comments on the EP rules on 2 May 2019.

- The EDPS welcomes that APPF will perform a necessity and proportionality test on a case-by-case basis before restrictions are applied, under Article 32(1) of the draft rules.
- In relation to the necessity principle, the EDPS has underlined that restrictions should be temporary and be lifted when their causes no longer apply. Therefore, the EDPS notes with satisfaction that restrictions will be reviewed every six months under Article 33(3) of draft I rules.

3. EDPS recommendations

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

Recommendation 1: The EDPS notices that Chapters I to III and V of the draft rules are not included in the document provided. The EDPS asks APPF to clarify the content of those chapters.

As Article 25 of the Regulation requires that rules on restrictions be laid down in internal rules, the recommended practice is to have stand-alone internal rules on restrictions. If the APPF decides to keep a hybrid document that does not focus on restrictions under Article 25 of the Regulation, the whole document must in any case meet the requirements for internal rules, i.e. be adopted at the highest level of management of the institution and published in the Official Journal⁴. In addition, the EDPS recommends:

- mentioning in the title of the draft rules that they include (notably) internal rules on restrictions to data subject rights;
- completing the title of Chapter IV (i.e. 'Exceptions, derogations and restrictions **to data subject rights**').

⁴ See Art. 25(5) and Recital 24 of the Regulation : 'The internal rules referred to in this Regulation should be clear and precise acts of general application intended to produce legal effects vis-à-vis data subjects. They should be adopted at the highest level of management of the Union institutions and bodies, within their competencies and in matters relating to their operation. They should be published in the *Official Journal of the European Union*. The application of those rules should be foreseeable to persons subject to them in accordance with the requirements set out in the Charter and the European Convention for the Protection of Human Rights and Freedoms. Internal rules may take the form of decisions, in particular when adopted by Union institutions.'

Recommendation 2: The EDPS notices that the draft rules do not contain a specification of the controller or the categories of controllers as foreseen under Article 25(2)(e) of the Regulation. The EDPS recommends that APPF specify who the controller is or list the categories of controllers. In addition, reference should be made to the function of the person rather than listing the names⁵.

Recommendation 3: The EDPS highlights that under Article 25(2)(f) of the Regulation the storage or retention period should be indicated in the internal rules. Therefore, the EDPS recommends adding a relevant provision to the draft I rules.

Recommendation 4: The EDPS takes note of Article 27 of the draft I rules, which states that APPF '*shall publish on its website data protection notices that inform all data subjects of its activities involving processing of their personal data and of a potential restriction of their rights in this context*'. In order to clarify the different scope of Article 27 (general information) and Article 28 (specific information on restrictions), the EDPS recommends clarifying the titles of these provisions accordingly.

Recommendation 5: In accordance with Articles 28(2) and 29(2) of the draft rules, the provisions of information may be deferred, omitted or denied, for as long as it would cancel the effect of the restriction. The EDPS recommends adding a clarification that the assessment of whether this would be justified shall take place on a case-by-case basis and as soon as it would no longer cancel the effect of the restriction, the APPF shall provide the information to the data subject.⁶

Recommendation 6: The EDPS highlights that when the communication of a data breach to the data subject is restricted, it shall be documented in a note and the note shall be communicated to the EDPS at the time of the notification of the personal data breach. Therefore, the EDPS recommends adding a relevant provision under Article 30 of the draft rules.

⁵ Guidelines, paragraph 53

⁶ Guidelines, paragraphs 61-62.

Recommendation 7: The EDPS would like to remind that the right to confidentiality of electronic communications under Article 36 of the Regulation may be restricted only in extraordinary circumstances⁷. In this case, the APPF shall inform the data subject concerned, in its reply to any request from the data subject, of the principal reasons on which the application of the restriction is based and of his or her right to lodge a complaint with the EDPS. In addition, the APPF may defer, omit or deny the provision of information concerning the reasons for a restriction and the right to lodge a complaint with the EDPS for as long as it would cancel the effect of the restriction. Assessment of whether this would be justified shall take place on a case-by-case basis. The EDPS recommends adding the above under Article 30 of the draft rules.

Recommendation 8: The EDPS welcomes the fact that, under Article 34 of the draft rules, the Data Protection Officer (DPO) will be informed whenever the rights of a data subject are restricted. The DPO should also, if possible, be involved in the assessment⁸ and throughout all the procedure⁹.

The EDPS recommends that Article 34 of the draft rules provide for the documentation of the involvement of the DPO in the application of restrictions in detail, including what information was shared with them

Recommendation 9: In accordance with Article 25(5) of the Regulation, the internal rules shall be adopted at the highest level of management of the Union institutions and bodies and published in the Official Journal. The EDPS recommends including such a reference in the draft rules.

Recommendation 10: 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*.

Recommendation 11: The EDPS highlights that restrictions to the right of access regarding selection procedures under Annex II of the draft rules must not exceed what is strictly necessary. The APPF can ensure the independence of the jury and protect

⁷ Guidelines, paragraph 16

⁸ Guidelines, paragraph 26.

⁹ Guidelines, p. 2, R6.

the rights of other candidates by having aggregate assessments by the selection Board and avoiding comparative assessments with other candidates, in order to limit the instances where a restriction is needed. In this spirit, the EPDS recommends that the APPF add in Annex II, point (2) that the restriction for protecting rights and freedoms of other data subjects should be applied only in very exceptional cases.

Recommendation 12: The draft rules (Annex VII - Cooperation with the European Anti-Fraud Office - OLAF) provides that APPF may impose a restriction on information and documents provided to OLAF. As OLAF is not considered as a 'recipient' under Article 3(13) of the Regulation, there is no obligation to inform the data subject (either spontaneously under Articles 15-16 of the Regulation or following a request for access under Article 17 of the Regulation) about a transmission of information to OLAF at the latter's request.

Therefore, and even though it does not harm to do it, there is strictly speaking no need to provide for a restriction to cover the hypothesis of a passive transmission to OLAF. Internal rules must, however, be in place to restrict data subject rights regarding personal data obtained from OLAF or personal data transmitted to OLAF initiated by the APPF (i.e. in case of suspicion of fraud by the APPF). In view of the above, the EDPS only suggests adding in Annex VII of the draft rules that before applying restrictions, the APPF shall consult OLAF, unless it is clear to the APPF that the application of a restriction is provided for by one of the acts referred to in those points or such consultation would jeopardise OLAF's activities.

* *
*

Done at Brussels, 28 April 2021

(e-signed)

Delphine HAROU