

MANAGEMENT BOARD DECISION No 34/2015
of 10 September 2015

adopting

Implementing Measures for the application of Regulation (EC) No 45/2001 by Frontex

THE MANAGEMENT BOARD

Having regard to the Frontex Regulation¹, in particular Article 11a thereof,

Having regard to the Data Protection Regulation², in particular Article 24(8) thereof,

Whereas:

- (1) The Charter of Fundamental Rights of the European Union guarantees the respect for private and family life (Article 7), establishes the right to data protection (Article 8(1)) and refers to the data protection principles (Article 8(2)). In 2012, the Charter became legally binding a part of the treaty law and therefore not only Member States but also EU institutions and bodies must observe and guarantee these rights.
- (2) Article 11a of the Frontex Regulation stipulates that Regulation (EC) No 45/2001, hereinafter referred to as the ‘Data Protection Regulation’, applies to the processing of personal data by Frontex; this article also obliges Frontex Management Board to adopt measures for its application. That Data Protection Regulation sets out the principles and rules applicable to all EU institutions and bodies and provides for the appointment by each EU institution and EU body of the Data Protection Officer.
- (3) Article 24(8) of the Data Protection Regulation requires that further implementing rules concerning the Data Protection Officer shall be adopted by each Community institution or body in accordance with the provisions in the Annex thereto. The implementing rules shall in particular concern the tasks, duties and powers of the Data Protection Officer.

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operation Cooperation at the External Borders of the Member States of the European Union OJ L 349, 25.11.2004, p.1, as last amended.

² Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2001 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data, OJ L 8, 12.01.2001, p. 1.

- (4) Such implementing rules shall also specify the procedures for the exercise of rights of the data subjects, as well as for the fulfilment of obligations relating to the processing of personal data by all relevant actors including Data Controllers.

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Decision lays down the general measures implementing the Data Protection Regulation and its Annex in Frontex. In particular, this Decision:

- supplements the provisions in the Data Protection Regulation relating to the appointment and status of the Frontex Data Protection Officer (DPO) as well as to his/her tasks, duties and powers;
- defines the roles and responsibilities of the Data Controllers in Frontex;
- lays down the rules according to which data subjects can exercise their rights, and
- implements the procedures for notifying to the DPO operations involving personal data.

Article 2

Definitions

1. For the purpose of this Decision, the definitions included in the Data Protection Regulation apply.
2. While data controllership and final accountability lies with Frontex as an Agency, "Data Controller" for the purpose of this Decision, is the Head of the Unit in which the processing of the personal data takes place. For the data processing by the Executive Support, the Deputy Executive Director is the Data Controller.
3. In case personal data is processed jointly by two or more Frontex units, each Head of the unit processing the personal data is a Data Controller; that joint data controllership should be accompanied by a clear distinction of roles and responsibilities, clarifying which controller is in charge of which aspects, in order to avoid and gaps of accountability. The Directors of the Division in which the processing takes place may, in agreement with other actors, decide to replace the Heads of Units and be a Data Controller.



CHAPTER II
DATA PROTECTION OFFICER

Article 3

Appointment of the Data Protection Officer

1. The Executive Director of Frontex appoints the DPO on the basis of the candidate's personal and professional qualities and, in particular, his or her expertise in data protection and sound knowledge of Frontex.
2. DPO is appointed for a period of three years: DPO may be reappointed up to a total duration of ten years. The Executive Director notifies the European Data Protection Supervisor (EDPS) on the appointment of Frontex DPO.
3. The Executive Director shall ensure that the DPO can carry out his/her duties in an independent manner and with adequate resources, albeit being subject to the conditions of employment in Frontex.
4. In exercising his/her tasks and powers, the DPO is accountable only to the Executive Director of Frontex.
5. DPO may be dismissed from his/her function only with the consent of the European Data Protection Supervisor and only in case the DPO no longer fulfils the conditions required for the performance of his or her duties.

Article 4

Tasks and duties of the DPO

1. Without prejudice to the duties of the DPO as provided for in the Data Protection Regulation and in particular Article 24(1) and the Annex herein, the DPO performs the following tasks in an independent manner:
 - (a) The DPO advises the Executive Director and the Data Controllers on matters concerning the application of data protection provisions in Frontex, either upon request or on his/her own initiative.
 - (b) The DPO may be consulted by the Executive Director, by any of the Data Controllers concerned, by the Staff Committee or by any individual on any matter concerning the interpretation or application of the Data Protection Regulation.
 - (c) The DPO - either on his/her own initiative or upon request of the Executive Director, a Data Controller, the Staff Committee or any individual concerned (including individuals external to Frontex) - investigates matters and occurrences directly relating to DPO tasks and duties and reports back to the person who commissioned the investigation.
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- (d) The DPO keeps, pursuant to Article 24(1)(d) and Article 26 of the Data Protection Regulation, a public register of the operations involving processing of personal data in Frontex and notifies the EDPS if those operations are likely to present any risk referred to in Article 27 of the Data Protection Regulation.
 - (e) The DPO makes an inventory on the already existing or planned operations in Frontex known to him/her but not yet formally notified to the DPO.
 - (f) The DPO raises awareness of Frontex staff members regarding the data protection requirements and best practices, in particular by internal trainings and publications. At least one training per year shall be organized. In particular, Data Controllers shall be informed of their obligations.
 - (g) The DPO responds to the requests of the EDPS and works together with the EDPS within the ambit of the personal data protection, either on his/her own initiative or on the request of the EDPS.
 - (h) The DPO cooperates with the DPOs of the other Union institutions and bodies, in particular by exchanging experience and know-how and representing Frontex in relation to the data protection issues.
2. DPO adopts a DPO Yearly Programme of Work and drafts Frontex DPO Annual Activity Report.

Article 5

Powers of the DPO

In order to perform his/her tasks and duties, the DPO:

- (a) Makes recommendations to the Executive Director or to the Data Controllers on the issues concerning the data protection.
 - (b) Reports any breach of the data protection rules to the Executive Director; any failure of a staff member to comply with the obligations under the Regulation is brought to the attention of the Executive Director and DPO may suggest to launch an administrative investigation in view of the possible application of Article 49 of the Data Protection Regulation.
 - (c) In accordance with the Annex to the Data Protection Regulation, handles queries and complaints and conducts investigations.
 - (d) Is consulted or at least, previously informed of all contacts with external parties relating to the application of the Regulation, notably with regard to interaction with the EDPS, DPOs of other Union institutions and bodies and other third parties.
 - (e) Attends the meetings with the EDPS and the DPOs of other Union institutions and bodies, in particular to exchange experience and best practices.
 - (f) Accesses at all times to data forming the subject matter of processing operations and to all data-processing installations, data carriers and storage areas.
 - (g) Benefits from the possibility to be appropriately trained and have the opportunity to update his/her knowledge, mainly on data protection law and technical aspects.
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- (h) To the extent required, is relieved of other activities in order to avoid a conflict of interest between his/her duties as DPO and any other official duties.
- (i) May not receive any instructions with respect to the performance of his/hers duties, with respect to the internal application of the provisions of the Regulation or with respect to his/her cooperation with the EDPS.

CHAPTER III

PROCEDURES, ROLES AND RESPONSIBILITIES

Article 6

Procedure for notifying processing operations

1. Prior to processing any personal data, the Data Controllers notify the DPO about using the template Notification form available for that purpose in Frontex via shared folders or intranet. The draft shall be consulted with the DPO before it is signed. After such consultation, the final notification shall be signed by the Data Controller and submitted to the DPO. That notification can also be sent by email but its original paper copy, signed by the Data Controller, must reach the DPO within 7 working days from the submission by email.
 2. The notification must contain all information required in Article 25(2) of Data Protection Regulation. DPO gives necessary assistance to Data Controllers in notifying processing operations both in relation to the particular planned processing operation and generally in relation to ways of completing the notification template.
 3. Data Controllers, in order to fulfil obligation stipulated in Article 27 of the Data Protection Regulation, notify the DPO in due time about processing operations which are likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes. Data Controllers take into account that the prior checking procedure with the EDPS lasts at least two months and that the operation cannot be implemented before the EDPS has communicated its opinion. DPO determines whether the planned processing operation presents such specific risks; DPO consults the responsible Data Controller if necessary. Consultation of the EDPS as to the need of prior checking may also take place in line with Article 27 (3) *in fine* of the Data Protection Regulation.
 4. The Data Controllers immediately inform the DPO about any changes affecting the information referred to in paragraphs 1-3 above.
 5. In relation to processing operations and inquires or investigations conducted by the DPO, the Data Controllers must answer the request of the DPO for information immediately and grant him/her access to the relevant personal data without any delay.
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Article 7

Role and duties of the Frontex Data Controllers

Without prejudice to the Article 6 above, every Data Controller is responsible for compliance with the data protection rules within his/her remit. In particular, the Data Controller:

- (a) Determines the purposes of every processing of personal data within his/her remit; he or she decides also on means of such processing; both purpose and means must be identified in the notification to be sent to DPO in accordance with Article 25 of the Data Protection Regulation and with Art. 6 of this Implementing Measures.
- (b) Ensures fairness of processing and the quality of data;
- (c) Is responsible for safety and security measures protecting personal data;
- (d) May limit the collection of personal data to what is directly relevant and necessary to accomplish a purpose indicated in the relevant Notification;
- (e) Authorises persons (staff members or data processors as foreseen in Art. 23 of the Data Protection Regulation) on the basis of a legitimate reason, to process personal data on behalf of that particular Controller in the frames of a given data processing operation; Data Controller makes the processor(s) aware of their responsibilities through appropriate instruction or training. Particular attention needs to be paid and additional pre-cautionary measures need to be taken in cases where the persons processing the data are not Frontex staff members but outsourced staff or contractors;
- (f) Is responsible that disclosure of personal data is compatible with the purpose of processing;
- (g) Cooperates with the Data Subjects regarding the exercise of their rights as foreseen in the applicable data protection rules, in particular in the Data Protection Regulation and in the Art.8 below;
- (h) Ensures that any personal data is retained no longer than indicated in the Notification;
- (i) May adopt internal data protection and data processing policy that is relevant to his/hers unit, applicable by his/her staff and enforces through his/hers supervision and regular review;
- (j) Consults the DPO, where appropriate, on the conformity of processing operations, in particular in the event of doubt as to conformity with Articles 4 to 10 of the Regulation. Data Controller may also consult the Frontex Security Officer and Frontex Information Security Officer on issues relating to the confidentiality of the processing operations and on the security measures taken pursuant to Article 22 of the Data Protection Regulation.

Article 8

Rights of data subjects

1. The register kept by the DPO pursuant to Article 26 of the Data Protection Regulation serves as an index of all personal data processing operations in Frontex. The register is accessible through the Frontex website or in hardcopy. Data Subjects are entitled to use the information contained in the
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register to exercise their rights pursuant to Articles 13 to 19 of the Data Protection Regulation and in particular the right of access, rectification, blocking, erasure and objection in relation to their personal data.

2. Data Subjects are appropriately informed by the Data Controller about any processing operations relating to them and about their rights, in particular as specified in Article 11 and Article 12 of the Data Protection Regulation. Apart from it, Data Subjects may be made aware of their rights by the DPO in different forms.
 3. Further to their right to be properly informed about any processing of their personal data, Data Subjects may approach the relevant Data Controller to exercise their rights pursuant to Article 13 to Article 19 of the Data Protection Regulation, as specified below:
 - (a) These rights may only be exercised by the Data Subjects or their duly authorised representatives.
 - (b) Requests to exercise these rights must be addressed in writing to the relevant Data Controller (with a copy to the DPO). If necessary, the DPO assists the Data Subject in identifying the Data Controller concerned. The Data Controller considers only the request if the requestor's identity and, if relevant, their entitlement to represent the Data Subject have been appropriately verified. The Data Controller informs without delay the Data Subject in writing whether the request has been accepted. If the request has been rejected, the Data Controller explains the grounds for rejection.
 - (c) The Data Controller, at any time within three calendar months of receipt of the request, by paying due attention to the urgency of the request, grants access pursuant to Article 13 of Data Protection Regulation by enabling the data subject to consult the data on-site or to receive a copy of it, according to the applicant's preference and technical possibilities of Frontex. In any case, the access is to be given in a form that enables the data subject to understand what is stored about him/her and what is happening with the data.
 - (d) Data Subject may contact the DPO if the Data Controller does not respect the time limits specified in points (b) and (c). In case of obvious abuse by a Data Subject in exercising his/her rights, the Data Controller may refer the Data Subject to the DPO. If the case is referred to the DPO, he/she decides on the merits of the request and the appropriate follow-up. In the event of disagreement between the Data Subject and the Data Controller, both parties have a right to consult the DPO.
 - (e) The exercise by Data Subjects of their rights is free of charge.
 4. To the extent justified by the legitimate reasons specified in Article 20 of the Regulation, the Data Controller may restrict the rights referred to in this Article. Decision on applying of restrictions must be in writing, and must contain description on the reason. Except in a case of absolute necessity, the Data Controller first consults the DPO by sending him/her the decision; opinion of the DPO is not binding. The Data Controller replies without delay to requests relating to the application of exceptions or restrictions to the exercise of rights and substantiates this decision. The copy of that reply is sent to the DPO, who maintains the register of the imposed restrictions. Any person concerned may request the EDPS to apply Article 47(1)(c) of the Regulation.
 5. Frontex staff members may consult the DPO before lodging a complaint with the EDPS pursuant to Article 33 of Data Protection Regulation.
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Article 9

Investigation procedure

1. The requests for investigation under Article 4(1) of this Decision are addressed in writing to the DPO by the Executive Director, a Data Controller, the Staff Committee or any individual concerned.
2. The DPO sends an acknowledgment of receipt to the requester as soon as possible but no later than 14 working days after receipt of the request and verifies whether the request is to be treated as confidential. However, in the case of obvious misuse of the right to request an investigation, for example where the same individual has made an identical request only recently, the DPO is not obliged to report back to the requester.
3. The DPO may investigate the matter on-site and request a written statement from the Data Controller who is responsible for the data processing operation in question. The Data Controller must provide his/her response to the DPO within 20 working days from the receipt of the DPO's request. The DPO may ask for additional information or assistance from any other Frontex staff member whose activities are related to the processing operation in question. In particular, that complementary information may be requested for instance from the Frontex Security Officer, the Information Security Officer or Frontex Legal Affairs Unit. The DPO shall be provided with requested information or assistance within 30 working days from the DPO's request.
4. The DPO reports back to the person that made the request within 5 calendar months from the receipt of the request.
5. The investigation is conducted in full independence. The investigation procedure is confidential if the complainant is an individual unless the Data Subject concerned gives his/her unambiguous consent to treat the request otherwise.

CHAPTER IV

FINAL PROVISIONS

Article 10

Relation to other legal acts

1. This Decision is without prejudice to the separate measures to be adopted by the Management Board for the application of the Data Protection Regulation to processing of personal data in the context of joint return operations as foreseen in Art. 11b and collected during joint operations, pilot projects and rapid interventions as foreseen in Art. 11c of the Frontex Regulation. Principles of Regulation 45/2001 and of this decision will also apply to the processing of personal data under Art. 11b and 11c of the Frontex Regulation.
 2. The Decision No 2008/36 of the Executive Director adopting Implementing rules concerning data protection at Frontex of 8 September 2008 is hereby repealed.
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Article 11
Entry into force

This decision enters into force on the day following the day of its adoption. It is to be published on the Intranet and the Internet site of Frontex.

Done in Warsaw, 10 September 2015

For the Management Board

[signed]

Marko Gašperlin
Deputy Chairperson

On behalf of the Chairperson
of the Management Board

