Decision (EU) 2020/655 of the European Central Bank of 5 May 2020 adopting implementing rules concerning data protection at the European Central Bank and repealing Decision ECB/2007/1 (ECB/2020/28)

DECISION (EU) 2020/655 OF THE EUROPEAN CENTRAL BANK

of 5 May 2020

adopting implementing rules concerning data protection at the European Central Bank and repealing Decision ECB/2007/1 (ECB/2020/28)

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular to Article 11.6 thereof,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council 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[(1)], and in particular Article 45(3) thereof,

Whereas:

(1) Regulation (EU) 2016/679 of the European Parliament and of the Council[(2)] sets out general rules to protect natural persons with regard to the processing of personal data and to ensure the free movement of personal data within the Union.

(2) Regulation (EU) 2018/1725 repeals Regulation (EC) No 45/2001 of the European Parliament and of the Council[(3)] and sets out the data protection principles and rules applicable to all Union institutions, bodies, offices and agencies.

(3) In order to ensure a consistent approach to personal data protection throughout the Union and free movement of personal data within the Union, it is necessary to align as far as possible the data protection rules applicable to Union institutions and bodies with the data protection rules adopted for the public sector in the Member States. Whenever the provisions of Regulation (EU) 2018/1725 follow the same principles as the provisions of Regulation (EU) 2016/679, those two sets of provisions should be interpreted homogenously, in particular because the scheme of Regulation (EU) 2018/1725 should be understood as equivalent to Regulation (EU) 2016/679.

(4) Article 43 of Regulation (EU) 2018/1725 requires each Union institution or body to designate a data protection officer. Pursuant to Article 45(3) of Regulation (EU) 2018/1725, each Union institution or body must adopt further implementing rules concerning the data protection officer. The implementing rules must in particular concern the tasks, duties and powers of the data protection officer.

Changes to legislation: *There are currently no known outstanding effects for the Decision (EU) 2020/655 of the European Central Bank. (See end of Document for details)*

(5) For reasons of efficiency and in line with past practice, the data protection officer of the European Central Bank (ECB) may be authorised to also cover data protection issues in relation to the European Systemic Risk Board (ESRB) if the ESRB's General Board decides to appoint the ECB's data protection officer as the ESRB's data protection officer.

(6) The implementing rules should also set out how data subjects may exercise their rights and how persons responsible for the processing of personal data should fulfil their duties within Union institutions and bodies.

(7) Whilst the ECB is the legal entity responsible for the protection of natural persons with regard to the processing of personal data under both Regulation (EU) 2018/1725 and this Decision, the processing operations may in practice be carried out by different organisational units within the ECB.

(8) Regulation (EU) 2018/1725 prescribes what remedies are available to a data subject for complaints concerning data protection against a Union institution, including the right to lodge a complaint with the European Data Protection Supervisor as laid down in Articles 63 and 68 of that regulation. Accordingly ECB staff members should rely on these remedies for complaints made by them as data subjects concerning data protection after the date of application of this Decision rather than remedies contemplated in the Conditions of Employment for Staff of the European Central Bank.

(9) The ECB intends to separately provide for restrictions concerning specific principles, rights and obligations concerning data protection in certain well defined circumstances as contemplated by Article 25 of Regulation (EU) 2018/1725 and therefore the date of application of this Decision should be 1 November 2020 to enable those restrictions to be separately provided for.

(10) Given the repeal of Regulation (EC) No 45/2001 by Regulation (EU) 2018/1725, Decision ECB/2007/1[(4)] should be repealed and replaced by this Decision,

HAS ADOPTED THIS DECISION:

SECTION 1

GENERAL PROVISIONS

Article 1

Subject matter and scope

1 This Decision sets out the general rules implementing Regulation (EU) 2018/1725 as regards the ECB. In particular, it specifies the rules relating to the appointment and role of the data protection officer of the ECB (DPO), including the DPO's tasks, duties and powers.

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

***Changes to legislation:** There are currently no known outstanding effects for the Decision (EU) 2020/655 of the European Central Bank. (See end of Document for details)*

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

(1) 'controller' means the ECB, and in particular the organisational unit of the ECB, which, alone or jointly with others, determines the purposes and means of the processing of personal data;

(2) 'data protection coordinator' means an ECB member of staff who assists the controller and the DPO in fulfilling their tasks and responsibilities pursuant to Regulation (EU) 2018/1725 and this Decision;

(3) 'data subject' means an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

(4) 'processing' means processing as defined in point (3) of Article 3 of Regulation (EU) 2018/1725;

(5) 'Union institutions and bodies' means Union institutions and bodies as defined in point (10) of Article 3 of Regulation (EU) 2018/1725;

(6) 'processor' means processor as defined in point (12) of Article 3 of Regulation (EU) 2018/1725;

(7) 'personal data' means personal data as defined in point (1) of Article 3 of Regulation (EU) 2018/1725;

(8) 'consent' means consent as defined in point (15) of Article 3 of Regulation (EU) 2018/1725.

SECTION 2

THE DATA PROTECTION OFFICER

Article 3

Appointment, status and organisational matters

1 The Executive Board shall:

a appoint the DPO on the basis of personal and professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in Article 45 of Regulation (EU) 2018/1725 and in this Decision;

b issue a non-convertible fixed-term contract for the position of DPO for a period of between three to five years, which may be extended up to the overall limit of 10 years, as set out in the Conditions of Employment for Staff of the European Central Bank; and

c register the DPO with the European Data Protection Supervisor (EDPS) in accordance with Article 44(9) of Regulation (EU) 2018/1725.

Changes to legislation: *There are currently no known outstanding effects for the Decision (EU) 2020/655 of the European Central Bank. (See end of Document for details)*

2 The Executive Board shall ensure that the DPO is able to carry out the tasks and duties referred to in Article 45 of Regulation (EU) 2018/1725 in an independent manner without receiving any instructions on how to exercise his or her tasks. Without prejudice to such independence:

a the DPO shall be subject to the Conditions of Employment for Staff of the European Central Bank;

b for administrative purposes and for the purpose of applying the ECB's employment framework, the DPO shall be allocated to the ECB's Directorate-General Legal Services;

c the DPO's appraiser consults the EDPS and may also seek input from other ECB stakeholders, before appraising the DPO's performance of his or her tasks and duties. The DPO shall not suffer any prejudice on account of due performance of his or her tasks and duties;

d the DPO is subject to dismissal by the Executive Board if he or she no longer fulfils the conditions required for the performance of his or her duties and such dismissal has received the prior consent of the EDPS in accordance with Article 44(8) of Regulation (EU) 2018/1725.

3 The Executive Board may appoint a Deputy DPO to whom paragraphs 1 and 2 shall apply. The Deputy DPO shall support the DPO in carrying out the DPO's tasks and duties, and deputise in the event of the DPO's absence.

4 Any ECB staff member providing support to the DPO in relation to data protection issues shall act solely on the DPO's instructions and shall be bound by professional secrecy and confidentiality in accordance with Article 44(5) of Regulation (EU) 2018/1725 in conjunction with Article 37 of the Statute of the ESCB.

5 In accordance with Article 43(2) of Regulation (EU) 2018/1725, at the ESRB's request, the DPO may be authorised to also fulfil in relation to the ESRB the tasks set out in Article 45 of Regulation (EU) 2018/1725.

Article 4

Data Protection Officer's tasks

The DPO shall carry out the tasks specified in Article 45 of Regulation (EU) 2018/1725 and in particular:

(a) inform and advise the Executive Board, the controllers, the Staff Committee and the data protection coordinators, and respond to consultations from any of them or any data subject on matters concerning the interpretation and application of data protection provisions at the ECB;

(b) investigate matters and incidents related to data protection either on the DPO's own initiative or at the request of the Executive Board, a controller, the Staff Committee or any data subject, and report back to the requester of the investigation;

(c) maintain a central register with the records of processing activities at the ECB pursuant to Article 31 of Regulation (EU) 2018/1725 and Article 9 of this Decision;

(d) assist a controller, upon request, in drafting data protection impact assessments and submissions for the prior consultation of the EDPS in accordance with Articles 39 and 40 of Regulation (EU) 2018/1725;

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(e) respond to requests from the EDPS and, within the sphere of his or her competence, cooperate with the EDPS;

(f) cooperate with the data protection officers of other Union institutions and bodies, national central banks and national competent authorities, in particular by: (i) sharing knowledge and know-how based on experience; (ii) representing the ECB in relevant discussions relating to data protection issues, excluding court cases; and (iii) participating in interinstitutional committees and bodies;

(g) ensure in an independent manner the application of Regulation (EU) 2018/1725 at the ECB by monitoring compliance with Regulation (EU) 2018/1725, with other applicable Union law containing data protection provisions and with the policies of the ECB and its processors in relation to the protection of personal data, including the assignment of responsibilities, the raising of awareness and training of ECB staff members involved in processing operations and any related audits.

Article 5

Data Protection Officer's powers

In performing his or her tasks pursuant to Article 4, the DPO:

(a) may request information from any ECB business area on any matter relating to the DPO's tasks and duties;

(b) shall have access to personal data being processed, to all ECB premises, and to all information, data processing operations and databases at any time;

(c) may issue an opinion on the lawfulness of actual or proposed processing operations, on the measures required to ensure that such operations are lawful, and on the suitability or adequacy of data protection measures or on any issue concerning processing operations;

(d) may bring to the Executive Board's attention any data protection related issue, including the failure of an ECB staff member to comply with the provisions of Regulation (EU) 2018/1725 or any other Union data protection provisions applicable to the ECB;

(e) may request that data protection related items be added to the Executive Board's agenda and submit relevant documentation to the Executive Board for that purpose;

(f) may conduct compliance checks of data processing operations carried out by a controller or on behalf of a controller;

(g) may restrict any data processing that is not in compliance with the provisions of Regulation (EU) 2018/1725 or this Decision or any other Union data protection provisions;

(h) may inform the EDPS of any issue related to data protection that requires the EDPS's input or guidance.