

The Executive Director

**DECISION No ADM-18-65
implementing Regulation (EU) 2018/1725 of
the European Parliament and of the Council
of 23 October 2018 in the European Union
Intellectual Property Office**

The Executive Director of the European Union Intellectual Property Office (the Office),

Having regard to Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark⁽¹⁾, and in particular to Articles 149(4) and 157(4)(a) thereof, to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs⁽²⁾, and in particular Article 97 thereof, and to Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Infringements of Intellectual Property Rights⁽³⁾, and in particular Article 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, and in particular Article 43 thereof,

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

Whereas pursuant to Article 45(3) of Regulation (EU) 2018/1725, each European Union institution or body will adopt further implementing rules concerning the Data Protection Officer and his or 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 European Union Intellectual Property Office ('EUIPO' or 'the Office'). In particular, it supplements the provisions of Regulation (EU)

⁽¹⁾ OJ L 154, 16.6.2017, p. 1.

⁽²⁾ OJ L 1, 5.1.2002, p. 1.

⁽³⁾ OJ L 129, 16.5.2012, p. 1.

2018/1725, relating to the Data Protection Officer's designation, as well as to his or her tasks, duties and powers.

2. This Decision also clarifies the roles, tasks and duties of the controllers and the data protection coordinators 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 will 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 EUIPO as stipulated in Article 43 of Regulation (EU) 2018/1725;
- (c) 'controller' means the EUIPO Management Advisory Committee member 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 EUIPO staff member designated in each department/service of the EUIPO to assist the controller in fulfilling the latter's data protection obligations;
- (e) 'data subject' means any identified or identifiable natural person to whom personal data processed by the EUIPO relates.

SECTION 2

DATA PROTECTION OFFICER

Article 3 **Designation, position and organisational matters**

1. The Executive Director of the Office will:
 - (a) designate the DPO from among EUIPO staff members;
 - (b) set a renewable term of office for the DPO of between 3 and 5 years;
 - (c) publish the contact details of the DPO and register the DPO with the European Data Protection Supervisor.
2. The Executive Director of the Office will:
 - (a) ensure that the data protection officer is involved, properly and in a timely manner, in all issues that relate to the protection of personal data;

- (b) support the data protection officer in performing the tasks referred to in Article 46 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(3) of Regulation (EU) 2018/1725;
- (d) if the DPO fulfils other tasks and duties, ensure that any such tasks and duties do not result in a conflict of interests.

Without prejudice to such independence:

- (a) the DPO must be a statutory staff member of the Office;
 - (b) for administrative purposes, the DPO will be assigned to the Executive Directorate or its equivalent;
 - (c) the performance of the DPO's tasks and duties will be assessed annually by the Executive Director as his or her Reporting Officer at the EUIPO, who may consult the EDPS in this respect before completing his or her EUIPO appraisal report.
3. The controllers must ensure that the DPO is kept informed without delay:
- (a) when an issue arises that has, or might have, data protection implications;
 - (b) in respect of all EUIPO management communications with internal and external parties relating to the application of Regulation (EU) 2018/1725, notably any interaction with the EDPS.
4. The Executive Director of the Office may designate a Deputy DPO, to whom paragraphs 1 and 2 will apply. The Deputy DPO will support the DPO in carrying out DPO tasks and duties, and will deputise in the event of the DPO's absence.
5. Any staff providing support to the DPO in relation to data protection issues will act solely on the DPO's instructions.

Article 4

Data Protection Officer's tasks and duties

1. The DPO will:
- (a) ensure that the controller or 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, they will provide, in particular, 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 Regulation (EU) 2018/1725 and monitor compliance with this Regulation, with other applicable European 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, when requested, about the necessity for a notification or a communication of personal data breach pursuant to Articles 37 and 38 of Regulation (EU) 2018/1725;
- (d) provide advice, when requested, about the data protection impact assessment and monitor its performance pursuant to Article 39 of Regulation (EU) 2018/1725, consulting the European Data Protection Supervisor in case of doubt regarding the need for a data protection impact assessment;
- (e) provide advice, when requested, about the need for prior consultation of the European Data Protection Supervisor pursuant to Article 40 of Regulation (EU) 2018/1725, consulting the European Data Protection Supervisor in case of doubt regarding the need for a prior consultation;
- (f) maintain a central register of processing operations to perform his or 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 or her competence, cooperate and consult with the EDPS, at the latter's request, or on his or 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 or her general tasks, the DPO will:
 - (a) act as an advisor to the Appointing Authority and to the controller and processor on matters concerning the application of data protection provisions. The DPO may be directly consulted by the Appointing Authority, the controller, and the EUIPO 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 or 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 their tasks and that come to their 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 if 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 or her explicit and unambiguous consent to treat the request otherwise;
 - (c) cooperate in the discharge of his or 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 or her activities to the Appointing Authority, the Executive Director of the Office and, if requested, make it available to all EUIPO staff.
2. Without prejudice to Articles 4(1)(g) and 5(1)(b) and (c) hereof, the DPO and his or her staff will not divulge information or documents that they obtain in the course of their duties.

Article 6 **Powers**

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

- (a) will have access at all times to the data forming the subject matter of processing operations and access to all EUIPO offices, data-processing installations and data carriers;
- (b) may, without prejudice to the EDPS's duties and powers, propose to the Appointing Authority administrative measures and issue general recommendations on the appropriate application of data protection provisions;
- (c) may, in specific cases, make any other recommendation for practical improvements relating to data protection to the Appointing Authority and/or to all other parties concerned;
- (d) may bring to the attention of the Appointing Authority any failure of an EUIPO 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 COORDINATORS

Article 7

Tasks and duties of the controller and data protection coordinators

1. The controller will ensure that all processing operations involving personal data that are performed within his or her area of responsibility comply with Regulation (EU) 2018/1725.
2. The controller will be a member of the Management Committee of the Office.
3. The controller must assist the DPO and the EDPS in the performance of his or her duties. In carrying out this duty, the controller will provide all information to the DPO and the EDPS, granting them access to all personal data within his or her control and responding to their questions.
4. In particular, the controller will:
 - (a) keep the DPO duly informed of 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 in performing their respective duties, in particular, by providing information in response to their requests within 10 calendar days;
- (c) implement appropriate technical and organisational measures and give adequate instructions to the Office's staff to ensure both compliance of the processing with the data protection principles and the level of security appropriate to the risks represented by the processing. The controller will, 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 that 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 Director of the EUIPO's Digital Transformation Department concerning issues relating to the confidentiality of the personal data processing operations and the processing of 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 will only use processors that provide 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 or her processing activities under his or her responsibility and insert records of processing activities in a central register as stipulated in Article 31 of Regulation (EU) 2018/1725. The register will be maintained by the DPO and made publicly accessible by the EUIPO;
- (g) in the event of a personal data breach, the controller will inform the data protection officer about it 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, including the facts relating to the personal data breach, its effects and the remedial actions taken to demonstrate compliance;
- (i) if the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller will 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 controller will, 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). 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 controller feels that the risk cannot be mitigated by reasonable means in terms of available technologies and costs of implementation, the controller will consult the European Data Protection Supervisor prior to processing. In both cases, the controller will seek the advice of the data protection officer about the need for a data protection impact assessment and whether this would need to be followed by prior consultation.

5. Without prejudice to the responsibilities of the controller and the DPO, the data protection coordinator will:
 - (a) be designated by his or her department/service's Director/Head with the DPO's knowledge and agreement;
 - (b) keep an inventory of all existing processing of personal data in his or her department/service and maintain records of all processing operations;
 - (c) assist the controller in providing accurate information on pending records and in the preparation/updating of the required documentation for the DPO to register new, or update on-going, processing operations records;
 - (d) have the right to obtain from the staff of his or her department/service adequate and necessary information as required for the accomplishment of his or her administrative tasks within the relevant department/service. This will not include the right of access to personal data processed under the responsibility of the controller;
 - (e) assist the controller in performing the annual 'self-assessment' of the department/service's compliance and report the results to the DPO;
 - (f) where appropriate, facilitate communication between the DPO and the controller;
 - (g) assist the DPO in ensuring that the controller or 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 or she will provide, in particular, information and training, consult interested parties, respond to 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 event of a complaint within the meaning of Article 90 of the Staff Regulations relating to a violation of Regulation (EU) 2018/1725, the Appointing Authority will consult the DPO, who should deliver his or her opinion in writing no later than 10 calendar days after receipt of the request. If, after the end of this period, the DPO has not provided his or her opinion to the Appointing Authority, it is no longer required. The Appointing Authority will not be bound by the DPO's opinion.

2. The DPO will be informed whenever an issue is under consideration that has, or might have, data protection implications.

Article 9
EUIPO staff

1. All EUIPO staff will 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 EUIPO staff with access to personal data will process such data other than on instructions from the controller, unless required to do so by national or European Union law.
2. Any member of the EUIPO staff may address his or her requests/queries to and raise his or her concerns regarding an alleged breach of the provisions of Regulation (EU) 2018/1725 before the DPO.
3. Any member of the EUIPO 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 EUIPO will 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 will contain at least the information referred to in Article 31(1)(a) to (g) of Regulation (EU) 2018/1725 and, for reasons of transparency, will be made public. The information will be entered and updated by the controllers and kept by the DPO. The Register will be published and regularly updated on the EUIPO's intranet and on the EUIPO 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 will serve as an index of all the personal data processing operations conducted at the EUIPO, 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 EUIPO data subjects:

- (a) these rights may also be exercised by the data subjects via their duly authorised representative. All information in this respect will be obtained from the controller free of charge;
 - (b) requests to exercise these rights will be addressed in writing to the controller. The controller will only grant the request if the requester's identity and, if relevant, his or her entitlement to represent the data subject have been appropriately verified. The controller will without delay, and in any case within 1 month of receipt of the request, provide information to the data subject in writing on the action taken. That period may be extended by a further 2 months where necessary, taking into account the complexity and number of requests. The controller will inform the data subject of any such extension within 1 month of receipt of the request, together with the reasons for the delay. If the controller does not take action on the data subject's request, the controller will inform the data subject without delay, and at the latest within 1 month of receipt of the request, of the reasons for not taking action and the possibility of lodging a complaint with the data protection officer and the EDPS and of 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 or 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 will 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 will have the right to consult the DPO.
2. EUIPO 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 will suffer prejudice on account of having lodged a complaint with the EDPS or having brought an alleged breach of the provisions of Regulation (EU) 2018/1725 to the attention of the DPO.

Article 12

Exemptions and restrictions

1. The controller may restrict the rights referred to in Articles 14 to 22, 34 and 38 of Regulation (EU) 2018/1725, as well as Article 4 hereof insofar 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 thereof.
2. Any person affected 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(b) or 11(c) above will be addressed to the DPO in writing.
2. The DPO will make sure to send an acknowledgement of receipt to the requester within two 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 will provide his or 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 EUIPO department/service. That department/service will provide the additional information or assistance within 10 calendar days of the DPO's request.
4. The DPO will report back to the requester within one calendar month of receipt of the request. This period might be extended by 2 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 will be available to data subjects who are EUIPO staff members.

SECTION 6
ENTRY INTO FORCE

Article 15
Final provision

This Decision will enter into force on 11 December 2018.

Done at Alicante, 26 November 2018.



Christian Archambeau
Executive Director