



**Europäische  
Patent-  
organisation**

Verwaltungsrat

**European  
Patent  
Organisation**

Administrative Council

**Organisation  
européenne des  
brevets**

Conseil d'administration

**SC/3/23**

Orig.: en

Munich, 28.04.2023

**SUBJECT:** Data Protection Framework for the Select Committee

**SUBMITTED BY:** Chairperson of the Select Committee

**ADDRESSEES:** Select Committee of the Administrative Council (for decision)

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#### SUMMARY

The Data Protection Rules of the Administrative Council (AC DPR), adopted by the Council in CA/D 2/23 and introduced through an amendment to the Council's Rules of Procedure (RoP), ensure that the same data protection rules in force for the European Patent Office apply to the Administrative Council and its subsidiary bodies.

Since the Select Committee is subject to its own distinct RoP, an amendment to the latter is required in order for data protection rules to be introduced for the Select Committee. Part II proposes such an amendment to the RoP of the Select Committee, based on an application of the AC DPR *mutatis mutandis*. Given that the AC DPR are, in turn, based on the Data Protection Rules of the European Patent Office, the proposed decision will ensure the consistent application of the same data protection standards to the Organisation as a whole.

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## PART I

### **I. STRATEGIC/OPERATIONAL**

1. Operational.

### **II. RECOMMENDATION**

2. The Select Committee is requested to approve the proposed amendment of its Rules of Procedure.

### **III. MAJORITY NEEDED**

3. Three-quarter majority.

### **IV. CONTEXT**

4. With the adoption of CA/D 5/21, the Administrative Council endowed the European Patent Office with a comprehensive set of rules which regulate the processing of personal data. These Data Protection Rules (Office DPR) meet the highest international standards in terms of respect of the principles of transparency and accountability, as well as procedures for effectively protecting the rights of data subjects.
5. The Office DPR apply to "the Office's processing of personal data" (Article 2 Office DPR), but not to the Administrative Council (or its subsidiary bodies), whose "prerogatives regarding [their] own processing of personal data are unaffected" by the Office DPR (CA/26/21, para. 17).
6. In light of the fact that the Administrative Council acts as the data controller in a number of processing operations involving personal data (see CA/8/23), a set of rules governing such operations for the Administrative Council was adopted in March 2023 (CA/D 2/23) through an amendment to the Council's Rules of Procedure (RoP).
7. Similarly, the Select Committee also acts as a data controller for a more limited range of processing operations, in particular the processing of the personal data of its members, their advisers and experts, as well as other participants in its meetings. Therefore, given that the Select Committee is subject to its own RoP, this data protection instrument will also need to be anchored in the RoP of the Select Committee, to ensure consistent application of the Council's data protection framework across the board.

## V. ARGUMENTS

8. Substantive arguments for the adoption of a data protection framework for the Administrative Council are set out in CA/8/23. Following the adoption of the amendments to its RoP to introduce the Data Protection Rules applicable to the Administrative Council (CA/D 2/23), the Council has decided to apply the same principles as the Office DPR *mutatis mutandis*, in order to ensure consistency in the data protection rules applicable within the Organisation.
9. In 2013, the Select Committee of the Administrative Council adopted its own RoP (SC/D 1/13). Consequently, in order to enable the Select Committee to apply the same data protection rules as the Administrative Council, the Select Committee needs to adapt its RoP accordingly.
10. By applying the same data protection rules as the Administrative Council (and by extension, the Office) to the Select Committee will contribute to ensuring that the Organisation implements a cohesive data protection framework. This can be achieved by introducing a new Article in the Select Committee's RoP, providing for the application the Data Protection Rules of the Administrative Council *mutatis mutandis*.
11. Moreover, under Article 145 of the EPC, the composition, powers and functions of the Select Committee are determined by the participating Contracting States which set it up. This institutional set-up underlines the Committee's relative autonomy and role as a "controller" of personal data in carrying out its mandate, meaning that it determines the purposes and means of the processing of such personal data. Hence, due to the nature of its mandate and competences, the Select Committee acts as the "controller" of its own data processing operations.
12. Consequently, the amendment of the Select Committee's RoP also envisages to safeguard the role of the Select Committee as a controller of the data it processes. To this end, the Chairperson of the Select Committee will assume the same data protection responsibilities as the Chairperson of the Administrative Council for matters within its competence, including those relating to legal redress. In light of the responsibility of the Council Secretariat for all organisational aspects of the Select Committee's proceedings and for advising its Chairperson on organisational matters (see Article 5 of the Select Committee's RoP), the former will serve as the delegated controller. Thus, it will be for the Council Secretariat, managed by its head, to ensure that all processing operations of the Select Committee involving personal data comply with the relevant rules.

**VI. ALTERNATIVES**

13. N/A

**VII. FINANCIAL IMPLICATIONS**

14. None

**VIII. LEGAL BASIS**

15. Part IX EPC, in particular Article 145(2)

**IX. DOCUMENTS CITED**

16. CA/26/21, CA/8/23, CA/D 5/21, CA/D 2/23, SC/D 1/13.

**X. RECOMMENDATION FOR PUBLICATION**

17. Yes.

PART II

Draft

DECISION OF THE SELECT COMMITTEE OF THE  
ADMINISTRATIVE COUNCIL  
of [date of decision] inserting an Article 13a in its  
Rules of Procedure

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THE SELECT COMMITTEE OF THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN  
PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Part IX (Special  
Agreements) thereof,

Having regard to Article 9 Regulation (EU) No 1257/2012,

Having regard to decisions CA/D 5/21 and CA/D 2/23 introducing a data protection  
framework for the European Patent Office and the Administrative Council, respectively,

HAS DECIDED AS FOLLOWS:

Article 1

The following Article 13a shall be inserted in the Rules of Procedure of the Select Committee  
of the Administrative Council:

**"Article 13a**

**Application of the Data Protection Rules of the Administrative Council to the Select  
Committee**

(1) The Data Protection Rules of the Administrative Council shall apply *mutatis mutandis* to  
the processing of personal data by the Select Committee.

(2) For the purposes of applying these Data Protection Rules to the Select Committee, references to the "Administrative Council" shall be interpreted as referring to the Select Committee. References to the "Chairperson of the Administrative Council" shall be interpreted as referring to the Chairperson of the Select Committee."

Article 2

This decision shall enter into force on [date of decision].

Done at Munich, [date of decision]

For the Select Committee of the  
Administrative Council  
The Chairperson

Jérôme DEBRULLE