

Data Protection Board

Rules of Procedure

Article 1 Guiding principles

- (1) In accordance with the principle of independence enshrined in Article 48(6) of the Implementing Rules for Articles 1b and 32a of the Service Regulations (Data Protection Rules), the Data Protection Board shall act impartially and in complete independence when performing its tasks or exercising its function.
- (2) The Data Protection Board shall act as an expert, reliable and authoritative body in the field of data protection, ensuring an appropriately informed decision-making process by the controller.
- (3) The Data Protection Board shall be organised and act collectively as a collegiate body and shall operate efficiently and as flexibly as possible so as to achieve internally the highest level of synergies among its members. It shall endeavour to operate where possible by consensus.
- (4) The Data Protection Board shall operate as openly as possible so as to be more effective and more accountable to the individual. The Data Protection Board shall explain its activities in a clear language which is accessible to all in accordance with the principle of transparency.
- (5) The Data Protection Board and its staff shall, both during and after their term of office, be bound by confidentiality with regard to any information which has come to their knowledge in the course of the performance of their official duties.
- (6) The definitions set out in the Data Protection Rules apply to these Rules of Procedure.

Article 2 Secretariat of the Data Protection Board

Pursuant to Article 48(10) of the Data Protection Rules, the Office shall provide the Secretariat of the Data Protection Board, the task of which is to provide legal, administrative and logistical support to the Data Protection Board. The Secretariat shall perform its tasks independently of any undue interference and exclusively under the instructions of the Chair. The Secretariat staff shall be bound by confidentiality with regard to any information which has come to their knowledge in the course of the performance of their duties for the Data Protection Board.

Article 3
Complaint to the Data Protection Board

- (1) Only the data subject whose data protection rights have allegedly been infringed is entitled to lodge a complaint with the Data Protection Board. The complainant may be represented or assisted by an external lawyer of his or her choice, on the basis of a valid power of attorney, which shall be submitted with the complaint. The power of attorney shall bear the signature of the complainant, the date and an explicit reference to the matter for which it has been issued. The Chair decides on the validity of the power of attorney.
- (2) The complaint to the Data Protection Board shall be lodged by the complainant in electronic form in one of the three official languages of the Office. If the original documents are in a language that is not one of the Office's official languages, they shall be submitted with an attached translation into one of those official languages.
- (3) The complaint to the Data Protection Board shall be dated and bear the signature of the complainant.
- (4) The complaint to the Data Protection Board shall identify the processing operation that allegedly infringed the rights of the data subject and which of those rights have allegedly been infringed and shall be accompanied by supporting documentary evidence. In particular, the complainant shall submit:
 - (a) the request to the controller to take an individual decision;
 - (b) a summary description of the processing operation allegedly infringing his or her data protection rights which is challenged in the complaint;
 - (c) the request for review to the delegated controller; and
 - (d) the decision of the delegated controller on the outcome of the review or, in the absence of such a decision, evidence that a request for review to the delegated controller was duly submitted by the complainant and the deadline for issuing the decision has expired.
- (5) The date used to determine whether the time limits have been complied with shall be that of dispatch of the complaint to the Secretariat of the Data Protection Board. In the event of doubt about the date of dispatch, the date used shall be that of receipt by the Data Protection Board.
- (6) Any costs incurred by the complainant in the course of the proceedings before the Data Protection Board, in particular fees payable to the external lawyer chosen to represent or assist him or her, shall be borne by the complainant, unless the President decides otherwise.

Article 4
Registration and handling of the complaint to the Data Protection Board

- (1) Upon receipt of a complaint, the Secretariat shall inform the controller and the Chair without undue delay.
- (2) Upon receipt of a complaint, the Secretariat shall open a case file, assign a registration number and inform the complainant accordingly within ten calendar days of the date of receipt.
- (3) The Chair is responsible for deciding whether the file is complete. The Secretariat carries out the analysis on the completeness of the file on behalf and under the direction of the Chair. If the complaint contains formal deficiencies or irregularities, the Secretariat shall advise the complainant and set a reasonable time limit within which to correct them. If the complainant fails to put the complaint in order within the time limit prescribed, the Chair may decide to consider the complaint irreceivable in accordance with Article 5 of these Rules.
- (4) Once the Chair has decided that the file is complete, the Secretariat on behalf of the Chair will refer the subject-matter to the members of the Data Protection Board without undue delay.
- (5) The Data Protection Board shall decide how to handle a complaint, taking into account:
 - (a) the nature and gravity of the alleged infringement, also considering the nature, scope or purpose of the processing concerned;
 - (b) the number of data subjects affected and the level of damage that has or may have been suffered by them as result of the infringement;
 - (c) the categories of personal data affected by the infringement;
 - (d) the duration of the infringement and any actions and/or measures taken by the delegated controller to ensure compliance with the obligations under the Data Protection Rules and to remedy the infringement and mitigate the possible adverse effects of the infringement;
 - (e) the potential overall importance of the case, also in view of any other public and private interests involved;
 - (f) the likelihood of establishing that the alleged infringement has occurred.
- (6) The Data Protection Board shall disclose the identity of the complainant and any document related to the complaint only to the extent necessary for the proper assessment of the complaint, including the procedural aspects. The Data Protection Board shall not disclose any document related to the complaint other than anonymised excerpts or summaries of the final decision to third parties unless the person concerned explicitly consents to such disclosure to third parties.
- (7) The Data Protection Board shall not disclose to the complainant any details on procedures that are confidential and to which the restrictions of the data subject's rights lawfully apply. In these cases, the role of the Data Protection Board will be to inform the complainant whether, in its opinion, the data have been processed in accordance with the Data Protection Rules and, if not, whether recommendations have been made.

- (8) If required by the circumstances of the complaint and authorised by the President of the Office, where applicable after consulting the President of the Boards of Appeal, the Data Protection Board shall co-operate with the competent national authorities, including competent national supervisory authorities or law enforcement authorities acting within the scope of their respective competences.

Article 5

Receivability of complaints

- (1) The Data Protection Board may decide that a complaint is irreceivable and deliver an opinion limited to the issue of its receivability. A complaint may be considered to be irreceivable *inter alia* if:
- (a) it is not submitted by a person referred to as a data subject under Article 2 of the Data Protection Rules and whose rights to data protection have allegedly been infringed, or by a rightful claimant on his or her behalf;
 - (b) it is submitted outside the time limits prescribed in Article 50(1) of the Data Protection Rules;
 - (c) it challenges an individual decision which should have been subject to the procedure of request of review by the delegated controller pursuant to Article 49 of the Data Protection Rules;
 - (d) it challenges a decision other than a decision of the delegated controller pursuant to Article 49 of the Data Protection Rules or concerns a matter other than an infringement of the data subject's rights under the Data Protection Rules;
 - (e) a complaint relating to the same facts has been lodged by the complainant and is pending with the Ombuds Office, the Appeals Committee or any other body of the European Patent Organisation, or other jurisdictional authority outside the European Patent Organisation;
 - (f) the conditions of Article 4(3) of these Rules are met;
 - (g) the Data Protection Board has already issued an opinion on the same subject-matter.
- (2) Where a complaint is found to be irreceivable or the examination of the complaint is discontinued, the Data Protection Board shall, where appropriate, advise the complainant to refer to another competent authority.

Article 6

Case file

- (1) The Secretariat shall be responsible for administering the case file of the complaint. The Secretariat shall keep an archive of the case files. The case file shall include all submissions by the parties and any other information and documents that the Data Protection Board deems necessary and appropriate for issuing an opinion.
- (2) Internal communications, memoranda and notes of the Data Protection Board in a given complaint shall not be part of the case file. They shall be archived internally.

Article 7

Objection with regard to the independence and impartiality of the Data Protection Board

- (1) Where an objection has been made by a complainant with regard to the independence or impartiality of the Chair or a member, the decision on that objection shall, as far as possible, be taken before any consideration of the receivability or merits of the complaint by the Data Protection Board has taken place.
- (2) Where the objection referred to in paragraph 1 is directed against a member of the Data Protection Board, the Chair shall take a decision on that objection and, where appropriate, replace the member. Where the objection referred to in paragraph 1 is directed against the Chair, the members shall jointly take a decision on the objection. If there has been a tie in the voting on the objection, the Chair shall be considered unable to act further in the complaint proceedings, and shall be replaced by the deputy Chair.
- (3) Any person against whom an objection has been made shall be given the opportunity to submit written comments upon the objection before a decision within the meaning of this Article is taken.

Article 8

Amicable settlement

- (1) Once the complaint has been registered by the Secretariat, the Chair may invite the parties to seek an amicable settlement of the matter giving rise to the complaint.
- (2) The Chair shall encourage and actively facilitate an amicable settlement. The Chair may also act as a mediator.
- (3) At any time during the proceedings before the Data Protection Board, the controller may, on its own initiative, seek an amicable settlement of the matter giving rise to the complaint. In this case, it shall inform the Data Protection Board.
- (4) The proceedings before the Data Protection Board may be suspended for a limited time period during the settlement process.
- (5) The settlement discussions shall be confidential and without prejudice to the parties' arguments in the proceedings. No written or oral communication and no offer or concession made in the framework of the attempt to secure a settlement may be referred to or relied on in the contentious proceedings.
- (6) If the parties have agreed to a settlement, the settlement is binding on both parties and the complaint shall be regarded as closed.
- (7) The Data Protection Board remains competent to deal with claims for the validity, application or execution of a settlement and may make recommendations to the controller that further internal means of redress are excluded for a challenge of the settlement.

Article 9
Data Protection Board meetings

- (1) The Data Protection Board may hold meetings to discuss one or more complaints.
- (2) Attendance at the Data Protection Board meetings is restricted to the Chair and the other two members, one or more members of the Secretariat staff and any observers invited in accordance with Article 48(1) of the Data Protection Rules.
- (3) The meetings of the Data Protection Board shall be convened by the Chair not less than two weeks prior to the meeting. The Secretariat shall issue the invitation to each member, and to any other participants, as instructed by the Chair. Where technically feasible and secure, meetings can be held remotely through videoconferencing or other technical means.
- (4) The Chair shall determine, and the Secretariat shall prepare, the agenda of meetings.
- (5) The Secretariat shall ensure that the Chair and all members have access to the complete complaint file in due time prior to the beginning of the meeting.
- (6) The Chair may request the Secretariat to draw up a summary of the relevant facts and arguments of the parties and a list of the documents submitted by them, together with any further information or analysis that might be deemed necessary and appropriate for the Data Protection Board to issue an opinion.
- (7) Complaints are generally dealt with in order of receipt. The Chair may, however, give priority treatment to a given complaint, in particular for reasons of urgency or gravity of the implications for the data subject.
- (8) The Chair shall direct the proceedings during the meeting. The Secretariat is responsible for taking minutes, as directed by the Chair. The Secretariat shall send the minutes for comments to all members no later than ten calendar days after the meeting. A list of meeting participants shall be added to the minutes. The draft minutes shall include a summary of the discussions, a record of the conclusions reached, any procedural decisions adopted and the numerical result of any votes.
- (9) The meetings of the Data Protection Board shall be confidential. The Chair shall take the appropriate measures to ensure confidentiality.

Article 10
Data Protection Board's opinion

- (1) After reviewing the claim, the evidence, any written input submitted by the data subject, the delegated controller and, where applicable, the processors and any other document or information that it deems suitable, the Data Protection Board shall issue its reasoned opinion. It may recommend compensation for material and/or non-material damage resulting from the unlawful or irregular processing of the data subject's personal data by the Office.
- (2) The Data Protection Board's reasoned opinion shall include:
 - (a) a description of the subject-matter of the complaint;
 - (b) a statement of the facts and a description of the proceedings, including but not limited to the date of any meeting of the Data Protection Board;
 - (c) the main arguments of the parties;
 - (d) the Data Protection Board's considerations;
 - (e) the Data Protection Board's recommendations, if any;
 - (f) an anonymised summary of any dissenting views of any members of the Data Protection Board.
- (3) The reasoned opinion of the Data Protection Board shall be adopted by a majority and shall be signed by the Chair.
- (4) The Chair may set a time limit for the submission of any possible dissenting views. A summary of any dissenting views received by the Data Protection Board Secretariat within this time limit shall be included in the opinion of the Data Protection Board. This summary must not disclose the identity of the dissenting members.
- (5) At the end of the review, the Secretariat of the Data Protection Board shall communicate the reasoned opinion of the Data Protection Board to the President of the Office or, when acting as the controller in the context of the non-judicial activities in which the Boards of Appeal Unit enjoys organisational autonomy under the Act of Delegation, the President of the Boards of Appeal, who shall take his or her final decision on the basis of that opinion. The controller shall in general follow the opinion of the Data Protection Board. If the controller decides not to follow Data Protection Board's opinion, it shall set out in writing the reasons for deviating from the opinion.
- (6) The Secretariat of the Data Protection Board shall communicate the reasoned opinion of the Data Protection Board to the complainant, the delegated controller and, where applicable, the processors, as well as to the Data Protection Officer.

Article 11
Urgency procedure

- (1) For reasons of gravity of the alleged infringement of the data subject's rights or in view of the severity of the risk imposed on the rights and freedoms established by the Data Protection Rules, the complainant may request that the Data Protection Board apply an urgency procedure to the complaint. The complainant requesting an urgent opinion or decision shall explain the reasons why such an urgent opinion or decision has to be adopted and shall submit any relevant document.
- (2) In the case of an urgency procedure, the Data Protection Board shall issue a reasoned opinion within two months of the lodging of the complaint.

Article 12
Test-case procedure

- (1) The Chair of the Data Protection Board may, of his or her own motion or at the request of a party and in accordance with these Rules of Procedure, initiate a test-case procedure.
- (2) When deciding whether to initiate a test-case procedure, the Chair shall take into account:
 - (a) the type and scale of the contested decision and the alleged infringement;
 - (b) the number of complaints filed;
 - (c) the claims and arguments put forward by the complainants in their complaints; and
 - (d) the possible consequences of dealing with the complaints in a test-case procedure.
- (3) Before initiating a test-case procedure, the Data Protection Board shall first seek the views of the complainant and of the controller on the suitability of processing the complaint in accordance with that procedure.
- (4) If the Chair decides to initiate a test-case procedure, the Chair shall select test complainants among the complainants referred to in paragraph 3, with due consideration given to the representative character of their complaints.
- (5) The opinion adopted by the Data Protection Board at the end of the test-case procedure shall constitute its opinion pursuant to Article 50(4) of the Data Protection Rules and shall apply to every complaint in which a similar issue has been raised.
- (6) Information about the initiation of a test-case procedure and the adoption of the resulting opinion shall be published by the Secretariat of the Data Protection Board.

Article 13
Consolidation of complaints to the Data Protection Board

The Chair of the Data Protection Board may decide to:

- (a) consolidate several complaints lodged by different complainants concerning the same subject-matter and deal with them in a single meeting and opinion;
- (b) consolidate several complaints lodged by the same complainant and deal with them in a single opinion.

Article 14
Suspension of complaint proceedings before the Data Protection Board

- (1) Each of the parties may at any time submit a written and reasoned request for the suspension of the complaint proceedings for a maximum period of one month. The other party shall be given the opportunity to comment on such a request. At the request of either party, the suspension may be extended to a maximum of three months.
- (2) The Chair of the Data Protection Board shall decide on the request, in the light of the reasons given in the request and any comments received from the other party.
- (3) The Chair of the Data Protection Board shall suspend the examination of a complaint pending a ruling by a court or a decision of another judicial or administrative body on the same matter.

Article 15
Withdrawal of complaint

- (1) A complaint may be withdrawn at any time during the proceedings, by written notification to the Secretariat. The Secretariat shall inform the Data Protection Board and the controller of any such withdrawal without undue delay.
- (2) The withdrawal of the complaint shall not prevent the Data Protection Board from continuing to examine the subject-matter of the complaint and issuing an opinion and/or recommendations to the controller. If the controller decides not to follow the recommendations of the Data Protection Board under this Article, this decision shall be documented.
- (3) Where, in the event of protracted inaction of the complainant, the Data Protection Board requests that the complainant take a certain action in order for the proceedings to continue, the Data Protection Board shall set a reasonable deadline by which the complainant must comply with this request. If the complainant does not comply with the request within the set deadline and the non-compliance is not justified by compelling reasons, the complaint shall be deemed to be withdrawn.

Article 16
Final decision by the controller

- (1) The final decision on the case taken by the President of the Office or, where applicable, by the President of the Boards of Appeal acting as the controller shall be notified to the complainant, the delegated controller and, where appropriate, the processors, as well as to the Data Protection Board and the Data Protection Officer. A copy of this decision and its reasoning shall be sent to the data subject, the delegated controller and, where appropriate, the processors, as well as to the Data Protection Officer.
- (2) Where the final decision is taken by the President of the Boards of Appeal acting, under Article 28(3) of the Data Protection Rules, as the controller in the context of the non-judicial activities in which the Boards of Appeal Unit enjoys organisational autonomy under the Act of Delegation, it shall be communicated to the President of the Office. Where the decision is taken by the President of the Office but concerns activities of the Boards of Appeal where the President of the Boards of Appeal acts as a delegated controller, it shall be communicated to the President of the Boards of Appeal.
- (3) Having due regard to the confidentiality of the proceedings and if so authorised by the President, abstracts from the final decision and from the opinion of the Data Protection Board may be published in-house and/or externally by the Secretariat.

Article 17
Retention period

- (1) The Secretariat of the Data Protection Board shall retain case files for ten years after their withdrawal or definitive resolution through:
 - (a) a final decision taken by the President of the Office or, where applicable, the President of the Boards of Appeal which has not been challenged;
 - (b) a judgment by the Administrative Tribunal of the International Labour Organization;
 - (c) a judgment issued in dispute resolution proceedings under Article 50(7) of the Data Protection Rules; or
 - (d) an amicable settlement.
- (2) Members of the Data Protection Board shall destroy and/or erase any files or copies of files pertaining to a complaint case file within six months of the issue of the Data Protection Board's opinion.

Article 18
Final provisions

- (1) These Rules of Procedure shall enter into force on 1 January 2022
- (2) The Data Protection Board may propose amendments to these Rules of Procedure, which amendments shall be submitted to the President for approval.