

Data Protection Office

## Request to initiate an arbitration procedure on an alleged infringement of data protection rights

This form will enable you to provide us with the information the Controller needs to initiate an arbitration procedure on an alleged infringement of data protection rights under the EPO Data Protection Rules and/or, as applicable, mutatis mutandis, under the AC DPR and the SC DPR. You can refer to Annex 1 for the explanatory notes on the questions in this form.

We kindly ask you to fill out this form and send it with your request to [president@epo.org](mailto:president@epo.org) and/or as applicable, to [council@epo.org](mailto:council@epo.org).

Questions	Information to be provided by the data subject
<p><b>1. Your name and contact details (including email address)</b></p> <p>As the person filing the request, you will be referred to for the purposes of the procedure as "the claimant".</p>	<p>First name</p> <p>Surname</p> <p>Email address</p>
<p><b>2. Do you have a legal representative?</b></p> <p>If YES: Please attach the power of attorney. This document is mandatory if you wish your legal representative to represent you in the arbitration procedure.</p>	
<p><b>3. Briefly describe your reasons for filing a claim requesting to start an arbitration procedure (separate document may be attached)</b></p> <p>E.g.: Alleged infringement of data protection rights, the decision of the President is considered not in accordance with the Data Protection Rules, etc.</p>	
<p><b>4. Did you file a request for review by the delegated controller under Art. 49 DPR on the same topic?</b></p> <p>If YES: Please attach the review decision if possible.</p>	
<p><b>5. Did you file a complaint to the Data Protection Board (DPB) under Art. 50 DPR on the same topic?</b></p> <p>If YES: Please attach the opinion issued by the DPB if possible.</p>	

Questions	Information to be provided by the data subject
<p><b>6. Have you received a final decision by the Controller<sup>1</sup> under Art. 50(6) DPR on the same topic?</b></p> <p>If YES: Please attach a copy of the Decision of the Controller.</p>	
<p><b>7. With the present request, are you challenging the decision under 6.?</b></p>	
<p><b>8. I hereby kindly request to the Controller to initiate an arbitration procedure as set forth in the Article 52 of the European Patent Office Data Protection Rules ('DPR').<sup>2</sup></b></p>	<p>Date Place Name  Signature</p>
<p><b>9. I hereby confirm that I am aware of the conditions to request an ad-hoc arbitration and its subsequent rules under Article 52 DPR, as stated in the Annex 2 below.</b></p>	<p>Date Place Name  Signature</p>

<sup>1</sup> "Controller" can refer to the EPO President, the AC or the SC, as appropriate.

<sup>2</sup> And as set forth, mutatis mutandis, in the AC DPR and SC DPR.

## Annex 1 Explanatory Notes

Explanatory Notes	
<b>Question 1:</b> <b>Your name and contact details</b>	State your name and how you would prefer us to contact you (e.g. e-mail address), as this will enable us to follow up your request and inquire additional information.
<b>Question 2:</b> <b>Do you have a legal representative?</b>	<p>You have the right to be represented by a legal representative of your choice during the ad-hoc arbitration procedure.</p> <p>To make use of this right, you shall attach the power of attorney including the authorisation of your legal representative to make the request to the President of the Office to initiate the arbitration procedure on your behalf. This document needs to be transmitted by the Office to the Permanent Court of Arbitration with the request to appoint an arbitrator.</p>
<b>Question 3:</b> <b>Briefly describe your reasons for requesting to start an arbitration procedure (separate document may be attached)</b>	Please indicate what precisely you would like to challenge in the decision (e.g., briefly mention which specific right was infringed and how).
<b>Questions 4 to 7:</b> <b>4. Did you file a request of review by the delegated controller on the same topic?</b> <b>5. Did you file a complaint to the Data Protection Board (DPB) on the same topic?</b> <b>6. Have you received a final decision by the Controller on the same topic?</b> <b>7. With the present request, are you challenging the decision under 6.?</b>	<p>Providing this information will allow the arbitrator to promptly and accurately identify if the request is receivable by ensuring that all the preceding, mandatory steps in the grievance procedure were completed.</p> <p>Additionally, please attach a copy of the review decision from the delegated controller, the opinion issued by the DPB and the Decision of the Controller.</p>

## **Annex 2 Means of redress available to data subjects under the Data Protection Rules (DPR)**

### **Article 49 DPR – Request for review by the delegated controller**

- (1) Data subjects who consider that the processing by the Office of their personal data infringes their rights as a data subject under these Rules may request that the delegated controller review the matter and take a decision. The request shall be submitted no later than three months from the day on which the data subject was informed or otherwise became aware of the processing of personal data allegedly infringing his or her rights.
- (2) Prior to taking any decision, the delegated controller shall consult the Data Protection Officer. The Data Protection Officer shall provide the delegated controller with a written opinion no later than 15 calendar days after receipt of the request for review. If the Data Protection Officer has not provided an opinion by the end of this period, it will no longer be required.
- (3) The decision under paragraph 1 above shall be taken within one month of receipt of the request, and communicated to the data subject in writing, indicating the means of redress provided for in Article 50. This time limit may be extended by two further months where necessary, taking into account the complexity and number of the requests. If it is necessary to extend the standard time limit, the delegated controller shall duly notify the data subject of this and the reasons for the delay within one month of receipt of the request for review. If the controller or the delegated controller fails to take any action by the end of a period of three months, this will be deemed to be an implicit rejection of the request.
- (4) A decision or implicit rejection by the delegated controller under this Article is a condition for filing a complaint with the Data Protection Board under Article 50.

### **Article 50 DPR – Legal Redress**

- (1) Data subjects may challenge the decision taken under Article 49(1) by filing a complaint with the Data Protection Board within three months of receipt of the decision in accordance with Article 49(3) or, in the case of an implicit rejection, of the date of expiry of the time limit for replying to the request for review.
- (2) When examining an objection filed by a data subject, the Data Protection Board shall invite the data subject, the delegated controller and, where applicable, the processor to set out in writing their position on the claims and facts at issue and to provide evidence or comments and arguments on evidence already at hand.
- (3) After examining the objection, the evidence and any written input submitted by the data subject, the delegated controller and, where applicable, the processor, the Data Protection Board shall issue a reasoned opinion to the controller. If it finds that the Office's processing of the data subject's personal data was unlawful, it may recommend that compensation for material and/or non-material damage be awarded.
- (4) The Data Protection Board shall communicate its reasoned opinion to the controller, which will then take a final decision. The controller will normally follow the Data Protection Board's opinion. If the controller decides not to follow the opinion, it shall set out in writing the reasons for deviating from it.
- (5) When the President of the Boards of Appeal acts as the controller under the organisational autonomy granted by the Act of Delegation, he or she shall inform the President of the Office of his or her final decision. When the President of the Office takes a final decision on a complaint lodged with the Data Protection Board and concerning activities of the Boards of Appeal in which the President of the Boards of Appeal acts as the delegated controller, he or she shall inform the President of the Boards of Appeal.
- (6) The controller shall notify the data subject, the delegated controller and, where applicable, the processor, as well as the Data Protection Officer, of the final decision and the conclusions of the Data Protection Board. A copy of the decision shall also be sent to the Data Protection Board.
- (7) The persons covered by Article 1 of the Service Regulations may challenge the decision of the controller only before the Administrative Tribunal of the International Labour Organization under Article 113 of the Service Regulations.

- (8) If data subjects not covered by Article 1 of the Service Regulations disagree with the decision taken by the controller, they may ask the President of the Office, within three months of receipt of the final decision under paragraph 6, for ad-hoc arbitration proceedings under Article 52 to resolve their dispute with the Office over the processing of their personal data.
- (9) In cases in which the final decision challenged under paragraphs 7 and 8 of this Article was taken by the President of the Boards of Appeal, he or she shall be informed that the decision has been challenged.

#### **Article 52 DPR – Ad-hoc arbitration**

- (1) Any dispute, controversy or claim raised by a data subject not falling within the scope of application of Article 1 of the Service Regulations arising from a decision of the controller notified to the data subject in accordance with Article 50(6) shall be the subject of final and binding arbitration in accordance with the following procedure and to the exclusion of any other national or international jurisdiction.
- (2) Within three months of receipt of the controller's final decision under Article 50(6), the data subject may request the President of the Office in writing to initiate the arbitration procedure set forth in these Rules.
- (3) Within three months of receipt of such notification by the data subject, one arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration.
- (4) The arbitrator shall be legally qualified, admitted to practise law in one of the contracting states and be able to demonstrate relevant expertise in data protection matters. He or she shall be familiar with the law governing international organisations. The arbitrator must not be or have been in or at the service of the Office or the data subject. He or she shall act independently and impartially.
- (5) The place of arbitration shall be The Hague (the Netherlands).
- (6) The law governing the arbitration procedure shall be the European Patent Convention, these Rules, including any implementing legislation, the law of international organisations and the principles of public international law.
- (7) The language of the proceedings shall be one of the official languages of the Office (English, French or German), as determined by the arbitrator.
- (8) Subject to this Article, the arbitrator may conduct the arbitration as he or she sees fit, provided that the parties are treated equally and each party is given the opportunity of presenting his or her case at every stage of the proceedings.
- (9) The arbitration proceedings are not public. The parties and the arbitrator shall treat the subject-matter of the proceedings confidentially. The arbitration award shall not be published.
- (10) A settlement shall be concluded in the form of a written arbitration award with an agreed wording.
- (11) The arbitrator shall fix the costs of arbitration in his or her award. The term "costs" includes the fees of the arbitrator, travel and other reasonable expenses incurred by the arbitrator, reasonable costs of expert advice required by the arbitrator and reasonable travel and other expenses of witnesses. The fees of the arbitrator shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent, the value of the dispute (if any) and other relevant circumstances of the case. Promptly after his or her appointment, the arbitrator shall inform the parties as to how he or she proposes to determine his or her fees and expenses. Within 15 calendar days of receiving that proposal, any party may refer the proposal to the Secretary-General of the Permanent Court of Arbitration for review. If the Secretary-General of the Permanent Court of Arbitration finds that the proposal is inconsistent with the principles of this paragraph, he or she shall make any necessary adjustments, which shall be binding upon the arbitrator.
- (12) The arbitrator fixes the value of the dispute by exercising his or her reasonable discretion.
- (13) The European Patent Organisation pays the arbitrator's fees and expenses, the cost of possible expert advice and witnesses. Each party pays his or her own costs for legal representation and expenses unless the arbitrator decides otherwise.

## **B. Under the AC DPR**

### **Article 11 AC DPR - Oversight and legal redress**

- (1) Data subjects who consider that the processing of their personal data by the Administrative Council infringes their rights under these Rules may request the relevant delegated controller for the Administrative Council to review the matter and take a decision. Such a decision shall be prepared by the European Patent Office.
- (2) Data subjects may challenge the decision taken under paragraph 1 by filing a complaint with the Data Protection Board referred to in Article 10(1) within three months of receipt of the decision.
- (3) When examining an objection filed by a data subject, the Data Protection Board shall invite the data subject and the European Patent Office, acting on behalf of the Administrative Council, to set out in writing their position on the claims and facts at issue and to provide evidence or comments and arguments on evidence already at hand. After examining the objection, the evidence and any written input submitted, the Data Protection Board shall issue a reasoned opinion to the Chairperson of the Administrative Council.
- (4) When taking the final decision, the Chairperson of the Administrative Council shall normally follow the Data Protection Board's opinion. If the opinion is not followed, the reasons for deviating from it shall be set out in writing.
- (5) Data subjects covered by Article 1 of the Service Regulations may challenge the decision of the Chairperson of the Administrative Council only before the Administrative Tribunal of the International Labour Organization under Article 113 of the Service Regulations. Data subjects not covered by Article 1 of the Service Regulations who disagree with the decision taken by the Chairperson of the Administrative Council may ask the Administrative Council, within three months of receipt of the final decision under paragraph 4, for ad-hoc arbitration proceedings to resolve the dispute. The provisions in the EPO DPR on such ad-hoc arbitration proceedings shall apply accordingly.
- (6) The Chairperson of the Administrative Council, assisted by the Data Protection Office and the Council Secretariat, shall draw up and submit to the Administrative Council an annual report on his or her performance of tasks under these Rules.

## **C. Under the SC DPR**

### **Article 1 SC DPR**

- (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.