



### Rules of procedure for the DATA PROTECTION COMMITTEE (DPC)

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18.07.2023	1.0	DPC	Final adoption in annual meeting

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(Adopted on July 18<sup>th</sup> 2023)

The DPC is established as the EMBL's independent data protection Supervisory Authority. As set forth in Internal Policy N° 68 (IP 68), the DPC hereby enacts the following rules of procedure:

## **PREAMBLE**

The purpose of these rules is to set out how the application of IP 68 is supervised at EMBL.

## **DUTIES AND POWERS**

### **§ 1 Membership in the DPC**

1. The DPC shall be composed of three members appointed by the Director General, consisting of one internal, and two external members.
2. The members of the DPC shall be appointed for a common term of office lasting three years. Appointments are renewable at the discretion of the Director General. At the end of every term, the DPC shall submit a written report to the Director General.
3. The tenure of a DPC member shall not exceed nine years.
4. If, in exceptional circumstances, a resignation is deemed necessary, the leaving member shall hold the position until such time as the Director General is notified of the termination of his/ her appointment.
5. If, in exceptional circumstances, EMBL terminates the appointment of a member of the DPC, this leaving member shall be discharged immediately from his/ her position.
6. The members of the DPC shall have the knowledge, the skills, and the professional experience required to properly exercise their duties. The DPC members are obliged to ensure they are always aware of the most recent developments in data protection issues.

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7. The Data Protection Officer (DPO) and the Data Protection Strategy Board shall propose the new members of the DPC to the Director General. The DPO and the Data Protection Strategy Board shall take into account:
- a) The principle of diversity with regard to the professional backgrounds of the members;
  - b) The principles of independence and impartiality as described in IP 68. These principles require that:
    - (1) The DPC shall be provided with its own budget;
    - (2) DPC members are free from any external influence, direct or indirect, which has potential effects on their freedom to make decisions in good faith;
    - (3) EMBL ensures that the activities of the internal DPC member shall never be affected or supervised by his/ her hierarchical superior, irrespective of the service-related linkage between the internal DPC member and EMBL;
    - (4) Members of the DPC shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

## **§ 2 The roles of the DPC members**

### **§ 2 a The Chairperson**

1. The Director General shall appoint a Chairperson from among the external members of the DPC. The appointment will be for the term of three years.
2. The Chairperson shall preside over the meetings. He/ she will declare the opening and closing of each meeting, direct the discussions and, if necessary, summarize findings, ensure observance of these Rules of Procedure, put proposals to the vote and draw conclusions during the meetings.

### **§ 2 b The Rapporteur**

The DPC appoints a rapporteur from among the external members of the DPC, for each case taking into consideration the required expertise to deliver expert opinions.

### **§ 2c The internal member of the DPC**

The internal member acts as a technical expert and, if necessary, he/ she provides deeper insight in the internal processes of EMBL.

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### § 3 The Secretary

1. The secretary shall perform their tasks under the instructions of the Chairperson.
2. The secretary of the DPC shall be bound by secrecy and shall enjoy independence in the discharge of their function within the EMBL administration. EMBL shall provide an internal or external ad hoc secretary to provide office support to the DPC when required.
3. Secretarial costs of the DPC shall be borne by the EMBL budget. EMBL shall further provide office accommodation, equipment and materials.
4. The secretary shall be in particular responsible for:
  - a. the preparation of the agenda and the delivery thereof together with the relevant documents to the DPC Members;
  - b. the use of electronic means for the internal and external communication;
  - c. the preparation and follow-up of the meetings of the DPC; and
  - d. the day-to-day business of the DPC.

### § 4 Rights and Obligations of the Members of the DPC

1. All members of the DPC shall respect privileges and immunities in the exercise of their role.
2. EMBL will endeavour to bestow on the external members the status of experts, or otherwise seek to ensure that they are covered by EMBL privileges and immunities, when exercising their powers and duties.
3. The members of the DPC shall be bound to strict confidentiality with regard to confidential information and secrets of EMBL (especially confidential reports and consultations) to which they gain access through their service in the DPC. This obligation shall continue to apply after they have left the DPC. All confidential documents shall be returned to the DPC when leaving the DPC.
4. Each member of the DPC shall inform the Director General of potential conflicts of interest<sup>1</sup>.

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<sup>1</sup> Internal Policy N° 57.

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## § 5 Remuneration

1. For the work on the DPC, internal members shall not receive any additional variable remuneration, other than their monthly salary.
2. External DPC members shall be provided with a fixed financial compensation per meeting, determined by the Director General.
3. EMBL shall reimburse the travel and out of pocket expenses of all DPC members. Travel expenses and out of pocket expenses associated with attending meetings shall be borne by EMBL. These shall be reimbursed in accordance with the respective Staff Rules and Regulations of EMBL applicable to EMBL Staff Members.

## MEETINGS OF THE DPC

### § 6 Meetings

The DPC members shall meet as needed to carry out its functions but not less than once a year for the preparation of the annual report, and on an ad hoc basis, if the members are informed by the Director General of complaints, or in case of grave data breaches.

The meetings of the DPC shall take place remotely, unless it is considered necessary to physically meet. One meeting per year should take place at the EMBL headquarters, when possible.

### § 7 Meetings procedure

1. The Chairperson shall conduct the meetings. She/ he will lead the meeting and shall determine the order in which agenda items are dealt with.
2. Meetings, minutes and any relevant documentation shall be in the English language.
3. Recommendations of the DPC shall be adopted in meetings by a majority of votes.
4. The DPC members have the right to seek expert advice.
5. The secretary will take minutes, that shall be signed by the Chairperson. The minutes shall state the place and the date of the meeting, participants names, agenda items, the content of discussions, and any recommendations made by the DPC.

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6. Minutes shall be confidential and only be shared with the members. The minutes shall be deemed approved, if no member of the DPC who took part in the voting submits a written objection to the Chairperson within two weeks of the minutes being sent.

## DATA BREACH

### § 9 Procedure in grave cases of data breach

1. The DPC shall be promptly informed of grave cases of data breach by the data controller supported by the DPO.
2. The DPO shall act as the main contact point for the DPC. The data controller together with the DPO shall provide all necessary details and agree with the DPC on how and when additional information should be provided.
3. The DPC evaluates the data breach notification based on whether the measures taken by the Data Controller are appropriate to mitigate possible adverse effects of personal data breach. To facilitate its supervisory functions, the DPC can perform its own investigation and evaluation of Data Breaches.

## ANNUAL REPORTS

### § 10 Reporting to the Director General

The annual report to the DG shall include a list of the activities of the DPC statistics and analysis of complaints received, investigations undertaken, recommendations made and the resulting decisions of the Director-General; and any other specific or general recommendations.

The DPC shall also provide a copy of the annual report to the DPO.

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## COMPLAINTS WITH THE DPC

### § 11 Complaint with the DPC

Where his/ her personal data has been processed in a manner that is not compliant with IP 68, the complainant shall lodge his/her complaint as follows:

- with the Rapporteur of the DPC;
- dated and signed by the complainant;
- containing a copy of the complaint, evidence presented, and the outcome of the resolution effort under § 12.

The Rapporteur shall examine the receivability of the complaint under § 13 and, in the event that it is receivable, investigate and establish the facts.

### § 12 Preliminary complaint and amicable resolution effort

1. Before filing a complaint with the DPC, the complainant shall seek for an amicable resolution of the case, together with the DPO and the concerned EMBL-process owner.
2. The result of the resolution shall be communicated in writing to the complainant, within one month.

### § 13 Admissibility of the complaint

The complaint is admissible, when

- it is lodged one month after receiving in writing the negative result of the resolution, or if the DPO omits to reply to the request of the complainant for a period longer than three months after the incident has occurred; and
- the complainant claims that his/her rights have been violated by any legal or material act or omission of an EMBL-data controller or a data processor, and
- this legal act or omission violates the rights of the data subject as set forth in IP 68.

## **§ 14 The Rapporteur**

The Rapporteur of the DPC shall register the complaint under § 11; and communicate with the complainant on behalf of the DPC; and in case of hearings, they shall

- schedule the date for the hearings of the case, and communicate the date of the hearings to the members of the DPC and the parties at least fifteen (15) working days beforehand;
- be present at all hearings, at the request of the DPC.

## **§ 15 Comments to complaint and reply**

1. The complaint shall be transmitted by the Rapporteur to the Director General.
2. The parties shall have thirty (30) working days to present a written reply to the Rapporteur.
3. Upon justified request, these deadlines may be extended by the Chairperson of the DPC.

## **PROCEDURAL RULES**

### **§ 16 Proceedings conducted in writing**

The parties shall submit their arguments regarding the dispute to the DPC in writing. The DPC shall proceed with a written procedure.

Decisions of the DPC may be given without a hearing for oral argument being held.

### **§ 17 Tenor of the written pleadings**

The preparatory written complaint shall provide:

- a. The designation of the parties by name, status or business, place of residence; the subject matter of the complaint; the number of annexes;
- b. In case of electronic mail all the required information for the transmission of electronic documents;
- c. The claims that the Complainant intends to file with the DPC;
- d. Information on the factual circumstances serving as grounds for the complaint;
- e. The declarations regarding the facts alleged by the data-controller;
- f. The designation of the evidence that the party intends to submit as proof of any facts alleged, or by way of rebutting allegations, as well as a declaration regarding the evidence designated by the opponent;
- g. The signature of the person responsible for the written pleading.

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## § 18 Attachments of documents

1. The records or documents at hand to the party that are referred to in the complaint are to be attached to same as copies.
2. Where only individual parts of a record or document are relevant, attaching excerpts shall meet the above requirement; said excerpts shall set out the introduction, the parts addressing the matter in dispute, the closing of the document, as well as its date and signature.
3. Should the records or documents be known to the other party already, or should they be very extensive, it shall suffice to exactly specify them and to offer the opportunity to inspect them.

## § 19 Deadlines for written pleadings

The DPC shall set a deadline for the submission of facts.

## § 20 Hearing

Where applicable, hearings will be conducted in accordance with the internal legal framework on procedures for EMBL hearings.

In exceptional cases, the DPC may call for a hearing in physical presence, if the DPC considers it necessary to clear up facts and circumstances of the case.

## § 21 Withdrawal of the complaint

Should the claimant withdraw his/her complaint, the Chairperson of the DPC may accept the withdrawal if the other party agrees.

## § 22 Deliberation and recommendations

1. Upon closure of the hearing, the DPC shall deliberate on its decision.
2. The deliberations of the DPC are confidential and shall be held out of the presence of either party or of any other person.
3. Before issuing a recommendation, the DPC may propose an amicable resolution or settlement to parties
4. The decisions or recommendations of the DPC shall:

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- be taken by majority of the members;
  - state the grounds on which the DPC's recommendations are based;
  - contain findings which cover the main facts and legal arguments put forward by the two parties;
  - be signed by the Chairperson and the Rapporteur;
  - indicate the date of the decision;
  - be sent to the Director General, the Data Protection Officer, Legal Services, and to the complainant, in certified copies certified true by the rapporteur, within thirty days;
5. The DPC shall decide about the costs of the procedure. The DPC may recommend the award of appropriate remedies including reimbursement of reasonable costs upon submission of appropriate supporting documents and, where the circumstances justify, up to a maximum of 1000.- EUR in moral compensation. In exceptional and well-justified situations, the DPC may recommend moral compensation up to a maximum of 2000.- EUR.

## **§ 24 Decision-making**

Within thirty calendar days of receiving the DPC's decision, the Director General may present justifiable reasons why not to accept it, as well as whether to pursue any follow-up actions.

## **§ 25 Revision Clause**

The Rules of Procedure can be revised by the members of the DPC present and voting.

## **§ 26 Final provisions**

These Rules of Procedure shall enter into force as from July 18<sup>th</sup> 2023.

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