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II

(Non-legislative acts)

DECISIONS

DECISION (EU) 2021/752 OF THE EUROPEAN CENTRAL BANK**of 30 April 2021****amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations
(ECB/2021/21)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Article 12.1, the second indent of Article 18.1 and the second indent of Article 34.1 thereof,

Having regard to Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60) ⁽¹⁾,

Whereas:

- (1) Pursuant to Article 1(4) of Guideline (EU) 2015/510 (ECB/2014/60), the Governing Council may, at any time, change the tools, instruments, requirements, criteria and procedures for the implementation of Eurosystem monetary policy operations.
- (2) On 22 July 2019, in pursuing its price stability mandate and to preserve favourable bank lending conditions and support the accommodative stance of monetary policy in Member States whose currency is the euro, the Governing Council adopted Decision (EU) 2019/1311 of the European Central Bank (ECB/2019/21) ⁽²⁾. This Decision provides for a third series of targeted longer-term refinancing operations (TLTROs-III) to be conducted over the period September 2019 to March 2021.
- (3) On 12 March 2020, in order to support bank lending to those most affected by the spread of the coronavirus disease (COVID-19), in particular small and medium-sized enterprises, the Governing Council decided to change certain key parameters of TLTROs-III. Moreover, on 30 April 2020, in order to further support the provision of credit to households and firms in the face of the prevalent economic disruptions and heightened uncertainty, the Governing Council decided on certain further changes to these parameters. Decision (EU) 2020/407 of the European Central Bank (ECB/2020/13) ⁽³⁾ and Decision (EU) 2020/614 of the European Central Bank (ECB/2020/25) ⁽⁴⁾ implement these changes.

⁽¹⁾ OJ L 91, 2.4.2015, p. 3.

⁽²⁾ Decision (EU) 2019/1311 of the European Central Bank of 22 July 2019 on a third series of targeted longer-term refinancing operations (ECB/2019/21) (OJ L 204, 2.8.2019, p. 100).

⁽³⁾ Decision (EU) 2020/407 of the European Central Bank of 16 March 2020 amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2020/13) (OJ L 80, 17.3.2020, p. 23).

⁽⁴⁾ Decision (EU) 2020/614 of the European Central Bank of 30 April 2020 amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2020/25) (OJ L 141, 5.5.2020, p. 28).

- (4) On 10 December 2020, the Governing Council decided to adopt additional monetary policy measures aiming to contribute to preserving favourable financing conditions over the pandemic period, thereby supporting the flow of credit to all sectors of the economy, underpinning economic activity and safeguarding medium-term price stability. As part of these measures, the Governing Council decided to further recalibrate the conditions of TLTROs-III. In particular, it decided to extend the period over which considerably more favourable terms will apply to June 2022, that three additional operations will be conducted between June and December 2021, and to raise the total amount that Eurosystem counterparties will be entitled to borrow in TLTROs-III from 50% to 55% of their stock of eligible loans. In order to provide an incentive for banks to sustain the current level of bank lending, the Governing Council also decided that the extension of the more favourable terms on TLTROs-III to June 2022 will be made available only to banks that achieve a new lending performance target. Decision (EU) 2021/124 of the European Central Bank (ECB/2021/3) implemented these changes ^(*).
- (5) The sanctions related to non-compliance with the deadlines set for submitting reports and auditor evaluations should be adjusted to make the sanctioning regime more proportionate while still aiming to ensure that participants comply with the deadlines set. In addition, the cases in which participants are permitted to switch from individual to group participation or join existing TLTRO-III groups as well as the procedure to be followed in such cases should be clarified. Furthermore, provision should be made for an exemption from the obligation to submit a further auditor's evaluation in relation to reports revised due to corporate reorganisations or changes in the composition of TLTRO-III groups. Lastly, the reporting requirements and relevant interest rate calculations in the event of a change in the TLTRO-III group composition or of a corporate reorganisation that occurs between 1 April 2021 and 31 December 2021 should be clarified.
- (6) The changes to the sanctions for non-compliance with reporting and auditing requirements and the provisions regarding the treatment of corporate reorganisations occurring after 31 March 2021 for the purpose of calculating TLTRO-III interest rates introduced by this Decision should be made known to credit institutions as soon as possible. Therefore, this Decision should enter into force without delay.
- (7) Therefore, Decision (EU) 2019/1311 (ECB/2019/21) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision (EU) 2019/1311 (ECB/2019/21) is amended as follows:

- (1) in Article 1, point 17 is replaced by the following:

‘(17) “participant” means a counterparty eligible for Eurosystem monetary policy open market operations in accordance with Guideline (EU) 2015/510 (ECB/2014/60), which submits bids in TLTRO-III tender procedures either on an individual basis or on a group basis as lead institution, and which is subject to all rights and obligations associated with its participation in the TLTRO-III tender procedures, excluding a credit institution which has fully repaid all TLTRO-III borrowings;’

- (2) in Article 3(2), point (d) is replaced by the following:

‘(d) the composition and the lead institution of a TLTRO-III group shall remain unchanged for all TLTROs-III, subject to paragraphs 5, 5a, 6 and 6a of this Article.’

^(*) Decision (EU) 2021/124 of the European Central Bank of 29 January 2021 amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2021/3) (OJ L 38, 3.2.2021, p. 93).

- (3) in Article 3, paragraph (5a) is replaced by the following:

‘5a. In exceptional cases, where there are objective reasons, the Governing Council may decide to allow institutions participating in TLTROs-III on an individual basis to instead participate in future TLTROs-III on a group basis by joining an existing TLTRO-III group or by forming a new TLTRO-III group. That TLTRO-III group and each of its members shall comply with the provisions of Article 3.’;

- (4) in Article 3(6), the introductory phrase in point (b) is replaced by the following:

‘If, in relation to the TLTRO-III group, a credit institution that is not a participant or a member of a TLTRO-III group fulfils the conditions set out in Article 3(3)(a)(i) or (ii) with effect after, but not on or before, the last day of the month preceding the application referred to in point (d) of paragraph 3, the TLTRO-III group composition may change to reflect the addition of that credit institution as a new member, provided that:’;

- (5) in Article 3, the following paragraph 6a is inserted:

‘6a. Without prejudice to paragraph 5a, an institution participating in TLTROs-III on an individual basis may instead participate in future TLTROs-III on a group basis by forming a TLTRO-III group, provided that:

- (a) the members of that TLTRO-III group are credit institutions that are not participating in TLTROs-III on an individual basis or as members of another TLTRO-III group and fulfil the conditions set out in Article 3(3)(a)(i) or Article 3(3)(a)(ii) with effect after, but not on or before, the last day of the month preceding the application referred to in Article 3(3)(d); and

- (b) that TLTRO-III group and each of its members comply with the provisions of Article 3.’;

- (6) in Article 3(7), the introductory phrase is replaced by the following:

‘Where changes in the composition of a TLTRO-III group have been accepted by the Governing Council in accordance with paragraph 5, a new TLTRO-III group has been formed in accordance with paragraph 5a or paragraph 6a, or changes in the composition of TLTRO-III groups have taken place in accordance with paragraph 6, unless otherwise decided by the Governing Council, the following shall apply:’;

- (7) the second subparagraph of Article 5(6) is replaced by the following:

‘If due to the exercise of remedies available to an NCB in accordance with its contractual or regulatory arrangements, a participant is required to repay the TLTRO-III outstanding amounts in the eighth or subsequent TLTROs-III before the resulting interest rate for the additional special reference period has been communicated to the participant, the interest rate applicable to the amounts borrowed by that participant under the eighth or subsequent TLTROs-III and subject to mandatory repayment shall be set in accordance with paragraph 3c. If such repayment is required after the interest related data of the additional special reference period have been communicated to the participant, the interest rate applicable to the amounts borrowed by that participant under the eighth or subsequent TLTROs-III and subject to mandatory repayment shall be set in accordance with paragraphs 3b and 3c.’;

- (8) in Article 6, the following paragraph 7a is inserted:

‘7a. Where a revised first report is submitted due to a change in the TLTRO-III group composition or a corporate reorganisation pursuant to point (a) of paragraph 7, such change in the TLTRO-III group composition or corporate reorganisation shall be taken into account in the submission of the second and third reports pursuant to paragraph 1.

Where a revised first report is submitted due to a change in the TLTRO-III group composition or a corporate reorganisation pursuant to points (b) and (c) of paragraph 7, such change in the TLTRO-III group composition or corporate reorganisation shall be taken into account in the submission of the third report pursuant to paragraph 1, and the second report shall not be revised.’;

- (9) in Article 6, paragraph 8a is replaced by the following:

‘8a. A participant that submits a revised first report pursuant to paragraph 7 shall ensure that the quality of the data submitted in that revised first report is evaluated by an external auditor in accordance with the rules laid down in paragraph 6. That auditor’s evaluation of the revised first report shall be made available to the relevant NCB as follows:

- (a) where the revisions concern the supplementary items, the auditor's evaluation of these supplementary items shall be provided together with the revised first report;
- (b) where the participant submits a revised first report pursuant to paragraph 7(a), the auditor's evaluation of those revisions shall be made available to the relevant NCB by 30 July 2021, as specified in the indicative calendar for TLTROs-III published on the ECB's website;
- (c) where the participant submits a revised first report pursuant to paragraph 7(b) or paragraph 7(c), the auditor's evaluation of those revisions shall be made available to the relevant NCB by the deadline specified in the indicative calendar for TLTROs-III published on the ECB's website for the submission of the results of the auditor's evaluation for participants participating for the first time in the eighth or subsequent TLTROs-III operations.';

(10) in Article 6, the following paragraph 8b is inserted:

'8b. By way of exception from paragraph 8a, a participant that has made the results of the auditor's evaluation of the first report available to the relevant NCB and subsequently submits a revised first report pursuant to paragraph 7 shall not be required to make available to the relevant NCB a new auditor's evaluation of that revised first report if all of the following criteria are fulfilled:

- (a) the corporate reorganisation is a merger or acquisition involving one or more acquired credit institutions that are all participants in TLTROs-III on an individual basis, or involving credit institutions that comprise an entire TLTRO-III group;
- (b) the auditor's evaluation of the first report for each acquired participant on an individual basis or for the acquired TLTRO-III group was made available, separately, to the relevant NCB before the corporate reorganisation occurred; and
- (c) the revisions do not concern the supplementary items referred to in the first report.';

(11) the following Article 6a is inserted:

'Article 6a

Calculation of interest rate in the event of a change in the TLTRO-III group composition or of a corporate reorganisation that occurs between 1 April 2021 and 31 December 2021

1. In the event of a change in the TLTRO-III group composition or of a corporate reorganisation that involves participants participating in the first seven TLTROs-III on an individual or on a group basis where that change occurs between 1 April 2021 and 31 December 2021, the interest rate applicable to amounts borrowed under each of the first seven TLTROs-III shall be calculated as follows:

- (a) during the period until 23 June 2021, the interest rate shall be calculated on the basis of the interest rate related data relating to the second reference period and the special reference period taking into account the individual lending performance of each of the participants, and also taking into account the provisions of Article 5 of this Decision with respect to interest rate calculation;
- (b) during the period starting on 24 June 2021 and continuing until maturity, the interest rate shall be calculated on the basis of the interest rate related data for the additional special reference period relating to the institution resulting from the corporate reorganisation or relating to the TLTRO-III group after the change in group composition (unless a more favourable rate would have been warranted on the basis of the interest rate related data relating to the second reference period and the special reference period depending on the participant's individual lending performance(s)) and also taking into account the provisions of Article 5 of this Decision with respect to interest rate calculation.

2. In the event of a change in the TLTRO-III group composition or of a corporate reorganisation that involves participants participating in the first seven TLTROs-III on an individual or on a group basis where that change occurs between 1 April 2021 and 31 December 2021, the interest rate applicable to amounts borrowed under each of the eighth or subsequent TLTROs-III shall be calculated on the basis of the interest rate related data for the additional special reference period relating to the institution resulting from the corporate reorganisation or relating to the TLTRO-III group after the change in group composition.';

(12) Article 7 is replaced by the following:

'Article 7

Non-compliance with reporting requirements

1. Where a participant fails to submit a report or comply with audit requirements, or where errors are identified in the data reported, the following shall apply:

- (a) if a participant fails to make the first report available to the relevant NCB by the relevant deadline, its borrowing allowance shall be set at zero;
- (b) if a participant fails to make the results of the auditor's evaluation of the first report available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB's website, the following rules shall apply:
 - (i) if the auditor's evaluation of the first report is received by the relevant NCB within the period of 14 calendar days starting on the day after the expiry of the relevant deadline, the participant shall incur for each day until such evaluation is received a penalty equal to the total outstanding amount borrowed by the participant under TLTROs-III divided by 1 000 000 (or if that amount is less than EUR 1 000, a penalty of EUR 1 000 for each day until the auditor's evaluation of the first report is received). The penalties incurred per day shall be accumulated and charged to the participant by the relevant NCB after receipt of the auditor's evaluation of the first report;
 - (ii) if the auditor's evaluation of the first report is not received by the relevant NCB within the period of 14 calendar days specified in point (i), the participant shall repay the outstanding amounts borrowed under those TLTROs-III operations with reference to which the borrowing allowance has been calculated on the basis of the first report for which the auditor's evaluation has not been received. The participant shall repay such amounts on the settlement day of the next main refinancing operation at the average rate on the main refinancing operation over the life of each respective TLTRO-III until the settlement day of the repayment, except during the special interest rate period and the additional special interest rate period, when the average rate on the main refinancing operations over each such period minus 50 basis points shall apply;
- (c) if a participant in one of the first seven TLTROs-III fails to make the data relating to the second reference period in the second report or the results of the auditor's evaluation of those data available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB's website, the following rules shall apply:
 - (i) if either the data relating to the second reference period in the second report or the results of the auditor's evaluation of those data are received by the relevant NCB within the period of 14 calendar days starting on the day after the expiry of the relevant deadline, the participant shall incur for each day until receipt a penalty equal to the total outstanding amount borrowed by the participant under TLTROs-III divided by 1 000 000 (or if that amount is less than EUR 1 000, a penalty of EUR 1 000 for each day until receipt). The penalties incurred per day shall be accumulated and charged to the participant by the relevant NCB after receipt of all data relating to the second reference period in the second report or of the results of the auditor's evaluation of those data. The interest rate related data relating to the second reference period shall be communicated by the relevant NCB to the participant on 1 October 2021;
 - (ii) if either the data relating to the second reference period in the second report or the results of the auditor's evaluation of those data are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the average rate on the main refinancing operation over the life of each respective TLTRO-III shall apply to the amounts borrowed by that participant under TLTROs-III, except during the special interest rate period and the additional special interest rate period, when the average rate on the main refinancing operations over each such period minus 50 basis points shall apply unless the participant is granted a better

rate as a result of its lending performance during the third reference period. If it is the data relating to the second reference period in the second report that are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the participant shall also incur a penalty of EUR 5 000 which shall be charged to the participant by the relevant NCB after receipt of all data relating to the second reference period in the second report.

Notwithstanding the previous paragraph of this point (ii), if the participant only provides the data for the special reference period of the second report and the auditor's evaluation of this data, and the participant's eligible net lending during the special reference period equals or exceeds its benchmark net lending, the interest rate applicable to the amounts borrowed by the participant shall be calculated pursuant to Article 5(1) or Article 5(3a) subject to the conditions set out in Article 6(3a) and Article 6(3b) respectively;

- (d) if a participant in one of the first seven TLTROs-III fails to make the data relating to the special reference period in the second report or the results of the auditor's evaluation of those data available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB's website, the following rules shall apply:
 - (i) if either the data relating to the special reference period in the second report or the results of the auditor's evaluation of those data are received by the relevant NCB within the period of 14 calendar days starting on the day after the expiry of the relevant deadline, the participant shall incur for each day until receipt a penalty equal to the total outstanding amount borrowed by the participant under TLTROs-III divided by 1 000 000 (or if that amount is less than EUR 1 000, a penalty of EUR 1 000 for each day until receipt). The penalties incurred per day shall be accumulated and charged to the participant by the relevant NCB after receipt of all data relating to the special reference period in the second report or of the results of the auditor's evaluation of those data. The interest rate related data relating to the second reference period shall be communicated by the relevant NCB to the participant on 1 October 2021;
 - (ii) if either the data relating to the special reference period in the second report or the results of the auditor's evaluation of those data are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the participant's eligible net lending during the special reference period shall be considered lower than its benchmark net lending and the participant may not take advantage of the interest rate set out in Article 5(1);
- (e) if the pecuniary penalty pursuant to point (c)(i) is charged by the relevant NCB, the pecuniary penalty pursuant to point (d)(i) shall not be charged. Similarly, if the pecuniary penalty pursuant to point (d)(i) is charged by the relevant NCB, the pecuniary penalty pursuant to point (c)(i) shall not be charged;
- (f) if a participant fails to make the data relating to the third report or the results of the auditor's evaluation of the data relating to the third report available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB's website, the following rules shall apply:
 - (i) if either the data relating to the third report or the results of the auditor's evaluation of those data are received by the relevant NCB within the period of 14 calendar days starting on the day after the expiry of the relevant deadline, the participant shall incur for each day until receipt a penalty equal to the total outstanding amount borrowed by the participant under TLTROs-III divided by 1 000 000 (or if that amount is less than EUR 1 000, a penalty of EUR 1 000 for each day until receipt). The penalties incurred per day shall be accumulated and charged to the participant by the relevant NCB after receipt of all data relating to the third report or of the auditor's evaluation of those data. The interest rate related data relating to the second reference period shall be communicated by the relevant NCB to the participant on 1 July 2022;
 - (ii) if either the data relating to the third report or the results of the auditor's evaluation of those data are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the interest rate calculated pursuant to Article 5(1)(b), 5(2)(b) or 5(3)(b) (if the participant has already participated in one of the first seven TLTROs-III), or pursuant to Article 5(3c)(a) (if the participant participated in the eighth or subsequent TLTROs-III), shall apply during the additional special interest rate period to the amounts

borrowed by that participant under those TLTROs-III, while during the period after the additional special interest rate period, the rate shall be calculated pursuant to Articles 5(1)(c), 5(2)(c), 5(3)(c) or 5(3c)(b). If it is the data relating to the third report that are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the participant shall also incur a penalty of EUR 5 000, which shall be charged to the participant by the relevant NCB after receipt of all data relating to the third report;

- (g) if a participant fails to otherwise comply with the obligations set out in Article 6(6), (7) or (8a), the average rate on the main refinancing operations over the life of each respective TLTRO-III shall apply to the amounts borrowed by that participant under TLTROs-III, except during the special interest rate period and the additional special interest rate period when the average rate on the main refinancing operations minus 50 basis points over each such period shall apply;
- (h) if a participant, either in connection with the audit referred to in Article 6(6) and 6(8a) or by any other means, identifies errors in the data submitted in the reports, including inaccuracies or incompleteness, it shall notify the relevant NCB thereof within the shortest timeframe possible. Where the relevant NCB has been notified of such errors, inaccuracies or omissions, or where such errors, inaccuracies or omissions come to its attention by other means: (i) the participant shall provide any additional information requested by the relevant NCB within the shortest timeframe possible to assist in assessing the impact of the errors, inaccuracies or omissions concerned; and (ii) the relevant NCB may take appropriate action, which may include a recalculation of the relevant values that in turn may affect the interest rate applied to the participant's borrowing under TLTROs-III and a requirement to repay the amounts borrowed which, due to the error, inaccuracy or omission exceed the participant's borrowing allowance. Participants shall demonstrate that any shortcomings identified by the audit referred to in Articles 6(6) and 6(8a) have been addressed in the data reported to NCBs in accordance with the timeframe requested by the relevant NCB and, where shortcomings are identified by the auditor's evaluation of the second report or the third report, by a deadline which allows for the timely communication of interest rate related data by the relevant NCB based on the respective data in accordance with the indicative calendar on the ECB's website.

2. Paragraph 1 shall be without prejudice to any sanction that may be imposed pursuant to Decision ECB/2010/10 of the European Central Bank (*) in respect of the reporting obligations laid down in Regulation (EU) No 1071/2013 (ECB/2013/33).

3. For the avoidance of doubt, the reporting requirements and related sanctions in case of non-compliance laid down in paragraph 1 shall only apply if the participant participates in TLTROs-III.

(*) Decision ECB/2010/10 of the European Central Bank of 19 August 2010 on non-compliance with statistical reporting requirements (OJ L 226, 28.8.2010, p. 48).;

(13) in Annex II, point (3) in the third indent (Reclassifications (3.2C)) of point (c)(ii) of Section 4 is replaced by the following:

‘(3) Adjustments that result from the correction of reporting errors, in accordance with instructions received from the relevant NCB pursuant to point (h) of Article 7(1);’.

Article 2

Entry into force

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 30 April 2021.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE

RULES OF PROCEDURE

DECISION No 2021-096 REV 1 OF THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE

of 16 April 2021

on internal rules concerning restrictions of certain rights of data subjects in relation to the processing of personal data in the framework of the functioning of the European Union Agency for the Operational Management of the Large-Scale IT Systems in the Area of Freedom, Security and Justice

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE (EU-LISA), hereafter 'eu-LISA',

Having regard to the Treaty on the Functioning of the European Union,

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 ⁽¹⁾, and in particular Article 25 thereof, (hereafter 'Regulation (EU) 2018/1725'),

Having regard to the Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 ⁽²⁾, and in particular Article 35 thereof, (hereafter 'Regulation (EU) 2018/1726'),

Having regard to the opinion of the European Data Protection Supervisor (EDPS) of 11 March 2021 and to their 'Guidance on Article 25 of the Regulation (EU) 2018/1725 and internal rules restricting data subjects rights' ⁽³⁾,

After consulting the Staff Committee,

Whereas:

- (1) eu-LISA carries out its activities in accordance with Regulation (EU) No 2018/1726.
- (2) eu-LISA is empowered to conduct administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings, in accordance with the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽⁴⁾ ('Staff Regulations'), and with eu-LISA Decision No 2014-080 of 28 January 2015 of the Management Board of eu-LISA on the adoption of implementing rules to the Staff Regulations adopting implementing provisions regarding the conduct of administrative inquiries and disciplinary proceedings. If required, it also notifies cases to OLAF.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 295, 21.11.2018, p. 99.

⁽³⁾ EDPS Guidance on Article 25 of the Regulation (EU) 2018/1725 and internal rules restricting data subjects rights (update 24 June 2020) – https://edps.europa.eu/data-protection/our-work/publications/guidelines/guidance-art-25-regulation-20181725_en

⁽⁴⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

- (3) eu-LISA staff members are under an obligation to report potentially illegal activities, including fraud and corruption, which are detrimental to the interests of the Union. Staff members are also obliged to report conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union. This is regulated by eu-LISA Decision on internal rules concerning whistleblowing of 26 June 2018.
- (4) eu-LISA has put in place a policy to prevent and deal effectively with actual or potential cases of psychological or sexual harassment in the workplace, as provided for in its Decision No 2018-174 of 6 December 2018 of the Management Board regarding eu-LISA's policy on protecting the dignity of the person and preventing psychological and sexual harassment adopting implementing measures pursuant to the Staff Regulations. The Decision establishes an informal procedure whereby the alleged victim of the harassment can contact eu-LISA's 'confidential' counsellors.
- (5) eu-LISA can also conduct investigations into potential breaches of security rules for European Union classified information ('EUCI'), based on its Decision No 2019-273 of 20 November 2019 amending its security rules for protecting EUCI.
- (6) eu-LISA is subject to both internal and external audits concerning its activities.
- (7) In the context of such administrative inquiries, audits and investigations, eu-LISA cooperates with other Union institutions, bodies, offices and agencies.
- (8) eu-LISA can cooperate with third countries' national authorities and international organisations, in accordance with the provisions laid down in Article 43 of the Regulation (EU) 2018/1726.
- (9) eu-LISA can also cooperate with EU Member States' public authorities, either at their request or on its own initiative.
- (10) eu-LISA is involved in cases before the Court of Justice of the European Union when it either refers a matter to the Court, defends a decision it has taken and which has been challenged before the Court, or intervenes in cases relevant to its tasks. In this context, eu-LISA might need to preserve the confidentiality of personal data contained in documents obtained by the parties or the interveners.
- (11) To fulfil its tasks, eu-LISA collects and processes information and several categories of personal data, including identification data of natural persons, contact information, professional roles and tasks, information on private and professional conduct and performance, and financial data. eu-LISA acts as data controller.
- (12) Under Regulation (EU) 2018/1725, eu-LISA is therefore obliged to provide information to data subjects on those processing activities and to respect their rights as data subjects.
- (13) eu-LISA might be required to reconcile those rights with the objectives of administrative inquiries, audits, investigations and court proceedings. It might also be required to balance a data subject's rights against the fundamental rights and freedoms of other data subjects. To that end, Article 25 of the Regulation (EU) 2018/1725 gives eu-LISA the possibility to restrict, under strict conditions, the application of Articles 14 to 22, 35 and 36 of the Regulation (EU) 2018/1725, as well as its Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 20. Unless restrictions are provided for in a legal act adopted on the basis of the Treaties, it is necessary to adopt internal rules under which eu-LISA is entitled to restrict those rights.
- (14) eu-LISA might, for instance, need to restrict the information it provides to a data subject about the processing of his or her personal data during the preliminary assessment phase of an administrative inquiry or during the inquiry itself, prior to a possible dismissal of case or at the pre-disciplinary stage. In certain circumstances, providing such information might seriously affect eu-LISA's capacity to conduct the inquiry in an effective way, whenever, for example, there is a risk that the person concerned might destroy evidence or interfere with potential witnesses before they are interviewed. eu-LISA might also need to protect the rights and freedoms of witnesses as well as those of other persons involved.

- (15) It might be necessary to protect the anonymity of a witness or whistle-blower who has asked not to be identified. In such a case, eu-LISA might decide to restrict access to the identity, statements and other personal data of such persons, in order to protect their rights and freedoms.
- (16) It might be necessary to protect confidential information concerning a staff member who has contacted eu-LISA confidential counsellors in the context of a harassment procedure. In such cases, eu-LISA might need to restrict access to the identity, statements and other personal data of the alleged victim, the alleged harasser and other persons involved, in order to protect the rights and freedoms of all concerned.
- (17) eu-LISA should apply restrictions only when they respect the essence of fundamental rights and freedoms, are strictly necessary and are a proportionate measure in a democratic society. eu-LISA should give reasons explaining the justification for those restrictions.
- (18) In application of the principle of accountability, eu-LISA should keep a record of its application of restrictions.
- (19) When processing personal data exchanged with other organisations in the context of its tasks, eu-LISA and those organisations should consult each other on potential grounds for imposing restrictions and the necessity and proportionality of those restrictions, unless this would jeopardise the activities of eu-LISA.
- (20) Article 25(6) of the Regulation (EU) 2018/1725 obliges the controller to inform data subjects of the principal reasons on which the application of the restriction is based and of their right to lodge a complaint with the EDPS.
- (21) Pursuant to Article 25(8) of the Regulation (EU) 2018/1725, eu-LISA is entitled to defer, omit or deny the provision of information on the reasons for the application of a restriction to the data subject if this would in any way cancel the effect of the restriction. eu-LISA should assess on a case-by-case basis whether the communication of the restriction would cancel its effect.
- (22) eu-LISA should lift the restriction as soon as the conditions that justify the restriction no longer apply, and assess those conditions on a regular basis.
- (23) To guarantee utmost protection of the rights and freedoms of data subjects and in accordance with Article 44(1) of the Regulation (EU) 2018/1725, the Data Protection Officer (DPO) of eu-LISA should be consulted in due time of any restrictions that may be applied and verify their compliance with this Decision.
- (24) Articles 16(5) and 17(4) of the Regulation (EU) 2018/1725 provide for exceptions to data subjects' right to information and right of access. If these exceptions apply, eu-LISA does not need to apply a restriction under this Decision.
- (25) Pursuant to Article 35(2) of Regulation (EU) 2018/1726, the Management Board shall adopt measures for the application of Regulation (EU) 2018/1725 by the Agency including internal rules referred to in paragraphs 1, 3 and 4 of Article 25 of the Regulation 2018/1725, after consulting the EDPS.

HAS ADOPTED THIS DECISION:

Article 1

Subject-matter and scope

1. This Decision lays down rules relating to the conditions under which eu-LISA may restrict the application of Articles 4, 14 to 22, 35 and 36, pursuant to Article 25 of the Regulation (EU) 2018/1725 in the context of the procedures set out in paragraph 2 in accordance with Article 25 of that Regulation.
2. eu-LISA, as the controller, is represented by its Executive Director.

*Article 2***Restrictions**

1. eu-LISA may restrict the application of Articles 14 to 22, 35 and 36, and Article 4 thereof in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 20:
 - (a) pursuant to Article 25(1) (b), (c), (f), (g) and (h) of the Regulation (EU) 2018/1725, when conducting administrative inquiries, pre-disciplinary, disciplinary or suspension proceedings under Article 86 and Annex IX of the Staff Regulations and eu-LISA Decision No 2014-080 of 28 January 2015 and when notifying cases to OLAF;
 - (b) pursuant to Article 25(1)(h) of the Regulation (EU) 2018/1725, when ensuring that eu-LISA staff members may report facts confidentially where they believe there are serious irregularities, as set out in eu-LISA Decision No 2018-122 on internal rules concerning whistleblowing of 26 June 2018;
 - (c) pursuant to Article 25(1)(h) of the Regulation (EU) 2018/1725, when ensuring that eu-LISA staff members are able to report to confidential counsellors in the context of a harassment procedure, as defined by eu-LISA Decision No 2018-174 of December 2018;
 - (d) pursuant to Article 25(1)(c), (g) and (h) of the Regulation (EU) 2018/1725, when conducting internal audits in relation to activities or departments of eu-LISA;
 - (e) pursuant to Article 25(1)(c), (d), (g) and (h) of the Regulation (EU) 2018/1725, when providing or receiving assistance to or from other Union institutions, bodies, offices and agencies or cooperating with them in the context of activities under points (a) to (d) of this paragraph and pursuant to relevant service level agreements, memoranda of understanding and cooperation agreements;
 - (f) pursuant to Article 25(1)(c), (g) and (h) of the Regulation (EU) 2018/1725, when providing or receiving assistance to or from third countries national authorities and international organisations or cooperating with such authorities and organisations, without prejudice to the provisions laid down in Article 43 of the Regulation (EU) 2018/1726;
 - (g) pursuant to Article 25(1)(c), (g) and (h) of the Regulation (EU) 2018/1725, when providing or receiving assistance and cooperation to and from EU Member States' public authorities, either at their request or on its own initiative;
 - (h) pursuant to Article 25(1)(e) of the Regulation (EU) 2018/1725, when processing personal data in documents obtained by the parties or interveners in the context of proceedings before the Court of Justice of the European Union.
2. Any restriction shall respect the essence of fundamental rights and freedoms and be necessary and proportionate in a democratic society.
3. A necessity and proportionality test shall be carried out on a case-by-case basis before restrictions are applied. Restrictions shall be limited to what is strictly necessary to achieve their objective.
4. For accountability purposes, eu-LISA shall draw up a record describing the reasons for restrictions that are applied, which grounds among those listed in paragraph 1 apply and the outcome of the necessity and proportionality test. Those records shall be part of a register, which shall be made available on request to the EDPS. eu-LISA shall prepare periodic reports on the application of Article 25 of the Regulation (EU) 2018/1725.
5. When processing personal data received from other organisations in the context of its tasks, eu-LISA shall consult those organisations on potential grounds for imposing restrictions and the necessity and proportionality of the restrictions concerned, unless this would jeopardise the activities of eu-LISA.

*Article 3***Risks to the rights and freedoms of data subjects**

1. Assessments of the risks to the rights and freedoms of data subjects of imposing restrictions and details of the period of application of those restrictions shall be registered in the record of processing activities maintained by eu-LISA under Article 31 of the Regulation. They shall also be recorded in any data protection impact assessments regarding those restrictions conducted under Article 39 of the Regulation (EU) 2018/1725.
2. Whenever eu-LISA assesses the necessity and proportionality of a restriction it shall consider the potential risks to the rights and freedoms of the data subject.

*Article 4***Safeguards and storage periods**

1. eu-LISA shall implement safeguards to prevent abuse and unlawful access or transfer of the personal data in respect of which restrictions apply or could be applied. Such safeguards shall include technical and organisational measures and be detailed as necessary in eu-LISA internal decisions, procedures and implementing rules. The safeguards shall include:
 - (a) a clear definition of roles, responsibilities and procedural steps;
 - (b) if appropriate, a secure electronic environment which prevents unlawful and accidental access or transfer of electronic data to unauthorised persons;
 - (c) if appropriate, secure storage and processing of paper-based documents;
 - (d) due monitoring of restrictions and a periodic review of their application.

The reviews referred to in point (d) shall be conducted at least every six months.

2. Restrictions shall be lifted as soon as the circumstances that justify them no longer apply.
3. The personal data shall be retained in accordance with the applicable eu-LISA retention rules, to be defined in the data protection records maintained under Article 31 of the Regulation (EU) 2018/1725. At the end of the retention period, the personal data shall be deleted, anonymised or transferred to archives in accordance with Article 13 of the Regulation (EU) 2018/1725.

*Article 5***Involvement of the Data Protection Officer**

1. eu-LISA DPO shall be informed without undue delay whenever data subject rights are restricted or intended to be restricted in accordance with this Decision. He or she shall be given access to the associated records and any documents concerning the factual or legal context.
2. eu-LISA DPO may request a review of the application of a restriction. eu-LISA shall inform its DPO in writing of the outcome of the review.
3. eu-LISA shall document the involvement of the DPO in the application of restrictions, including what information is shared with him or her.
4. In practice, the person responsible on behalf of the controller ('controller in practice') ⁽ⁱ⁾ shall inform eu-LISA DPO when the restriction has been lifted.

⁽ⁱ⁾ EDPS Guidance on documenting processing operations for EU institutions, bodies and agencies (EUIs) – Accountability on the ground Part I – 'top management is accountable for compliance with the rules, but responsibility is usually assumed at a lower level ("person responsible on behalf of the controller"/"controller in practice")'.

*Article 6***Information to data subjects on restrictions of their rights**

1. eu-LISA shall include a section in the data protection notices published on its website/intranet providing general information to data subjects on the potential for restriction of data subjects' rights pursuant to Article 2(1). The information shall cover which rights may be restricted, the grounds on which restrictions may be applied and their potential duration.
2. eu-LISA shall inform data subjects individually, in writing and without undue delay of ongoing or future restrictions of their rights. eu-LISA shall inform the data subject of the principal reasons on which the application of the restriction is based, of their right to consult the DPO with a view to challenging the restriction and of their rights to lodge a complaint with the EDPS.
3. eu-LISA may defer, omit or deny the provision of information concerning the reasons for a restriction and the right to lodge a complaint with the EDPS for as long as it would cancel the effect of the restriction. Assessment of whether this would be justified shall take place on a case-by-case basis. As soon as it would no longer cancel the effect of the restriction, eu-LISA shall provide the information to the data subject.

*Article 7***Communication of a personal data breach to the data subject**

1. Where eu-LISA is under an obligation to communicate a data breach under Article 35(1) of the Regulation (EU) 2018/1725, it may, in exceptional circumstances, restrict such communication wholly or partly. It shall document in a note the reasons for the restriction, the legal ground for it under Article 2 and an assessment of its necessity and proportionality. The note shall be communicated to the EDPS at the time of the notification of the personal data breach.
2. Where the reasons for the restriction no longer apply, eu-LISA shall communicate the personal data breach to the data subject concerned and inform him or her of the principal reasons for the restriction and of his or her right to lodge a complaint with the EDPS.

*Article 8***Confidentiality of electronic communications**

1. In exceptional circumstances, eu-LISA may restrict the right to confidentiality of electronic communications under Article 36 of the Regulation (EU) 2018/1725. Such restrictions shall comply with Directive 2002/58/EC of the European Parliament and of the Council ⁽⁶⁾.
2. Where eu-LISA restricts the right to confidentiality of electronic communications, it shall inform the data subject concerned, in its reply to any request from the data subject, of the principal reasons on which the application of the restriction is based and of his or her right to lodge a complaint with the EDPS.
3. eu-LISA may defer, omit or deny the provision of information concerning the reasons for a restriction and the right to lodge a complaint with the EDPS for as long as it would cancel the effect of the restriction. Assessment of whether this would be justified shall take place on a case-by-case basis.

⁽⁶⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

*Article 9***Entry into force**

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Tallinn, 16 April 2021.

For the Management Board
Zsolt SZOLNOKI
Chairperson of the Management Board

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