



EDPS SUPERVISORY OPINION ON THE STATUS OF THE PAYMASTER OFFICE (PMO) OF THE EUROPEAN COMMISSION IN THE SERVICE LEVEL AGREEMENTS SIGNED WITH EU INSTITUTIONS, BODIES, OFFICES AND AGENCIES (Case 2022-0528)

1. INTRODUCTION

1. This Supervisory Opinion regards the status of the Office for the Administration and Payment of Individual Entitlements ('Paymaster Office, PMO'), as a Commission service, in relation to the processing of personal data that it carries out in the context of the Service Level Agreements ('SLAs') concluded with Union institutions, bodies, offices and agencies ('EU institutions') within the area of its specific competence.
2. The EDPS issues this Supervisory Opinion in accordance with Article 58(3)(c) of Regulation (EU) 2018/1725¹, ('the Regulation').

2. FACTS

3. On 05 May 2022, the PMO consulted the EDPS as regards its status in relation to the processing of personal data in the context of the SLAs it concludes with EU institutions for the provision of services to such EU institutions within the area of its specific competence. The EDPS requested additional documentation on 12 May 2022 and on 24 June 2022. In July 2022, the EDPS suspended the handling of the consultation and asked the PMO to conduct further analysis of the case, in cooperation with the Commission DPO. In November 2022, the EDPS reactivated the handling of the case, following a note received by PMO on 21 October 2022, which further elaborated on the analysis of the issue at stake. Further exchanges

¹ Regulation (EU) 2018/1725 of the European Parliament and 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, OJ, L 295, 21.11.2018, pp. 39-98.

between the PMO, the Commission DPO and the EDPS took place in the course of November, December 2022, and January 2023.

4. The PMO is in charge of determining, calculating and paying out individuals' entitlements in accordance with the Staff Regulations (SR)², the Commission Decision of 6 November 2002 establishing an Office for the administration and payment of individual entitlements³, as well as the Commission Decisions that designate the PMO as appointing authority for the provision of certain services within the Commission.⁴ The PMO provides services to EU institutions in a broad range of areas such as determination of individual financial rights for staff, pensioners and rights holders, payment of salaries and allowances, payment of unemployment allowances, reimbursement of sickness and accident insurance expenses, etc.
5. According to Article 2(2) of the SR, one or more institutions may entrust to any other institution or to an inter-institutional body the exercise of some or all of the powers conferred on them, as Appointing Authorities, other than decisions relating to appointments, promotions or transfers of officials. According to Article 2(4) of the Commission Decision of 6 November 2002, the PMO may act *at the request of* and *on behalf of* another body or agency established under or on the basis of the Treaties.
6. Some of the services that the PMO provides to EU institutions that apply the SR, are rendered exclusively by the PMO. In accordance with the information provided by the PMO, such services are provided exclusively on the basis of the attribution in the applicable statutory rules of exclusive competence to the Commission, in conjunction with the Commission Decision that designate the PMO as appointing authority for the provision of certain services within the Commission.⁵
7. Such services concern:
 - i) the reimbursement of medical costs in accordance with Article 72 of the SR, and the Joint Rules on Sickness insurance for EU officials;
 - ii) the payment of unemployment allowance in accordance with 28a and 96 of the Conditions of Employment of Other Servants (CEOS); and

² Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385-1386)

³ Commission Decision of 6 November 2002 establishing an Office for the administration and payment of individual entitlements (2003/522/EC), OJ L 183, 22.7.2003, p. 30-34

⁴ See Commission Decision C(2021)9126 of 15.12.2021 on the exercise of powers conferred by the Staff Regulations on the appointing authority (AA) and by the Conditions of Employment of Other Servants on the authority authorised to conclude contracts of employment (AACE).

⁵ Idem

iii) the payment of retirement pensions, invalidity allowance and survivor's pensions in accordance with Article 45 of Annex VIII to the SR and Articles 44 and 114 of the CEOS in conjunction with Decision 63/491/EEC of 10 July 1963.⁶

8. The SLAs concluded between the PMO and the EU institutions, confirm that certain services are “exclusively rendered” by the PMO and provide details concerning the processing of personal data that the provision of these services entails. In accordance with the information provided by the PMO, as well as the relevant provision of the template SLA⁷, the services rendered exclusively by the PMO are included in the SLA for reasons of clarity.
9. The PMO provides **other services on demand** under SLAs concluded between the PMO and the EU institutions concerned. The delegation of powers by the EU institutions to the PMO takes place through an AIPN delegation decision⁸ annexed to the SLA. Such services concern the management and determination of financial benefits related to staff in active service, retired staff (including staff on invalidity and beneficiaries of a survivor's pension), and former staff who are eligible to an unemployment allowance, as well as the management of mission expenses of staff members, the management of costs related to external experts, the calculation of expenses of Seconded National Experts (SNEs), assistance with obtaining visas for staff members and assistance with the management of salary attachments (“saisies sur salaires”).
10. Concerning the determination of roles and responsibilities, in 2018, the Commission assessed that “Commission services providing work to EU institutions and other bodies would be considered as processors (“service providers”) and that the EU institutions and other bodies outsourcing the work would remain controller”. In this vein, a data processing agreement is annexed in the SLAs concluded between the PMO and the EU institutions to which PMO provides its services.
11. However, the PMO analysed the work performed and concluded that PMO itself has a decisive impact on the technical and -organisational elements of the processing operations done for the EU institutions in question. Specifically, the PMO argues that:

“i) The PMO decides on the essential elements of the processing operation, i.e. what personal data should be collected, about which individuals, who has access to the data, who are its recipients etc. The retention period for the data processed by the PMO is not set by the clients: data processed by the PMO

⁶ Decision of 10 July 1963 specifying the institution responsible for payment of benefits provided for in the pension scheme (63/46/Euratom).

⁷ Article 19(3) of the template SLA.

⁸ Autorité investie du pouvoir de nomination.

are kept in accordance with the specific retention periods laid down for PMO files, since it is not possible to apply different retention periods depending on whether the file relates to a Commission staff member or to a staff member of an EU institution or other body.

ii) PMO exercises the powers as appointing authority by virtue of the formal delegation of such powers by EU institutions and other bodies under the SLAs.

iii) PMO is in direct contact with the data subjects of the other EU institutions and other bodies for whom it manages financial benefits as appointing authority, often outside of any intervention of the HR services of these other services (e.g. for the reimbursement of medical costs).

iv) PMO decides autonomously and independently on how personal data are processed. The IT applications that are used to process the personal data are configured in the same way for all data subjects, whether they come from the Commission or from another EU institution or body.

v) The PMO is not at all in the situation of processing personal data ‘only on documented instructions from its clients’. The PMO processes data of all the data subjects (be they from the Commission or from other EU institutions and bodies) in accordance with the applicable legal rules, as well as with the procedures and practices as determined within the Commission.”

12. Following the above, the PMO concludes that it should be considered as a - separate- controller, rather than a processor, with regard to the processing of personal data that takes place in the context of the SLAs with other EU institutions.
13. In light of the above, the PMO asked the EDPS to indicate whether he would agree with the conclusions it reached with regard to its status and indicate the correct qualification for the processing operations at stake.
14. It is to be noted that in accordance with Article 2 of the Commission Decision (EU) 2020/969, “(...) the Commission shall be considered to be the controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725”⁹. At the same time, the Head of a Directorate-General, Service or Cabinet, which carries out a processing operation on behalf of the Commission in fulfilment of the mission of the Directorate-General, Service or Cabinet, is to be considered a “delegated controller” in accordance with Article 3(4) of the above Commission Decision. For

⁹ [Commission Decision \(EU\) 2020/969 of 3 July 2020 laying down implementing rules concerning the Data Protection Officer, restrictions of data subjects’ rights and the application of Regulation \(EU\) 2018/1725 of the European Parliament and of the Council, and repealing Commission Decision 2008/597/EC, OJ L 213, 6.7.2020, p. 12–22.](#)

this reason, the EDPS' understanding is that the PMO in essence asks the EDPS to indicate whether the Commission is a - separate - controller with regard to the processing of personal data that takes place in the context of the SLAs concluded with other EU institutions and, hence, whether the Head of the PMO is a delegated controller. Nonetheless, for ease of reference, the EDPS refers to the status of the PMO - instead of the status of the Commission - in the present opinion.

3. LEGAL ANALYSIS AND RECOMMENDATIONS

15. The qualification of PMO as a controller (joint or separate) or a processor with regard to the processing it carries out in providing the services that fall under the SLAs concluded with other EU institutions will depend on various factors which are outlined below.
16. In accordance with Article 3(8) of the Regulation, '**controller**' means "the Union institution or body or the directorate-general or any other organisational entity, which alone or jointly with others, **determines the purposes and means** of the processing of personal data. Where the purposes and means of such processing are determined by a specific Union act, the controller or the specific criteria for its nomination can be provided for by Union law. Therefore, unless defined in Union law, controllership is determined from an analysis of the **factual elements** or the circumstances of the case, in particular by establishing who has influence over the processing by virtue of an exercise of decision-making power."¹⁰
17. In other words, the identification of the 'why' and the 'how' of a processing operation is the decisive factor for an entity to assume the role of 'controller'. When carrying out a processing operation, the controller is the one deciding on the purpose ('why') and on the means to carry out such processing operation ('how'). The degree of influence of a party in determining both purposes and means may identify its role as a controller.¹¹
18. Where one or more entities jointly determine the purposes and means of processing, they shall be considered **joint controllers**.¹² The notion of joint determination should be understood as any situation where each controller has a

¹⁰ [EDPB Guidelines 07/2020 of 7 July 2021 on the concepts of controller and processor in the GDPR](#), para 20.

¹¹ [EDPS Guidelines of 7 November 2019 on the concepts of controller, processor and joint controllership under Regulation \(EU\) 2018/1725](#), p. 9-10.

¹² Article 28(1) of the Regulation

chance/right to determine both the purposes and essential elements of the means of a processing operation.¹³

19. With regard to the role of the processor, its essence lies in the processing of personal data on behalf of the controller.¹⁴ In practice, this means that the processor is serving the interests of the controller in carrying out specific tasks, and hence, it follows the instructions set out by the controller, at least with regard to the purpose and the essential of the means of the processing.¹⁵ It should be noted that while the determination of the purpose is exclusively reserved to the controller, the processor may still determine “non-essential means of the processing”, such as the choice for a particular type of hard- or software or the detailed security measures, without assuming controllership.¹⁶
20. In the case at hand, in order to assess the roles of the PMO and the EU institutions to which it provides its services, a distinction has to be made between the following two types of services:
 - The first category concerns services that are rendered exclusively by the PMO to EU institutions that apply the SR.
 - The second category concerns services that are provided by the PMO to the EU institutions that opt to delegate their powers to the PMO on the basis of an AIPN delegation decision, enacted under an SLA.

3.1.1. Services that fall under the exclusive competence of the PMO

21. Some of the services provided by the PMO to EU institutions, such as the reimbursement of medical costs, are rendered exclusively by the PMO (see paragraphs 6 and 7 above). The provision of these services by the PMO entails the processing of personal data of staff members and former staff members of the EU institutions concerned. For instance, the PMO has to process personal data (e.g. identification data and health data) of staff members of EU institutions to reimburse their medical costs.
22. The EDPS reiterates that the PMO is *exclusively* in charge of providing such services to EU institutions in accordance with the applicable regulatory framework. In other words, the Commission is directly mandated by the legislators to provide certain services to the EU institutions that apply the SR. The

¹³ [EDPS Guidelines of 7 November 2019 on the concepts of controller, processor and joint controllership under Regulation \(EU\) 2018/1725](#), p. 23.

¹⁴ Article 3(12) of the Regulation

¹⁵ [EDPS Guidelines of 7 November 2019 on the concepts of controller, processor and joint controllership under Regulation \(EU\) 2018/1725](#), p. 16.

¹⁶ [EDPB Guidelines 07/2020 of 7 July 2021 on the concepts of controller and processor in the GDPR](#), para 40.

PMO as a Commission service is in charge of providing such services in accordance with the applicable Commission Decision.¹⁷ Therefore, the EDPS concludes that the *purpose* of the processing operations that such services entail is defined in the SR and the relevant legal bases, which grant to PMO exclusive power to provide these services to other EU institutions.

23. With regard to the means of the processing operations concerned, the PMO unilaterally determines such *means* in accordance with the applicable legal rules, as well as with the procedures and practices determined within the Commission, without receiving any instructions from the EU institutions concerned. In particular, the PMO decides what personal data should be collected, who has access to such data, who the recipients are, and for how long such data are kept. Additionally, the PMO unilaterally decides on the IT applications used for the processing of the personal data in question. Overall, the PMO acts **independently** in the provision of these services.
24. In the framework of the SLA, exchanges of personal data of the data subjects concerned take place between the EU institutions and the PMO. In particular, the EU institutions identify the persons who are its staff members and/or former staff members who are eligible for the different benefits that the PMO manages under the SLA, and forwards their identification data (first name, surname, personal address, etc.) and their financial data (bank agency code, BIC code, bank account number, etc.) to the PMO.
25. In light of the information provided by the PMO, it is established that the PMO does not determine the purposes and means of processing operations that take place by the EU institutions prior to the transmission of personal data to the PMO (e.g. the collection of personal data by the EU institutions). Therefore, for these processing operations, each EU institution determines the means and purposes and are to be considered as ‘controller’ within the meaning of Article 3(8) of the Regulation.¹⁸
26. However, after the transmission of such personal data to the PMO has taken place, the EU institutions in question no longer take any decisions on the purposes and means of the processing operations that the PMO undertakes when it provides its services. Therefore, the EDPS concludes that the PMO is a **separate controller** within the meaning of Article 3(8) of the Regulation with regard to the processing of personal data it undertakes in the context of the provision of the services that it renders exclusively to EU institutions. It is apparent that such

¹⁷ See Commission Decision C(2021)9126 of 15.12.2021 on the exercise of powers conferred by the Staff Regulations on the appointing authority (AA) and by the Conditions of Employment of Other Servants on the authority authorised to conclude contracts of employment (AACE).

¹⁸ This is not in dispute.

controllorship starts from the moment the personal data in question are transmitted to the PMO by the EU institutions.

27. It should be noted that the fact that the above legal bases¹⁹ grant to PMO exclusive power to carry out certain tasks that imply processing of personal data, is also an indication that the PMO is to be considered a separate controller for the respective processing operations.²⁰
28. In light of the above, the PMO, as a separate controller is responsible for ensuring compliance with the Regulation when it processes personal data in the context of providing the services listed above.²¹ In accordance with the accountability principle, the PMO should also be able to demonstrate such compliance.²²

3.1.2. Services provided by the PMO to EU institutions on demand

29. EU institutions may delegate to the PMO their competence as appointing authorities according to Article 2(2) of the SR and Article 2(4) of the Commission Decision of 6 November 2002 establishing an Office for the Administration and Payment of Individual Entitlements (2003/522/EC). Such delegation of competence takes place through an AIPN delegation decision annexed to an SLA concluded between the PMO and the EU institutions concerned. By virtue of the formal delegation of powers, the PMO exercises its powers as appointing authority. In other words, the PMO is assigned to carry out specific tasks and provide certain services to the EU Institution that delegated to it their powers on the basis of a decision of the concerned AIPN, enacted under an SLA. The services to be provided by the PMO are listed in the SLA and may include delegations of powers with regard to the management and determination of financial benefits, management of mission expenses of staff members, management of costs related to external experts, etc. The implementation of these tasks entails processing of personal data. For instance, the PMO processes personal data of staff members of the EU institutions concerned to determine their financial benefits.
30. In the framework of the SLA, exchanges of personal data of the staff and former staff of the EU institutions to whom the PMO provides its services take place. The EU institutions identify the staff members and/or former staff members who are eligible for the different benefits that the PMO manages under the SLA, and forwards their identification data (first name, surname, personal address, etc.) and

¹⁹ See para 22.

²⁰ [EDPS Guidelines of 7 November 2019 on the concepts of controller, processor and joint controllership under Regulation \(EU\) 2018/1725](#), p. 8.

²¹ For instance, Articles 4(1), 14, 26(1), 31(1), 34(1) of the Regulation.

²² Article 4(2) of the Regulation.

their financial data (bank agency code, BIC code, bank account number, etc.), to the PMO.

31. The EDPS notes that the mere fact that an entity provides services to another entity, upon request of the latter, does not automatically result in a controller-processor relationship. In the case at hand, the EU institutions can take the decision to entrust certain powers, such as the power of financial determination of pension's rights of their staff members, to the PMO. At the same time, the PMO can accept such delegation of powers insofar as the delegated powers correspond to the AIPN powers that are attributed to the PMO within the Commission. In other words, the PMO can take over the responsibility to carry out certain tasks for other EU institutions only if it is competent to carry out such tasks based on the relevant Commission Decisions.
32. For the PMO to be able to provide the services outlined in the SLA, the concerned EU institution transmits the identification data of the staff members (and former staff members) who are eligible for different financial benefits to the PMO. After such personal data are transmitted to the PMO, the PMO decides **autonomously** how personal data should be processed to render its services in accordance with the rules applicable at the Commission.
33. From the above, it is apparent that the PMO is not following instructions set out by the EU institution with regard to the processing of personal data in order to provide its services. Therefore, the EDPS' assessment is that the PMO is not acting on behalf of the relevant EU institution or body when it processes personal data to provide the services concerned under the SLA, and hence, the conditions set out in Article 3(12) for an entity to be considered a processor, are not fulfilled.
34. Subsequently, it is relevant for the EDPS to assess whether the PMO is a separate or joint controller, together with the EU institution concerned, when it processes personal data in the context of providing its services under an SLA. *Prima facie*, the EU institutions together with the PMO converge on the same general objective, which is the processing of personal data for the purpose of the provision of certain services delegated by the EU institutions to the PMO. Nonetheless, the joint determination of the purpose(s) of the processing operation, including in the form of converging purposes²³, is not sufficient for two entities to be considered joint controllers within the meaning of Article 28(1) of the Regulation. As it is clear from the wording of the said article and based on settled case law²⁴, joint controllers must jointly determine **cumulatively** the purpose(s) **and** means of processing. If the joint determination by the entities in question concerns **solely**

²³ EDPB guidelines 7/2020, para 53: "Decisions can be considered as converging on purposes and means if they complement each other and are necessary for the processing to take place in such manner that they have a tangible impact on the determination of the purposes and means of the processing".

²⁴ For instance, CJEU judgment of 29 July 2019, Fashion ID, C-40/17, para 74.

either the purpose(s) or the means of processing, the conditions set out in Article 28(1) of the Regulation are not fulfilled and the entities concerned are not joint controllers.

35. In the case at hand, after the transmission to the PMO of the identification data by the EU institutions concerned, the PMO autonomously decides on the means of processing. Namely, the PMO decides **unilaterally** what personal data should be processed, who has access to the data, who the recipients are, and for how long data are kept, in accordance with the procedures and practices determined within the Commission. The data subjects for whom the PMO manages financial benefits also transmit certain personal data directly to the PMO, without the involvement of the EU institution at stake. In other words, while the EU institutions and the PMO seemingly converge on the same general purpose, which is the processing of personal data for the provision of certain services delegated to the PMO under an SLA, the PMO enjoys independence in the determination of the means of processing. Therefore, the PMO is a **separate controller** for the processing undertaken when it provides its services to EU institutions upon request on the basis of an SLA. It is apparent that the EU institutions in question are separate controllers for any processing operations that precede or are subsequent to the processing undertaken by the PMO in the context of the SLA. For instance, EU institutions are separate controllers for any processing undertaken before the transmission of identification data of their staff members to the PMO.

Recommendation 1: SLAs between PMO and EU institutions should clearly indicate that the PMO is a separate controller concerning the processing of personal data that it carries out, both in the context of the provision of services that fall under its exclusive competence as well as in the context of the provision of services that are provided on demand.

Recommendation 2: For the sake of legal certainty, SLAs between PMO and EU institutions should include provisions that determine the details of the exchanges of personal data taking place in the context of the SLA. Such provisions should at least indicate the subject matter and the purpose of the processing activities, the categories of personal data exchanged and the categories of the data subjects concerned.

Recommendation 3 : The PMO should update its record of processing activities, in accordance with Article 31 of the Regulation, to ensure that it reflects the fact that it is a separate controller for the processing undertaken when it provides its services to other EU institutions (both exclusively and on demand). In that respect, the data protection notices that concern the processing operations at

stake should also be updated in accordance with Articles 14-16 of the Regulation and should be communicated to the data subjects concerned accordingly.

Recommendation 4: The PMO should initiate the update of the SLAs already concluded or to be concluded with the EU institutions concerned to ensure that they are in line with the Regulation, and take account of this EDPS Supervisory Opinion.

4. CONCLUSION

36. In order to ensure compliance of the processing with the Regulation, the EDPS **deems necessary** that:
37. The SLAs clearly indicate that the PMO is a separate controller concerning the processing of personal data that it carries out both in the context of the provision of services that fall under its exclusive competence as well as in the context of the provision of services that are provided on demand. **(Recommendation No 1).**
38. The SLAs include provisions that determine the details of the exchanges of personal data taking place between the PMO and the EU institutions. Such provisions should at least indicate the subject matter and the purpose of the processing, the categories of personal data exchanged and the categories of the data subjects concerned **(Recommendation No 2).**
39. The PMO update its record of processing activities in accordance with Article 31 of the Regulation to ensure that it reflects the fact that PMO is a separate controller for the processing undertaken when it provides services to other EU institutions (both exclusively, and on demand). In that respect, the data protection notices that concern the processing operations at stake should also be updated in accordance with Articles 14-16 of the Regulation and should be communicated to the data subjects concerned accordingly **(Recommendation No 3).**
40. The PMO initiate the update of all SLAs already concluded or to be concluded with the EU institutions concerned to ensure that they are in line with the Regulation, and take account of this EDPS Supervisory Opinion **(Recommendation No 4).**

41. In light of the accountability principle laid down in Article 4(2) of the Regulation, the EDPS expects the PMO to implement the above recommendations accordingly and has decided to close the case.

Done at Brussels on 19 June 2023

Leonardo CERVERA NAVAS
Head of EDPS Secretariat (Acting)

(e-signed)