



Formal Comments of the EDPS on the Proposal for a Regulation amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries controls

1. Introduction

On 30 May 2018, the European Commission tabled a proposal for a Regulation amending Council Regulations (EC) No 1224/2009, (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008 and Regulation (EU) No 2016/1139 (hereinafter “the Proposal”).

The Proposal aims to address the current and future needs in terms of fishery data and fleet control and to match the constant evolution of fishing practices and techniques. Moreover, the Proposal seeks to take advantage of modern and more cost-effective control technologies and data exchange systems to reflect recently adopted EU policies, such as the strategy for Plastics in a Circular Economy, the Digital Single Market strategy and the International Ocean Governance.

One of the EDPS` tasks is to advise the Commission services in the drafting of new legislative proposals with data protection implications. The EDPS welcomes that he had already been consulted informally by the Commission on the draft Proposal and that many of his comments have been taken into account.

The EDPS has limited the comments below to the provisions of the Proposal that are particularly relevant from a data protection perspective.

2. EDPS Comments

Use of electronic monitoring systems for the control of the landing obligations - CCTV

The EDPS observes that Article 25a of the Proposal provides that a certain percentage of fishing vessels should be equipped with continuously recording CCTV systems to ensure effective control of the landing obligation. Recital 14 of the Proposal provides that the CCTV should only concern the gears and the parts of the vessels where fishery products are brought on board, handled and stored, whereas the footage will be recorded locally on the vessel and should be made available exclusively to Member States officials or Union inspectors upon requests, in particular in the context of inspections, investigations or audits. Pursuant to Article 25a(4) of the Proposal, the Commission will by means of implementing acts lay down detailed rules on the requirements, technical specifications, installation and functioning of the CCTV.

In the accompanying Impact Assessment it is explained that the absence of measures empowering Member States to effectively control the landing obligation was one of the main shortcomings identified during the evaluation process of the fisheries controls. Moreover, it is stressed that the level of proof required to prosecute beyond reasonable doubt suspected or observed discarding events is practically impossible to obtain using traditional means of

control, such as aerial surveillance, inspections at sea or inspections at landing. However, remote electronic monitoring technology (REM) incorporating closed-circuit television (CCTV) have demonstrated the potential to be an effective means to ensure control and enforcement of the landing obligation and provide a deterrent to illegal discarding.¹

The EDPS acknowledges the need for comprehensive inspections to assess and verify compliance of the activities carried out by the operators and the masters with the rules of the Common Fishery Policy. In particular, he acknowledges that CCTV systems can be a helpful tool to ensure effective control of the landing obligation. However, the monitoring of activities such as the bringing on board, the handing as well as the storing of fishery products via CCTV implies the monitoring and recording of employees and consequently constitutes processing of personal data.

As the Commission will in accordance with Article 25a(4) of the Proposal lay down detailed rules on the requirements, technical specifications, installation and functioning of the CCTV in implementing acts, the EDPS wants to draw the attention to Article 25 of Regulation 2016/679² (the “GDPR”) (as well as to Article 27 of the new regulation that will soon replace Regulation (EC) 45/2001³) which introduces the principle of data protection by design and by default. This concept requires controllers to implement appropriate technical and organisational measures in order to effectively ensure compliance with the data protection principles and to integrate the necessary safeguards to meet the requirements of the aforementioned regulations and in particular to protect the rights of data subjects. Moreover, the concept requires controllers to ensure that by default only those personal data are processed, which are necessary for the specific purpose of the processing.

The EDPS calls upon the Commission to closely follow the concept of data protection by design and by default when laying down the detailed rules on the requirements, technical specifications, installation and functioning of the CCTV. In this respect, the EDPS wants to recall his recently published Preliminary Opinion on privacy by design.⁴

The EDPS also wants to point out that pursuant to Article 5(1)(e) of Regulation 679/2016 (GDPR), personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which they are processed (“storage limitation principle”). However, the EDPS observes that the Proposal contains no specific rules regarding the retention period of CCTV footage. Article 112(3) provides in general that personal data should not be stored for longer than five years, whereas in specific cases, such as a follow up of a complaint or an inspection, they can be retained for ten years.

The EDPS recalls that the former Article 29 Data Protection Working Party stressed in its Opinion on video surveillance⁵ that the retention period for CCTV should not exceed one week. The EDPS is aware that the Proposal foresees specific security measures (e.g. that the

¹ Cf. SWD (2018) 280 final, p 57.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1.

³ COM (2017) 8 final, Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals 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.

⁴https://edps.europa.eu/sites/edp/files/publication/18-05-31_preliminary_opinion_on_privacy_by_design_en_0.pdf

⁵ See Opinion 4/2004 of the Article 29 Data Protection Working Party on the Processing of Personal Data by means of Video-Surveillance, p. 20.

footage is only recorded locally on the vessel and is exclusively available to Member States officials or Union inspectors upon requests), however, a retention period of five years appears neither necessary nor proportionate and would therefore clearly contradict the storage limitation principle.

Therefore, the EDPS calls upon the Commission to carefully reassess the proposed retention period for CCTV footage and to introduce a proportionate retention period.

Finally, the EDPS wants to recall that he has to be consulted prior to the adoption of the relevant implementing acts in accordance with Article 28(2) of Regulation 45/2001 and in line with Article 42(1) of the forthcoming new regulation that will replace it.

Brussels,

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