



EDPS comments on the European Economic and Social Committee’s draft internal rules concerning restrictions of certain rights of data subjects (Article 25 of Regulation (EU) 2018/1725) (Case 2020-1215)

1. INTRODUCTION

These comments relate to the European Economic and Social Committee’s draft implementing rules concerning restrictions of certain rights of data subjects (pursuant to Article 25 of Regulation (EU) 2018/1725, hereinafter ‘The Regulation’¹).

The EDPS’ comments refer to the document submitted on 21 December 2020 (hereinafter ‘the draft internal rules’). We issue these comments in accordance with Article 41(2) of the Regulation.

2. GENERAL COMMENTS

The EDPS welcomes that the EESC followed the updated EDPS Guidance on Article 25 of the Regulation², published on 21 June 2020.

The EDPS welcomes that EESC will only restrict data subject’s rights under Article 25 of the Regulation based on the proposed internal rules, which provide a legal basis thereto. As these restrictions seek to temporarily render unavailable certain rights that lie at the heart of the right to data protection, their legal basis should be well defined. In this regard, it appears to the EDPS that the internal rules are duly limited to the types of processing operations the EESC performs or expects to perform and that each type of processing operation is linked to its specific ground(s) for restriction under Article 25 (1) of the Regulation.

The EDPS welcomes that EESC will perform a necessity and proportionality test on a case-by-case basis before restrictions are applied, under Article 2.3 of the draft internal rules, and that Article 2.4 of the draft internal rules provides for the obligation to document the application of restrictions.

3. RECOMMENDATIONS

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.

² Available on the EDPS website via: https://edps.europa.eu/sites/edp/files/publication/20-06-24_edps_guidance_on_article_25_of_the_new_regulation_and_internal_rules_en.pdf

Articles 1, 2 and 8 of the draft internal rules mention the possible restriction of Article 36 of the Regulation, the confidentiality of electronic communications. The EDPS would like to reiterate that a restriction to the confidentiality of electronic communications may interfere with the essence of the right to data protection. As such, it is only under extraordinary circumstances that this right can be restricted and we therefore recommend that the text of the internal rules be adapted in order to reflect this consideration.

The EDPS also recommends verifying whether Article 2.1(k) of the draft internal rules should additionally include point (j) of that paragraph in the activities listed under this indent.

Finally, the EDPS notes that only Recital 17 of the draft internal rules identifies the President of the EESC as the controller. The EDPS recommends to also include the identity of the controller in the EESC decision itself.

Done at Brussels, 10 February 2021