



Formal comments of the EDPS on the Proposal for a Council Decision on the signature, on behalf of the Union, and the provisional application of the implementing Protocol (2021-2026) of the EU-Gabon Fisheries Partnership Agreement

1. Introduction and background

- The following comments concern the Commission proposal for a Council Decision on the signature and provisional application of the Protocol implementing EU-Gabon fisheries agreement ('the Proposal')¹, which aims to authorise the signature, provisional application and subsequent conclusion of a new implementing Protocol to the Fisheries Partnership Agreement (FPA), subject to the consent of the European Parliament².
- The new Protocol will apply provisionally from the date of signature in order not to delay restarting EU vessels fishing operations, stalled since the expiry of the last Protocol in 2016.
- These comments are provided in reply to the formal request by the Commission on 21 June 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')³. We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
- These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR³.

2. EDPS Comments

- Article 11 of the Annex to the Proposal contains a number of provisions related to data processing and confidentiality. The EDPS welcomes the inclusion of references to the protection of personal data. At the same time, the EDPS recommends expanding the data protection provisions of the agreement in order to include

¹ The draft Commission proposal for Council Decisions on signature and provisional application of the Protocol implementing EU-Gabon fisheries agreement.

² The last implementing Protocol for the current Fisheries Partnership Agreement (FPA) between the EU expired on 23 July 2016.

³ 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, OJ L 295, 21.11.2018.

elements which are essential conditions for the lawfulness of transfers of personal data that will take place following the agreement.⁴ These include in particular: purpose limitation; the categories of data to be processed; the authorities responsible for the processing of data; the retention periods; restrictions and safeguards on onward transfers; control by an independent authority of respect for the private life and protection of the personal data.⁵

- The information provided by the Commission indicates that in the context of the EU-Gabon fisheries agreement, certain categories of personal data may be processed for the purpose of the vessel's activities being authorised by Gabon. In particular, certain data such as the name, address and the contact details of ship-owners and captains may be transferred either in the form of pdf documents sent by email or via automatic IT systems. Moreover, control data on the vessel's positions and catches are transmitted, as well as reports on entry and exit in and from the Exclusive Economic Zone (EEZ) of Gabon.
- The EDPS notes that the Annex to the Proposal envisages the transfer of several categories of data, which in some cases could be considered personal data⁶.
- Article 4(1) GDPR defines personal data as '*any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*'. Even the data concerning legal persons may therefore in some cases be considered as personal data, as the clarified by the CJEU⁷. In these cases, the determining factor is whether the information 'relates to' an 'identifiable' natural person. Consequently, personal data would normally be processed in all cases where the ship-owner, as natural person or legal person identifying one or more natural persons, or the captain of the vessel is identified or identifiable.
- The EDPS also notes that the purposes of data processing envisaged in Articles 11 of the Annex to the Proposal are not specified with sufficient detail. The purpose limitation principle requires that personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes. The purpose of the collection must be clearly and specifically

⁴ See, among others, CJEU Opinion 1/15, *EU PNR Canada agreement*, ECLI:EU:C:2016:656.

⁵ See CJEU Opinion 1/15, *EU PNR Canada agreement*, ECLI:EU:C:2016:656, para. 328.

⁶ See also the Opinion of the European Data Protection Supervisor on the Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy, available at https://edps.europa.eu/sites/default/files/publication/11-10-28_fisheries_en.pdf.

⁷ See Court of Justice of European Union in Joint Cases C92/09, *Volker und Markus Schecke Gbr v. Land Hessen*, and C-93/09, *Eifert v. Land Hessen and Bundesanstalt für Landwirtschaft und Ernährung*, at paragraph 53, where the CJEU considered that legal persons can claim the protection of Articles 7 and 8 of the Charter in so far as the official title of the legal person identifies one or more natural persons.

identified: it must be detailed enough to determine what kind of processing is included within the specified purpose, and to allow that compliance with data protection law can be assessed and data protection safeguards applied. The EDPS recommends to more clearly specify the purposes of the processing of personal in Article 11 of the Annex to the Proposal, as well as the relevant categories of personal data involved.

- Finally, the EDPS notes that Article 11(5) of the Annex to the Proposal indicates that personal data should only be retained for as long as they are necessary to achieve the intended purpose. Indeed, a key data protection principle is that personal data should be kept in a form which permits the identification of data subjects for no longer than necessary for the purposes for which the data were collected. In this regard, the EDPS considers that the storage period should be established more precisely by setting a maximum period of retention. The EDPS recommends including a provision in Article 11 of the Protocol (the Annex to the Proposal) that would specify retention periods in relation to the categories of data processed for each purpose.

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(e-signed)