



EDPS formal comments on a Proposal for a Regulation of the European Parliament and of the Council laying down conservation and management measures for the Conservation of the Southern Bluefin Tuna

1. Introduction and background

- The following comments concern the Proposal for a Regulation of the European Parliament and of the Council laying down conservation and management measures for the Conservation of the Southern Bluefin Tuna ('the Proposal').
- The aim of the Proposal is to implement into EU law the relevant control, conservation and management measures adopted by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). The CCSBT is the regional fisheries management organisation (RFMO) responsible for managing Southern bluefin tuna (*Thunnus maccoyii* – SBF) through its area of distribution. To promote cooperation in the conservation and management of Southern bluefin tuna, the CCSBT has created the Extended Commission for the Conservation of Southern Bluefin Tuna (Extended Commission), in which the EU can participate as a member.
- These comments are provided in reply to the formal request by the Commission on 28 July 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')¹. 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 EUDPR.

2. EDPS Comments

2.1. General Comments

- Article 5 of the Proposal provides that Member States shall ensure that each Union fishing vessel authorised by the flag Member States to have SBF by-catch has been placed on the CCSBT Record of Vessels. Any Union fishing vessel not included in the

¹ 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.

CCSBT Record of Vessels shall be deemed not to be authorised to retain on board, tranship or export SBF.

- Pursuant to Article 5 of the Proposal, each flag Member State shall submit to the Commission information with respect to each Union fishing vessel authorised by the flag Member States to have SBF by-catch to be included in the CCSBT Record of Vessels. The information to be provided includes the names and addresses of the ship owner(s) and the operator pursuant to Article 5 of the Proposal.
- Article 4(1) GDPR (as well as Article 3(1) EUDPR) 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 clarified by the CJEU². 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 information concerning the ship-owner or master of the vessel pertains to an identified or identifiable individual.
- The EDPS welcomes the reference to the confidentiality as highlighted in Article 24 of the Proposal concerning the “[...] *confidential treatment of electronic reports and messages transmitted to and received from the CCSBT Secretariat.*”
- The EDPS notes, however, the lack of any reference to the applicability of Union data protection law. The EDPS therefore recommends adding a recital to recall the applicability of the GDPR and EUDPR to any activities covered by the Proposal involving the processing of personal data. In this regard, the EDPS also recalls the rules applicable to the transfer of personal data³ and to the processing of personal data relating to criminal convictions and offences⁴.

² 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.

³ See Chapter V of the GDPR and EUDPR respectively.

⁴ See Article 10 GDPR and Article 11 EUDPR respectively. In light of Article 19 of the Proposal, the EDPS notes that the data processed to include a Union fishing vessel in the draft CCSBT illegal, unreported and unregulated (‘IUU’) vessel list may constitute personal data relating to criminal convictions and offences, in which case appropriate safeguards for the rights and freedoms of data subjects should be provided, in accordance with Article 10 GDPR and Article 11 EUDPR.

Brussels,

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(e-signed)