



## **EDPS Formal comments on the Proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (recast)**

### **1. Introduction and background**

Regulation No 1141/2014 of the European Parliament and of the Council of 22 October 2014 governs the statute and funding of European political parties and European political foundations.

The Proposal for the recast of Regulation No 1141/2014 (the 'Proposal') aims to

- increase the financial viability of European political parties and foundations, facilitate their interactions with their national member parties, so that European political parties can more easily participate in national campaigns on EU topics;
- close the remaining loopholes regarding sources and transparency of financing (in particular, donations and financing from outside the EU);
- cut excessive administrative burden and increase legal certainty.

In addition, specific amendments to the Regulation are proposed in order to guarantee high standards of transparency that address the emerging new environment of online political campaigning and the risk of foreign interference and the infringement of data protection rules in political advertising<sup>1</sup>.

The European Commission has presented the Proposal as part of measures aimed at protecting election integrity and open democratic debate, in conjunction with three other proposals, namely a Proposal for a Council Directive laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals (recast), a Proposal for a Council Directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by Union citizens residing in a Member State of which they are not nationals (recast), and a Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising.

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission of 25 November 2021, pursuant to Article 42(1) of Regulation 2018/1725. The comments below are limited to the provisions of the Proposal that are relevant from a data protection perspective.

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<sup>1</sup> Explanatory memorandum, p. 2.



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, for example as a result of the adoption of other related implementing or delegated acts, pursuant to Articles 5, 8, 9 and 40 of the Proposal. 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 Regulation (EU) 2018/1725.

## 2. Comments

### 2.1 General Comments

The EDPS recognises the importance played by political parties in a representative democracy, as they bridge the gap between citizens and the political system. According to Article 10 (4) of the Treaty on European Union, European political parties ‘*contribute to forming European political awareness and to expressing the will of citizens of the Union*’. Article 12(2) of the Charter of Fundamental Rights of the European Union expresses the same principle.

Against this background, the EDPS welcomes the intention of the Commission to allow European political parties and foundations to fully fulfil their mission “*to contribute to the creation of a European political space*”, as well as to address the need for “*transparency of political advertising, which is essential for a fair democratic debate and free and fair elections*”.

In his Opinion 10/2018 on the Commission Package on free and fair European elections, the EDPS already underlined that political communication was essential to the participation of citizens, political forces and candidates in democratic life and to the fundamental right to freedom of expression. Moreover, the EDPS highlighted that these rights and freedoms are interdependent with the rights under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, respectively to respect for private and family life, home and communications, and to the protection of personal data<sup>3</sup>.

The EDPS welcomes the reference in Recital 58 of the Proposal to the applicability of Regulation (EU) 2018/1725, and in Recitals 59 and 62 to the applicability of Regulation (EU) 2016/679 (GDPR), as regards the processing of personal data. The EDPS also welcomes Recital 57 of the Proposal, stating that this Regulation respects the fundamental rights and observes the principles enshrined in the Charter, in particular Articles 7 and 8 thereof, and that it must be implemented in full respect of those rights and principles.

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<sup>2</sup> Explanatory memorandum, p. 1.

<sup>3</sup> [https://edps.europa.eu/sites/edp/files/publication/18-12-18\\_opinion\\_on\\_election\\_package\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-12-18_opinion_on_election_package_en.pdf) (paragraph 11).

## 2.2. Specific comments

### 2.2.1 Verification procedure related to infringements of rules on the protection of personal data

In the above-mentioned Opinion 10/2018, the EDPS made specific observations on a proposal for a Regulation whose purpose was the amendment of Regulation (EU, Euratom) No 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament. This proposal was finally adopted by the European Parliament and the Council on 25 March 2019 (Regulation (EU, Euratom) 2019/493)<sup>4</sup>, and the Regulation (EU, Euratom) No 1141/2014 was amended accordingly.

In particular, the EDPS made the following comments and recommendations:

- The procedure related to infringements of rules on the protection of personal data is complementary to the sanctions that national data protection supervisory authorities are entitled to impose under the GDPR. Consequently, the EDPS recommended to clarify “*that the Authority would not impose sanctions for infringements of the GDPR as such*”, and that “*the scope of the measure taken by the Authority should be limited to sanctioning an unlawful conduct consisting in the breach of the one or more provisions of Regulation No 1141/2014 for which it is competent*”<sup>5</sup>. Article 12 of the current Proposal provides the same verification procedure related to infringements of rules on the protection of personal data as the one which was subject to the above-mentioned comments, and which was finally adopted under Article 10a of the Regulation 2019/493. Accordingly, the EDPS reiterates his previous recommendation about the need to clarify the complementary aims of the sanction foreseen in the framework of the verification procedure. Similar considerations also apply in relation to Article 37 (8) in the current Proposal<sup>6</sup>.
- The EDPS noted that the new procedure would entail sharing of information by the national data protection supervisory authorities with the Committee of independent persons, but such cooperation was not covered by Article 28 of Regulation No 1141/2014, which is now Article 32 in the current proposal. The Proposal specifically provides for an agreement with the Member States “*on practical arrangements for (...) exchange of information, including the rules regarding the disclosure of confidential information or evidence*”. In this context, the EDPS recommendation to include the Committee in such practical arrangements remains still relevant<sup>7</sup>.

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<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R0493&from=EN>

<sup>5</sup> [https://edps.europa.eu/sites/edp/files/publication/18-12-18\\_opinion\\_on\\_election\\_package\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-12-18_opinion_on_election_package_en.pdf) (paragraph 17).

<sup>6</sup> Idem, paragraph 19.

<sup>7</sup> Idem, paragraph 21.

- Finally, the EDPS recommended in Opinion 10/2018 that his own role in the new procedure should be clarified<sup>8</sup>. The EDPS therefore reiterates his recommendation that the possible role of the EDPS following a finding of infringement of the EUDPR should also be considered.

### 2.2.2 Political advertising

Article 5 of the current proposal refers to the [Proposal for] Regulation on the transparency and targeting of political advertising, stating that “*European political parties shall ensure that the providers of political advertising services which they use when engaging fully comply with their obligations pursuant to Articles 7 and 12 of Regulation 2022/XX [on the transparency and targeting of political advertising]*”. The EDPS was consulted separately on the latter Proposal and issued Opinion 2/2022. Consequently, his recommendations on the transparency and targeting of political advertising in this Opinion are fully applicable in the context of the current proposal too.

In addition, Article 5(6) provides for the designation of national regulatory authorities “*competent to supervise compliance with paragraphs 1, 2 and 4*”. However, Article 5 (1) refers itself to Article 12 of Regulation 2022/XX [on the transparency and targeting of political advertising], whose provisions are monitored by the national data protection authorities (DPAs) and the EDPS. Accordingly, the EDPS recommends either a revision of the reference to paragraph 1 of Article 5, or a clarification on the respective roles of the national regulatory authorities, the DPAs and the EDPS.

### 2.2.3. Publication of the names of donors and their corresponding donations

Article 23(5) of the Proposal introduces a due diligence mechanism for donations above EUR 3000. In the Explanatory Memorandum, the Commission explains that this provision serves to close loopholes in the transparency regime for donations<sup>9</sup>:

*“For all donations the value of which exceeds EUR 3000, European political parties and European political foundations shall request donors to provide the necessary information for their proper identification. European political parties and European political foundations shall transmit the information received to the Authority upon its request.*

*The Authority shall establish a form to be used for purposes of the first subparagraph”.*

This paragraph has to be read in the light of Article 36(1)(e) of the Proposal, which provides that:

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<sup>8</sup> Idem, paragraph 23.

<sup>9</sup> Explanatory Memorandum, page 9.

“[The European Parliament, under the authority of its Authorising Officer or under that of the Authority, shall make public the following on a website created for that purpose, in an open, machine readable format]:

...

*(e) the names of donors and their corresponding donations reported by European political parties and European political foundations in accordance with Article 23(2), (3) and (4), with the exception of donations from natural persons the value of which does not exceed EUR 1500 per year and per donor, which shall be reported as 'minor donations'. Donations from natural persons the annual value of which exceeds EUR 1500 and is below or equal to EUR 3000 shall not be published without the corresponding donor's prior written consent to their publication. If no such prior consent has been given, such donations shall be reported as 'minor donations'. The total amount of minor donations and the number of donors per calendar year shall also be published”.*

The EDPS has already presented his views on the balance which needs to be struck between the principle of transparency and the fundamental rights to privacy and personal data protection. In his Opinion of 13 December 2012 on the Proposal for a Regulation on the statute and funding of European political parties and European political foundations, which included already similar provisions to the ones in the above mentioned Article 36, he noted in particular that it was “*unclear whether other means to achieve transparency have been considered*”, adding that “*the proposal does not show that the Commission considered several options to find the one most consistent with the objective of publication, while causing the least interference with the beneficiaries’ right to private life and to protection of personal data as required by the Court of Justice in Schecke*”<sup>10</sup>.

Recently, in his opinion of 9 December 2021<sup>11</sup>, Advocate General Pikamae referred also to the Schecke case, recalling the case law of the Court, according to which no automatic preeminence can be recognised with the objective of transparency on the right to the protection of personal data.

The publication of the names of persons who make a donation to a European political party or foundation still requires today that a “*proper balance*”<sup>12</sup> is achieved between the aim of transparency and the interests of the persons concerned:

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<sup>10</sup> [https://edps.europa.eu/sites/default/files/publication/12-12-13\\_funding\\_political\\_parties\\_en.pdf](https://edps.europa.eu/sites/default/files/publication/12-12-13_funding_political_parties_en.pdf), paragraph 37. In *Schecke*, the Court stated in particular that “*it is necessary to bear in mind that the institutions are obliged to balance, before disclosing information relating to a natural person, the European Union’s interest in guaranteeing the transparency of its actions and the infringement of the rights recognised by Articles 7 and 8 of the Charter. No automatic priority can be conferred on the objective of transparency over the right to protection of personal data (see, to that effect, Commission v Bavarian Lager, paragraphs 75 to 79), even if important economic interests are at stake*” CJEU, *Volker und Markus Schecke et Eifert* (C-92/09 et C-93/09, EU:C:2010:662), paragraph 85.

<sup>11</sup> Conclusions of Advocate General Priit Pikamae, *Vyriausioji tarnybinės etikos komisija* (C-184/20, ECLI:EU:C:2021:991), at paragraph 75.

<sup>12</sup> [https://edps.europa.eu/sites/default/files/publication/12-12-13\\_funding\\_political\\_parties\\_en.pdf](https://edps.europa.eu/sites/default/files/publication/12-12-13_funding_political_parties_en.pdf), paragraph 33.

In the same vein, in his recent Opinion 12/2021 on the anti-money laundering and countering the financing of terrorism (AML/CFT) package of legislative proposals<sup>13</sup>, in the context of beneficial ownership registers, the EDPS recommended to co-legislators to assess the necessity and proportionality of the general access by the public to the data in the register and, if appropriate, to lay down a specific legal framework in this regard, distinct from the one on access by competent authorities<sup>14</sup>.

Recital 56 of the Proposal, which is identical to Recital 34 of the Regulation 1141/2014, does refer to the need to “*strike an appropriate balance between, on the one hand, the fundamental right to the protection of personal data and, on the other hand, the legitimate public interest in transparency regarding the funding of European political parties and foundations*”<sup>15</sup> but is merely a declarative statement, which does not provide any specific justification of the choice of the thresholds, which, by the way, remain unchanged with respect to the previous wording of Regulation 1141/2014.

In the light of these considerations, the EDPS reiterates his previous position that a further, more detailed, justification is needed to substantiate the proportionality of the chosen threshold as regards the publication of donators’ names.

Brussels, 20 January 2022

*(e-signed)*

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<sup>13</sup> [https://edps.europa.eu/system/files/2021-09/21-09-22\\_edps-opinion-aml\\_en.pdf](https://edps.europa.eu/system/files/2021-09/21-09-22_edps-opinion-aml_en.pdf)

<sup>14</sup> Idem, paragraph 25.

<sup>15</sup> Recital 56 of the Proposal.