



EDPS Formal comments on the Proposal for the Regulation of the European Parliament and of the Council establishing a catch documentation programme for bluefin tuna (*Thunnus thynnus*) and repealing Regulation (EU) No 640/2010

1. Introduction and background

1. The following comments concern the Proposal for a Regulation of the European Parliament and of the Council establishing a catch documentation programme for bluefin tuna (*Thunnus thynnus*) and repealing Regulation (EU) No 640/2010 ('the Proposal').
2. The aim of the Proposal is to establish a 'Union Bluefin tuna Catch Documentation Programme'. The programme would serve to implement conservation and management measures adopted by the International Commission for the Conservation of Atlantic Tunas ('ICCAT') relating to a Bluefin Tuna Catch Documentation Scheme and the mandatory use of the electronic Bluefin tuna catch document system with a view to identifying the origin of all bluefin tuna¹.
3. These comments are provided in reply to the formal request by the Commission on 12 April 2022 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('EUDPR')². We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
4. 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. Comments

5. The Proposal provides that a Bluefin tuna Catch Document ('BCD') shall be completed for each bluefin tuna caught by a fishing vessel or trap, transferred, landed or transhipped at ports by fishing vessels or traps, or caged or harvested by farms. Once completed, the BCD must in principle be submitted for validation by a competent authority of the flag state of the vessel, trap or farm state that caught or harvested

¹ COM(2020) 670 final, p. 1.

² 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, p. 39).



the bluefin tuna, or of the Member State of establishment of the seller or exporter that domestically traded or exported the bluefin tuna³.

6. The recording and validation of catch and trade is performed through the electronic Bluefin tuna Catch Document system ('eBCD system'), a system that is operated by ICCAT and already used by Member States and operators⁴.
7. Article 4(6) of the Proposal specifies that a validated BCD shall include, as appropriate, the information set out in Annex 1 of ICCAT Recommendation [18-13]. The information to be provided includes, inter alia and if appropriate, the name of the catching vessel, the name of the towing vessel, the name of the carrier vessel, as well as the name and location of the farm in case of farming and the name and address of the export company.
8. Article 7 of the Proposal foresees that, in case of re-export, each lot of bluefin tuna shall be accompanied by a validated Bluefin Tuna Re-export Certificate ('BFTRC'). Article 8 (3) states that the validated BFTRC shall include the information set out in Annexes 4 and 5 to ICCAT Recommendation [18-13]. The information to be provided includes, inter alia, the name, address and signature of the re-exporter.
9. The EDPS recalls that Article 4(1) of the General Data Protection Regulation⁵ ('GDPR') and Article 3(1) EUDPR define 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 data concerning legal persons may therefore in some cases be considered as personal data, as clarified by the CJEU⁶. 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, the farm, the export company and the re-exporter relates to an identified or identifiable individual.

³ Articles 3(2) and 4(2) of the Proposal.

⁴ COM(2020) 670 final, p. 3. See also Article 5 of the Proposal.

⁵ 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 (OJ L 119, 4.5.2016, p. 1).

⁶ Judgment of Court of Justice of European Union of 9 November 2010, *Volker und Markus Schecke Gbr and Hartmut Eifert v. Land Hessen*, Joined Cases C-92/09 and C-93/09, ECLI:EU:C:2010:662 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.

10. The EDPS also notes that, pursuant to Article 12 of the Proposal, a copy of all validated BCDs or BFTRC shall be communicated, inter alia, to the Commission. The communication of those copies may therefore result in processing of personal data that would be subject to the EUDPR.
11. The EDPS notes that the Proposal contains no reference to the applicability of Union data protection law. The EDPS 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. The EDPS also suggests to clarify that the competent authorities and the Commission shall each be considered as controllers in relation to their own processing of personal data. Finally, the EDPS recalls the rules applicable to the transfers of personal data to third countries or international organisations⁷.

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(e-signed)

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⁷ See Chapter V of the GDPR and EUDPR respectively.