



EDPS

EUROPEAN DATA PROTECTION SUPERVISOR

EDPS Formal comments on the draft Proposal for a Commission Implementing Decision on a pilot project to implement the administrative cooperation provisions relating to regulated professions set out in Directives 2005/36/EC and (EU) 2018/958 of the European Parliament and of the Council by means of the Internal Market Information System and to integrate the database of regulated professions into that system

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals 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 ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 1 December 2022, the European Commission submitted a draft Proposal for a Commission Implementing Decision on a pilot project to implement the administrative cooperation provisions relating to regulated professions set out in Directives 2005/36/EC and (EU) 2018/958 of the European Parliament and of the Council by means of the Internal Market Information System and to integrate the database of regulated professions into that system ('the draft Proposal').
2. The draft Proposal aims at carrying out a pilot project² in order to assess whether the Internal Market Information System ('IMI') would be an effective tool to implement the notification obligations set out in Articles 59(1), (2), (5) and (6), Article 59(7), first sentence, and Article 60(1) of Directive 2005/36/EC³ as well as in Article 11(1) of

¹ OJ L 295, 21.11.2018, p. 39.

² In accordance with Article 4(1) of Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation').

³ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

Directive (EU) 2018/958⁴, and to integrate the database of regulated professions referred to in Article 59(1) of Directive 2005/36/EC into IMI⁵.

3. The EDPS previously issued an Opinion on the Commission proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the IMI⁶.
4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 20 of the draft Proposal.
5. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available, for example as a result of the pilot project⁷.
6. 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 and are limited to the provisions of the draft Proposal that are relevant from a data protection perspective.

2. Comments

7. The EDPS is aware that, in accordance with 4(1) of the IMI Regulation, the Commission may carry out pilot projects in order to assess whether IMI would be an effective tool to implement provisions for administrative cooperation of Union acts not listed in the Annex of the IMI Regulation. In that regard the Commission must adopt an implementing act to determine which provisions of Union acts shall be subject to a pilot project and to set out the modalities of each project, in particular the basic technical functionality and procedural arrangements required to implement the relevant administrative cooperation provisions.

⁴ Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions (OJ L 173, 9.7.2018, p. 25).

⁵ See Article 1 of the draft Proposal.

⁶ [Opinion of the European Data Protection Supervisor on the Commission proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System \('IMI'\)](#), issued on 18 February 2012.

⁷ According to Article 6 of the draft Proposal the Commission must submit the evaluation of the outcome of the pilot project to the European Parliament and the Council, as required by Article 4(2) of IMI Regulation, by 31 December 2025.

8. The EDPS would nevertheless like to point out that these expansions of IMI must be subject to in-depth tests before their implementation, in particular having regard to security and data protection measures. The integration of the new database and of the additional IMI functionalities must be implemented in full compliance with the principle of data protection by design and by default and in particular without putting at risk the existing security and data protection measures.
9. When it comes to processing of personal data, the EDPS notes that the draft Proposal itself provides for limited processing of personal data, by giving the possibility for Member States to decide to provide contact details containing the personal data⁸ of a contact person for the purpose of the technical functionality referred to in Article 4, point (o) of the draft Proposal. This personal data would be recorded and transmitted to the public website.
10. As a general observation, the EDPS would like to recall that, when it comes to processing of personal data in line with the draft Proposal, the GDPR⁹ (with regard to the Member States) and EUDPR (with regard to the Commission) would apply, as well as Chapter IV of the IMI Regulation concerning rights of data subjects and supervision.
11. Given the subject matter and the provisions of the draft Proposal, the EDPS has no further comments on the draft Proposal.

Brussels, 12 December 2022

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁸ First name, last name, email address, phone number, name of the competent authority the person works for, languages spoken (see Article 5(2) of the draft Proposal).

⁹ 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 (General Data Protection Regulation) (Text with EEA relevance) (OJ L 119, 4.5.2016, p. 1).