



**EDPS Formal comments on the draft Commission Decision laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention to Union institutions and bodies, as amended by Regulation (EU) 2021/1767, as regards requests for the internal review of administrative acts and repealing Commission Decision 2008/50/EC**

**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 Community institutions and bodies and on the free movement of such data ('EUDPR')<sup>1</sup>, and in particular Article 42(1) thereof,

**HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

**1. Introduction and background**

1. On 27 January 2023 the European Commission issued the draft Commission Decision laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention to Union institutions and bodies, as amended by Regulation (EU) 2021/1767, as regards requests for the internal review of administrative acts and repealing Commission Decision 2008/50/EC ('the draft Proposal').
2. The objective of the draft Proposal is to implement Regulation (EU) 2021/1767<sup>2</sup>, which amended Regulation (EC) No 1367/2006 and introduced additional rights to request internal review of administrative acts from the EU institutions and bodies. This Regulation requires the Commission in Article 11(2) to adopt the provisions which are necessary to ensure that the criteria and conditions for entitlement to internal review are applied in a transparent and consistent manner, including the newly introduced provisions regarding requests by members of the public. Furthermore, Article 11a(2) stipulates that 'Union institutions and bodies may establish online systems for receipt of requests for internal review and may require that all requests for internal review be submitted via their online systems.' The Commission has established such an online system. The draft Proposal also serves the purpose to

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 356, 8.10.2021, p. 1–7.



declare the use of this system obligatory, as is provided for as an option in Article 11a(2) of Regulation (EC) No 1367/2006 as amended by Regulation (EU) 2021/1767.

3. The draft Proposal is adopted pursuant to Article 11(2) and - as regards the requirement to use the Commission's online system - Article 11a(2) of Regulation (EC) No 1367/2006.
4. The EDPS received a previous but almost identical version of the draft Proposal on 14 December 2022. The EDPS welcomes the early involvement in this file.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 27 January 2023, pursuant to Article 42(1) of Regulation 2018/1725<sup>3</sup> ('EUDPR'). In this regard, the EDPS welcomes the reference to this consultation in Recital 10 of the Proposal.
6. 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 adoption of other related implementing or delegated acts<sup>4</sup>.
7. 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

### 2.1. Categories of Data

8. Annex II of the draft Proposal lays down the documents to be provided by members of the public whose request is supported by at least 4000 members of the public residing in at least five Member States. If the signatory is a natural person, in addition to proof of signature and first name and family name, a proof of residence and address '*e.g. in the form of a national register number or equivalent*' would need to be provided, as well as a confirmation of meeting the minimal age requirement of 16 years.

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<sup>3</sup> 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, 21.11.2018, L.295, p. 39.

<sup>4</sup> In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

9. The EDPS acknowledges the need for assurance that a request meets the eligibility requirements. However, he recalls that unique numeric identifiers concerning natural persons are not in use in every Member State and where they are, their use may be strictly regulated. Suggesting, even as an example, to provide such national register numbers as proof of residence for natural persons appears neither necessary nor appropriate having regards to the purposes of the processing<sup>5</sup>. The EDPS therefore suggests to remove the example<sup>6</sup>.

## 2.2. Security

10. The EDPS notes that the draft Decision only provides for electronic channel(s) for the submission of requests. In this regard, Article 2 - Submission of requests - provides for e-mail as an alternative to the online system possibly established by the institution or body<sup>7</sup>.
11. The EDPS notes that requests in the case of Article 11(1a) point (b) of Regulation (EC) No 1367/2006 will include significant amounts of personal data (i.e. personal data concerning at least 4000 members of the public). Transmitting such requests through unencrypted e-mails would not be secure and could potentially be intercepted by third parties. The EDPS therefore recommends specifying in Article 2 that the transmission of requests via email must be accompanied by additional measures to ensure confidentiality (e.g., encryption).

Brussels, 17 February 2023

*((e-signed))*

Wojciech Rafał WIEWIÓROWSKI

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<sup>5</sup> In addition to possibly contradicting national provisions regarding the use of the identifier, excessive disclosure of such identifiers may contribute to increased risks of unlawful processing (e.g., identity theft). Moreover, their disclosure may not offer meaningful evidence, insofar as the Commission would only be able to perform a plausibility check.

<sup>6</sup> Removing the example would also be more consistent, as the draft Proposal does not suggest any specific form of proof in relation to the other information that should be provided for each signatory.

<sup>7</sup> As regards the Commission in particular, the newly added Article 9 provides that only the publicly accessible online system for receipt of requests for internal review shall be used for submitting all requests addressed to the Commission. We understand that this provision eliminates the possibility of using e-mail when the European Commission is the intended addressee. The use of an online system should allow the Commission to ensure high level of security for information shared, e.g. by using Hypertext Transfer Protocol Secure (HTTPS).