



EDPS Formal comments on a Draft Commission Implementing Regulation laying down the necessary rules and detailed requirements for the functioning and management of a repository of information pursuant to Regulation (EU) 2018/1139

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 6 February 2023, the European Commission consulted the EDPS on a draft proposal for a Commission Implementing Regulation laying down the rules and procedures for the establishment and management of a repository of information pursuant to Article 74 of Regulation (EU) 2018/1139 as well as its annexes ('the draft Implementing Regulation').
2. The objective of the draft Implementing Regulation is to implement Article 74 of Regulation (EU) 2018/1139², which requires the European Union Aviation Safety Agency ('the Agency'), in cooperation with the European Commission and the national competent authorities, to establish and manage a repository of information. Therefore, this draft Implementing Regulation proposes a comprehensive and complete set of rules and procedures for the establishment and management of such a repository.
3. The draft Implementing Regulation would be adopted pursuant to Article 74(8) of Regulation (EU) 2018/1139 (the Basic Act).

¹ OJ L 295, 21.11.2018, p. 39.

² Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ L 212, 22.8.2018, p. 1–122



4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 6 February 2023 pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 22 of the Draft Implementing Regulation.
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 adoption of other related implementing or delegated acts³.
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 EUDPR and are limited to the provisions of the draft Proposal that are relevant from a data protection perspective.

2. Comments

2.1. General comments

7. The EDPS welcomes the reference to Regulation (EU) 2016/679⁴ ('GDPR') and EUDPR throughout the draft Implementing Regulation, and in particular in Recitals 13 and 15, as well as in Article 2 on definitions, and Article 15 on the allocation of responsibilities among joint controllers.
8. The EDPS also welcomes, in Articles 14 and 15 of the draft Implementing Regulation, the clear delineation of roles and responsibilities between the Agency, the Commission and the national competent authorities, considered together as joint controllers.
9. Finally, the EDPS welcomes the introduction, in Article 17 of the draft Implementing Regulation, of a maximum storage period of 10 years for personal data, starting from the date of expiry of the document.

³ 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.

⁴ 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), OJ L 119, 4.5.2016, p. 1–88.

2.2. Processing for archiving and historical research purposes

10. Article 18 of the draft Implementing Regulation lays down specific rules on the processing of personal data by the Agency for archiving and historical research purposes in the interest of safety of aviation.
11. The EDPS recalls the obligation to provide appropriate safeguards for such processing. According to Article 89(1) GDPR and 13 EUDPR, *“those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner”*.
12. In this regard, the EDPS notes that Article 18(2) of the draft Implementing Regulation foresees that the *“Agency shall develop access protocol to the registry”*. However, the EDPS recommends to refer explicitly to the data minimisation principle in this Article, in order to avoid any duplication of the repository through this registry, which should be limited to archiving and historical research purposes.

2.3. Logging of data-processing operations

13. The EDPS welcomes the introduction of a specific retention period of one year for the logs of the data-processing operations, in Article 9(2) of the draft Implementing Regulation. In this article he recommends adding a specific reference to the data minimisation principle, too.

Brussels, 29 March 2023

(e-signed)
Wojciech Rafał WIEWIÓROWSKI