



EDPS Formal comments on the draft Commission delegated Regulation amending Delegated Regulation (EU) 2019/1122 as regards the modernisation of the functioning of the Union Registry

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 20 February 2023, the European Commission issued a draft Commission delegated Regulation amending Delegated Regulation (EU) 2019/1122 as regards the modernisation of the functioning of the Union Registry ('the draft delegated Regulation').
2. The Delegated Regulation (EU) 2019/1122² was adopted pursuant to Article 19(3) of the Directive 2003/87/EC³, in order to provide for a standardised and secured system of registries in the form of standardised electronic data-bases containing common data elements to track the issue, holding, transfer and cancellation of allowances⁴, to provide for public access and confidentiality as appropriate and to ensure that there are no transfers incompatible with obligations resulting from the Kyoto Protocol.

¹ OJ L 295, 21.11.2018, p. 39.

² Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (Text with EEA relevance) (OJ L 177, 2.7.2019, p. 3).

³ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁴ 'Allowance' means an allowance to emit one tonne of carbon dioxide equivalent during a specified period-see Art 3(a) of the Directive 2003/87/EC.



3. The objective of the draft delegated Regulation is to provide necessary clarifications on the rules regarding the transfer of allowances, to remove some redundant structures of the Union Registry and implement the Union Registry with new technical frameworks as well as to extend the list of entities that can receive data stored in the Union Registry⁵.
4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 13 April 2023, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 9 of the 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 adoption of other related implementing or delegated acts⁶.
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 takes note of the proposed amendment to Article 80(3) of the Delegated Regulation (EU) 2019/1122 as regards the entities that can receive data (including personal data) pursuant to its current Article 80.
8. According to the existing rules, the central administrator or a national administrator may provide data stored in the Union Registry and the European Union Transaction Log ('EUTL') or gathered pursuant to that delegated Regulation to a limited list of entities enumerated in Article 80(3). The amendment to the delegated Regulation proposes to extend this list to include the European Public Prosecutor's office ('EPPO'), the European Central Bank ('ECB') and the European Banking Authority ('EBA').

⁵ See point 3 of the Explanatory Memorandum.

⁶ 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 recalls that Article 80(4) of the Delegated Regulation (EU) 2019/1122 lists the purposes for which data can be shared to entities listed in paragraph 3 of the same Article, notably: "investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime, market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU Emissions Trading Scheme."
10. While the EDPS understands the link between the above mentioned purposes with regard to the tasks of the EPPO mentioned in recital 6 of the draft delegated Regulation (investigation, detection and prosecution of money laundering and other serious crime) the EDPS is of the opinion that the reasoning provided for in recital 7 of the draft delegated Regulation, aiming to justify the expansion of the list to ECB and EBA, does not fit any of these purposes mentioned in Article 80(4) of the Delegated Regulation (EU) 2019/1122. The EDPS therefore questions the necessity and the appropriateness of providing the data to the ECB and EBA and considers that, on the basis of the current draft delegated Regulation, only the addition of the EPPO to the list of entities appears justified.
11. Moreover, having in mind recital 7 of the draft delegated Regulation, the EDPS is of the opinion that providing only anonymised data to the ECB and EBA would appear to be sufficient. Such a solution would undoubtedly be more in line with the principle of data minimisation.
12. In addition, the EDPS wishes to underline that, pursuant to Article 290 TFEU, delegated acts (such as the subject of the present consultation) should only concern non-essential elements of the basic act. In this regard, the EDPS is of the opinion that questions of access (especially by law enforcement) to personal data should more appropriately be addressed in the basic act and not in the delegated act, as they cannot be considered as non-essential elements from the data protection point of view.

Brussels, 20 April 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI