



EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

11 December 2023

Opinion 53/2023 on the Directive on Soil Monitoring and Resilience (Soil Monitoring Law)

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 ‘With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies’, and under Article 52(3)‘... for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data’.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years.

*Under **Article 42(1)** of Regulation 2018/1725, the Commission shall ‘following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals’ rights and freedoms with regard to the processing of personal data’.*

This Opinion relates to the Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)¹. This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Regulation (EU) 2018/1725. This Opinion is limited to the provisions of the Proposal that are relevant from a data protection perspective.

¹ COM(2023) 416 final.

Executive Summary

On 5 July 2023, the European Commission issued a Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law).

The objective of the Proposal is to put in place a soil monitoring framework for all soils across the EU, which will address the current gap of knowledge on soils. It should be an integrated monitoring system based on EU level, Member State and private soil data.

The EDPS welcomes the objectives of the Proposal as well as the fact that they are meant to be achieved without (substantial) processing of personal data, which would be in line with the data minimisation principle.

However, the EDPS considers it necessary to clarify why exactly is EUDPR mentioned in Article 19(2) of the Proposal. If no personal data are meant to be processed, as it currently seems to stem from the Proposal, the reference to the EUDPR should be deleted from the Proposal. On the other hand, in case personal data are meant to be processed under the Proposal, it needs to be clarified in the Proposal which categories of personal data would be processed, by whom and for what purposes.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

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

Having regard to 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 ('EUDPR')², and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 5 July 2023, the European Commission issued a Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)³ ('the Proposal').
2. The objective of the Proposal is to put in place a solid and coherent soil monitoring framework for all soils across the EU, which will address the current gap of knowledge on soils. It should be an integrated monitoring system based on EU level, Member State and private data. This data will be based on a common definition of what constitutes a healthy soil and will underpin the sustainable management of soils, to maintain or enhance soil health, and thus to achieve healthy and resilient soils everywhere across the EU by 2050⁴.
3. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 25 October 2023, pursuant to Article 42(1) of EUDPR.

2. General remarks

4. The EDPS notes and welcomes the aim of the Proposal to put in place a soil monitoring framework for all soils across the EU and to continuously improve soil health in the Union with the view to achieve healthy soils by 2050 and maintain soils in healthy condition. As stated by the Commission, the Proposal is an important piece of the European Green Deal and an instrument to achieve EU policy objectives such as climate neutrality, resilient nature and biodiversity, zero pollution, sustainable food systems, human health and well-being⁵.

² OJ L 295, 21.11.2018, p. 39.

³ COM(2023) 416 final.

⁴ See p. 4 of the Explanatory Memorandum of the Proposal.

⁵ See p. 7 of the Explanatory Memorandum of the Proposal.

5. The EDPS also welcomes the fact that, when it comes to this specific Proposal, the objectives are meant to be achieved without (substantial) processing of personal data, which would be in line with the data minimisation principle⁶.

3. References to the data protection framework

6. The EDPS notes that Article 19(2) of the Proposal provides that the Commission must ensure that soil health data made accessible through the digital soil health data portal referred to in Article 6 of the same Proposal is available to the public in accordance with the EUDPR. While the EDPS affirms that any processing of personal data must be in line with the EU data protection legislation, including the EUDPR, it is the EDPS' opinion that the wording of Article 6 and Article 19 of the Proposal does not in any way imply processing of personal data but only soil (health) data.
7. In that regard, the EDPS considers it necessary to clarify why exactly EUDPR is mentioned in Article 19(2) of the Proposal. If any personal data would need to be processed under the Proposal, it must be explicitly determined which categories of personal data would be processed, by whom and for what purposes. In addition, any processing of personal data should be limited to what is necessary and proportionate in relation to the purpose for which they are processed. Personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes.
8. Furthermore, the EDPS underlines that, in case there would be processing of personal data provided for under the Proposal, this processing must comply with the requirements of the Regulation (EU) 2016/679⁷ (in case of processing of personal data by Member States or by entities in the Member States) and/or the EUDPR (in case of processing of personal data by the Union institutions and bodies). In such a case, the EDPS advises to make an explicit reference to the applicability of the GDPR and/or EUDPR to the processing of personal data under the future Regulation in a recital of the Proposal instead of Article 19(2). On the other hand, if no personal data are meant to be processed, as it currently seems to stem from the Proposal, the reference to the EUDPR should be deleted.

4. Conclusions

9. In light of the above, the EDPS makes the following recommendations:

(1) to clarify whether any personal data would be processed under the Proposal, if so, by whom and for what purposes;

⁶ See Article 5(1)(c) GDPR and Article 4(1)(c) EUDPR.

⁷ 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).

(2) to delete the reference to the EUDPR in Article 19(2) and, if any processing of personal data is envisaged, to refer to data protection legislation (GDPR and/or EUDPR) in a recital of the Proposal;

(3) to make reference to this Opinion in a recital of the final text of the Proposal.

Brussels, 11 December 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI