

EDPS Formal comments on the draft Commission Implementing Regulation laying down rules for the application of Council Regulation (EC) No 1217/2009 setting up the Farm Sustainability Data Network and repealing Commission Implementing Regulation (EU) 2015/220

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 19 August 2024, the European Commission consulted the EDPS on the draft Commission Implementing Regulation laying down rules for the application of Council Regulation (EC) No 1217/2009 setting up the Farm Sustainability Data Network² and repealing Commission Implementing Regulation (EU) 2015/220 ('the draft implementing regulation').
2. The objective of the draft Implementing Regulation is to lay down rules to ensure the functioning of the new Farm Sustainability Data Network ('FSDN'), into which the Farm Accountancy Data Network ('FADN') is transformed³, following amendments through Regulation (EU) 2023/2674⁴. The draft Implementing Regulation aims, among others, to fix thresholds for the economic size of holdings⁵, provide for Union typology to classify holdings⁶, establish methods and deadlines for data transmission by

¹ OJ L 295, 21.11.2018, p. 39.

² OJ L 328, 15.12.2009, p. 27.

³ Recital 1 of the draft implementing regulation.

⁴ Regulation (EU) 2023/2674 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network, OJ L, 2023/2674, 29.11.2023.

⁵ Recital 2 of the draft implementing regulation. It concerns holdings covered by the field of survey, as referred to Article 5(1), first subparagraph, of Regulation (EC) No 1217/2009.

⁶ Recital 4 of the draft Implementing Regulation.

Member States to the Commission⁷, provide for rules governing the amount payable to Member States for the delivery of completed farm returns within a set deadline⁸, set out provisions on the data to be extracted from the different datasets in order to implement rules on data sharing included in Article 4a of Regulation (EC) No 1217/2009⁹, and set out provisions about the computerised data system to transmit and analyse data¹⁰.

3. The draft Implementing Regulation is adopted pursuant to Article 4a(3), Article 5(1), third subparagraph, Article 5a(2) and (4), Article 5b(7), Article 7(2), Article 8(4), Article 8a(2) and Article 19(4) of Council Regulation (EC) No 1217/2009 of 30 November 2009 setting up the Farm Sustainability Data Network.
4. The EDPS previously issued Opinion 18/2022 on the Proposal for a Regulation as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network¹¹.
5. 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. In this regard, the EDPS recommends to include an explicit reference to this consultation in one of the recitals of the draft Implementing Regulation.
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 acts¹².
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 Implementing Regulation that are relevant from a data protection perspective.

2. Computerised data system - storage duration of personal data

8. The draft implementing regulation provides that the computerised data system, established by the Commission, shall ensure the secure exchange of information

⁷ Recital 10 of the draft implementing regulation.

⁸ Recital 14 of the draft implementing regulation.

⁹ Recital 16 of the draft implementing regulation.

¹⁰ Recital 17 of the draft implementing regulation.

¹¹ [EDPS Opinion 18/2022 on the Proposal for a Regulation as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network](#), issued on 11 August 2022.

¹² 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.

between the Member States and the Commission¹³. It provides that any personal data collected pursuant to Regulation (EC) No 1217/2009 shall be processed in accordance with Articles 16, 16a and 16b thereof.

9. The computerised data system shall be used by Member States to submit to the Commission farm returns¹⁴ of returning holdings¹⁵ and either the links to or the data from certain datasets¹⁶, related to returning holdings¹⁷. Such information may contain personal data¹⁸. The Commission is required to adopt detailed rules on storage, processing, reuse and sharing of such data¹⁹.
10. The EDPS notes that draft Implementing Regulation does not establish the storage period for the collected personal data.
11. Article 16a(2) of Council Regulation (EC) No 1217/2009 provides that “[i]ndividual data shall be kept as long as they are needed to perform time series analyses.” Further, recital 25 of Regulation (EU) 2023/2674 provides that “uses of FSDN data, and of the personal data included therein, should include the possibility to analyse long-term trends based on indicators, such as on nutrient management or emissions, the evolution of which needs to be assessed over a long period of time to keep pace with natural phenomena. Therefore, analyses should be regularly performed, especially on environmental information. (...) Therefore, it is not appropriate to set a time limit for the use of data, but rather to keep data for as long as they are needed to perform time series analyses.”
12. The EDPS recalls that in line with the storage limitation principle, personal data may be kept in a form that permits identification of the individual for no longer than is necessary for the purposes for which it was processed²⁰.
13. The EDPS refers to the objectives laid down in Council Regulation (EC) No 1217/2009, for which individual data (which may constitute personal data)²¹ may be processed,

¹³ Article 22 of the draft implementing regulation. See also recital 23 of Regulation (EU) 2023/2674 of the European Parliament and of the Council of 22 November 2023. It explains that the existing system should continue to function for data transmission and verification between the Member States and the Commission and for the analysis of the data both at individual farm level and at aggregated level.

¹⁴ Article 2(5) of Council Regulation (EC) No 1217/2009 provides that “farm return” means the form, either to be compiled or already compiled, with data about the returning holding excluding the links and data referred to in Article 4a(1).

¹⁵ Article 2(4) of Council Regulation (EC) No 1217/2009 provides that “returning holding” means any holding for which a farm return is compiled for the purposes of the FSDN.

¹⁶ Article 4a(1) of Council Regulation (EC) No 1217/2009, which refers to the following datasets: the Member States’ data for performing the monitoring and evaluation of common agricultural policy (‘CAP’) Strategic Plans (‘DME’), and the Integrated Administration and Control System (‘IACS’) established by Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013, OJ L 435, 6.12.2021, p. 187. See also Articles 18-21 of the draft implementing regulation.

¹⁷ Article 8a(1) of Council Regulation (EC) No 1217/2009.

¹⁸ See e.g. recitals 25 and 26 of Regulation (EU) 2023/2674.

¹⁹ See also Article 8a(2) of Regulation (EC) No 1217/2009.

²⁰ Article 5(1)(e) GDPR and Article 4(1)(e) EUDPR.

²¹ See Article 2(10) of Council Regulation (EC) No 1217/2009.

in particular, the use of FSDN data to assess the sustainability of Union agriculture and to address challenges faced by Union agriculture²². The EDPS recommends assessing whether analyses for such purposes, including time series analyses²³, can be carried out with anonymized data. It recommends defining the maximum storage period for the categories of personal data, or at least laying down additional criteria to determine such periods, necessary to achieve the purposes listed in Article 1 of Regulation (EC) No 1217/2009²⁴.

Brussels,

²² See Article 1(1) and (3) and 16(1) of Council Regulation (EC) No 1217/2009.

²³ Article 16a(2) of Council Regulation (EC) No 1217/2009.

²⁴ Article 16(1) and 16a(2) of Regulation (EC) No 1217/2009.