



EDPS
EUROPEAN DATA PROTECTION SUPERVISOR

EDPS SUPERVISORY OPINION ON DRAFT INTERNAL RULES CONCERNING RESTRICTIONS OF CERTAIN RIGHTS OF DATA SUBJECTS IN RELATION TO THE PROCESSING BY THE EUROPEAN COMMISSION FOR THE SUPERVISION, INVESTIGATION, ENFORCEMENT AND MONITORING UNDER REGULATION (EU) 2022/2065 (Case 2024-0770)

1. INTRODUCTION

1. This Supervisory Opinion relates to the draft internal rules concerning restrictions of certain rights of data subjects in relation to the processing by the European Commission for the supervision, investigation, enforcement and monitoring under Regulation (EU) 2022/2065 of 3 September 2024 ('draft IR').
2. The European Data Protection Supervisor ('EDPS') issues this Supervisory Opinion in accordance with Article 41(2) of Regulation (EU) 2018/1725¹ ('the EUDPR').

¹ Regulation (EU) 2018/1725 of the European Parliament and 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, L 295, 21.11.2018, pp. 39-98.

2. FACTS

3. The Directorate-General responsible for Communications Networks, Content and Technology of the European Commission formally consulted the EDPS on the draft IR on 3 September 2024.

3. LEGAL ANALYSIS AND RECOMMENDATIONS

3.1. General comments

4. The EDPS welcomes the fact that the European Commission timely consulted the EDPS on its draft IR.
5. The EDPS further welcomes that the European Commission has partially made use of the draft internal rules provided as Annex II to the EDPS Guidance on Article 25 of the Regulation 2018/1725 and internal rules restricting data subjects rights ('EDPS model internal rules').
6. Concerning the right to information, we take note that the European Commission is going to publish data protection notices on its website informing data subjects of the potential restrictions of their rights related to the processing of their personal data for the purpose of the supervision, investigation, enforcement and monitoring pursuant to Regulation (EU) 2022/2065.
7. The EDPS also takes note that the European Commission will perform a necessity and proportionality test on the need for the restriction of data subjects' rights, according to several provisions of the draft internal rules.
8. The EDPS welcomes that the European Commission is documenting the restrictions for accountability purposes, namely to make the files available to the EDPS upon request.

3.2. EDPS Recommendations

9. The EDPS notes that the Article 3 of the draft IR regarding the provision of information to data subjects mentions the rights that may be restricted, the grounds on which restrictions may be applied and their potential duration, but does not include an explicit reference to the right to lodge a complaint to the EDPS.

10. As a matter of completeness, data subjects shall be informed not only about the principal reasons on which the application of the restriction is based, but also on their right to lodge a complaint before the EDPS, in accordance with Article 25 (6) EUDPR. The same recommendation is also mentioned in the EDPS model internal rules². The European Commission correctly mentioned such right to lodge a complaint before the EDPS on Articles 4 and 5 of the draft IR, but omitted such reference in its Article 3.
11. Therefore, the **EDPS deems necessary that Article 3 of the draft IR include a reference to the right to lodge a complaint before the EDPS**, according to Article 25(6) EUDPR (**Recommendation 1**).
12. Regarding the Data Protection Officer (DPO), Article 9 of the draft IR detail the involvement of the Data Protection Coordinator of the Directorate-General for Communications Networks, Content and Technology and the DPO of the European Commission. However, no reference is made to the involvement of the DPO in the necessity and proportionality test of the envisaged restriction.
13. In this regard, the EDPS Guidelines on Article 25 EUDPR³ recommends that the DPO be always informed and, if possible, involved in the necessity and proportionality assessment regarding the restriction that the controller is intending to apply.
14. Therefore, the **EDPS recommends** that the draft IR include in Article 9 the not just the **DPOs'** consultation before any restriction, but also their **involvement in the necessity and proportionality assessment of the restriction that the controller is intending to apply (Recommendation 2)**.

4. CONCLUSION

15. The EDPS has made recommendations to ensure compliance of the processing with the EUDPR.
16. As indicated above, in order to ensure compliance of the processing with the Regulation, the EDPS **deems necessary** that the European Commission:

² *Ibidem*, p. 24.

³ *Ibidem*, p. 11.

- **include in Article 3 of the draft IR a reference to the right to lodge a complaint before the EDPS, according to Article 25(6) EUDPR (Recommendation 1).**

17. Moreover, the EDPS **recommends** that the European Commission:

- **include in Article 9 of the draft IR the DPOs' involvement in the necessity and proportionality assessment of the restriction that the controller is intending to apply (Recommendation 2).**

18. In light of the accountability principle, the EDPS expects the European Commission to implement the above recommendations accordingly and has decided to close the case.

Done at Brussels