



EDPS
EUROPEAN DATA PROTECTION SUPERVISOR

EDPS SUPERVISORY OPINION ON THE AMENDMENT TO ARTICLE 12 OF THE IMPLEMENTING MEASURES FOR THE STATUTE FOR MEMBERS OF THE EUROPEAN PARLIAMENT (Case 2024-0980)

1. INTRODUCTION

1. This Supervisory Opinion examines which ground for lawfulness the European Parliament could rely upon for the processing of Members of the European Parliament's (MEPs) biometric data for the attestation of their attendance in the central attendance registry via a voluntary biometric verification method implemented as part of a 2-year transitional, automated system foreseen by the European Parliament. In addition, this Supervisory Opinion examines whether a proposed amendment to the European Parliament's ('Parliament') implementing measures for the Statute for Members of the European Parliament¹ (IMMS) can be relied upon as a legal basis in Union law for the processing of MEPs' biometric data in the context of the foreseen biometric registration method.
2. This Supervisory Opinion follows up on the Supervisory Opinions of the EDPS of 29 March 2021 on the use of a computerised system by the European Parliament for the digitalisation of the Plenary and central attendance registers through biometric technology (2021-0355)² and of 11 May 2023 on the implementation of the EDPS recommendations on the MEP biometric attendance register (2022-1318)³, as well as the EDPS' informal Opinion on the Amendment to Article 12 of the Implementing Measures for the Statute for Members of the European Parliament (2024-0466).

¹ Implementing Measures for the Statute for Members of the European Parliament, Bureau Decision of 19 May and 9 July 2008, OJ, C 159, p. 1 (consolidated version: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009D0713\(01\)-20220101&qid=1671201317801&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009D0713(01)-20220101&qid=1671201317801&from=EN))

² https://www.edps.europa.eu/system/files/2021-03/21-03-29_edps_opinion_ep_computerised_system_biometrics_en.pdf

³ https://www.edps.europa.eu/system/files/2023-09/2022-1318_edps_supervisory_opinion_on_mep_biometric_system_redacted_for_publication_version_of_15_9_23_en.pdf

2. BACKGROUND INFORMATION

3. On 17 June 2019, the European Parliament Bureau decided to implement a computerised system which sought to digitise the European Parliament's existing paper-based Central Attendance Registry (CAR) for MEPs through the use of biometric technology. The system would attest MEP's attendance under Article 12 of the IMMS and would facilitate the payment of the corresponding daily allowances under Article 24 of the IMMS.
4. In this regard, in its Supervisory Opinions of 29 March 2021 and 11 May 2023, the EDPS had found that the Parliament lacked a sufficient legal basis for the processing of biometric data as a means for attesting attendance of MEPs.
5. On 05 February 2024, considering that the new system would entail a change in Members' habits and due to the mixed views on the advantages of an automated system based entirely on biometric technology, the Bureau of the Parliament decided⁴ to implement, **for a 2-year transitional period, a badge-based system** for the attestation of MEPs' attendance, **applicable only to the CAR** (the current manual/paper-based system would remain applicable to plenary sittings and committee meetings), which would be **complemented with the possibility for MEPs to instead attest their attendance via fingerprint scanning** (biometrics). The possibility for individual MEPs to instead attest their attendance via fingerprint scanning would be **available on an entirely voluntary basis** and in line with any recommendations issued by the EDPS. Additionally, this system would be subject to a review after a 2-year period from its first implementation, in view of moving to the automated system based entirely on biometric technology.
6. Against this background, on 23 May 2024, the Parliament consulted the EDPS informally on whether it can rely upon Articles 5(1)(a) and (d) and 10(2)(a) and (g) of the Regulation (EU) 2018/1725⁵ ('the Regulation') as grounds for lawfulness specifically for the processing of MEPs' biometric data for the attestation of their attendance via the voluntary biometric registration method foreseen as part of the above described 2-year transitional system of attesting MEPs' attendance in the CAR. In addition, the Parliament consulted the EDPS as to whether a proposed amendment to Article 12, and in particular Article 12(1)(c) of the IMMS, would constitute a sufficient legal basis in Union law under Articles 5(1)(a) and 10(2)(g) of the Regulation for the processing of MEPs' biometric data in this context. The EDPS issued the informal Opinion on 7 June 2024.

⁴ European Parliament Bureau Minutes of the ordinary meeting of 05-02-2024 (PE 755.517/BUR).

⁵ 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.

7. On 12 November 2024, the European Parliament formally requested the European Data Protection Supervisor (EDPS) to issue a Supervisory Opinion on this matter. In response, the EDPS has provided the requested opinion.
8. The EDPS issues this Supervisory Opinion in accordance with Article 58(3)(c) of the Regulation.

3. LEGAL ANALYSIS

3.1. Scope of this Supervisory Opinion

9. The Parliament has not provided the EDPS with any specific documentation relating to the badge-based system for the attestation of MEPs' attendance (under Article 12(1)(a) of the proposed amendment to the IMMS). As such, the EDPS is not in a position to provide an assessment on this aspect of the above-described 2-year transitional system. Therefore, the scope of this Opinion will be limited to the following questions related to the complementary possibility for MEPs, on a voluntary basis, to attest their attendance via fingerprint scanning/biometric registration (under Article 12(1)(c) of the proposed amendment to the IMMS):
 - Whether the Parliament can rely upon MEPs' consent under Articles 5(1)(d) and 10(2)(a) of the Regulation, as a complementary lawful ground to Articles 5(1)(a) and 10(2)(g) of the Regulation, for the processing of their biometric data in the context of the implementation of the biometric verification method foreseen in the above-described 2-year transitional system; and,
 - Whether the Parliament can rely upon the proposed amendment of Article 12(1)(c) of the IMMS as a legal basis in Union law under Articles 5(1)(a) and 10(2)(g) of the Regulation for the processing of MEPs' biometric data in the context of the implementation of the biometric verification method foreseen in the above-described 2-year transitional system.
10. Nevertheless, in relation to the means of attestation of attendance via electronic automated registration in the CAR, referenced under Article 12(1)(a) of the proposed amendment to the IMMS, i.e. the badge-based system; in line with the principle of accountability enshrined under Article 4(2) of the Regulation, in order to be able to demonstrate compliance with the Regulation, the Parliament needs to identify a lawful ground and a legal basis for this processing operation. In addition, the Parliament must conduct an assessment of the necessity and proportionality of this means of attesting MEPs' attendance, for a specified purpose. Moreover, the DPIA will need to be updated to reflect this new 2-year transitional system and a dedicated data protection notice and record of processing operations will need to be prepared.

The EDPS reminds the Parliament that this will need to be done prior to the commencement of this processing activity.

3.2. Lawfulness of processing

11. Article 12(1)(c) of the proposed amendment to the IMMS provided by the Parliament includes a reference to a Notice on the processing of Member's personal data on the basis of Article 12(1)(c) of the IMMS ('Bureau Notice'). According to the Bureau Notice, which relates exclusively to the biometric verification method of attestation of MEPs' attendance in the CAR foreseen as part of the Parliament's 2-year transitional system, the Parliament seeks to rely jointly on Articles 5(1)(a) and (d) and 10(2)(a) and (g) of the Regulation as grounds for lawfulness for the processing of MEPs' biometric data for the purpose of reimbursing MEPs of the subsistence expenses they have incurred.
12. The processing of any personal data is only lawful if at least one of the grounds for lawfulness listed in Article 5(1) of the Regulation is applicable. For the processing of special categories of personal data, including biometric data, which is the subject of the present Opinion, to be lawful, one of the requirements established in Article 10(2) of the Regulation must be fulfilled. As such, the Parliament can only rely on one lawful ground for the processing of MEPs' biometric data under Article 5(1) and 10(2) of the Regulation respectively.
13. As such, it will be successively analysed below whether the requirements included in both Articles 5(1)(a) / 10(2)(g) and/or 5(1)(d) / 10(2)(a) of the Regulation are met in order to determine which lawful ground the Parliament should rely on specifically for the processing of MEPs' biometric data in the context of the voluntary biometric registration system foreseen as part of the Parliament's 2-year transitional system.

3.3. Lawfulness of processing under Articles 5(1)(a) and 10(2)(g) of the Regulation

3.3.1. Legal Basis in Union Law

14. Both Articles 5(2) and 10(2)(g) of the Regulation set a requirement that the basis for the processing be laid down in Union law. According to the Bureau Notice, which relates exclusively to the complementary biometric verification method of attestation of MEPs' attendance in the CAR foreseen in the Parliament's 2-year transitional system, the Parliament intends to rely upon Article 20 of the Members' Statute⁶,

⁶ Decision 2055/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament, OJ, L 262/1
(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005Q0684&from=EN>)

Articles 12 and 24 of the IMMS, and Articles 36, 74 and 240 of Regulation 2018/1046 on the financial rules applicable to the general budget of the Union⁷ as legal bases for the processing of MEPs' biometric data via the biometric attendance registration method.

15. These rules read as follows:

- Article 20 of the MEPs Statute

'1. Members shall be entitled to reimbursement of expenses incurred in the exercise of their mandate. [...]

4. Parliament shall lay down the conditions for the exercise of this right.'

- IMMS

AMENDED 'Article 12

Attestation of attendance

1. A Member's attendance shall be attested by one of the following means:

- (a) electronic automated registration in the central attendance register at Parliament's places of work during the opening hours laid down by the Bureau,*
- (b) the Member's signature of the record of attendance available in the relevant Chamber or meeting room of an official Parliament body, or*
- (c) **biometric registration in accordance with the conditions laid down by the Bureau as set out in particular in the corresponding notice.***⁸

*The provisions of this paragraph shall be **subject to a review after a two year period from the first implementation of the system referred to in point (c).***

Article 24

Subsistence allowance

1. Members shall be entitled to a subsistence allowance for each day's attendance:

- (a) in a place of work or at a meeting venue, duly attested in accordance with Article 12, involving travel covered by the provisions governing reimbursement of ordinary travel expenses; [...]*

- Regulation 2018/1046

'Article 36

Internal control of budget implementation

⁷ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, OJ, L 193 (<https://eur-lex.europa.eu/eli/reg/2018/1046/oj>)

⁸ See Notice on the processing of Member's personal data on the basis of Article 12(1)(c) of the implementing Measures for the Statute of Members.

1. Pursuant to the principle of sound financial management, the budget shall be implemented in compliance with the effective and efficient control appropriate to each method of implementation [...]
2. For the purposes of budget implementation, internal control shall be applied at all levels of management and shall be designed to provide reasonable assurance of achieving prevention, detection [...] of fraud and irregularities. [...]
5. If, during implementation, the level of error is persistently high, the Commission shall identify the weaknesses in the control systems [...] propose appropriate action, such as simplification of the applicable provisions, improvement of the control systems and redesign of the programme or delivery systems.'

'Article 74

Powers and duties of the authorising officer

1. The authorising officer shall be responsible in the Union institution concerned for implementing revenue and expenditure in accordance with the principle of sound financial management [...] and for ensuring compliance with the requirements of legality and regularity and equal treatment of recipients.
2. For the purposes of paragraph 1 of this Article, the authorising officer by delegation shall [...] put in place the organisation structure and the internal control systems suited to the performance of his or her duties [...]
5. In order to prevent errors and irregularities before the authorisation of operations and to mitigate risks of non-achievement of objectives, each operation shall be subject at least to an ex ante control relating to the operational and financial aspects of the operation.'

16. Article 20 of the Members' Statute and Article 24 of the IMMS constitute the legal basis for maintaining an attendance register in order to establish MEPs' entitlement to the reimbursement of subsistence expenses, and Articles 36, 74 and 240 of Regulation 2018/1046 describe how internal measures and control systems should be put in place to ensure sound financial management of the EU budget and to prevent financial fraud and irregularities. However, these rules are silent as to the modalities of the attendance register. These modalities are to be found in the proposed amendment to Article 12 of IMMS. As such, it needs to be assessed whether the proposed amendment to Article 12 of IMMS, in particular Article 12(1)(c) on the biometric registration method, can be relied upon independently as a legal basis for the processing of MEPs' biometric data.
17. Recital 23 of the Regulation provides that 'The Union law referred to in this Regulation should **be clear and precise and its application should be foreseeable to persons subject to it**, in accordance with the requirements set out in the Charter and the European Convention for the protection of Human Rights and Fundamental Freedoms'.

18. According to case law, any legislation which entails interference with the individual rights to privacy and personal data protection must be **‘clear and precise rules governing the scope and application of the measure in question’**.⁹ The law must meet quality requirements, namely, it must be **‘accessible to the person concerned and foreseeable as to its effects’** to guarantee that the ‘law’ permitting for an interference with fundamental rights is compatible with the rule of law and that the individuals are protected from arbitrariness of public authorities.¹⁰
19. A legal base permitting an interference with the fundamental right to personal data protection, as in the present case, must itself define the scope of the interference with that right.¹¹ As such, the EDPS welcomes that Article 12(1)(c) of the proposed amendment to the IMMS clearly and specifically indicates that biometric registration is to be used as a means to attest attendance. However, the EDPS recommends that it be specified in Article 12(1)(c), as is done in the case of Article 12(1)(a) of the proposed amendment to the IMMS, that biometric registration will only apply for attestation of attendance in the CAR (**Recommendation 1**).
20. The EDPS welcomes that Article 12(1) of the proposed amendment to IMMS clarifies that ‘the provisions of this paragraph shall be subject to a review after a two-year period from the first implementation of the system referred to in point (c)’ i.e. biometric registration, thereby ensuring that addressees of this legal act are aware of the circumstances and conditions under which their right to personal data protection can be interfered with. In this regard, the EDPS reminds the Parliament that the data subjects will need to be informed of the revisions to the provisions of Article 12(1) of the IMMS and the implications, by means of an updated dedicated data protection notice, communicated to them at the time when their personal data are obtained and made available with a corresponding updated record of processing activities.
21. Given that the legal basis for the processing of MEPs’ biometric data must be foreseeable and accessible to MEPs, the legal basis should be clear about the purpose of the processing, the categories of personal data processed, the categories of data subjects, the minimum safeguards in place and the controller as well as the applicable retention periods must be specified. In this regard, the EDPS welcomes that a reference to the Bureau Notice, in which all the elements listed above are specified, has been incorporated into Article 12(1)(c) of the proposed amendment to IMMS. In line with the requirement of foreseeability and accessibility for the data subject, which is intertwined with the principle of transparency enshrined under Article 14 of the Regulation, the EDPS additionally welcomes the specification in the Bureau Notice that additional information on the processing of MEPs’ biometric data will be

⁹ See CJEU, 22 June 2021, *Latvijas Republikas Saeima (Penalty Points)*, C-439/19, ECLI:EU:C:2021:504, para. 105 (‘Penalty Points’), as well as case General Court judgment of 24 February 2022, *SIA*, C-175/20, ECLI:EU:C:2022:124 (‘SIA’), para. 55.

¹⁰ CJEU, 15 February 2016, N., C-601/15 PPU, EU:C:2016:84, para. 81.

¹¹ *SIA*, para. 54, and CJEU, 6 October 2020, *Privacy International*, C-623/17, ECLI:EU:C:2020:790, para. 65 (‘Privacy International’).

provided in a dedicated data protection notice which will be made available and communicated to data subjects, along with the corresponding record of processing activity at the time when personal data are obtained. The EDPS also welcomes the inclusion in the Bureau Notice of a link to the Parliament's Data Protection Registry, where the latter two documents will be published.

22. In light of the specific context of the processing operation in question, which involves the processing of biometric data and, as such, special categories of personal data, through the use of innovative technological solutions, the internal rules adopted by the Parliament will need to meet a heightened threshold of accessibility and foreseeability. As such, the EDPS recommends that the adopted internal rules, i.e. the proposed amendment to Article 12 of the IMMS and the accompanying Bureau Notice, be made as widely available as possible, for instance through their publication on the Parliament's website and its social media channels, as well as in the Official Journal of the European Union (**Recommendation 2**).
23. In light of the above, **provided that the Parliament takes into account the EDPS' recommendations 1 and 2, Article 12(1)(c) of the proposed amendment to the IMMS, is sufficient to be relied upon as a legal basis in Union law under Articles 5(1)(a) and 10(2)(g) of the Regulation for the processing of MEP's biometric data** in order for them to attest their attendance in the CAR via the biometric registration method foreseen in the Parliament's 2-year transitional system.

3.3.2. Task carried out in the public interest and reasons of substantial public interest

24. As previously explained in its Supervisory Opinion of 11 May 2023 (2022-1318), the EDPS considers that **financial fraud prevention**, including the necessity for democratically elected individuals to lead by example, can be **considered a substantial public interest that may justify the processing of biometric data**, provided that the other requirements of Articles 5(1)(a) and 10(2)(g) of the Regulation are met (i.e. legal basis in Union law, necessity and proportionality and suitable safeguards).

3.3.3. Necessity and proportionality

25. According to both Articles 5(1)(a) and 10(2)(g) of the Regulation, processing shall only be lawful if it is necessary and proportionate. Necessity implies the need for a fact-based assessment of the effectiveness of the measure for the objective pursued and of whether it is less intrusive compared to other options for achieving the same goal.¹² Once a measure is necessary, it should then be examined according to its

¹² See EDPS, 'Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit'

proportionality. This proportionality test generally involves assessing what safeguards should accompany a measure in order to reduce the risks posed by the envisaged measure to the fundamental rights and freedoms of the individuals concerned to an acceptable and proportionate level.¹³

26. In its Supervisory Opinion of 11 May 2023 (2022-1318), the EDPS confirmed that it shares the view of the Parliament that the **biometric processing operation for the MEPs' CAR attendance is necessary and proportionate, as long as the appropriate safeguards are put in place**. In this regard, the EDPS had deemed it necessary that the Parliament agree with the contractor a procedure ensuring the exclusive control of the Parliament over the TAMS at all times and ensure that any system processing biometric data uses state of the art encryption algorithms. Moreover, the EDPS had recommended that the Parliament:

1. consider using renewable (and revocable) biometric references as recommended in section 6.2.3. of ISO 24745 standard to adapt their system;
2. consider using an alternative system matching users' fingerprints against biometric templates stored in tokens held by users (e.g. smart cards); and,
3. should not copy CODICT data to the TAMS databases or, at least, the fingerprint readers' local database.

27. According to the information provided in the Bureau Notice, 'the fingerprints of Members wishing to make use of the biometric registration system shall be scanned for the purpose of generating a biometric template. The biometric templates are not a raw image of the fingerprints but a mathematical representation obtained by feature extraction from biometric data limited to characteristics necessary to perform identifications and verifications. These templates shall be protected by encrypted algorithms and stored as reference data on a token held by a user, the personal data shall be erased on request by the user and at the latest upon the return of the token to the Parliament at the end of the user's mandate. The Parliament shall have sole control over the encryption keys once the installation of the system has been completed. Each time a user places his or her finger on a reader, the fingerprint shall be scanned to extract only the necessary elements to temporarily generate a new biometric template that will be compared with the templates already stored in the token.'

28. The EDPS deems that due to the planned implementation, as described above, of a one-to-one system with no local storage of the biometric system, the EDPS' recommendations on the renewable and revocable biometric references as well as on the copying of CODICT data to the TAMS databases are no longer of concern.

¹³ See EDPS, [Guidelines](#) on assessing the proportionality of measures that limit the fundamental rights to privacy and to the protection of personal data.

Concerning the EDPS' finding that the Parliament should ensure that any system processing biometric data should use state of the art encryption algorithms, the Parliament has not provided the EDPS with any information on which encryption algorithms it intends to use, as such the EDPS is not in a position to pronounce itself on this. Concerning the remaining finding and recommendation, based on the safeguards to be implemented, as described in the paragraph above, the EDPS deems that they are satisfied. As such, provided that the Parliament is able to demonstrate that it has ensured that any system processing biometric data uses state of the art encryption algorithms, **the appropriate safeguards have been put in place and the biometric processing operation for the attestation of MEPs' attendance in the CAR is necessary and proportionate to achieve the substantial public interest of financial fraud prevention** under Articles 5(1)(a) and 10(2)(g) of the Regulation.

29. Based on discussions held between the Parliament and the EDPS during an introductory meeting held on 14 May 2024, in the view of the EDPS, the **fact that the biometric processing operation for the attestation of MEPs' attendance in the CAR is used by MEPs solely on a voluntary basis and is complementary to the badge-based system, is not an obstacle to the above finding of necessity and proportionality**, given that this system will be put in place for a 2-year transitional period which is necessary to test the foreseen technical systems and to give MEPs time to become accustomed to an automated procedure for attestation, but nonetheless has as its objective a full transition to a biometric system at the end of the 2-year period and ultimately achieving the substantial public interest of financial fraud prevention.

3.4. Lawfulness of processing based on consent under Articles 5(1)(d) and 10(2)(a) of the Regulation

30. According to Articles 5(1)(d) and 10(2)(a) of the Regulation, the processing of data subjects personal data and special categories of personal data, such as biometric data, is lawful if the data subject has given its (explicit) consent to the processing.
31. In accordance with Article 3(15) of the Regulation, consent must be **freely given, specific, informed** and an **unambiguous** indication of the data subjects wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to such processing. In accordance with Article 10(2)(a) of the Regulation, consent must be **explicit**. Moreover, the conditions for consent under Article 7 of the Regulation must be complied with.
32. 'Freely given consent' implies a real choice and control for data subjects. If a data subject feels compelled to consent or will endure negative consequences if they do not consent, then consent will not be valid. Moreover, consent will not be considered to be free if the data subject is unable to refuse or withdraw his or her consent without

detriment. The notion of imbalance between the controller and the data subject should also be taken into consideration.¹⁴

33. Based on the documentation provided, MEPs seem to have a real choice and control over whether or not to give their consent to the processing of their biometric data, given that the possibility to attest their attendance via biometric registration will be entirely on a voluntary basis. Only MEPs wishing to make use of the biometric registration system shall be required to provide their consent to the scanning of their fingerprints for the purpose of generating a biometric template. In principle, MEPs will not feel compelled to consent given that they will be able to instead attest their attendance in the CAR by means of the badge-based system. Additionally, MEPs will be able to withdraw their consent at any time and the biometric data will be erased at their request. As such, if MEPs give their consent to the processing of their biometric data for the attestation of their attendance via the biometric registration system, the EDPS is of the view that their consent could be considered to be 'freely given' in line with Article 3(15) of the Regulation.
34. According to both Articles 5(1)(d) and 10(2)(a) of the Regulation, consent of the data subject must be given in relation to a specific purpose for the intended processing activity. As such, 'specific consent' can only be obtained from data subjects if they are informed about these intended specific purposes. For consent to be 'informed', it should be based on the information provided by the Parliament in the dedicated data protection notice in line with Articles 14 and 15 of the Regulation and the information must be provided to the data subjects prior to obtaining their consent, so that they have a clear understanding of what they are agreeing to. For consent to be 'unambiguous' a clear affirmative act on the part of the data subject is required. Similarly, 'explicit consent' under Article 10(2)(a) of the Regulation refers to the way consent is expressed by the data subject, i.e. the data subject must give an express statement of consent, for instance by signing a written statement prepared by the controller.¹⁵
35. The Bureau Notice clearly identifies the specific purpose for the processing of MEPs' biometric data as 'reimbursing Members of the subsistence expenses that they have incurred in attending official activities held in the Parliament's place of work in Brussels and Strasbourg'. Moreover, the Bureau Notice makes reference to the dedicated data protection notice which will be communicated to the MEPs at the time when the biometric data are obtained. Additionally, in the context of a preparatory meeting held between the EDPS and the Parliament held on 14 May 2024, the latter confirmed that MEPs' consent would be collected via their signature of a consent form following the communication of the data protection notice and prior to the collection of their fingerprint/biometric data. As such, if MEPs give their consent to the processing of their biometric data for the attestation of their attendance via the

¹⁴ See Article 29 Working Party [Guidelines on consent](#).

¹⁵ See Article 29 Working Party [Guidelines on consent](#).

biometric registration system, the EDPS is of the view that their consent could be considered to be 'specific, informed and unambiguous/explicit' in line with Articles 3(15) and 10(2)(a) of the Regulation.

36. In light of the above, the criteria for consent under Articles 3(15), 7 and 10(2)(a) of the Regulation appear to be met and as such, in principle, **the EDPS sees no obstacles to the Parliament relying on MEPs' consent for the processing of their biometric data for the attestation of their attendance via the biometric registration means foreseen under the 2-year transitional system.**
37. However, the EDPS recalls that in line with the principle of accountability enshrined in Article 4(2) of the Regulation, once the biometric registration means is in place, the Parliament will need to be able to demonstrate compliance with the above-described criteria for consent. Moreover, in line with the principle of purpose limitation enshrined in Article 4(1)(b) of the Regulation, the Parliament will only be able to rely on the MEPs' consent as a legal basis for the processing of their biometric data under Articles 5(1)(d) and 10(2)(a) of the Regulation, for the specifically identified purpose of reimbursing Members of the subsistence expenses that they have incurred in attending official activities held in the Parliament's place of work in Brussels and Strasbourg.

3.5. Choice of ground for lawfulness of processing

38. In light of the above assessment, it appears that the requirements under both Articles 5(1)(a) / 10(2)(g), i.e. (substantial) public interest, and Articles 5(1)(d) / 10(2)(a), i.e. (explicit) consent, are met. As such, the Parliament would, in principle, be able to rely on either lawful ground for the processing of MEPs' biometric data for attestation of their attendance in the CAR via the biometric registration method during the 2-year transitional period.
39. It is important to note that the Parliament has clearly indicated that if it chooses to rely on consent for any part of the processing, it is fully prepared to respect that choice and stop that part of the processing if an individual MEP withdraws consent. Sending out the message that data will be processed on the basis of consent, while actually some other lawful basis is relied on, would otherwise be fundamentally unfair to individuals. In other words, the Parliament cannot swap from consent to other lawful bases. Because of the requirement to disclose the lawful basis, which the Parliament as controller is relying upon at the time of collection of personal data, the Parliament must have decided in advance of collection what the applicable lawful basis is.¹⁶
40. If Parliament were to rely on Articles 5(1)(a) and 10(2)(g) of the Regulation, it would have to be ensured that data subjects are clearly informed that the use of the

¹⁶ See European Data Protection Board, Guidelines 05/2020 on consent under Regulation 2016/679, paras. 122, 123.

biometric registration system and the collection of their biometric data for this purpose is entirely voluntary. Therefore, given that the Parliament intends to make the possibility to use the biometric registration method entirely voluntary in any case, in the interest of fairness, and of providing more clarity and legal certainty to the data subjects on the voluntary nature of the biometric registration system, the EDPS recommends that **Parliament rely exclusively on MEPs' consent** under Articles 5(1)(d) and 10(2)(a) of the Regulation specifically for the processing of MEPs' biometric data for attestation of their attendance in the CAR via the biometric registration method foreseen by the Parliament in its 2-year transitional system and that it update the Bureau Notice and all other relevant data protection documentation accordingly to reflect reliance on this lawful ground (**Recommendation 3**).

41. The EDPS notes that it sees no obstacles to the Parliament relying on MEPs' consent for the processing of their biometric data for the attestation of their attendance via the biometric registration method because MEPs have a true choice whether or not to consent given that the badge-based system will be available as an alternative. However, **once the 2-year transitional period expires and the fully biometric method of attestation of attendance is in place, the Parliament will no longer be able to rely on MEPs' consent under Articles 5(1)(d) and 10(2)(a) of the Regulation. Instead, the Parliament will need to rely on Articles 5(1)(a) and 10(2)(g) of the Regulation**, for which the EDPS has determined that the requirements are met in Section 3.2. of this Opinion.¹⁷ In this regard, the data subjects will need to be informed of the change of lawful ground and all data protection documentation will need to be updated accordingly.
42. As previously explained, the scope of this Opinion relates exclusively to the voluntary biometric registration method foreseen as part of the 2-year transitional system. Nevertheless, the EDPS notes that if MEPs decide not to use the voluntary possibility to attest their attendance via the biometric registration system, they will have no choice but to resort to the badge-based default method. As such, the **Parliament needs to rely on Article 5(1)(a) of the Regulation for the processing resulting specifically from the default badge-based method also foreseen as part of the 2-year transitional system and the Parliament needs to demonstrate, prior to the commencement of that processing operation, that the requirements of Article 5(1)(a) of the Regulation are met.**

¹⁷ Note that it will be necessary to reassess the 'legal basis in Union law' criteria under Articles 5(1)(a) and 10(2)(g) when Article 12 of the IMMS is amended at the end of the 2-year transitional period, as per Article 12(1) of the IMMS.

4. CONCLUSION

In light of the above, in this Supervisory Opinion, the EDPS has made the following **recommendations** to ensure the Parliament's compliance with the Regulation:

1. The Parliament should rely exclusively on MEPs' consent under Articles 5(1)(d) and 10(2)(a) of the Regulation during the 2-year transitional period specifically for the processing of MEPs' biometric data for attestation of their attendance in the CAR via the biometric registration method and the Parliament should update the Bureau Notice and all other relevant data protection documentation accordingly to reflect reliance on this lawful ground (**Recommendation 3**).
2. The Parliament should specify in Article 12(1)(c) of the proposed amendment to the IMMS that biometric registration will only apply for attestation of attendance in the central attendance registry (**Recommendation 1**) and the Parliament should make the proposed amendment to Article 12 of the IMMS and the accompanying Bureau Notice as widely available as possible, for instance through their publication on the Parliament's website and its social media channels, as well as in the Official Journal of the European Union (**Recommendation 2**).

In light of the **accountability principle** enshrined under Article 4(2) of the Regulation, the EDPS expects the Parliament to implement the above recommendations accordingly and has decided to **close the case**.

Brussels, 5 December 2024

(e-signed)

Wojciech Rafał WIEWIÓROWSKI