

EDPS Formal comments on the draft Commission Implementing Regulation amending Commission Regulation (EC) No 1010/2009 of 27 October 2009 laying down rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

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 8 May 2025, the European Commission consulted the EDPS on the draft Implementing Regulation amending Commission Regulation (EC) No 1010/2009 of 27 October 2009 laying down rules for the implementation of Council Regulation (EC) No 1005/2008² establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing ('the draft implementing regulation').
2. The objective of the draft implementing regulation is to amend the current Commission Regulation N° 1010/2009, following the revision³ of the IUU Regulation. The main amendments aim at detailing the rules on the functioning of a digital information management system (CATCH), as well as clarifications in relation to reporting requirements.

¹ OJ L 295, 21.11.2018, p. 39.

² Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (IUU Regulation)

³ Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control, OJ L, 2023/2842, 20.12.2023

3. The draft implementing regulation is adopted pursuant to Article 52 of the IUU Regulation.
4. The EDPS previously issued formal comments⁴ on the Proposal for a Regulation amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control.
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. The EDPS welcomes the reference to this consultation in Recital 30 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 acts⁵.
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. Comments

2.1. General comments

8. The EDPS welcomes the introduction into the draft implementing regulation of Recital 25 and a new Article 36, which are dedicated to the protection of personal data, and refer to the European data protection legal framework. For the sake of clarity, the EDPS recommends to specify in Recital 25 that Regulation 2016/679⁶ applies for the processing of personal data by Member States.

⁴ EDPS Formal Comments on the Proposal for a Regulation amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries controls, issued on 18 July 2018

⁵ 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.

⁶ 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 (GDPR), OJ L 119, 4.5.2016, p. 1–88

9. The EDPS also welcomes the distinction made between the roles of the Commission and the competent authorities of Member States under EU data protection law, in paragraph 2 of Article 36. At the same time, the EDPS considers that the roles and responsibilities of the different entities involved in the processing of personal data should be further specified.

2.2. Roles and responsibilities

10. The EDPS recalls that the concepts of controller, joint controller and processor play a crucial role in the application of data protection law, since they determine who is responsible for compliance with different data protection rules, and how data subjects can exercise their rights in practice. Furthermore, in line with Articles 28 of the EUDPR and 26 of the GDPR, where two or more controllers together determine the purposes and means of the processing, they are considered to be joint controllers. In addition, the concept of controllership does not necessarily refer to one single entity, but can also involve multiple parties playing a role in a processing operation. As a result, and as confirmed by the Court of Justice of the European Union (CJEU)⁷, each of the actors involved would have obligations under data protection law. In case of joint controllers, the distribution of tasks between them has to be specified by means of an arrangement between them.
11. Against this background, the EDPS welcomes the reference to Articles 10 and 11 of Implementing Regulation (EU) 2019/1715⁸ in Article 6a (11) of the draft implementing regulation, with regard to processing of personal data in CATCH. In particular, Article 11 of the latter regulation delineates the respective roles and responsibilities of the Commission and the competent authorities of the Member States, considered as joint controllers of data processing operations.
12. At the same time, the EDPS notes that, pursuant to Article 6a (5) (6) and (7) of the draft implementing decision, the access to data stored in this information management system is not only provided to the Member States and the Commission, but also to the European Fisheries Control Agency (EFCA) and to other users, including competent authorities and operators of third countries, who may be granted a partial access by the Commission. The EDPS notes with satisfaction that in the latter case, such partial access should not include access to personal data, except

⁷ Judgment of the Court of Justice of the European Union of 5 June 2018, *Wirtschaftsakademie Schleswig-Holstein*, C-210/16, paragraph 29. See also the EDPS Guidelines on the concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725, 7 November 2019, p. 11

⁸ Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019 laying down rules for the functioning of the information management system for official controls and its system components (the IMSOC Regulation) (Text with EEA relevance), OJ L 261, 14.10.2019, p. 37–96

where the conditions for lawful transfers of personal data established by the EU data protection laws are fulfilled by the applicant of the third country.

13. Since the European Fisheries Control Agency should have the ‘same access rights as the Commission, in order to assist the Commission and the Member States in the uniform and effective application of the rules of the Common Fisheries policy’⁹, the EDPS considers that the Commission and EFCA should be considered as joint controllers, given that the tasks that would be entrusted to EFCA are inextricably linked with those falling within the responsibility of the Commission.

2.3. Storage duration

14. Article 6a (10) of the draft implementing regulation would provide a storage duration of up to 10 years for the storage of personal data from the catch certificates and related documents of documentation.
15. The EDPS recalls that pursuant to the principle of storage limitation, personal data can be kept ‘for no longer than is necessary for the purposes for which the personal data are processed’. The EDPS considers that a justification is needed to substantiate the proportionality of the chosen retention period, in particular with regard to Article 22(4) of Regulation (EC) N° 1005/2008, which does provide such a duration. Absent further justification, the envisaged retention period of 10 years does not seem to comply with the requirement of storage limitation and should be reduced as far as the processing of personal data is concerned.

Brussels, 13 June 2025

(e-signed)
Wojciech Rafał WIEWIÓROWSKI

⁹ Article 6a (5) of the draft implementing regulation