



EDPS Formal comments on the draft Commission Implementing Regulation laying down a list of specific high-value datasets and the arrangements for their publication and re-use

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 Community institutions and bodies and on the free movement of such data ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 7 June 2022, the European Commission issued the Proposal for an Implementing Regulation laying down a list of specific high-value datasets and the arrangements for their publication and re-use ('the draft Proposal').
2. The objective of the draft Proposal is to establish the list of high-value datasets belonging to the thematic categories set out in Annex I to Directive (EU) 2019/1024 and held by public sector bodies among the existing documents to which that Directive applies. The draft Proposal also lays down the arrangements for publishing and reusing high-value datasets, in particular the applicable conditions for re-use and the minimum requirements for disseminating data via application programming interfaces ('APIs')².
3. The draft Proposal is adopted pursuant to Article 14(1) of Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information.³ The EDPS issued on 10 July 2018 an Opinion on the proposal for this Directive⁴.

¹ OJ L 295, 21.11.2018, p. 39.

² Article 1 of the Proposal.

³ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56–83).

⁴ [EDPS Opinion 5/2018 on the proposal for a recast of the Public Sector Information \(PSI\) re-use Directive, issued on 10 July 2018.](#)



4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 7 June 2022, pursuant to Article 42(1) of Regulation 2018/1725⁵ ('EUDPR'). In this regard, the EDPS welcomes the reference to this consultation in Recital 13 of the Proposal.
5. 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 acts⁶.
6. 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 Proposal that are relevant from a data protection perspective.

2. Comments

2.1. General comments

7. The EDPS recognises the legitimate objective of fostering the re-use of public sector information (PSI), as long as the development of data sharing in the internal market respects the EU legal framework in the field of personal data protection⁷. A balanced approach should be followed in all cases of PSI re-use where the protection of privacy and personal data is at stake.
8. The EDPS notes that Recital 8 of the draft Proposal refers to the '*Union law on the protection of individuals with regard to the processing of data*' in cases where making high-value datasets available entails the processing of personal data. The EDPS also recalls that Recital (52) and Article 1(4) of Directive 2019/1024 specify that that Directive does not affect the protection of individuals with regard to the processing of personal data

⁵ 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 (OJ, 21.11.2018, L.295, p. 39).

⁶ 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.

⁷ [Comments of the EDPS in response to the public consultation on the planned guidelines on recommended standard licences, datasets and charging for the reuse of public sector information initiated by the European Commission, issued on 22 November 2013.](#)
[EDPB-EDPS Joint Opinion 03/2021 on the Proposal for a regulation of the European Parliament and of the Council on European data Governance \(Data Governance Act\), issued on 10 March 2021, paragraphs 18-20.](#)

under Union and national law, particularly Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council and including any supplementing provisions of national law⁸. Against this background, it is clear that the whole EU legal framework on PSI re-use, including this draft Proposal, must respect the EU data protection legal framework.

9. Recital 5 of the draft Proposal lays down that *‘The provisions of Union and Member State legislation that go beyond the minimum requirements set out in this draft Implementing Regulation, in particular in cases of sectoral law, are to continue to apply’*. With respect to the specific category of *‘Companies and company ownership’*, Recital 10 encourages Member States to go beyond the minimum requirements with respect to the scope of datasets and arrangements for re-use set out in the draft Proposal. Similarly, Recital 11 states that Member States should be able to complement the lists of the datasets set out in the Annex to the draft Proposal with already accessible public sector information, whenever such data are thematically related and considered of high value in light of the elements described in Article 14(2) of Directive (EU) 2019/1024. In particular, this Recital specifies that *‘this includes information that constitutes personal data, whenever Member States consider that this is necessary and genuinely meets objectives of general interest, e.g. anti-money-laundering and combat terrorist financing’*.
10. The EDPS wishes to stress that complementing the lists of datasets already set out in the Annex of the draft Proposal also requires full respect of EU data protection legislation. With regard to information on money laundering and terrorist financing, the EDPS understands that the information regarding *‘companies and company ownership’* listed in the Annex of the Proposal do not include information concerning beneficial ownership, as defined under Article 3(6) of Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing⁹. In this respect, the EDPS recalls that beneficial ownership information should only be accessible for the purpose of identification and prevention of money-laundering and terrorist financing to competent authorities who are in charge of enforcing the law and to obliged entities when taking customer due diligence measures. Access by the public to beneficial ownership information access would require a specific necessity and proportionality assessment and be subject to a separate set of rules laying down appropriate safeguards¹⁰. Therefore, the EDPS recommends deleting the final sentence of

⁸ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56–83).

⁹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117).

¹⁰ [EDPS Opinion 12/2021 on the anti-money laundering and countering the financing of terrorism \(AML/CFT\) package of legislative proposals, 22 September 2021, paragraphs 22-27.](#)

recital (11) which might be misunderstood as suggesting that personal data that is relevant for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing should generally be made publically accessible and available for re-use.

2.2. Additional conditions for ensuring compliance with personal data protection

11. Article 4(4) of the draft Proposal envisages additional conditions to be imposed on the re-use of personal data. According to the current wording, public sector bodies holding high-value datasets listed in the Annex ‘*may*’ impose such additional conditions that shall restrict the possibilities for reusing personal data ‘*only to the extent necessary*’ to ensure the protection of individuals with regard to the processing of personal data. The EDPS considers that this wording might create uncertainty and discourage the implementation of measures to protect individuals with regard to the processing of their personal data. As mentioned above, any re-use of personal data should respect the Union legislation concerning the protection of personal data. Therefore, the EDPS suggests to replace ‘*may*’ by ‘*shall*’, and ‘*only to the extent*’ by ‘*where*’. The whole paragraph would read as follows: ‘*Public sector bodies holding high-value assets listed in the Annex shall impose additional conditions on the re-use of personal data in the scope of the specific high-value datasets that shall restrict the possibilities for reusing personal data where necessary to ensure the protection of individuals with regard to the processing of personal data*’.
12. The EDPS regrets the absence in the draft Proposal of any example of additional conditions or limitations which should be envisaged when making personal data available for re-use. Against this background, the EDPS recalls that, in their Joint Opinion on the Data Governance Act Proposal, the EDPB and the EDPS have strongly recommended ‘*(...) to clarify that the re-use of personal data held by public sector bodies may only be allowed if it is grounded in Union or Member State law which **lays down a list of clear compatible purposes** for which the further processing may be lawfully authorised or constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23 of the GDPR*’¹¹. The same Joint Opinion also recalled in more general terms that the re-use of personal data should always respect the ‘*principles of lawfulness, fairness and transparency as well as purpose limitation, data minimization, accuracy, storage limitation, integrity and confidentiality*’¹² in line with Article 5 of Regulation (EU) 2016/679 (GDPR)¹³.

¹¹ EDPB-EDPS Joint Opinion 03/2021 on the Proposal for a regulation of the European Parliament and of the Council on European data Governance (Data Governance Act, issued on 10 March 2021, paragraph 77.

¹² EDPB-EDPS Joint Opinion 03/2021 on the Proposal for a regulation of the European Parliament and of the Council on European data Governance (Data Governance Act, issued on 10 March 2021, paragraph 73.

¹³ 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, OJ L 119, 4.5.2016, p. 1–88.

13. The EDPS invites also the Commission to consider the inclusion, in the Annex to the draft Proposal, of possible technical arrangements to be put in place when making datasets that include personal data available for re-use of personal data, in particular through Application Programming Interfaces (APIs) and bulk download. The EDPS also recalls the importance of anonymisation as a means of finding a balance between the interests in making public sector information re-use possible and the various obligations under data protection legislation, as also recalled by Directive (EU) 2019/1024¹⁴.
14. The EDPS welcomes the inclusion, in the report on the implementation of the draft Proposal, of a requirement for Member States to provide to the Commission information on the existence data protection impact assessments carried out in accordance with Article 35 of the GDPR¹⁵.

2.3. The geospatial thematic category

15. Section 1.2 (c) of the Annex states that '*Member States shall take into consideration the ongoing implementation of Directive 2007/2/EC as well as the obligations foreseen by Article 67(3) of Regulation (EU) 2021/2116*'. Article 67(5) of the same Regulation specifies that '*Member States shall limit public access to data sets referred to in paragraphs 3 and 4 where such access would adversely affect the confidentiality of personal data, in accordance with Regulation (EU) 2016/679*'. Therefore, the EDPS recommends to also refer explicitly to paragraph 5 of Article 67.

Brussels, 15 July 2022

(e-signed)

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¹⁴ EDPS Opinion 5/2018 on the proposal for a recast of the Public Sector Information (PSI) re-use Directive, issued on 10 July 2018, paragraph 26. See e.g. recital (52) of Directive (EU) 2019/1024.

¹⁵ Article 5(3)(e) of the draft Proposal.