

EDPS Formal comments on the draft:

- **Commission Delegated Regulation supplementing Regulation (EU) No 2021/691 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Globalisation Adjustment Fund for Displaced Workers (EGF)**
- **Commission Implementing Regulation setting out the format to be used for the reporting of irregularities concerning the European Globalisation Adjustment Fund for Displaced Workers (EGF) under Regulation (EU) 2021/691 of the European Parliament and of the Council**
- **Commission Delegated Regulation supplementing Regulation (EU) No 2021/2116 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development and repealing Commission Delegated Regulation (EC) 2015/1971**
- **Commission Implementing Regulation setting out the frequency and the format of the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, under Regulation (EU) No 2021/2116 of the European Parliament and of the Council and repealing Commission Implementing Regulation (EU) No 2015/1975**

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 31 May 2023, the European Commission consulted the EDPS on the following draft Regulations:
 - **Commission Delegated Regulation supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, and**

¹ OJ L 295, 21.11.2018, p. 39.

repealing Commission Delegated Regulation (EU) 2015/1971 ('the AGRI draft Delegated Regulation');

- Commission Implementing Regulation setting out the frequency and the format of the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, under Regulation (EU) 2021/2116 of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2015/1975 ('the AGRI draft Implementing Regulation');
- Commission Delegated Regulation supplementing Regulation (EU) 2021/691 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Globalisation Adjustment Fund for Displaced Workers (EGF) ('the EGF draft Delegated Regulation');
- Commission Implementing Regulation setting out the format to be used for the reporting of irregularities concerning the European Globalisation Adjustment Fund for Displaced Workers (EGF) under Regulation (EU) 2021/691 of the European Parliament and of the Council ('the EGF draft Implementing Regulation').

2. Under Article 50(3) of Regulation (EU) 2021/2116 of the European Parliament and of the Council², Member States should make available to the Commission information about irregularities and other cases of non-compliance with the conditions set out in their common agricultural policy (CAP) strategic plans, suspected fraud cases detected and steps taken to recover undue payments in connection with those irregularities and frauds. The objective of the AGRI draft Delegated Regulation is to determine which irregularities are to be reported and to establish which data are to be provided by Member States to the Commission³. The objective of the AGRI draft Implementing Regulation is to set out the frequency and format of the reporting of irregularities by Member States pursuant to Article 50(3) of Regulation (EU) 2021/2116⁴.
3. Under Article 23(1), first subparagraph point (e) and second subparagraph, of Regulation 2021/691 of the European Parliament and the Council⁵, Member States must report irregularities, including fraud, related to the European Globalisation Adjustment Fund for Displaced Workers (EGF), to the Commission. The objective of the EGF draft Delegated Regulation is to set out the criteria for determining the cases of irregularity to be reported by Member States and the data to be provided in that context⁶. The objective of the EGF draft Implementing Regulation is to set out the

² 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).

³ See Article 1 of the AGRI draft Delegated Regulation.

⁴ See Article 1 the AGRI draft Implementing Regulation.

⁵ Regulation (EU) 2021/691 of the European Parliament and of the Council of 28 April 2021 on the European Globalisation Adjustment Fund for Displaced Workers (EGF) and repealing Regulation (EU) No 1309/2013 (OJ L 153, 3.5.2021, p. 48).

⁶ See Article 1 the EGF draft Delegated Regulation.

format to be used by Member States for the reporting of irregularities pursuant to Article 23(1), second subparagraph, of Regulation (EU) 2021/691⁷.

4. The AGRI draft Delegated and Implementing Regulations are adopted pursuant to Article 52 of Regulation (EU) 2021/2116 and the EGF draft Delegated and Implementing Regulations are adopted pursuant to Article 23(6) and (7) of Regulation (EU) 2021/691.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 31 May 2023, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recitals 11 of both draft Delegated Regulations of the Proposal.
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 acts⁸.
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 Regulations that are relevant from a data protection perspective.

2. Comments

2.1. Purpose limitation

8. The EDPS notes that Articles 4(4) of both draft Delegated Regulations introduce the possibility to further use the information reported by the Member States, for purposes other than the protection of the Union's financial interests, if those Member States would give their express consent for this further use.
9. The EDPS would like to underline that any possible further use of this information must respect Article 7 and 8 of the Charter of Fundamental Rights and be in compliance with Regulation (EU) 2016/679 ('GDPR')⁹. In this regard, the EDPS would like to recall that, according to Article 5(1)(b) of the GDPR, personal data must be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes. In line with Article 6(4) of the GDPR, the processing for a purpose other than that for which the personal data have been collected is possible if based on a Union law (such as the Delegated Regulations at hand) which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1) GDPR.

⁷ See Article 1 the EGF draft Implementing Regulation.

⁸ 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.

10. Having this in mind, the EDPS appreciates the attempt of the Commission to reflect the principle of purpose limitation in Articles 4(4) of both draft Delegated Regulations which read: “[...] *the information [reported by the Member States] shall not be used for any purposes other than the protection of the Union's financial interests, unless the Member State providing it have given its express consent*”. At the same time, the EDPS is of the view that the current possibility for further processing based solely on the Member States’ consent, for virtually any other purpose, would be too broad and at odds with the very principle of purpose limitation.
11. Therefore, the EDPS considers that, without prejudice to the consent of Member States, specific categories of new purposes for which the information could be further processed must be listed in these Regulations in an exhaustive manner. In addition, these new purposes must be limited to what is necessary and proportionate to safeguard the objectives referred to in Article 23(1) GDPR.

2.2. Reference to the EDPS consultation

12. Finally, the EDPS welcomes the reference in recital 11 of the draft Delegated Regulations to this consultation of the EDPS and considers the same should be done in relation to the draft Implementing Regulations as well.

Brussels, 25 July 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI