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- Formal Comments of the European Data Protection Supervisor

Delegations will find in annex formal comments of the European Data Protection Supervisor on the above-mentioned proposal.



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23.05.2022

EUROPEAN DATA PROTECTION SUPERVISOR

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Brussels, 23 May 2022
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Subject: Formal Comments¹ of the European Data Protection Supervisor on the Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual management plan for bluefin tuna in the eastern Atlantic and the Mediterranean, amending Regulations (EC) No 1936/2001, (EU) 2017/2107, and (EU) 2019/833 and repealing Regulation (EU) 2016/1627

Your Excellency,
Mr Secretary-General,

Having regard to Article 42(1) of 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, please find enclosed Formal Comments on the Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual management plan for bluefin tuna in the eastern Atlantic and the Mediterranean, amending Regulations (EC) No 1936/2001, (EU) 2017/2107, and (EU) 2019/833 and repealing Regulation (EU) 2016/1627.

We have sent a copy of these Formal Comments to the President of the European Commission and the President of the European Parliament.

Yours sincerely,

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

Encl.: Formal Comments

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¹Article 20(1) of the EDPS Rules of Procedure provide that "In response to requests from the Commission pursuant to Article 42(1) of the Regulation, the EDPS shall issue opinions or formal comments."



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EDPS Formal comments on the Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual management plan for bluefin tuna in the eastern Atlantic and the Mediterranean, amending Regulations (EC) No 1936/2001, (EU) 2017/2107, and (EU) 2019/833 and repealing Regulation (EU) 2016/1627

1. Introduction and background

1. The following comments concern the Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual management plan for bluefin tuna in the eastern Atlantic and the Mediterranean, amending Regulations (EC) No 1936/2001, (EU) 2017/2107, and (EU) 2019/833 and repealing Regulation (EU) 2016/1627 ('the Proposal').
2. The aim of the Proposal is the implementation of ICCAT Recommendation 18-02 into EU law to allow the Union to comply with its international obligations and to provide operators with legal certainty regarding rules and obligations¹. ICCAT Recommendation 18-02 was adopted by the International Commission for the Conservation of Atlantic Tunas (the 'ICCAT') at its 21st special meeting in 2018, in order to establish a multiannual management plan for bluefin tuna in the eastern Atlantic and the Mediterranean.
3. These comments are provided in reply to the formal request by the Commission on 12 April 2022 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('EUDPR')². We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
4. These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available. 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.

2. Comments

5. Pursuant to Article 2 of the Proposal, the Regulation would apply to Union fishing vessels and Union vessels engaged in recreational fisheries which catch, tranship or carry on board bluefin tuna. It would also apply to third country fishing vessels and

¹ COM(2019) 619 final, p. 2.

² 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 L 295, 21.11.2018, p. 39).



third country vessels engaged in recreational fisheries operating in Union waters and catching or carrying on board bluefin tuna, as well as to 'Union farms'.

6. The EDPS recalls that Article 4(1) of the General Data Protection Regulation³ ('GDPR') and Article 3(1) EUDPR define personal data as '*any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*'. Even the data concerning legal persons may therefore in some cases be considered as personal data, as clarified by the CJEU⁴. In these cases, the determining factor is whether the information 'relates to' an 'identifiable' natural person. Consequently, personal data would normally be processed in all cases where the information concerning the ship owner or master of the vessel as well as the farm owner relates to an identified or identifiable individual.
7. Chapter V of the Proposal provides for the electronic submission by Member States to the European Commission of certain information, to be transmitted to the ICCAT Secretariat. The information to be provided includes in particular the name and ICCAT number of vessels⁵ and, in case of joint fishing operations, the identity of 'operators', as well as information on the farms of destination⁶. 'Operator' is defined in Article 5(34) of the Proposal as '*the natural or legal person who operates or holds any undertaking carrying out any of the activities related to any stage of production, processing, marketing, distribution and retail chains of fisheries and aquaculture products*'. Sections 2 and 3 of Chapter V deal with 'catch recording' and 'landings and transshipments' respectively, and foresee a number of recording and reporting requirements for 'masters of catching vessels'.
8. Section 8 of Chapter V of the Proposal provides for the implementation, by Member States, of a Vessel Monitoring System (VMS) for their fishing vessels with a length overall equal to or greater than 12 meters in accordance with Annex XV⁷. The purpose of this system is the collection and continuous transmission of data, including the vessel's identification⁸.

³ 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).

⁴ Judgment of Court of Justice of European Union of 9 November 2010, *Volker und Markus Schecke Gbr and Hartmut Eifert v. Land Hessen*, Joined Cases C-92/09 and C-93/09, ECLI:EU:C:2010:662 at paragraph 53, where the CJEU considered that legal persons can claim the protection of Articles 7 and 8 of the Charter in so far as the official title of the legal person identifies one or more natural persons.

⁵ Articles 25 and 28 of the Proposal.

⁶ Article 29 of the Proposal.

⁷ Article 56 (1) of the Proposal.

⁸ Annex XV, point (1) (b) of the Proposal.

9. Section 9 of Chapter V of the Proposal is related to inspection activities, in accordance with the ICCAT Scheme of Joint International Inspection. Annex IX of the Proposal describes the modalities of such inspections, which include the drafting of reports by inspectors. In particular, point 12 of Annex IX foresees that copies of the report shall be given to the master of the vessel and to the government of the inspection party, which shall transmit copies to the appropriate authorities of the flag State of the inspected vessel and to the ICCAT Commission. Finally, Section 10 of Chapter VI focuses on enforcement measures, referring to Regulation 1224/2009 with respect to fishing vessels, and adding measures with respect to farms.
10. Against this background, the EDPS welcomes the reference to confidentiality in Article 56(6) of the Proposal concerning messages made available to the Member States inspection vessels, as well as in Annex VIII (4), which imposes an obligation of confidentiality on ICCAT regional observers when treating information. The EDPS also welcomes the general obligation of confidentiality contained in Article 64 of the Proposal.
11. The EDPS notes that the Proposal contains no direct reference to the applicability of Union data protection law. Article 64 of the Proposal contains an indirect reference, by referring to Article 112 of Regulation (EC) No 1224/2009. Article 112 of Regulation (EC) No 1224/2009 makes reference to both Directive 95/46/EC and Regulation (EC) No 45/2001, which have been repealed by Regulation (EU) 2016/679 and Regulation (EU) 2018/1725, respectively⁹.
12. The EDPS recommends adding a recital to recall the applicability of the GDPR and EUDPR to any activities covered by the Proposal involving the processing of personal data. The EDPS also suggests to clarify that the competent authorities and the Commission shall each be considered as controllers in relation to their own processing of personal data. Finally, the EDPS recalls the rules applicable to the transfers of personal data to third countries or international organisations¹⁰.

Brussels, 23 May 2022

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁹ In accordance with Article 94(2) GDPR, references to the repealed Directive 95/46 shall be construed as references to the GDPR. In the same vein, Article 99 EUDPR provides that references to Regulation (EC) No 45/2001 and Decision No 1247/2002/EC shall be construed as references to the EUDPR.

¹⁰ See Chapter V of the GDPR and EUDPR respectively.