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NOTE

From:	Mr Wojciech Rafał WIEWIÓROWSKI, European Data Protection Supervisor
On:	22 September 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Data Protection Supervisor (EDPS) on the two Proposals for Council Decisions on the signing and conclusion, on behalf of the European Union, of the Council of Europe Convention on the protection of the environment through criminal law

Delegations will find attached the above-mentioned opinion.

Encl.: EDPS opinion 25/2025

IM 9360 2025
23-09-2025

EDPS EUROPEAN DATA PROTECTION SUPERVISOR

WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

Received on
22. 09. 2025

E-MAIL

H.E. Ambassador Carsten GRØNBECH-JENSEN
Permanent Representative of Denmark to the European Union

Ms Thérèse BLANCHET
Secretary-General
Council of the European Union

Brussels,
WRW/MD/asj/D(2025)3483 **C2025-0710**
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Subject: Opinion of the European Data Protection Supervisor on the two Proposals for Council Decisions on the signing and conclusion, on behalf of the European Union, of the Council of Europe Convention on the protection of the environment through criminal law

Your Excellency,
Dear 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 our Opinion on the two Proposals for Council Decisions on the signing and conclusion, on behalf of the European Union, of the Council of Europe Convention on the protection of the environment through criminal law.

We have sent a copy of this Opinion to the President of the European Commission and the President of the European Parliament.

Yours sincerely,

Wojciech Wiewiórowski

Digitally signed by:
WOJCIECH RAFAŁ
WIEWIÓROWSKI (EUROPEAN
DATA PROTECTION SUPERVISOR)
Date: 2025-09-22 15:05:53 UTC

Encl.: Opinion

Cc: Mr Serge DE BIOLLEY. Director for Justice, Secretariat General of the Council

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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data protection authority

Opinion 25/2025

on the two Proposals for Council Decisions on the signing and conclusion, on behalf of the European Union, of the Council of Europe Convention on the protection of the environment through criminal law

edps.europa.eu

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 'With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies', and under Article 52(3)'... for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data'.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years. The selection procedure for a new EDPS mandate for a term of five years is still ongoing.

*Under **Article 42(1)** of Regulation 2018/1725, the Commission shall 'following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data'.*

This Opinion relates to two Proposals for Council Decisions on the signing and conclusion, on behalf of the European Union, of the Council of Europe Convention on the protection of the environment through criminal law[1]. This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Regulation (EU) 2018/1725. This Opinion is limited to the provisions of the Proposal that are relevant from a data protection perspective.

[1] COM(2025) 433 final and COM(2025) 434 final

Executive Summary

On 29 July 2025, the European Commission adopted two Proposals for Council Decisions on the signing and conclusion, on behalf of the European Union, of the new Council of Europe Convention on the protection of the environment through criminal law.

The EDPS recognises the legitimacy and the importance of the aim pursued by this Convention, whose objective is to prevent and combat environmental crime, as well as promoting and enhancing national and international cooperation and establishing minimum rules to guide States in their national legislation.

Against this background, the EDPS welcomes the introduction of a specific article dedicated to the protection of personal data in the new Convention, and the reference in the Preamble to the Council of Europe Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its amending Protocols.

The EDPS recommends ensuring that appropriate safeguards are in place for the transfers of personal data between EU Member States and third countries including, if appropriate, by the conclusion of bilateral or multilateral agreements.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ('EUDPR')[2], and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 23 November 2022, the Committee of Ministers of the Council of Europe set up and mandated the Committee of Experts on the protection of the environment through criminal law to draft a new Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172) ('the new Convention') by 30 June 2024.

2. On 7 July 2023, the Commission adopted a Recommendation for a Council Decision authorising the European Commission to participate, on behalf of the European Union, in negotiations on the new Convention[3]. The EDPS was not consulted on this recommendation.

3. By Decision of 28 September 2023, the Council of the European Union authorised the Commission to participate, on behalf of the European Union, in the negotiations on the new Convention[4].

4. On 14 May 2025, the Council of Europe's Committee of Ministers adopted the new Convention on the Protection of the Environment through Criminal Law. The purposes of this Convention are to prevent and combat environmental crime, promote and enhance national and international co-operation against environmental crime, establish minimum rules to guide States in their national legislation and thereby promote and enhance the protection of the environment[5].

5. Article 53 of the new Convention provides that the Convention shall be open for signature by the Member States of the Council of Europe. the non-member States which have participated in its elaboration and the European Union. Moreover, any non-member State

[2] OJ L 295, 21.11 2018, p 39.
[3] Recommendation for a COUNCIL DECISION authorising the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172), as well as a draft Explanatory Report thereto COM/2023/419 final
[4] Council Decision (EU) 2023/2170 of 28 September 2023 authorising the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172). OJ L, 2023/2170, 16.10.2023.
[5] Article 1 of the Council of Europe Convention on the protection of the environment through criminal law

of the Council of Europe which has not participated in the elaboration on the new Convention may be invited by the Committee of Ministers of the Council of Europe to accede to this Convention, under conditions specified in Article 54 of the new Convention.

6. On 29 July 2025, the European Commission adopted two Proposals[6] for a Council Decision on the signing and conclusion, on behalf of the European Union, of the Council of Europe Convention on the protection of the environment through criminal law ('the Proposals'). The legal bases of the Proposals are Article 83(2) and Article 218(5) and (6) subparagraph 2(a) of the Treaty on the Functioning of the European Union (TFEU).

7. The objectives of the Proposals are (1) to authorise the signing on behalf of the Union, of the Council of Europe Convention on the protection of the environment through criminal law, and (2) to approve this Convention[7].

8. The present Opinion of the EDPS is issued in response to consultations by the European Commission of 29 July 2025, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to these consultations, respectively in Recital 11 of the Proposal on the signing of the new Convention, and Recital 9 of the Proposal on the conclusion of this Convention. In this regard, the EDPS also notes that he was already previously informally consulted on one article[8] of the new Convention, pursuant to recital 60 of EUDPR.

2. General remarks

9. The EDPS acknowledges the legitimacy and the importance of the global objective pursued by the new Convention, which aims at improving the protection of the environment by preventing and combating environmental crimes. The need for a high level of environmental protection is enshrined in Article 37 of the Charter of Fundamental Rights of the European Union.

10. The EDPS recalls that, pursuant to Article 216(1) TFEU, international agreements concluded by the European Union '*are binding upon the institutions of the Union and on the Member States*'. Moreover, according to the settled case law of the Court of Justice of the European Union ('CJEU'), international agreements become from their coming into force '*an integral part of Community law*'[9] and they have primacy over acts of secondary Union legislation[10].

11. Furthermore, the *'obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness'*[11]. It is therefore essential to ensure that the obligations stemming from the new Convention would not prejudice these principles as far as data protection is concerned.

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[6] COM(2025) 433 final and COM(2025) 434 final
[7] Articles 1 of the Proposals
[8] Article 42-Data protection.
[9] Judgment of the Court of Justice of 30 April 1974, *R & V Haegeman v Belgian State*, ECLI:EU:C 1974 41, para. 5.
[10] Judgment of the Court (Grand Chamber) of 3 June 2008, *Intertanko and Others*, ECLI:EU:C 2008:312, para. 42.
[11] Judgment of the Court (Grand Chamber) of 3 September 2008, *Yassin Abdullah Kadi, Al Barakaat International Foundation v. Council and Commission*. ECLI:C:2008 461, para. 285.

12. Against this background, the EDPS notes that Chapter VI of the new Convention is dedicated to "international cooperation" among the Parties to the Convention, which implies exchanges of information, including personal data. In particular, Article 40(2) provides that this Convention might be considered as the legal basis for mutual assistance in criminal matters among competent authorities, in respect of the offences established in accordance with this Convention.

13. The EDPS welcomes the introduction of a specific article on data protection in Chapter VI - Article 42 - which recalls the need to respect *applicable legislation and international agreements governing the protection of personal data*, for any transfer of personal data by a Party. In this regard, the EPDS recalls that all Member States of the Council of Europe are parties to the Convention 108 of the Council of Europe[12], which is also applicable in the law enforcement area. Therefore, the EDPS welcomes the reference to this Convention, as well as the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data[13], in the Preamble of the new Convention. The EDPS supports efforts towards a prompt ratification by third countries of this Protocol as a meaningful step towards aligning with internationally recognised data protection principles, and as a signal of their engagement with broader standards and fundamental rights.

14. Furthermore, the EDPS positively notes the reference to data protection rules in Article 5(2)(b) of the new Convention, in the context of exchange of information for strategic and operational purposes at the national level.

3. Transfers of personal data from EU Member States to third countries

15. The EDPS recalls that in the absence of an adequacy decision, transfers of personal data from EU Member States to a third country may be based on another legal ground, including a legally binding and enforceable instrument between public authorities or bodies[14].

16. The EDPS notes that, pursuant to Article 49(2) of the new Convention, '*the Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it*'. In this respect, the EDPS considers that specific safeguards for the protection of personal data could be provided in such agreements, whenever an EU Member State transfers personal data on the basis of the new Convention to a third country, if there is not already a binding agreement

[12] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).
[13] Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS n°223).
[14] See Chapter V of 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 (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1-88 and Chapter V Article 36 of Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, pp. 89

governing the protection of personal data between these two States or an international agreement regulating the transfer of personal data, to which both are parties.

4. Conclusions

In light of the above, the EDPS recommends to clarify in the explanatory report that Article 49(2) of the new Convention also encompasses the possibility to refer to bilateral or multilateral agreements for purposes of supplementing the data protection provisions of the new Convention in relation to the transfers of personal data from EU Member States to third countries.

Wojciech Wiewiórowski

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