



# EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data  
protection authority

19 June 2023

## Opinion 23/2023

on the signing, conclusion and provisional application on behalf of the Union, of the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other (2023-2028)

*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.*

*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 (i) the Proposal for a Council Decision on the signing, on behalf of the Union, and provisional application of the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community on the one hand, and the Republic of Kiribati, on the other (2023-2028) and (ii) Proposal for a Council Decision on the conclusion, on behalf of the Union, of the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other (2023-2028). 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 Proposals that are relevant from a data protection perspective.*

## **Executive Summary**

The EDPS is consulted on the Commission proposals to sign, conclude and provisionally apply a Protocol on the implementation of the Fisheries Partnership Agreement between the EU and the Republic of Kiribati.

The EDPS welcomes the inclusion of a specific provision on data protection in Article 16 of the Protocol that usefully details the conditions and safeguards relating to the processing of personal data. For the purpose of transferring data, the EDPS nevertheless recommends to make use of the joint committee, consisting of representatives of the EU and Kiribati, to further detail these appropriate safeguards, enforceable data subject rights and effective legal remedies. In doing so, the EDPS recommends the Commission to take due account of the EDPB Guidelines 2/2020 on Articles 46(2)(a) and 46(3)(b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies.

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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) 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')<sup>1</sup>, and in particular Article 42(1) thereof,

**HAS ADOPTED THE FOLLOWING OPINION:**

### 1. Introduction

1. On 16 May 2023, the European Commission ('the Commission') issued:
  - a proposal for a Council Decision on the signing, on behalf of the Union, and provisional application of the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community on the one hand, and the Republic of Kiribati, on the other (2023-2028) ('the Signing Proposal')<sup>2</sup>; and
  - a proposal for a Council Decision on the conclusion, on behalf of the Union, of the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other (2023-2028) ('the Conclusion Proposal')<sup>3</sup>.
2. The objective of the Signing Proposal is (i) to authorise the signing, on behalf of the Union, of the Protocol on the implementation of the Fisheries Partnership Agreement between the European Community and the Republic of Kiribati (2023-2028) ('the Protocol')<sup>4</sup> and (ii) to provide for the provisional application of the Protocol<sup>5</sup>.
3. The objective of the Conclusion Proposal is to approve the Protocol<sup>6</sup>.
4. The objective of the Protocol is to implement the Fisheries Partnership Agreement between the European Community and the Republic of Kiribati by specifying in particular the conditions governing access by Union vessels to the fishing areas<sup>7</sup>.
5. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 16 May 2023, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 9 of the Signing Proposal and in Recital 7 of the

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> COM(2023) 253 final.

<sup>3</sup> COM(2023) 251 final.

<sup>4</sup> Article 1 of the Signing Proposal.

<sup>5</sup> Article 3 of the Signing Proposal.

<sup>6</sup> Article 1 of the Conclusion Proposal.

<sup>7</sup> Article 2(1) of the Protocol.

Conclusion Proposal. In this regard, the EDPS also positively notes that he was already previously informally consulted pursuant to recital 60 of EUDPR.

## 2. General remarks

6. On 23 July 2007, the Council adopted Regulation (EC) No 893/2007 on the conclusion of a Fisheries Partnership Agreement between the European Community and the Republic of Kiribati ('the Partnership Agreement')<sup>8</sup>.
7. The first protocol to the Partnership Agreement expired on 15 September 2012. The second protocol to the Partnership Agreement expired on 15 September 2015<sup>9</sup>.
8. On 28 January 2015, the Council authorised the Commission to open negotiations with Kiribati for the conclusion of a new protocol implementing the Partnership Agreement. Those negotiations were concluded and a new protocol implementing the Partnership Agreement for a period of five years (2023-2028) was initialed on 18 December 2022<sup>10</sup>.
9. The Protocol should now be signed and approved on behalf of the EU.
10. In this context, the EDPS understands that the roles and responsibilities of the EU and of the Member States for issuing and managing fishing authorisations are laid down in Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 ('the SMEFF Regulation')<sup>11</sup>. In this respect, the EDPS takes note that Title IV and in particular Article 43 of the SMEFF Regulation on relations with third countries and Regional Fisheries Management Organisations (RFMOs) clarify, to a certain extent, the roles and responsibilities of the Commission and the Member States regarding the exchange of information with third countries and RFMOs<sup>12</sup>.

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<sup>8</sup> Recital 1 of the Signing Proposal.

<sup>9</sup> Recital 2 and 3 of the Signing Proposal.

<sup>10</sup> Recital 4 of the Signing Proposal.

<sup>11</sup> Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008, OJ L 347, 28.12.2017, p. 81.

<sup>12</sup> Article 43 of the SMEFF Regulation: '1. When a Member State receives information from a third country or an RFMO which is relevant for the effective application of this Regulation, it shall communicate that information to the Commission or the body designated by it, and, where appropriate, to other Member States concerned, provided that it is permitted to do so under bilateral agreements with that third country or the rules of the RFMO concerned. 2. The Commission or the body designated by it may, in the framework of fisheries agreements concluded between the Union and third countries, under the auspices of RFMOs to which the Union is a contracting party, communicate relevant information concerning non-compliance with the rules of this Regulation, or serious infringements, to other parties to those agreements or organisations subject to the consent of the Member State that supplied the information and in accordance with Regulation (EC) No 45/2001.'

## Data Protection safeguards

11. The EDPS welcomes the inclusion of a specific provision on data protection in Article 16 of the Protocol. This article strengthens the level of protection for data subjects. In particular, the EDPS welcomes the clarification that:
- the data shall be processed by the competent authorities solely for the purposes of implementing the Partnership Agreement, and in particular for the purposes of fisheries management, monitoring, control and surveillance<sup>13</sup>;
  - personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject<sup>14</sup>;
  - personal data shall not be kept for longer than is necessary for the purpose for which they were exchanged, up to a maximum of ten years, unless the personal data are necessary to follow up an infringement, inspection or judicial or administrative proceedings. In such cases, the personal data may be stored for twenty years. If personal data are kept for longer, they shall be anonymised<sup>15</sup>.

### 3. International transfers of personal data

12. The EDPS recalls that in the absence of an adequacy decision, transfers of personal data to a third country may be based on a legally binding and enforceable instrument between public authorities or bodies<sup>16</sup>. In such case, such instrument should provide appropriate safeguards and ensure that enforceable data subject rights and effective legal remedies for data subjects are available<sup>17</sup>.
13. The EDPB has clarified in its Guidelines 2/2020 ('the EDPB Guidelines'), what safeguards should be put in place by legally binding and enforceable instruments between public bodies to enable transfers of personal data between these bodies on that basis<sup>18</sup>.
14. The EDPS notes and welcomes that Article 16 of the Protocol provides for many of those safeguards. In light of the EDPB Guidelines, the EDPS nevertheless encourages to complement Article 16 the Protocol by adding, in particular, the following provisions:
- To provide for definitions of the basic personal data concepts and rights<sup>19</sup>.

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<sup>13</sup> Article 16(2) of the Protocol.

<sup>14</sup> Article 16(3) of the Protocol.

<sup>15</sup> Article 16(8) of the Protocol.

<sup>16</sup> Article 48(2)(a) EUDPR and Article 46(2)(a) GDPR.

<sup>17</sup> Article 48(1) EUDPR and Article 46(1) GDPR.

<sup>18</sup> [European Data Protection Board \(EDPB\) Guidelines 2/2020 on articles 46 \(2\) \(a\) and 46 \(3\) \(b\) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies](#), issued on 15 December 2020. The same guidance also clarifies the safeguards required to be put in place by provisions to be inserted into administrative arrangements between public bodies, subject to authorisation from the competent supervisory authority.

<sup>19</sup> Para 16 of the EDPB Guidelines.

- To clarify that further processing of the transferred data by the receiving authority can only take place if it is compatible with the original purpose and previously notified to the transferring authority, which may oppose for specific reasons<sup>20</sup>.
- To provide for individual notification of data subjects as a rule (with the possibility to provide as well for some exceptions to such individual notification)<sup>21</sup>.
- To provide for data subjects' right of access, to rectification, erasure, and restriction of processing<sup>22</sup>.
- To further detail the provisions on the right to redress to ensure that data subjects are afforded independent and effective redress mechanism<sup>23</sup>.
- To provide for supervision mechanisms<sup>24</sup>.
- To provide that any personal data transferred pursuant to the Partnership Agreement prior to its effective termination shall continue to be processed in accordance with the data protection provisions of the Partnership Agreement<sup>25</sup>.
- To clarify in Article 16(11) of the Protocol that complaints relating to data processed under the controllership of the flag Member States' authorities are to be addressed to EU national data protection supervisory authorities and not to the EDPS (as Article 16(2) of the Protocol refers also to the flag Member States as controllers).

15. In this context, the EDPS notes that Article 16(13) of the Protocol provides that further safeguards and legal remedies may be established by the joint committee made up of representatives of the EU and Kiribati ('the Joint Committee'). In this respect, the EDPS recommends the Joint Committee to further detail the appropriate safeguards, enforceable data subject rights and effective legal remedies. In doing so, the EDPS recommends the Commission to take due account of the EDPB Guidelines.

## 4. Conclusions

16. In light of the above, the EDPS makes the following recommendations:

- (1) to make use of the Joint Committee to further detail appropriate safeguards, enforceable data subject rights and effective legal remedies listed in Article 16 of the Protocol. In doing so, the EDPS recommends the Commission to take due account of the EDPB Guidelines 2/2020 on Articles 46(2)(a) and 46(3)(b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies.

Brussels, 23 June 2023

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI

p.o. Leonardo CRVERA NAVAS  
Acting Head of EDPS Secretariat

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<sup>20</sup> Para 20 of the EDPB Guidelines.

<sup>21</sup> Para 31 of the EDPB Guidelines.

<sup>22</sup> Section 2.4.2 of the EDPB Guidelines.

<sup>23</sup> Section 2.7 of the EDPB Guidelines.

<sup>24</sup> Section 2.8 of the EDPB Guidelines.

<sup>25</sup> Para 64 of the EDPB Guidelines.



