

EDPS Formal comments on the draft Proposal for a Commission Implementing Regulation laying down implementing technical standards for the application of Article 15(1) of Directive (EU) 2021/2167 of the European Parliament and of the Council with regard to the templates to be used by credit institutions for the provision to buyers of information on their credit exposures in the banking book

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 23 June 2023, the European Commission submitted to the EDPS the draft Commission Implementing Regulation laying down implementing technical standards for the application of Article 15(1) of Directive (EU) 2021/2167 of the European Parliament and of the Council with regard to the templates to be used by credit institutions for the provision to buyers of information on their credit exposures in the banking book ('the draft Proposal').
2. The objective of the draft Proposal is to lay down implementing technical standards for the application of Article 15(1) of Directive (EU) 2021/2167 of the European Parliament and of the Council ('the Basic Act')², thus ensuring that a credit institution provides a prospective credit purchaser with necessary information regarding a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, and, if applicable, the collateral.
3. The draft Proposal is adopted pursuant to Article 16(6) of the Basic Act, which empowers the Commission to adopt the implementing technical standards developed by the European Banking Authority (EBA) to specify the templates to be used by

¹ OJ L 295, 21.11.2018, p. 39.

² Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU, OJ L 438, 8.12.2021, p. 1.

credit institutions for the provision of information referred to in Article 15(1) of the Basic Act.

4. The EDPS previously issued formal comments on the Proposal for a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral³, as well as informal comments on an earlier draft of the draft Proposal, on 11 May 2023.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 23 June 2023, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital (13) of the draft 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 acts⁴.
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 Proposal that are relevant from a data protection perspective.

2. Comments

8. The EDPS recommends including a reference to the applicability of Regulation (EU) 2016/679 of the European Parliament and of the Council ('GDPR')⁵ in a recital of the draft Proposal. A suggested wording for this recital is: "*Regulation (EU) 2016/679 of the European Parliament and of the Council applies to the processing of personal data in the context of this Implementing Regulation.*"
9. Article 6(2)(b) of the draft Proposal provides that the sharing of personal data must occur only insofar as necessary before entering into a contract for the transfer or sale

³ [Formal comments of the EDPS on the Proposal for a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral](#), issued on 24 January 2019.

⁴ 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.

⁵ 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.

of non-performing credit agreements. Recital 8 of the draft Proposal further clarifies that “*for data protection reasons, credit institutions should only be allowed to provide personal data where that is necessary to identify individuals whose credit agreements are non-performing.*”

10. The EDPS welcomes the aim of ensuring that credit institutions only disclose personal data prior to the transfer or sale of non-performing credit agreements to cases where such disclosure is necessary. In line with this objective, the EDPS recommends amending Recital 8 to specify that credit institutions should only be allowed to provide personal data “*in cases where it is necessary*” to identify individuals whose credit agreements are non-performing. In addition, the EDPS recommends clarifying in which circumstances the identification of the individuals by the purchaser prior to entering into a contract for the transfer or sale of non-performing credit agreements would be considered necessary⁶. Finally, the EDPS recommends also amending Article 6(2)(b) of the draft Proposal to specify that the sharing of personal data before entering into a contract for the transfer or sale of non-performing credit agreements must only occur in cases where it is necessary to identify individuals whose credit agreements are non-performing.
11. The EDPS notes that the implementing technical standards specify the data fields, under Annex I, a ‘data glossary’, under Annex II, as well as the instructions for the use of data templates, under Annex III to the draft Proposal. The EDPS welcomes the references in Recital 11 and Annex III of the draft Proposal, according to which where credit institutions agree to share information other than the types listed in Annex I of the draft Proposal with prospective buyers, “*Such additional information should as a rule not contain additional personal data, in line with the principle of data minimisation and data protection by design and by default.*”⁷

Brussels, 25 July 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁶ In line with the principles of data minimisation and data protection by default, under Articles 5(1)(c) and 25(2) of the GDPR.

⁷ Annex III, page 3 of the draft Proposal.