

EDPS Formal comments on the draft Commission Delegated Regulation amending Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry

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 8 August 2023, the European Commission consulted the EDPS on the draft Commission Delegated Regulation amending Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to reflect in the Delegated Regulation (EU) 2019/1122² changes introduced by Directive (EU) 2023/959³ to the Emissions Trading System (ETS) Directive⁴, as well as to introduce some elements of simplification that have emerged from the past experience and remove references to legal provisions that have been deleted from the ETS Directive⁵.
3. The draft Delegated Regulation is adopted pursuant to Article 19(3) of ETS Directive.
4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 12 of the Proposal.

¹ OJ L 295, 21.11.2018, p. 39.

² Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (OJ L 177, 2.7.2019, p. 3).

³ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ L 130, 16.5.2023, p. 134).

⁴ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁵ See p. 2 of the Explanatory Memorandum of the draft Delegated Regulation.

5. 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 acts⁶.
6. 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 Delegated Regulation that are relevant from a data protection perspective.

2. Comments

2.1. Reception of the data stored in the Union Registry

7. The EDPS notes the insertion of a new subparagraph into Article 80(4) of the Delegated Regulation (EU) 2019/1122 concerning the reception of the data stored in the Union Registry by competent authorities referred to in Article 22 of Regulation (EU) No 596/2014⁷. The subparagraph would allow these competent authorities to receive, upon request to the central administrator if such requests are justified and necessary for the purposes referred to in the first subparagraph, data stored in the Union Registry at regular intervals determined in consultation with the central administrator.
8. The EDPS understands that these competent authorities already have the possibility to request the data stored in the Union Registry⁸ and welcomes that no additional purposes justifying such a request are introduced by the draft Delegated Regulation. The only substantial added value of the new subparagraph seems to be the fact that the competent authorities would be able to receive the data at regular intervals (determined in consultation with the central administrator). In that regard, the EDPS suggests to insert in the same subparagraph an obligation of the central administrator to evaluate on a regular basis whether this sending of the data to the competent authorities at regular intervals would continue to be justified and necessary.

Brussels, 25 September 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁶ 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.

⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

⁸ See Article 80(3) in connection with first paragraph of Article 80(4) of the Delegated Regulation (EU) 2019/1122.