



EDPS Formal comments on the draft Commission Delegated Regulation (EU) supplementing Council Regulation (EC) No 1217/2009 setting up the Farm Sustainability Data Network with rules for annual income determination, holding sustainability analysis and access to data for research purposes, and repealing Commission Delegated Regulation (EU) No 1198/2014

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 1 of February, the European Commission consulted the EDPS on the draft Commission Delegated Regulation (EU) supplementing Council Regulation (EC) No 1217/2009 setting up the Farm Sustainability Data Network with rules for annual income determination, holding sustainability analysis and access to data for research purposes, and repealing Commission Delegated Regulation (EU) No 1198/2014 ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to establish rules for fixing the threshold values delimiting the field of survey, for drawing up plans for the selection of holdings, for fixing the reference period for the standard outputs, for determining the general and principal types of farming, as well as for granting access to pseudonymised data for research purposes².

¹ OJ L 295, 21.11.2018, p. 39.

² Recital (2) of the draft Delegated Regulation.



3. The draft delegated regulation is adopted in accordance with Article 19a of the Regulation (EC) No 1217/2009³ as amended by the Regulation (EU) 2023/2674⁴ upon which the draft Delegated Regulation is based.
4. The EDPS previously issued the Opinion 18/2022 on the Proposal for a Regulation as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network⁵.
5. 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 the draft Delegated Regulation.
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 acts.
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 Delegated Regulation that are relevant from a data protection perspective.

2. Comments

2.1. Access for research purposes to pseudonymised data

8. Annex II of the draft Delegated Regulation sets out the rules and conditions for the Commission to grant access at Union level to pseudonymised data for research purposes referred to in Article 16(3) of Regulation (EC) No 1217/2009.
9. The EDPS recalls that Article 89(1) of the GDPR⁶ and Article 13(1) EUDPR set out the requirement that processing for research purposes shall be subject to appropriate safeguards for the rights and freedoms of the data subject.

³ Council Regulation (EC) No 1217/2009 of 30 November 2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Community (OJ L 328, 15.12.2009, p. 27).

⁴ Regulation (EU) 2023/2674 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network, OJ L, 2023/2674, 29.11.2023.

⁵ [EDPS Opinion 18/2022 on the Proposal for a Regulation as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network](#) issued on 11 August 2022.

⁶ 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.

10. The non-exhaustive list of safeguards set out in the above mentioned Articles focus on the following:
 - a) safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation;
 - b) these measures may include pseudonymisation;
 - c) however, in cases where the purposes of the processing (or further processing) can be fulfilled without identification of the individuals, the controller must go beyond pseudonymisation and must ensure that individuals can no longer be identified (anonymisation).
11. The EDPS welcomes Recital 7 of the Delegated Regulation, which specifies that rules on granting access to pseudonymised data for research purposes should be established to ensure the possibility of providing data fit for such purposes, while guaranteeing an adequate level of protection of individual data. In addition, it usefully clarifies that in accordance with Article 89(1) of GDPR and Article 13(1) of EUDPR, before providing access to pseudonymised data, it should be ensured that the purposes of the data processing could not be fulfilled using anonymised data.
12. Finally, the EDPS welcomes that according to point d of the Annex II to the draft Delegated Regulation, applicants for data access for research purposes must show that pseudonymised data is necessary for fulfilling the purposes of the processing and explain why this purpose cannot be achieved by using anonymous data.
13. The EDPS welcomes the attention paid to data protection aspects in the draft Delegated Regulation, notably having regard to the need to ensure respect for the principle of data minimisation and to provide for the use of anonymous data in cases where the purposes of the processing (or further processing) can be achieved in this manner. In the light of the above, the EDPS does not have any specific recommendations for the draft Delegated Regulation.

Brussels, 26 February 2024

(e-signed)

Wojciech Rafał WIEWIÓROWSKI