



EDPS comments on the draft Decision of the European Committee of Regions on internal rules concerning restrictions of certain rights of data subjects (Article 25 of Regulation (EU) 2018/1725) (Case 2021-0345)

1. Introduction

These comments relate to the draft implementing rules of the European Committee of Regions (CoR) concerning restrictions of certain rights of data subjects pursuant to Article 25 of Regulation (EU) 2018/1725¹ (hereinafter ‘the Regulation’).

The EDPS’ comments refer to the document submitted on 23 March 2021 (hereinafter ‘the draft internal rules’). We issue these comments in accordance with Article 41(2) of the Regulation.

2. General comments

- The EDPS welcomes that the CoR followed the updated EDPS Guidance on Article 25 of the Regulation², published on 24 June 2020.
- The EDPS welcomes that EESC will only restrict data subject’s rights under Article 25 of the Regulation based on the proposed internal rules, which provide a legal basis thereto. As these restrictions seek to temporarily render unavailable certain rights that lie at the heart of the right to data protection, their legal basis should be well defined. In this regard, it appears to the EDPS that the internal rules are duly limited to the types of processing operations the CoR performs or expects to perform and that each type of processing operation is linked to its specific ground(s) for restriction under Article 25 (1) of the Regulation.
- The EDPS welcomes that CoR will perform a necessity and proportionality test on a case-by-case basis before restrictions are applied, under Article 4(1) of the draft internal rules, and that Article 4(3) of the draft internal rules provides for the obligation to document the application of restrictions.

¹ Regulation (EU) 2018/1725 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.

² Available on the EDPS website via: [20-06-24 edps guidance on article 25 of the new regulation and internal rules en.pdf \(europa.eu\)](https://edps.europa.eu/20-06-24-edps-guidance-on-article-25-of-the-new-regulation-and-internal-rules-en.pdf)

- The EDPS welcomes the CoR's intention to make the draft rules enforceable on the twentieth day following that of their publication in the Official Journal of the European Union, given the importance of all persons concerned being aware of its provisions, and in compliance with Article 25(5) of the Regulation as regards restrictions to data subjects' rights.

3. Recommendations

The EDPS recommends verifying whether Article 3(1)(n) of the draft internal rules should additionally include point (g) of that paragraph in the activities listed under this indent.

The EDPS notes that only Recital 3 of the draft internal rules identifies the President of the CoR as the controller. The EDPS recommends to also including the identity of the controller in the CoR decision itself.

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Done at Brussels, 20 April 2021

(e-signed)

Delphine HAROU