

Formal comments of the EDPS on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection

1. Introduction

On 6 May 2018, the European Commission tabled a Proposal for a Regulation amending Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection¹ (hereafter the “Proposal”). The EDPS received the Proposal on 28 May 2018 for consultation.

The aim of the Proposal is to support the European Agenda on Migration by providing EU policy and decision-makers with better and timelier statistics on asylum and managed migration. Therefore, the Proposal introduces new statistics and new disaggregation of statistics, while increasing the frequency of statistics on returns and obligations to leave from annual to quarterly.

The Proposal was presented without an accompanying Impact Assessment. However, the Commission stressed in the Explanatory Memorandum that as the Proposal would have no significant economic, social or environmental consequences and would not impose additional burden on businesses or the public, the conduction of an Impact Assessment was not necessary.² Furthermore, the Commission pointed out that the Proposal would bring no changes to the themes or subject matter of statistics already collected under Regulation (EC) No 862/2007, nor would it have any adverse effects on data protection, since all existing obligations, guarantees and safeguards would remain applicable.³

One of the EDPS’ tasks is to advise the Commission services in the drafting of new legislative proposals with data protection implications. In this respect, the EDPS notes that he was not consulted on the Proposal at the inter-service consultation stage. Nevertheless, he welcomes the consultation by the Commission at the present stage of the legislative process.

The EDPS has limited the comments below to the provisions of the Proposal that are particularly relevant from a data protection perspective.

2. EDPS Comments

The EDPS acknowledges the importance of comprehensive statistics on migration and international protection and also understands the need for more precise, more frequent and timelier statistics, as they enable policy-makers to monitor and assess the developments in this dynamic policy

¹ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, , p. 23).

² Cf. COM (2018) 307 final, p. 7.

³ Cf. COM (2018) 307 final, p. 7 and 8.

environment. In addition, comprehensive statistics provide policy-makers with relevant data which can contribute for the adoption of more effective Union policies.

The EDPS notes that the Proposal will introduce new statistics regarding first-time asylum applicants and Dublin re-examination requests as well as new disaggregation of asylum statistics, resettlement statistics, residence permits statistics and statistics on returns and obligations to leave. Moreover, the Proposal will increase the frequency of statistics on returns and obligations to leave from annual to quarterly.

The EDPS observes that the Proposal refers in Recital 7 to Regulation (EC) No 223/2009⁴ (hereinafter “the European statistics Regulation”) which establishes a solid framework for the development, production and dissemination of European statistics. The European statistics Regulation refers in Recital 22 to Directive 95/46/EC⁵ as well as Regulation (EC) No 45/2001⁶ and introduces in its Chapter V specific rules for the protection of statistical data. In this respect, the EDPS also welcomes that the Proposal stresses in Recital 10 that “[t]his Regulation guarantees the right to respect for private and family life and to the protection of personal data, as set out in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union”.

Against this background, the EDPS shares the view of the Commission that the Proposal will neither affect the scope of Regulation (EC) No 862/2007, nor is it likely to have any adverse effects on data protection, since the already existing and solid framework of the European statistics Regulation remains unaltered and therefore fully applicable.

However, the EDPS wants to take the opportunity to point out that Directive 95/46/EC has recently been repealed by Regulation (EU) 2016/679⁷ (the “GDPR”) and that Regulation (EC) No 45/2001 is currently under review to align it with the GDPR. For the sake of clarity and to prevent any doubt on the applicability of the GDPR and the new regulation that will soon replace Regulation (EC) No 45/2001, the EDPS recommends to insert in the Proposal a reference to the new data protection legislation.

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⁴ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (No longer in force, Date of end of validity: 24.5.2018).

⁶ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 (OJ L 8, 12.1.2001, p. 1).

⁷ 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 (OJ L 119, 4.5.2016, p. 1).