



## **EDPS Formal comments on the draft Commission Implementing Regulation laying down operational details for the product database established under Regulation (EU) 2017/1369 of the European Parliament and of the Council**

### **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')<sup>1</sup>, and in particular Article 42(1) thereof,

**HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

#### **1. Introduction and background**

1. On 30 November 2023, the European Commission consulted the EDPS on the draft Commission Implementing Regulation laying down operational details for the product database established under Regulation (EU) 2017/1369<sup>2</sup> of the European Parliament and of the Council ('the draft Implementing Regulation').
2. The objective of the draft Implementing Regulation is to set out operational details for the functioning of the product database ('EPREL') and detailed rules applying to suppliers placing on the Union market:
  - a) energy-related products covered by delegated acts supplementing Regulation (EU) 2017/1369 and Directive 2010/30/EU; and
  - b) tyres covered by Regulation (EU) 2020/740 on the labelling of tyres<sup>3</sup>.
3. The draft Implementing Regulation is adopted pursuant to Article 12 of Regulation (EU) 2017/1369.
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

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> OJ L 198, 28.7.2017, p. 1–23.

<sup>3</sup> Article 1 of the draft Commission Implementing Regulation.



welcomes the reference to this consultation in Recital 29 of the draft Implementing Regulation<sup>4</sup>.

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 acts<sup>5</sup>.
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 Commission Implementing Regulation that are relevant from a data protection perspective.

## **2. Comments**

### **2.1. Categories of personal data**

7. In line with Article 12(1) of the Regulation (EU) 2017/1369, the Commission is mandated to establish and maintain a product database consisting of a public part, a compliance part and an online portal giving access to those two parts.
8. With regard to the information in the public part of the database, Annex I of Regulation (EU) 2017/1369 includes among the information to be made publicly available the name or trademark, address, contact details and other legal identification of the supplier. With regard to the information to be entered in the online portal by the Commission, Annex I point 2 refers to contact details of the Member States' market surveillance authorities.
9. The EDPS welcomes that Article 6 of the draft Implementing Regulation specifies that only a generic suppliers' contact point will be made publicly available and used for aspects related to product compliance<sup>6</sup>.
10. The EDPS further welcomes that Article 20 of the draft Implementing Regulation specifies which personal information should be stored in EPREL to ensure the verification of identity of suppliers and which information should be provided by the users of EPREL accounts for suppliers and for market surveillance authorities. It also

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<sup>4</sup> The recital should, however, be amended to refer to Article 42(1) of Regulation (EU) 2018/1725 rather than to Article 42(2) of Regulation (EU) 2018/1725.

<sup>5</sup> 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.

<sup>6</sup> As noted by recital (16) of the draft Commission Implementing Regulation, the physical person or individual performing this particular task for the supplier may change over time, thus generic contact such as functional mailboxes and telephone services should be provided to ensure continuity over time of the contact points in EPREL and to limit the processing of personal data.

provides a reference to the need to comply with the EUDPR. The EDPS recommends, however, to replace the term “personal information” with “personal data” in Article 20(1) of the draft Implementing Regulation.

## **2.2. Storage duration**

11. Article 11 of the draft Implementing Regulation concerns the management of supplier user profiles and verification.
12. The EDPS welcomes that Article 11(3) specifies that user’s personal data should be deleted simultaneously to the deletion of their users’ account unless a) these data are necessary to legally identify the supplier and b) necessary to track access to technical model information. The EDPS also welcomes Article 11(4), which further specifies that personal data related to an EPREL supplier user profile, which has been inactive for over one year and that, after a double alert, has been blocked, should be deleted automatically one year after the day of blocking the account unless: a) keeping these data is necessary to legally identify the supplier and b) they have performed operations that needs to be logged.

Brussels, 14 December 2023

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI