



**EDPS Formal comments on the draft Commission Implementing Regulation laying down the rules for the application of Regulation (EU) 2023/988 of the European Parliament and of the Council as regards the modalities for consumers and other interested parties to inform the Commission of products that might present a risk to the health and safety of consumers and for the transmission of such information to the national authorities concerned**

**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 6 February 2024, the European Commission consulted the EDPS on the draft Implementing Regulation laying down the rules for the application of Regulation (EU) 2023/988 as regards the modalities for consumers and other interested parties to inform the Commission of products that might present a risk to the health and safety of consumers and for the transmission of such information to the national authorities concerned ('the draft Implementing Regulation').
2. The objective of the draft implementing regulation is:
  - to specify the modalities for the sending, by the consumers and other interested parties, of information to the Commission about products that might present a risk to the health and safety of consumers,
  - to specify the modalities for the transmission of such information to the national authorities concerned for possible follow-up<sup>2</sup>.

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

<sup>2</sup> Recitals 1 and 2 of the draft Implementing Regulation.



3. The draft Implementing Regulation is adopted pursuant to Article 34(4) of Regulation 2023/988<sup>3</sup>.
4. The EDPS previously issued formal comments<sup>4</sup> on the Proposal for a Regulation on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council.
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 Recital 9 of the draft Implementing 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<sup>5</sup>.
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 Implementing Regulation that are relevant from a data protection perspective.

## 2. Comments

### 2.1. General comments

8. The EDPS welcomes the reference, in Recital 8 of the draft Implementing Regulation, to the Union law on the protection of personal data, namely the Regulation (EU) 2016/679 ('the GDPR')<sup>6</sup>, the EUDPR and the Directive 2002/58/EC ('ePrivacy Directive')<sup>7</sup>, as applicable.

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<sup>3</sup> Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and of the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (Text with EEA relevance) PE/79/2022/REV/1, OJ L 135, 23.5.2023, p. 1–51.

<sup>4</sup> [Formal comments of the EDPS on the Proposal for a Regulation on general product safety, amending Regulation \(EU\) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council](#), issued on 18 August 2021.

<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> 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.

<sup>7</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)? OJ L 201, 31.7.2002, p. 37–47.

9. The EDPS also welcomes the introduction in the draft Implementing Decision of Article 4, dedicated to the retention of personal data. This article specifies a maximum data retention period of 5 years.

## **2.2. Automated filtering of information**

10. According to Article 2 of the draft Implementing Regulation, the information submitted by consumers should be filtered by the Safety Gate Portal ‘in an automated manner’ to verify whether the information provided concerns a product safety issue. The draft Implementing Regulation does not specify whether such information includes personal data. The EDPS understands, however, that the personal data related to the consumers and other interested parties would not need to be processed for the purpose of the automated filtering.
11. Should it be envisaged to process personal data to carry out the automatic filtering, suitable measures to safeguard the data subject’s rights and freedoms and legitimate interests should be in place. For the avoidance of doubt, the EDPS invites the Commission to be more explicit as regards the categories of data processed in the preliminary filtering.
12. Similar considerations apply to the automated processing of data related to the economic operator or the provider of the online marketplace through which the product has been purchased, as well as to the data of the responsible person for the product. The EDPS understands, however, that those data will mainly concern legal persons and no personal data would be used to carry out the automatic filtering as such. For the avoidance of doubt, the EDPS invites the Commission to be more explicit as regards the categories of data processed in the preliminary filtering.

## **2.3. Transmission of the information to the relevant Member States**

13. Article 3 of the draft implementing regulation allows for the transmission of the information collected by the Commission to the relevant Member States. The EDPS understands that the information transmitted to the relevant Member States may include personal data related to the consumer or other interested parties (name and contact details), as well as data relating the responsible person for the product, or the relevant provider of an online marketplace (which may in certain cases still involve personal data). The EDPS recalls that any personal data transmitted should only be processed by national authorities to follow up on the product safety issue, while applying all the other principles of the GDPR<sup>8</sup>.

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<sup>8</sup> Formal comments of the EDPS on the Proposal for a Regulation on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council, pages 3 and 4.

## **2.4. Retention period**

14. As mentioned above, the EDPS welcomes the introduction in the draft Implementing Regulation of a clear maximum duration, for the storage of personal data provided by the consumer and other interested party. He regrets, however, that there is no objective reason justifying the maximum duration of 5 years. The EDPS recommends introducing in a recital a provision substantiating that the proposed maximum retention period of 5 years is proportionate.

Brussels, 26 March 2024

*(e-signed)*  
Wojciech Rafał WIEWIÓROWSKI