

# EDPS SUPERVISORY OPINION ON THE DRAFT COMMISSION DECISION ON THE MEANS OF URGENT INTERNAL COMMUNICATION (Case 2024-0775)

## 1. INTRODUCTION

1. This Supervisory Opinion relates to the draft Commission decision on the means of urgent internal communication ('the draft decision'). The draft decision was communicated to the EDPS on 6 September 2024, in accordance with Article 41(1) of Regulation (EU) 2018/1725<sup>1</sup> ('the Regulation').
2. The EDPS issues this Supervisory Opinion in accordance with Article 58(3)(c) of the Regulation.

## 2. FACTS

3. On 6 September 2024, the Commission informed the EDPS of its draft decision on the means of urgent internal communication. In short, the draft decision provides that the Commission may reach out to staff members and other persons working for it ('staff') by using their mobile phone numbers for three defined purposes: (1) for security and safety purposes, (2) for business continuity purposes, or (3) for duly justified work-related purposes in accordance with Article 55(1) of the Staff Regulations.
4. On 18 September 2024, the Commission and the EDPS had an informal meeting, where the EDPS requested clarifications with regard to the purpose of processing private phone numbers of staff members in accordance with Article 55(1) of the Staff Regulations. On the same date, the Commission shared with the EDPS an updated version of the draft decision, following an inter-service consultation.

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<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and the Council 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, OJ, L 295, 21.11.2018, pp. 39-98.

5. As it was specified by the Commission at the above meeting, the lawful ground for the processing at stake is Article 5(1)(a) of the Regulation. The legal basis<sup>2</sup> for the Commission to obtain and process this personal data is provided by the Staff Regulations and the Conditions of Employment of Other Servants<sup>3</sup>, the Rules of Procedure of the Commission<sup>4</sup>, and the Decision on the Security in the Commission.<sup>5</sup> Taking into consideration, that such documents do not contain specific provisions with regard to the processing of private phone numbers of staff, the Commission concluded that the adoption of a decision is necessary to provide further details with regard to such processing.
6. The present Opinion concerns the updated version of the draft decision, which was communicated to the EDPS on 18 September 2024.

### **3. LEGAL ANALYSIS AND RECOMMENDATIONS**

#### **3.1. Processing of personal data falling within the scope of the Regulation**

7. The Regulation applies to the processing of personal data by all Union institutions, bodies, offices and agencies<sup>6</sup>. The Commission is an EU institution falling within the scope of the Regulation.
8. Private mobile phone numbers relate to identified or identifiable natural persons (i.e. staff and other persons directly or indirectly working for the Commission), and hence, constitute personal data within the meaning of Article 3(1) of the Regulation.
9. Furthermore, the operation of collecting, storing and using private mobile phone numbers constitutes processing of personal data, within the meaning of Article 3(3) of the Regulation, for which the Commission is the controller within the meaning of Article 3(8) of the Regulation.

#### **3.2. Compliance with the purpose limitation principle (Article 4(1)(b) of the Regulation)**

10. Personal data collected on the basis of the draft decision (i.e. private mobile phone numbers) should be processed for specified, explicit, and legitimate purposes, in accordance with Article 4(1)(b) of the Regulation ('purpose limitation principle').

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<sup>2</sup> Article 5(1) of the Regulation.

<sup>3</sup> OJ L 56, 4.3.1968, p.1.

<sup>4</sup> Rules of Procedure of the Commission [C(2000) 3614], OJ L 308, 8.12.2000, p. 26–34.

<sup>5</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission, OJ L 72, 17.3.2015, p. 41.

<sup>6</sup> Article 2(1) of the Regulation.

11. In the case at hand, Article 4(1) of the draft decision describes the purposes of processing of private mobile phone numbers. In particular, such personal data may be processed:

a) to reach staff for the purposes of alerting them of any immediate security threats and security measures the Commission takes to address them;

b) to reach staff during business continuity disruptions;

c) to reach staff for the purposes of Article 55(1) of the Staff Regulations, read in conjunction with Article 5 of Decision C(2022) 1788.

### 3.2.1. Processing for the purpose of security threats and security measures

12. Concerning the purpose defined in Article 4(1)(a) of the draft decision, the EDPS notes that the Commission plans to use private mobile phone numbers in case of security threats, as well as security measures taken to address such threats. Article 4(2) of the draft decision further specifies that such measures consist of warning and informing staff of “concrete security threats to them, to Commission information or to Commission assets, as well as issuing security guidance in such cases, especially when the usual means of internal communication are not operational”. Recital 2 of the draft decision also reiterates that the Commission should be able to inform staff of any risks to their safety and security and of the security measures taken. Finally, the draft decision refers to the Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission, that provides the legal basis for the Commission to take specific security measures<sup>7</sup> to prevent or control risks to security, in particular in the context of the Commission’s rights as a landlord or as an employer.

13. Based on the above, the EDPS concludes that the objective of the processing is sufficiently clear and it is explicitly described in the enacting terms of the draft decision.<sup>8</sup> Therefore, the purpose of the processing described in Article 4(1)(a) of the draft decision is explicit, specified, and legitimate in line with the purpose limitation principle enshrined in Article 4(1)(b) of the Regulation.

### 3.2.2. Processing for the purpose of contacting staff during business continuity disruptions

14. Concerning the purpose defined in Article 4(1)(b) of the draft decision, the EDPS notes that the Commission plans to use private mobile phone numbers of staff during business continuity disruption incidents. In accordance with Article 2(d) of the draft decision, “business continuity disruption refers to any event or circumstance, whether anticipated or unforeseen, that significantly impacts the ability of the Commission,

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<sup>7</sup> Article 12(1) lists a number of security measures, including: (a) securing of scenes and evidence, including access and exit control log files, CCTV images, in case of incidents or conduct that may lead to administrative, disciplinary, civil or criminal procedures;(b)limited measures concerning persons posing a threat to security, including ordering persons to leave the Commission’s premises, escorting persons from the Commission’s premises, banning persons from the Commission’s premises for a period of time, the latter defined in accordance with criteria to be defined in implementing rules;(c)limited measures concerning objects posing a threat to security including removal, seizure and disposal of objects;(d)searching of Commission premises, including of offices, within such premises; and (e)searching of CIS and equipment, telephone and telecommunications traffic data, log files, user accounts, etc.

<sup>8</sup> [Guidance for co-legislators on key elements of legislative proposals - draft for public consultation](#), p.6.

particularly its IT systems, physical assets, and staff members and other persons working directly or indirectly for the Commission, to continue its functions and operations without interruption or significant deviation from normal operational processes”. Article 4(1)(b) further specifies that such processing would take place in particular when two cumulative conditions are met. First, the usual means of communication are not operational and second, a system of two-way communication with staff is required for the purpose of ensuring the effectiveness of these alternative means of internal communication in the context of business continuity exercises.<sup>9</sup> The draft decision also refers to Article 24 of the Rules of Procedure, which provides that the members of the Commission and all departments are to take appropriate measures to ensure service continuity.

15. On the basis of the above, the EDPS concludes that the objective of the processing is sufficiently clear and it is explicitly described in the enacting terms of the draft decision.<sup>10</sup> Therefore, the EDPS concludes that the purpose of the processing described in Article 4(1)(b) of the draft decision is sufficiently explicit, specified, and legitimate, in line with the purpose limitation principle enshrined in Article 4(1)(b) of the Regulation.

### 3.2.3. Processing for contacting staff for the purposes of Article 55(1) of the Staff Regulations

16. Concerning the purpose defined in Article 4(1)(c) of the draft decision, the EDPS notes that the Commission plans to use private mobile phone numbers for the purposes of Article 55(1) of the Staff Regulations, which provides that “Officials in active employment shall at all times be at the disposal of their institution.” As specified in the draft decision, this provision should be read in accordance with Commission Decision C(2022) 1788 on working time and hybrid working, in particular Article 5 thereof. Article 5 of the above Commission Decision provides the rules on the daily working hours, including the right of staff to disconnect during from 19.00 to 8.00 during working days, at weekends, on public holidays and during the staff’s annual leave or other types of leave (‘disconnection period’). Additionally, the above article provides that line managers and other staff may not contact staff or request them to work during the disconnection period, except in three cases: a) emergency, b) pre-agreement, c) where the nature of the work or tasks require availability during such hours.
17. From the above, it is concluded that in accordance with Article 4(1)(c) of the draft decision, staff may be reached on their private mobile phone numbers for work-related purposes in the above three cases. Cases b), and c) are clearly defined, as it is straightforward to prove that there is pre-agreement between the line manager and

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<sup>9</sup> In accordance with Article 2(1)(e) of the draft decision, “security exercise or business continuity exercise means planned activities that the Commission undertakes to test and improve its readiness for handling threats, disruptions, and crises, identify vulnerabilities, and to train staff members and persons directly or indirectly working for the Commission on security and business continuity operational procedures such as evacuations, communication cascades or the Commission’s functions, aimed to strengthen preparedness and minimise the impact of security incidents and business continuity disruptions”.

<sup>10</sup> [Guidance for co-legislators on key elements of legislative proposals - draft for public consultation](#), p.6.

staff member, or that certain pre-determined functions require availability during the disconnection period.

18. However, the EDPS notes that the notion of ‘emergency’ is not defined neither in the Commission Decision C(2022) 1788, nor in the draft decision which is examined in the present opinion. It is also not clear how such an ‘emergency’ situation differs or relates to the purposes laid down in Article 4(1)(a) and (b) of the draft decision, namely to reach staff for the purposes of alerting them of any immediate security threats and security measures the Commission takes to address them, and to reach staff during business continuity disruptions.
19. Therefore, while the purpose of the processing, as described in Article 4(1)(c) of the draft decision is prima facie legitimate, considering that there is a legal ground to introduce such processing under Article 55 of the Staff Regulations, it is not sufficiently explicit, or specified as required by the principle of purpose limitation enshrined under Article 4(1)(b) of the Regulation. This is because the conditions that should be taken into consideration for assessing whether a certain situation constitutes an emergency that would allow for the contacting staff members on their private mobile phone numbers are not clearly articulated. In the absence of a definition of what constitutes an emergency, staff members who have access to private phone numbers<sup>11</sup> have a very broad discretionary power to contact staff members during the disconnection period.
20. **Recommendation 1:** The EDPS **deems necessary** that the Commission update the draft decision to further specify the purpose for which staff members may be contacted on their private phone number, in accordance with Article 4(1)(b) of the Regulation. In that regard, the draft decision should define the conditions that should be taken into consideration to assess what constitutes an emergency that would justify contacting staff members on their private phone number during the disconnection period.

### 3.3. Necessity and proportionality assessment

21. Article 8 of the Charter enshrines the fundamental right to the protection of personal data. The right is not absolute and may be limited, provided that the limitations comply with the requirements laid down in Article 52(1) of the Charter. To be lawful, any limitation on the exercise of the fundamental rights protected by the Charter must comply with a set of criteria, laid down in Article 52(1) of the Charter. In that respect, it must be established, among others that the limitations on the exercise of fundamental rights must be **necessary** to achieve the objective pursued, as well as **proportionate** in relation to the purpose pursued.<sup>12</sup>

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<sup>11</sup> Article 5 of the draft decision.

<sup>12</sup> [Assessing the necessity of measures that limit the fundamental right to the protection of personal data: a toolkit](#), p. 4, [Guidelines on assessing the proportionality of measures that limit the fundamental rights to privacy and the protection of personal data](#), p. 10, [Guidance for co-legislators on key elements of legislative proposals - draft for public consultation](#), p.11-12.

22. Therefore, the Commission should make sure that the measures introduced by the draft decision are necessary and proportionate to the purposes pursued.

### 3.3.1. Necessity and proportionality of processing in the context of security threats and security measures

23. Concerning the processing of private phone numbers for the purpose of alerting these persons of any immediate security threats and security measures the Commission takes to address them (Art. 4(1)(a) of the draft decision), the Commission clearly explains in its draft decision the conditions that justify the processing of private phone numbers of staff. Specifically, such conditions are met when there is an immediate security threat and staff needs to be alerted of the incident, as well as of the security measures taken. Such information should reach staff “at the same time to ensure equality of treatment, as quickly as possible, and by the most appropriate means available, such as by using a private mobile phone number”.<sup>13</sup>

24. The scope and the application of the measure in question is clear. Moreover, the Commission carried out an analysis and concluded that the purpose of informing staff about security threats and security measures taken cannot reasonably be achieved just as effectively by other less intrusive means, considering informing staff should take place “as quickly as possible”.<sup>14</sup> Therefore, from the information provided by the Commission, it is concluded that, the processing of private mobile phone numbers for the purpose describe in Article 4(1)(a) of the draft decision is necessary and proportionate to the purpose pursued.

### 3.3.2. Necessity and proportionality of processing during business continuity disruptions

25. Concerning the processing of private phone numbers for the purpose of contacting staff during business continuity disruptions (Art. 4(1)(b) of the draft decision), the Commission explains in its draft decision that such processing will take place “in particular when the usual means of communication are not operational and two-way communication with staff (...) is required, including for the purpose of ensuring the effectiveness of these alternative means of internal communication in the context of business continuity exercises”. The draft decision also specifies that business continuity disruption “makes it impossible for the Commission to fully maintain its normal activities”.<sup>15</sup> Finally, it highlights that there is a need for the Commission to prepare for potential disruption of its activities, in light of events “such as terrorist attacks, espionage activities as well as violent groups or individuals targeting the Commission or individuals working for the Commission, its IT systems, buildings, or other assets”.<sup>16</sup>

26. From the above, it is concluded that the scope and the application of the measure in question is clear and, and the purpose of processing private phone numbers to contact

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<sup>13</sup> Recital 2.

<sup>14</sup> C-184/20, [OT and the Vyriausioji tarnybinės etikos komisija](#), par. 85, [Guidance for co-legislators on key elements of legislative proposals - draft for public consultation](#), p.11.

<sup>15</sup> Recital 3.

<sup>16</sup> Recital 1.



staff during a disruption to business continuity cannot reasonably be achieved just as effectively by other less intrusive means.<sup>17</sup> Therefore, from the information provided by the Commission, it is concluded that the processing of private mobile phone numbers for the purpose describe in Article 4(1)(b) of the draft decision is necessary and proportionate to the purpose pursued.

### 3.3.3. Necessity and proportionality of processing for the purposes of Article 55(1) of the Staff Regulations

27. Concerning the processing of private phone numbers for the purpose of Article 55(1)<sup>18</sup> of the Staff Regulations in accordance with Commission Decision C(2022) 1788, namely contacting staff for work-related purposes when this is justified by an emergency, pre-agreement, or where the nature of tasks requires staff to be available outside of working hours, the Commission mentions in its draft decision that this is the least intrusive means of reaching out to staff. This is because, in accordance with the Commission, the alternative would be to ask staff to regularly check their work email or other means of internal communication, or reaching out to staff at their private home address.<sup>19</sup>
28. The Commission also notes that “In the past, the staff members’ private address was used to reach them for the purposes of Article 55(1) of the Staff Regulations. However, in view of the evolving societal reality and technological advancement, it has become less burdensome and more efficient, both for staff members and the administration, to reach staff members on their private mobile phones for the purposes of Article 55(1) of the Staff Regulations”.<sup>20</sup>
29. The EDPS welcomes the fact that the Commission examined certain alternatives when assessing whether the measure at stake is the least intrusive to achieve the desired outcome. Additionally, the EDPS welcomes the fact that the Commission provides safeguards by clearly defining the categories of staff who have access to private mobile phone numbers<sup>21</sup>.
30. Nonetheless, it appears that the rules governing the scope and the application of the measure at stake are not sufficiently clear and precise. Neither the draft decision, nor the Commission Decision C(2022) 1788 provide a definition or describe the conditions that should be taken into consideration to decide whether a given situation qualifies as “emergency”. As it has been analysed under paragraph 17 above, while it is straightforward to prove whether there is a pre-agreement or whether the function of a staff member requires availability outside working hours, it is difficult to prove the existence of an emergency that would justify contacting staff. In other words,

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<sup>17</sup> C-184/20, [OT and the Vyriausioji tarnybinės etikos komisija](#), par. 85, [Guidance for co-legislators on key elements of legislative proposals - draft for public consultation](#), p.11.

<sup>18</sup> As specified by the Commission, Article 55(1) of the Staff Regulation should be read in light of Article 5(6) of Commission Decision C(2022) 1788, which introduces the right to disconnect; See Recital 8, as well Article 4(1)(c) of the draft decision.

<sup>19</sup> Recital 10 of the draft decision.

<sup>20</sup> Recital 9 of the draft decision.

<sup>21</sup> Article 5 of the draft decision.

there is no legal certainty about the scope and extent of the interference when it comes to the processing of private phone numbers of staff in case of emergency.

31. Therefore, the necessity of the measure at stake has not been established. Additionally, in the absence of a detailed factual description of the measure at stake (i.e. clearly defining the conditions that should be met to allow usage of private phone numbers in case of emergency), the draft decision does not provide sufficient guarantees that private phone numbers of staff will be effectively protected against the risk of abuse.<sup>22</sup>
32. **Recommendation 2:** The EDPS **deems necessary** that the Commission clarify the scope and extent of contacting staff on their private phone numbers in case of emergency, by providing the definition of “emergency”, or the conditions that should be taken into consideration to conclude on whether a certain situation qualifies as an “emergency”.
33. Additionally, it appears that the Commission has not examined whether it could limit the interference to the right to privacy by granting staff the possibility to be provided with corporate phone numbers on corporate phones, or corporate phone numbers contained on an eSIM<sup>23</sup> where they could be contacted for the purposes of Article 55(1) of the Staff Regulations. While the provision of a corporate phone number also entails the processing of personal data of staff, the desired outcome would possibly be achieved with less interference with the right to privacy, as staff would have the possibility to separate work and private/family life. In that regard, the Commission should also analyse whether providing corporate phone numbers on corporate phones or corporate phone numbers contained on an eSIM to staff (and hence, processing corporate phone numbers) would limit the extent of the interference with the right to privacy, before concluding that the processing of private phone numbers of staff is the least intrusive measure to achieve the desired outcome.
34. **Recommendation 3:** The EDPS **deems necessary** that the Commission analyse whether the processing of corporate phone numbers would limit the extent of the interference with the right to privacy, in comparison to the processing of private phone numbers, before concluding that the processing of private phone numbers is the least intrusive means for contacting staff for the purposes of Article 55(1) of the Staff Regulations.

#### 3.4. Compliance with the storage limitation principle (Article 4(1)(e) of the Regulation)

35. The storage limitation principle provides for personal data to be “kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed”<sup>24</sup>. The draft decision does not specify at

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<sup>22</sup> [Guidance for co-legislators on key elements of legislative proposals - draft for public consultation](#), p.12.

<sup>23</sup> An eSIM is a digital SIM card embedded directly into a device, allowing the organisation to activate a mobile plan without needing a physical SIM card.

<sup>24</sup> Article 4(1)(e) of the Regulation.



all the retention periods of the private phone numbers of staff, processed for the purposes described therein.

36. The EDPS recommends that the time limits for storing private phone numbers of staff be clearly defined in the draft decision, in accordance with Article 4(1)(e) of the Regulation. The EDPS' understanding is that retaining such personal data would no longer be necessary as soon as a staff member leaves the service<sup>25</sup>.
37. **Recommendation 4:** The EDPS **deems necessary** that the draft decision provide that private phone number of staff member processed for the purposes defined in Article 4 of the draft decision be permanently deleted as soon as the staff member leaves the service.

## 4. CONCLUSION

As indicated above, in order to ensure compliance of the processing introduced in the draft decision with the Regulation, the EDPS **deems necessary** that the Commission:

38. Update the draft decision to further specify the purpose for which staff members may be contacted on their private phone number, in accordance with Article 4(1)(b) of the Regulation. In that regard, the draft decision should define the conditions that should be taken into consideration to assess what constitutes an “emergency” that would justify contacting staff members on their private phone number during the disconnection period (**Recommendation 1**).
39. Clarify the scope and extent of contacting staff on their private phone numbers in case of emergency, by providing the definition of “emergency”, or the conditions that should be taken into consideration to conclude on whether a certain situation qualifies as an “emergency” (**Recommendation 2**).
40. Analyse whether the processing of corporate phone numbers would limit the extent of the interference with the right to privacy, in comparison to the processing of private phone numbers, before concluding that the processing of private phone numbers is the least intrusive means for contacting staff for the purposes of Article 55(1) of the Staff Regulations (**Recommendation 3**).
41. Specify that the private phone number of a staff member processed for the purposes defined in Article 4 of the draft decision be permanently deleted as soon as the staff member leaves the service. (**Recommendation 4**).

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<sup>25</sup> See Article 47 of the Staff Regulation, which describes how services are terminated.

In light of the accountability principle, the EDPS expects the Commission to implement the above recommendations accordingly and has decided to **close the case**.

Done at Brussels