

EDPS Formal comments on the draft Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2023/2859 of the European Parliament and of the Council with regard to certain tasks of the collection bodies

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')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 4 March 2025, the European Commission consulted the EDPS on the draft Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2023/2859 of the European Parliament and of the Council with regard to certain tasks of the collection bodies ('the draft implementing Regulation').
2. Article 5 of Regulation (EU) 2023/2859 requires collection bodies to make available on the European Single Access Point information of relevance to financial services, capital markets and sustainability. In order to ensure that such information is provided in a harmonised fashion, the draft implementing Regulation would provide for a number of specifications².

¹ OJ L 295, 21.11.2018, p. 39.

² The specifications relate in particular the technical automated validations (Article 1); the characteristics of the qualified electronic seal (Article 2); the open standard licence (Article 3); the characteristics of the application programming interface (API) for the collection of ESAP data from the collection bodies (Article 4); the characteristics of metadata, as further specified in the Annex to the draft implementing Regulation (Article 5); the time limits for the transmission of API data by the collection bodies to the ESAP (Article 6); as well as an indicative list and characteristics of the acceptable data formats (Article 7).

3. The draft implementing Regulation would be adopted on the basis of Article 5(11), third subparagraph, of Regulation (EU) 2023/2859 ('the basic act')³, empowering the Commission to adopt the implementing technical standards referred to in Article 5(10).
4. The EDPS has issued formal comments⁴ on the draft proposal for a Regulation that was subsequently adopted as the basic act.
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 12 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 acts⁵.
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

8. The EDPS recalls that much of the information to be processed in the context of the draft implementing Regulation does not constitute personal data as it relates to legal rather than natural persons. However, there are instances in which Union or national law may require personal data to be made available to the public and available for centralised access via ESAP. Against this background, the EDPS recommends

³ Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, OJ L 2023/2859, 20.12.2023.

⁴ [EDPS Formal comments on \(i\) a proposal for a Regulation establishing a European single access point \(ESAP\) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, \(ii\) a proposal for a Directive amending certain Directives as regards the establishment and functioning of the European single access point and \(iii\) a proposal for a Regulation amending certain Regulations as regards the establishment and functioning of the European single access point](#), issued on 19 January 2022 ('EDPS formal comments on the basic act').

⁵ 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.

inserting in the draft implementing Regulation a recital referring to the applicability of Regulation (EU) 2016/679⁶ ('GDPR') and of the EUDPR.

9. Article 5(6) Regulation (EU) 2023/2859 requires entities to identify and indicate the inclusion of personal data in the information that they submit to a collection body. The indication that the information contains personal data is to be provided to ESAP by means of metadata accompanying the submitted information.
10. The Annex to the draft implementing Regulation includes among the metadata fields a 'personal data flag', which may have two possible values: (1) "true" when the information submitted contains personal data; or (2) "false" when the information submitted does not contain personal data. The EDPS welcomes this specification, which is relevant *inter alia* to ensure that such information is not retained for the purpose of being made available to ESAP, nor made accessible on ESAP, for longer than five years, unless otherwise provided in the relevant Union legislative acts⁷.
11. Having regard to Article 4 of the draft implementing Regulation, the EDPS recalls his previous recommendation, made in the formal comments on the basic act⁸, related to the need to require the implementation of technical and organizational measures aimed at avoiding excessive access to personal data via the API, notably in case of personal data related to administrative measures and other penalties regarding natural persons⁹.

Brussels, 29 April 2025

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁶ 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.

⁷ Article 5(1) *in fine* of Regulation (EU) 2023/2859.

⁸ See EDPS formal comments on the basic act, at page 8.

⁹ See also the EDPS formal comments on the draft implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2023/2859 with regard to the functionalities of the European single access point.