



EDPS Formal comments on the draft Commission Implementing Regulation establishing a common form for rail passengers' reimbursement and compensation requests for delays, missed connections and cancellations of rail services in accordance with Regulation (EU) 2021/782 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 Community institutions and bodies and on the free movement of such data ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 10 of March 2023, the European Commission consulted the EDPS on the draft Commission Implementing Regulation establishing a common form for rail passengers' reimbursement and compensation requests for delays, missed connections and cancellations of rail services in accordance with Regulation (EU) 2021/782 of the European Parliament and of the Council ('the draft Proposal').
2. The objective of the draft Proposal is to implement Articles 18(6) and 19(5) of Regulation (EU) 2021/782² that require the Commission to adopt an implementing act establishing a common form for reimbursement and compensation requests under this Regulation. The objective of this form is to make it easier for rail passengers to request reimbursement or compensation from railway undertakings in the event of cancellations or delays of a rail service.
3. The use of the form should allow passengers to provide a comprehensive overview of the relevant personal details and journey details to railway undertakings, ticket vendors and tour operators, thereby facilitating the processing of reimbursement and compensation requests by these undertakings³. Passengers should be able to submit

¹ OJ L 295, 21.11.2018, p. 39.

² OJ L 172, 17.5.2021, p. 1.

³ Recital (3) of the draft Proposal.



the common form for reimbursement and compensation requests to railway undertakings, ticket vendors and tour operators, as defined in Article 3 of Regulation (EU) 2021/782⁴.

4. In order to simplify the procedure for passengers applying for compensation and/or reimbursement, passengers should have the possibility to submit the common form for reimbursement and compensation requests, either as a physical document (paper-based) or by electronic means⁵.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 10 March 2023, pursuant to Article 42(1) of Regulation 2018/1725⁶ ('EUDPR'). In this regard, the EDPS welcomes the reference to this consultation in Recital 9 of the draft Proposal.
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 acts⁷.
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 Proposal that are relevant from a data protection perspective.

2. Comments

2.1. General comments

8. The EDPS welcomes that the reimbursement and compensation form in the Annex to the draft Proposal contains a generic reference to the data protection legal framework. This reference should be further specified by replacing the wording "*[d]ata protection rules apply*" by a more detailed reference (e.g., "*The General Data Protection Regulation*

⁴ Recital (5) of the draft Proposal.

⁵ Recital (6) of the draft Proposal.

⁶ Regulation (EU) 2018/1725 of the European Parliament and of 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, p. 39.

⁷ 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.

(Regulation (EU) 2016/679) applies to the processing of personal data by way of this form.”).

9. Furthermore, the EDPS recalls that Article 13 of Regulation (EU) 2016/679 (‘the GDPR’)⁸ provides for the obligation to provide information to data subjects from whom personal data are collected. This information requirement is necessary both for ensuring the fairness of processing operations and for enabling the exercise of data subjects rights. As a result, the form should be accompanied by a complete data protection notice in compliance with the GDPR. The EDPS therefore recommends clarifying that further information will be provided by the recipient of the form (e.g., by adding a sentence clarifying that *“Additional information about how your personal data will be processed is provided by the recipient of this form.”*).

10. Finally, the EDPS notes that the form invites passengers to “authorise” the recipient of the form to share their personal data “with other relevant parties if required for the processing of [their] request”. This wording could be understood as meaning that the legal basis for the processing of personal data would be the consent of the individual concerned, in accordance with Article 6(1)(a) GDPR. As accepting requests via the form and handling such requests constitutes a legal obligation, the EDPS recommends modifying this wording accordingly (e.g., by replacing the words *“I hereby authorise”* by *“I acknowledge that ...”*).

Brussels, 29 March 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁸ 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.