

## **EDPS Formal comments on the draft Commission Implementing Regulation (EU) laying down functional and technical specifications for the reporting interface module of Maritime National Single Windows**

### **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 13 September 2023, the European Commission consulted the EDPS on the draft Commission Implementing Regulation (EU) laying down functional and technical specifications for the reporting interface module of Maritime National Single Windows ('the draft implementing regulation'). The draft implementing regulation is accompanied by an Annex with detailed technical specifications.
2. The objective of the draft implementing regulation' and its Annex is to provide functional and technical specifications, standards and procedures in relation to the harmonised reporting interface module and the common user registry and access management system for the maritime National Single Windows created under Articles 6 and 12 of Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU<sup>2</sup> ('the basic act').
3. The draft implementing regulation is adopted pursuant to Articles 6(1)<sup>3</sup> and 12(4)<sup>4</sup> of the basic act.
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, 25.7.2019, p. 64.

<sup>3</sup> "The Commission shall, in close cooperation with the Member States, adopt implementing acts laying down the functional and technical specifications for the harmonised reporting interface module for the maritime National Single Windows. The functional and technical specifications shall aim to facilitate the interoperability with different technologies and reporting systems of the users."

<sup>4</sup> "The Commission shall, in close cooperation with the Member States, adopt implementing acts laying down the functional and technical specifications for the harmonised reporting interface module for the maritime National Single Windows. The functional and technical specifications shall aim to facilitate the interoperability with different technologies and reporting systems of the users."

recommends making a reference to this consultation in a recital of the draft implementing regulation.

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 implementing regulation that are relevant from a data protection perspective.

## 2. Comments

7. The EDPS notes that the exchange and processing of information through the reporting interface module ('RIM') and the common user registry and access management system ('URAM') will involve the processing of personal data, notably of senders<sup>6</sup>, persons crossing borders<sup>7</sup>, and persons sailing on board passenger ships operating to or from ports of Member States<sup>8</sup>. In relation to these passengers, the relevant types of personal data include: their family names; their forenames or initials; their sex; an indication of the category of age (adult, child or infant) to which they belong, or the age, or the year of birth; and, when provided by a passenger, information concerning the need for special care or assistance in emergency situations.
8. The EDPS welcomes that the Annex of the draft implementing regulation in specification 'URAM.05' provides that "*The URAM software shall implement access control mechanisms to ensure the protection of user information that is personal data, which shall be processed solely for the purpose of creating user accounts and managing the corresponding access rights. Personal data in the central registry shall be managed in accordance with the Regulation (EU) 2018/1725 and Regulation (EU) 2016/679.*" The EDPS recommends that a similar provision is included in the Annex where it provides for the technical specifications of the RIM, as well as in a recital of the draft implementing regulation.
9. The EDPS welcomes that the Annex of the draft implementing regulation in specification 'SA1' states that "*The RIM shall ensure confidentiality of information by*

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<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> Article 1(2) of the drafting implementing regulation: "*'sender' means a declarant or data service provider operating the IT system that sends electronic messages to MNSW or receives them via the reporting interface module*".

<sup>7</sup> Annex A(2) of the basic act and Article 8 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

<sup>8</sup> Annex A(6) of the basic act.

*encrypting information exchange between senders AS4 Access Point and RIM. The RIM shall decrypt and make the messages sent by a sender available to the MNSW-Core. The RIM shall use a Web Service Security (WSS) as standard to allow the secure exchange of messages between sender's AS4 Access Point and RIM.*" Similar measures would be required by technical specification 'URAM.03' for the URAM. Encryption, together with the measures described in specifications SA2 to SA5 (for the RIM) and URAM.04 (for the URAM) of the Annex, would play an important role in providing appropriate technical safeguards to ensure the secure transmission of information, included personal data, through the RIM and the URAM.

10. The EDPS notes that Recital (5) of the draft implementing regulation provides that *"Member States should be able to monitor network traffic and analyse system events, errors and exceptions, as well as integrate this information into their existing monitoring systems and processes. To accomplish this, the reporting interface module should provide suitable functionalities that allow events to be logged and stored and provide network traffic information to the Member States"*. In this context, technical specifications LR1 and LR2 in the Annex state that the RIM shall ensure *"logging and storage of events (e.g. delivery failures, delays, and recipient's error)"* and *"the storage of metadata of exchanged messages (e.g. dates and times, technical access point data of the sending and receiving access points, message types, and message identifiers)."* Although LR1 and LR2 give examples of events and metadata that may be logged and stored respectively, the EDPS considers that the types of events and metadata that may be concerned - in particular, insofar as they constitute personal data - should be clearly specified. Details could be provided, for example, by categorising both types of events and metadata into groups and providing a detailed description for each.
11. The EDPS also notes that Recital (6) of the draft implementing regulation provides that *"the common user registry and access management system should have a central authentication service and a central registry as key components. These components should work together to enable sender authentication across all reporting interface modules, providing a unified authentication mechanism"*. In addition, specification 'URAM.09' in the Annex states that *"The central authentication service shall log authentication attempts in JSON format with uniquely identifying unsuccessful attempts."* However, the Annex does not specify whether the information related to the unsuccessful authentication attempts that would be made available to the RIM would contain personal data, as well as the types thereof, which the EDPS invites the Commission to specify. In this context, the personal data provided to the RIM should be adequate, relevant and limited to what is necessary to enable Member States to manage security at their Domain level, in line with the data minimisation principle<sup>9</sup>.
12. Lastly, the EDPS notes that Recital (8) of the draft implementing regulation establishes that *"To provide single registration for senders to exchange information through the harmonised reporting interfaces in different Member States, Member States should be able to register senders in the central registry"*. Specifications 'URAM.10' to 'URAM.15' in the Annex provide specifications for the central registry, notably stating

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<sup>9</sup> Article 5(1)(c) GDPR.

that the “central registry shall allow Member States to view all data of the senders that they have previously registered”, “provide a search functionality for retrieving their registered senders’ data based on various search criteria”, “allow Member States to modify all their previously registered senders’ data to ensure data accuracy and validity”, and “offer reporting capabilities enabling Member States to analyse specific sender data, such as registration date, certificate validity and activity history.” However, the EDPS notes that while some specifications clarify the universe of senders whose personal data may be accessed by Member States (such as ‘URAM.12’, which states that Member States view “data of the senders that they have previously registered”), other specifications do not clearly specify the senders involved. Such clarification is particularly relevant for specification ‘URAM.15’ which provides that Member States may request reports on the activity history of registered senders. The EDPS considers it necessary to specify the senders involved in each specification, as the registry will contain personal data related to the senders.

13. Lastly, the EDPS notes that neither the basic act nor the draft implementing regulation specify the periods during which senders’ personal data would be maintained in the RIM or URAM. The EDPS recommends to define the retention periods applicable to the personal data of senders in the draft implementing regulation or in its Annex, in accordance with the storage limitation principle<sup>10</sup>.

Brussels, 18 October 2023

*(e-signed)*

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<sup>10</sup> Article 5(1)(e) GDPR.