

EDPS Formal comments on the draft Commission Delegated Regulation amending Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry

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 17 December 2024, the European Commission consulted the EDPS on the draft Commission Delegated Regulation amending Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry ('the draft delegated Regulation').
2. The objective of the draft delegated Regulation is to:
 - a. reflect in Delegated Regulation (EU) 2019/1122² changes stemming from Directive (EU) 2023/959³ and Decision of the EEA Joint Committee No 334/2023⁴;
 - b. introduce amendments to avoid negative impacts on operators that have no technical nor legal means to comply with previous EU Emissions Trading Systems (EU ETS) obligations;
 - c. ensure enforceability of Court rulings⁵; and
 - d. reflect transparency requirements stemming from Article 14(5) and (6) of Directive 2003/87/EC⁶.

¹ OJ L 295, 21.11.2018, p. 39.

² Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (OJ L 177, 2.7.2019, p. 3–62).

³ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ L 130, 16.5.2023, p. 134–202).

⁴ Decision of the EEA joint Committee No 334/2023 of 8 December 2023 amending Annex XX (Environment) to the EEA Agreement [2024/1419] (OJ L, 2024/1419, 13.6.2024).

⁵ In line with the newly proposed Article 58a in the draft delegated Regulation, the EDPS understands it concerns enforceability of a Member State's decision and ruling in accordance with Article 27 or Article 27a of Directive 2003/87/EC, or a ruling of the Court of Justice of the European Union, or of the European Free Trade Agreement Court.

⁶ Explanatory Memorandum of the draft delegated Regulation, p. 2.

3. The draft delegated Regulation is adopted pursuant to Article 19(3) of Directive 2003/87/EC⁷.
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 welcomes the reference to this consultation in Recital 12 of the draft delegated 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 acts⁸.
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 delegated Regulation that are relevant from a data protection perspective.

2. Comments

7. The EDPS understands that the draft delegated Regulation would entail only limited processing of personal data. Namely, Annex II of the draft delegated Regulation entails the introduction of Table VII-II, in Annex VII to the Delegated Regulation (EU) 2019/1122, listing the details of the aircraft operator contact person. The competent authority or aircraft operator should provide such information to the relevant national administrator⁹. The information includes, among others, the contact person's address, phone number and email address. The EDPS welcomes the clarification in Annex II of the draft delegated Regulation that the address, phone number and e-mail address concern the business contact details of the respective contact person and not his or her private contact details.
8. Given the subject matter and the provisions of the draft delegated Regulation, which do not raise significant issues having regard to the protection of personal data, the EDPS has no further comments on the draft delegated Regulation.

Brussels, 14 January 2024

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁷ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275, 25.10.2003, p. 32–46.

⁸ 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.

⁹ Article 15(1) Delegated Regulation (EU) 2019/1122.