

EDPS Formal comments on the draft Commission Implementing Regulation on the arrangements for the publication of the lists of operators and groups of operators and the information relating to the certificate provided to operators and groups of operators in accordance with Article 35(1) of Regulation (EU) 2018/848 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 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 21 November 2024, the European Commission consulted the EDPS on the draft Commission Implementing Regulation on the arrangements for the publication of the lists of operators and groups of operators and the information relating to the certificate provided to operators and groups of operators in accordance with Article 35(1)² of Regulation (EU) 2018/848³ of the European Parliament and of the Council ('the draft Implementing Regulation').
2. The objective of the draft Implementing Regulation is to provide the technical means for the publication of organic operator certificates issued by competent authorities, control authorities or control bodies in the electronic Trade Control and Expert

¹ OJ L 295, 21.11.2018, p. 39.

² Article 35(1) states that "[c]ompetent authorities, or, where appropriate, control authorities or control bodies, shall provide a certificate to any operator or group of operators that has notified its activity in accordance with Article 34(1) and complies with this Regulation. The certificate shall:

(a) be issued in electronic form wherever possible;

(b) allow at least the identification of the operator or group of operators including the list of the members, the category of products covered by the certificate and its period of validity;

(c) certify that the notified activity complies with this Regulation; and

(d) be issued in accordance with the model set out in Annex VI."

³ Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007, OJ L 150, 14.6.2018, p. 1.

System ('TRACES'). In particular, it aims to ensure the publication of essential information on the certificates previously issued during a period of five years prior to the date of issuance of the valid certificates in TRACES for five years from the date of their issuance⁴. In addition, the draft Implementing Regulation sets the rules on the publication of names and addresses of the operators and groups of operators that have been exempted from the obligation to be in possession of a certificate in accordance with Article 35(8) of Regulation (EU) 2018/848. Furthermore, the draft Implementing Regulation aims to define the cooperation between the Commission and Member States for the establishment and the update of the website.

3. The draft Implementing Regulation is adopted pursuant to Article 35(10)⁵ of Regulation (EU) 2018/848.
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.
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 acts⁶.
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. Pursuant to Article 2 of the draft Implementing Regulation, Member States shall make public the list of names and addresses of operators and groups of operators that have notified their activities in accordance with Article 34(1) of Regulation (EU) 2018/848 and that have been exempted from their obligation to be in possession of a certificate in accordance with Article 35(8)⁷ of Regulation (EU) 2018/848.

⁴ See also Recital 5 of the draft Implementing Regulation.

⁵ Article 35(10) states that “[t]he Commission shall adopt Implementing acts to provide details and specifications regarding the form of the certificate referred to in paragraph 1 and the technical means by which it is issued.”

⁶ 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.

⁷ Article 35(8) states that “Member States may exempt from the obligation to be in the possession of a certificate, provided for in paragraph 2, operators that sell unpacked organic products other than feed directly to the final consumer, provided that those operators do not produce, prepare, store other than in connection with the point of sale, or import such products from a third country, or subcontract such activities to a third party, and provided that:

(a) such sales do not exceed 5 000 kg per year;

(b) such sales do not represent an annual turnover in relation to unpacked organic products exceeding EUR 20 000; or

8. The EDPS notes that the draft Implementing Regulation would entail the processing of personal data⁸. Against this background, the EDPS welcomes recital 3 of the draft Implementing Regulation confirming that Member States should comply with the requirements for the protection of personal data pursuant to the GDPR⁹ when making public the names and addresses of the operators and groups of operators that have been exempted from the obligation to be in possession of a certificate in accordance with Article 35(8) Regulation (EU) 2018/848.
9. Pursuant to Article 3 of the draft Implementing Regulation, the Commission shall set up and maintain a Union website on the national lists of names and addresses of operators and groups of operators exempted from the obligation to be in possession of a certificate under its central internet address which includes links to the websites of Member States. The Commission shall provide updated internet links according to the information sent by Member States.
10. Given the subject matter and the provisions of the draft Implementing Regulation, which do not raise significant issues having regard to the protection of personal data, the EDPS has no further comments on the Proposal.
11. The EDPS recommends to add a reference to this consultation in the recital of the draft Implementing Regulation.

Brussels, 14 January 2025

(e-signed)

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(c) the potential certification cost of the operator exceeds 2 % of the total turnover on unpacked organic products sold by that operator.”

⁸ In particular, such processing may occur personal data when the operator is either a natural person or a company whose name or other information relates to an identified or identifiable individual. See also judgement of Court of Justice of European Union of 9 November 2010, *Volker und Markus Schecke Gbr v. Land Hessen and Eifert v. Land Hessen and Bundesanstalt für Landwirtschaft und Ernährung*, Joined Cases C-92/09 and C-93/09, at paragraph 53, where the CJEU considered that legal persons can claim the protection of Articles 7 and 8 of the Charter in so far as the official title of the legal person identifies one or more natural persons.

⁹ Regulation (EU) No 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, OJ L 119, 4.5.2016, p. 1.