



EDPS formal comments on the draft Commission Delegated Regulation amending Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office as regards setting out categories of operational personal data and categories of data subjects for the purpose of data processing in the index

1. Introduction and background

The European Public Prosecutor’s Office (‘EPPO’) has been established by Council Regulation (EU) 2017/1939 of 12 October 2017¹ to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union.

As a Union agency, which carries out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU, the EPPO processes operational personal data in line with the rules established in Council Regulation (EU) 2017/1939 and in its internal rules of procedure. The operational personal data are processed in a case management system (CMS), pursuant to Article 44 of Regulation (EU) 2017/1939.

The EPPO’s CMS contains a register of information obtained by the EPPO in accordance with Article 24 of Council Regulation (EU) 2017/1939, the information from the case files and an index of all case files. Pursuant to Article 44 (4) of Council Regulation (EU) 2017/1939, the index should not contain any operational personal data other than data needed to identify cases or establish cross-links between different case files. The categories of operational personal data and the categories of data subjects whose operational personal data may be processed in the index shall be listed in an Annex to Council Regulation (EU) 2017/1939.

However, at the time of the adoption of Council Regulation (EU) 2017/1939, such Annex was not included. Instead, pursuant to Article 49(3), the Commission has been empowered to adopt delegated acts to list the categories of operational personal data and the categories of data subjects whose operational personal data may be processed in the index. With the present draft Delegated Regulation, the Commission adopts the above-mentioned Annex to Council Regulation (EU) 2017/1939

The present formal comments of the EDPS are issued in response to the consultation by the European Commission, in line with Article 42 (1) of Regulation 2018/1725². In this regard, the EDPS welcomes the reference to this consultation in Recital 6 of the draft Commission Delegated Regulation.

¹ OJ L 283, 31.10.2017, p. 1.

² 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, 21.11.2018, L.295, p.39 (Regulation 2018/1725).

2. Comments

Processing of personal data in the context of criminal investigations is liable to have a significant impact on the lives of the individuals concerned. For that reason, the legal framework applicable to the EPPO must ensure that the limitations to the rights to privacy and data protection in relation to the fight against criminal offences are necessary and proportionate.

As stated above, the EPPO is a Union agency carrying out activities within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU ('law enforcement agency'). Therefore, wherever necessary, it is appropriate to make a cross-referencing with similar provisions in the basic acts establishing the other Union law enforcement agencies, in particular Eurojust³. Moreover, according to Articles 100 and 102 of Council Regulation (EU) 2017/1939, the EPPO should establish and maintain a close relationship with them. Hence, the harmonisation of data protection rules, including with regard categories of data subjects, would ensure uniform and consistent protection of natural persons with regard to the processing of their personal data and at the same time would facilitate the exchange of operational personal data between the agencies.

The draft Commission Delegated Regulation lays down four categories of data subjects whose operational personal data may be processed in the CMS index:

- a) suspected or accused persons in the criminal proceedings of the EPPO;
- b) convicted persons following the criminal proceedings of the EPPO;
- c) natural persons who reported or are victims of offences that fall within the competence of the EPPO;
- d) contacts or associates of one of the persons referred to in points (a) and (b).

The EDPS welcomes the fact that the categories of operational personal data that may be processed in the index with regard to the data subjects referred to in point (c) and (d) are more limited than the personal data on suspected, accused or convicted persons. Such approach is fully in line with Article 51 of Council Regulation (EU) 2017/1939, which lays down the obligation for the EPPO to make distinction between different categories of data subjects.

However, the EDPS points out to the fact that the category "contacts or associates" in point (d) could be potentially very broad and could lead to the processing of personal data of a large number of natural persons, who have had only occasional or entirely unrelated to the criminal activity contacts with the suspected, accused or convicted perpetrator.

Regulation (EU) 2018/1727 (Eurojust Regulation) in Article 27 (2), last sentence, explicitly requires that the processing of personal data of victims, contacts and associates "*may only take place if it is necessary for the fulfilment of the tasks of [Eurojust], within the framework of its competence and in order to carry out its operational functions.*" This safeguard is not provided for in Council Regulation (EU) 2017/1939.

In that context, the EDPS would also like to recall the principle of data minimisation and the obligation of the EPPO to ensure that the personal data in the CMS and especially in its index are adequate, relevant and not excessive in relation to the purposes for which they are processed.

³ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (Eurojust Regulation)

To that end, the EDPS recommends that the Commission Delegated Regulation introduces explicitly the requirement for the personal data of natural persons who reported or are victims of offences, or contacts or associates of the suspected, accused or convicted perpetrators, processed in the index of EPPO's CMS, to be limited to what is necessary and proportionate in order to carry out the EPPO's operational functions.

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(e-signed)