

EUROPEAN DATA PROTECTION SUPERVISOR

Summary of the Opinion of the European Data Protection Supervisor on the proposal for a Directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market

(2023/C 65/02)

(The full text of this Opinion can be found in English, French and German on the EDPS website <https://edps.europa.eu>)

On 7 December 2022, the European Commission issued the proposal for a Directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market ⁽¹⁾.

The proposal aims to achieve a minimum harmonisation of national laws on multiple-vote share structures of companies listing on small and medium-sized companies growth markets, while leaving sufficient flexibility to Member States for its implementation. Furthermore, the proposal is part of the Listing Act package, consisting of a set of measures to make public capital markets more attractive for EU companies and facilitate access to capital for SMEs.

With regard to the publication of personal data provided for in Article 6 of the proposal, the EDPS recalls that any requirement to publish personal data should, in addition to being provided by law, also fulfil the other requirements arising from the Charter and the GDPR ⁽²⁾, and in particular must meet an objective of public interest and be proportionate to the legitimate aim pursued.

The EDPS questions whether making available to the public at large the identity of holders of multiple-votes shares or of the persons entitled to exercise voting rights on their behalf or of the holders of securities with special control rights is in fact strictly necessary to strengthen investor confidence and facilitate informed investment decision-making. In any event, the EDPS considers that objective(s) of public interest that would justify public accessibility of such data should be clearly set out in the enacting terms of the proposal. In addition, the EDPS recommends to consider providing for a mechanism that would allow access to parties capable of demonstrating a legitimate interest linked to the proposal's objectives, as a safeguard to ensure that access to these data would be limited to investment related purposes.

1. INTRODUCTION

1. On 7 December 2022, the European Commission issued the proposal for a 'Directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market' ('the proposal').
2. The objective of the proposal is to achieve a minimum harmonisation of national laws on multiple-vote share structures of companies listing on small and medium-sized companies ('SMEs') growth markets, while leaving sufficient flexibility to Member States for its implementation.

⁽¹⁾ COM/2022/761 final.

⁽²⁾ 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).

3. The proposal is part of the Listing Act package, which consists of a set of measures to make public capital markets more attractive for EU companies and facilitate access to capital for SMEs ⁽³⁾. The Listing Act package aims to: (i) reduce the regulatory burden where it is considered to be excessive (i.e. where regulation could contribute to investor protection/market integrity in a more cost-efficient manner for stakeholders); and (ii) increase the flexibility given under company law to companies' founders/controlling shareholders to choose how to distribute voting rights after the admission to trading of shares ⁽⁴⁾.
4. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 14 December 2022, pursuant to Article 42(1) of EUDPR ⁽⁵⁾. The EDPS welcomes the reference to this consultation in recital 17 of the proposal.

4. CONCLUSIONS

16. In light of the above, the EDPS makes the following recommendations:

- (1) to add a recital confirming the applicability of the GDPR to the processing of personal data performed in the context of the proposal;
- (2) to delete the reference to 'ultimate ownership' in recital 13 of the proposal, since this is not mirrored by the purpose and by the content of the information to be provided;
- (3) to clearly spell out the objective(s) of public interest pursued that would justify the publication and public accessibility of personal data in the enacting terms of the proposal as such;
- (4) to consider providing for a mechanism that would allow access to parties capable of demonstrating a legitimate interest linked to the proposal's objectives as a safeguard to ensure that access to these data would be limited to the investment related purposes.

Brussels, 6 February 2023.

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⁽³⁾ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7348

⁽⁴⁾ COM (2022) 761 final, p. 1.

⁽⁵⁾ 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).