

EUROPEAN DATA PROTECTION SUPERVISOR

Summary of the Opinion of the European Data Protection Supervisor on the Proposals for Directives on standards for equality bodies in the field of equal treatment

(2023/C 64/13)

(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 a Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC ⁽¹⁾ and a Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU ⁽²⁾.

The objective of the proposals is to lay down minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment.

The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 8 December 2022, pursuant to Article 42(1) of EUDPR ⁽³⁾.

The EDPS welcomes such objectives. He notes that the reports, which the equality bodies would provide under Article 15, should not contain personal data and that the cooperation set out under Article 12, as well as the monitoring under Article 16 should not involve the processing of personal data.

He focuses therefore his recommendations on Article 18 concerning the processing of personal data. In particular, he recommends enhancing legal certainty for the equality bodies by considering Article 18 of the Proposals as the legal basis for the data processing and to make an explicit link to Article 9 GDPR ⁽⁴⁾ with regard to special categories of personal data. He recommends clarifying the scope of Article 18(1) of the Proposals to cover not only the collection but also the subsequent processing of personal data by equality bodies, as necessary, exhaustively listing all special categories of personal data within the meaning of the GDPR that may be processed on the basis of the Proposals as well as clarifying the suitable and specific measures to safeguard the fundamental rights and the interests of the data subject required in Article 9(2)(g) GDPR.

⁽¹⁾ COM(2022) 689 final.

⁽²⁾ COM(2022) 688 final.

⁽³⁾ 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).

⁽⁴⁾ 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).

1. INTRODUCTION

1. On 7 December 2022, the European Commission issued a Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC ⁽⁵⁾ and Article 12 of Directive 2004/113/EC ⁽⁶⁾ ('the Equal Treatment Proposal') and a Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation and deleting Article 20 of Directive 2006/54/EC ⁽⁷⁾ and Article 11 of Directive 2010/41/EU ⁽⁸⁾ ('the Equal Opportunities Proposal').
2. The objective of the Equal Treatment Proposal ⁽⁹⁾ is to lay down minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment as derived from Council Directives 79/7/EEC ⁽¹⁰⁾ (which prohibits discrimination based on sex, in matters of social security), 2000/43/EC (which prohibits discrimination based on racial or ethnic origin), 2000/78/EC ⁽¹¹⁾ (which prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment, occupation and vocational training) and 2004/113/EC (which prohibits discrimination based on sex in access to and supply of goods and services).
3. The Equal Treatment Proposal is part of several strategies and action plans adopted to achieve a Union of Equality: the gender equality strategy ⁽¹²⁾, the anti-racism action plan ⁽¹³⁾, the Roma strategic framework for equality, inclusion and participation ⁽¹⁴⁾, the LGBTIQ equality strategy ⁽¹⁵⁾, and the strategy for the rights of persons with disabilities ⁽¹⁶⁾. It was also referred to in the strategy on combating antisemitism and fostering Jewish life ⁽¹⁷⁾.
4. The objective of the Equal Opportunities Proposal ⁽¹⁸⁾ is to lay down minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment as derived from Directives 2006/54/EC and 2010/41/EU. This Proposal is

⁽⁵⁾ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

⁽⁶⁾ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).

⁽⁷⁾ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006, p. 23).

⁽⁸⁾ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1).

⁽⁹⁾ Article 1(1) and recitals 3 to 7 of the Equal Treatment Proposal.

⁽¹⁰⁾ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24).

⁽¹¹⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

⁽¹²⁾ COM(2020) 152 final (https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en).

⁽¹³⁾ COM(2020) 565 final (https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en).

⁽¹⁴⁾ https://ec.europa.eu/info/publications/new-eu-roma-strategic-framework-equality-inclusion-and-participation-full-package_en.

⁽¹⁵⁾ COM(2020) 698 (https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en).

⁽¹⁶⁾ COM(2021) 101 (<https://ec.europa.eu/social/main.jsp?catId=1484>).

⁽¹⁷⁾ COM(2021) 615 (https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4990). See Explanatory memorandum, page 4.

⁽¹⁸⁾ Article (1)(1) of the Proposal.

complementary to EU legislation adopted in the field of victims' rights ⁽¹⁹⁾, access to justice ⁽²⁰⁾ and to combat strategic lawsuits against public participation ⁽²¹⁾. The 2022 Rule of Law Report highlights that equality bodies need structural guarantees of independence and sufficient resources to work effectively, and several of these bodies in the Member States continue to face challenges ⁽²²⁾ ⁽²³⁾.

5. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 8 December 2022, pursuant to Article 42(1) EUDPR. The EDPS welcomes the reference to this consultation in recital 50 of the Equal Treatment Proposal and recital 49 of the Equal Opportunities Proposal. In this regard, the EDPS also positively notes that he was already previously informally consulted pursuant to recital 60 EUDPR on the Equal Treatment draft Proposal.

5. CONCLUSIONS

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

- (1) to enhance legal certainty for the equality bodies by considering Article 18 of the Proposals as the legal basis for the data processing and to make an explicit link to Article 9 GDPR with regard to the processing of special categories of personal data;
- (2) to clarify the scope of Article 18(1) of the Proposals to cover not only the collection but also the subsequent processing of personal data by equality bodies, as necessary;
- (3) to exhaustively list all special categories of personal data within the meaning of the GDPR that may be processed on the basis of the Proposals as well as clarify the suitable and specific measures to safeguard the fundamental rights and the interests of the data subject required in Article 9(2)(g) GDPR.

Brussels, 2 February 2023.

Wojciech Rafał WIEWIÓROWSKI

⁽¹⁹⁾ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

⁽²⁰⁾ Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26, 31.1.2003, p. 41).

⁽²¹⁾ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation') (OJ L 138, 17.5.2022, p. 30).

⁽²²⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report (COM(2022) 500 final) (https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law-mechanism/2022-rule-law-report_en).

⁽²³⁾ Explanatory memorandum, page 6.