



Brussels, 15 February 2022
(OR. en)

6232/22

Interinstitutional File:
2021/0433(CNS)

FISC 41
ECOFIN 124
DATAPROTECT 35

NOTE

From: Mr Wojciech Rafał WIEWIÓROWSKI, European Data Protection Supervisor

On: 10 February 2022

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: 15294/21 - COM (2021) 823 final

Subject: Formal comments of the European Data Protection Supervisor on the proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union

Delegations will find attached the formal comments of the European Data Protection Supervisor concerning the abovementioned legislative proposal.

E-MAIL



EUROPEAN DATA PROTECTION SUPERVISOR

WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

Received on
10. 02. 2022

IN 001416 2022
11.02.2022

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Mr Jeppe TRANHOLM-MIKKELSEN
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Brussels, 10 February 2022
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Subject: Formal Comments¹ of the European Data Protection Supervisor on the Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union

Your Excellency,
Mr Secretary-General,

Having regard to Article 42(1) of 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, please find enclosed Formal Comments on the Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union.

¹Article 20(1) of the EDPS Rules of Procedure provide that "In response to requests from the Commission pursuant to Article 42(1) of the Regulation, the EDPS shall issue opinions or formal comments."

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We have sent a copy of these Formal Comments to the President of the European Commission and the President of the European Parliament.

Yours sincerely,

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

Encl.: Formal Comments

Cc: Mr Serge DE BIOLLEY, Director for Justice, General Secretariat of the Council

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EDPS formal comments on the Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union

1. Introduction

- On 22 December 2021, the European Commission adopted the Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union ('the Proposal')¹.
- The objective of the Proposal is to establish common measures for the minimum effective taxation of multinational enterprises (MNE) groups in the form of:
 - (a) an income inclusion rule (IIR) in accordance with which a parent entity of an MNE group or a large-scale domestic group computes and collects its allocable share of top-up tax in respect of the low-taxed constituent entities of the group; and
 - (b) an undertaxed payments rule (UTPR) in accordance with which a constituent entity of an MNE group collects an allocable share of top-up tax computed by the ultimate parent entity of the group that was not charged under the IIR in respect of the low-taxed constituent entities of the group.
- These comments are provided in reply to the formal request by the Commission of 22 December 2021, pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')². We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
- These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available. 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.

2. Comments

- The EDPS welcomes recital (24) of the Proposal, specifying that the right to protection of personal data according to Article 8 of the EU Charter of Fundamental Rights as

¹ COM(2021) 823 final.

² See Article 1 of the Proposal.

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. 1).



well as Regulation 2016/679 ('the GDPR')⁴ applies to the processing of personal data carried out within the framework of this Directive.

- The EDPS notes that footnotes 10 and 11 refer to the publication of Regulation (EC) No 45/2001 and Directive 95/46/EC respectively and should therefore be corrected.
- Given the subject matter and the provisions of the Proposal, which do not raise significant issues having regard to the protection of personal data, the EDPS has no further comments on the Proposal.

Brussels, 10 February 2022

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

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).
