

EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data protection authority

Opinion 31/2026

on the Proposal for a Directive amending Directive 2005/36/EC as regards the digitalisation of procedures and recognition of professional qualifications issued outside the Union and Regulation 1024/2012

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 'With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies', and under Article 52(3)'... for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data'.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years. The selection procedure for a new EDPS mandate for a term of five years is still ongoing.

Under Article 42(1) of Regulation 2018/1725, the Commission shall 'following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data'.

This Opinion relates to the Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC as regards the digitalisation of procedures and recognition of professional qualifications issued outside the Union and Regulation 1024/2012[1]*.This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of its powers pursuant to Regulation (EU) 2018/1725. This Opinion is limited to the provisions of the Proposal that are relevant from a data protection perspective.*

[1] COM (2026) 995 final.

Executive Summary

On 15 September 2026, the European Commission issued a Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC as regards the digitalisation of procedures and recognition of professional qualifications issued outside the Union and Regulation 1024/2012.

The objective of the Proposal, which the EDPS welcomes, is to further facilitate and modernise the recognition of professional qualifications in regulated professions as organised under Directive 2005/36/EC while strengthening administrative cooperation between competent authorities and improving the monitoring of the implementation and functioning of the recognition system. To achieve this objective, the Proposal provides for, among other measures, the implementation of a common Union IT solution, the European Digital Recognition Solution ('EDRS'), to support the digitalisation of procedures for the recognition of professional qualifications.

The EDPS welcomes that the Proposal includes a specific provision concerning the processing of personal data through the EDRS. In this regard, the EDPS recommends further clarifying the roles and responsibilities of the Commission and the competent authorities of the Member States with respect to the processing of personal data under the Proposal and making sure that all provisions of the Proposal are in line with the allocated roles.

The EDPS considers that further clarification would also be welcome with respect to the functions of the AI support module in the EDRS and recommends providing the safeguards listed in Article 56f(7) of Directive 2005/36/EC (as amended by the Proposal) to applicants regardless of whether the processing of their personal data falls under the scope of Article 22(1) GDPR.

In addition, the EDPS recommends specifying the circumstances in which Member States are required to carry out exchanges of personal data of a criminal or similar nature and providing that such exchanges should only occur when the law of the host Member State requires that such data be provided for accessing the profession.

Finally, the EDPS recommends organising a coordinated supervision of the EDRS and clarifying how the retention period rules interact with each other or establishing a maximum data retention period for Member States' competent authorities following the completion of the recognition procedure.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ('EUDPR')[2], and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 15 September 2026, the European Commission issued a Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC[3] as regards the digitalisation of procedures and recognition of professional qualifications issued outside the Union and Regulation 1024/2012[4] ('the Proposal') [5].

2. The objective of the Proposal is to further facilitate and modernise the recognition of professional qualifications in regulated professions by leveraging digital tools to streamline, accelerate and make recognition procedures more efficient, while strengthening administrative cooperation between competent authorities and improving the monitoring of the implementation and functioning of the recognition system[6]. To achieve this objective, the Proposal provides for measures aiming in particular at:

    a. adopting a coordinated approach to the recognition of qualifications obtained by Member State nationals outside the Union[7];

    b. laying down precise deadlines for the exchange of information and for mutual assistance between the competent authorities of the host Member State and those of the home Member State[8];

[2] OJ L 295, 21.11.2018, p. 39.
[3] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, p. 22.
[4] Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'), OJ L 316, 14.11.2012, p. 1.
[5] COM (2026) 995 final.
[6] Explanatory Memorandum of the Proposal, p. 1.
[7] Recitals 3 and 4 and Title Va of the Proposal.
[8] Recital 8 of the Proposal.

c. appropriately informing and guiding applicants[9];

d. establishing, at Union level, a common Union IT solution, the European Digital Recognition Solution (the 'EDRS'), to support the digitalisation of procedures for the recognition of professional qualifications[10];

e. compensating applicants for the economic disadvantage caused by a delay attributable to the competent authority[11]; and[12];

f. monitoring and assessing the measures introduced by the Proposal, and particularly the effective functioning of the EDRS[13].

3. The Proposal forms part of the Skills Portability Initiative, which is a key component of the Fair Labour Mobility Package[14]. The Proposal is part of a legislative package of four legislative proposals, comprising, in addition to this Proposal, a Proposal for a Regulation of the European Parliament and of the Council on portability of qualifications and skills and amending Regulation (EU) 2018/1724 ("Skills Portabilty Act")[15]; a Proposal for a Regulation of the European Parliament and of the Council on digitalizing the coordination and security systems, laying down a framework for the European Social Security Pass (ESSPASS), and amending Regulations (EC) No 883/2004, (EC) No 987/2009 and (EU) No 2018/1724[16]; a Proposal for a Directive of the European Parliament and of the Council on the recognition of qualifications of third-country nationals[17]. The EDPS has been consulted on these proposals and has issued an opinion for each of them.

4. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 15 September 2026, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 27 of the Proposal. The EDPS also positively notes that it was already previously informally consulted pursuant to recital 60 of EUDPR.

2. General remarks

5. The EDPS welcomes the Commission's objective of further facilitating and modernising the recognition of professional qualifications in regulated professions. This Opinion provides recommendations to ensure that this objective is achieved in a way that preserves a high level of data protection, in compliance with the fundamental rights to privacy and to the

[9] Recital 9 of the Proposal.
[10] Recital 11 of the Proposal.
[11] As defined under article 3(1)(c) of Directive 2005/36/EC.
[12] Recital 23 of the Proposal.
[13] Recital 25 of the Proposal.
[14] COM (2026) 995 final, p.1.
[15] COM (2026) 992 final.
[16] COM (2026) 980 final.
[17] COM (2026) 990 final.

protection of personal data, as enshrined in Article 7 and 8 of the Charter of Fundamental Rights of the European Union.

6. The EDPS notes that the EDRS would entail the centralised processing at EU level of a potentially large number of declarations and applications and the personal data contained therein. This includes particularly sensitive personal data that falls under the scope of Articles 9 and 10 of Regulation (EU) 2016/679 ('GDPR') and 10 and 11 EUDPR.

7. The EDPS underlines the importance of deploying robust technical and organisational measures to ensure that the personal data processed through the EDRS is kept secure[18]. It welcomes the reference in Recital 22 of the Proposal to the need for the implementation of "*appropriate technical and organisational measures to safeguard personal data against unauthorised access, accidental loss, or unlawful processing*"[19].

3. The European Digital Recognition Solution

8. The Proposal proposes the creation of a common Union IT solution, the EDRS, to achieve the objective of facilitating and modernising the recognition of professional qualifications in regulated professions. The EDRS would provide a platform for the submission of declarations, applications and supporting evidence, while facilitating cooperation between home and host Member States and uniformising the recognition procedure for all Member States[20].

9. The EDRS would build on and interoperate with the Internal Market Information System ('IMI')[21] established under Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (the 'IMI Regulation)[22]. To allow for such interoperability, the Proposal provides for an amendment to point 2 to the Annex to the IMI Regulation[23]. The EDRS should also interoperate with the EU Digital Identity Wallet and the Single Digital Gateway[24].

[18] Article 33 EUDPR and Article 32 GDPR.
[19] This is without prejudice to amendments that would be required to Recital 22 to implement recommendations made in the present opinion.
[20] Recital 11 and Article 56b of Directive 2005/36 as amended by the Proposal.
[21] Recital 14 and Article 56b(3) of Directive 2005/36 as amended by the Proposal.
[22] Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'), OJ L 316, 14.11.2012, p. 1.
[23] Article 2 of the Proposal.
[24] Article 56b (2) (c) of Directive 2005/36/EC (as amended by the Proposal).

3.1. Roles and responsibilities

10. Article 56f of Directive 2005/36/EC (as amended by the Proposal) is dedicated to the processing of personal data through the EDRS. This provision would assign roles and responsibilities in relation to the processing of personal data via the EDRS as follows:

    a. Article 56f(3) of Directive 2005/36/EC (as amended by the Proposal) provides that the competent authorities of the home and host Member States would act as joint controllers "solely in respect of the cross-border processing operations that are strictly necessary for [the] exchange [of personal data through the EDRS], including the transmission, routing, receipt, consultation and technical provision of the personal data concerned through the EDRS, as well as the management of related access rights, logging, security measures and incident handling";

    b. Article 56f(4) of Directive 2005/36/EC (as amended by the Proposal) provides that "the Commission shall act as a processor, within the meaning of Article 3, point (12), of [the EUDPR], on behalf of the joint controllers referred to in paragraph 3 of this Article, for the processing of personal data carried out through the EDRS";

    c. Article 56f(5) of Directive 2005/36/EC (as amended by the Proposal) provides that "the competent authority of the host Member State shall be the controller, within the meaning of Article 4, point (7), of [the GDPR] for the processing of personal data necessary for the following: (a) the handling of applications for recognition of professional qualifications; (b) the assessment of applications, including the verification of supporting information; (c) the adoption of decisions and the management of redress procedures; (d) the handling of personal data related to declarations for provision of services"; and

    d. Article 56f(6) of Directive 2005/36/EC (as amended by the Proposal) provides that "the competent authority of the home Member State shall be the controller, within the meaning of Article 4 point (7) of [the GDPR] for the processing of personal data necessary for the following: (a) verifying qualifications or confirming the authenticity of documents; (b) providing supporting information or documents to the applicant or to the host Member State; (c) responding to requests for information made by the applicant and/or the host Member State, pursuant to this Directive".

11. The EDPS recalls that the designation of an actor as controller, joint controller or processor should reflect its role in the relevant processing operation, including who determines the purposes and essential means of the processing and who processes personal data on behalf of another actor, considering the functions assigned by Union or Member State law[25].

12. Against this background, the EDPS considers that the following legal and factual elements are relevant in relation to the proposed qualification of the Commission as a processor under Article 56f(4) of Directive 2005/36/EC (as amended by the Proposal):

    a. the Proposal tasks the Commission with the duty to establish, design, maintain and operate the EDRS and leaves it to the Commission to decide on how the EDRS

[25] EDPS Guidelines on the concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725, 7 November 2019, pp. 7-10, and EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR, 7 July 2021, pp. 9-18.

should support the competent authorities in their work to assess applications and to take decisions on recognition[26];

b. the Proposal grants the Commission access to personal data for the "supervision of the solution [the EDRS]"[27];

c. Section 4.5 of the legal, financial and digital statement states that the Commission, acting as a controller, should carry out a data protection impact assessment ('DPIA') on the EDRS and consult the EDPS, in accordance with Article 39 and 40 EUDPR, which is a duty of the controller under the EUDPR; and

d. the Proposal provides that the EDRS should build on the IMI; and in this regard it can be noted that the IMI Regulation provides that the Commission is responsible for the security, availability, maintenance and development of the system as a controller, subject to the supervision of the EDPS, and not as a processor of the competent authorities[28]. Keeping the Commission's IMI role for the underlying infrastructure while designating it as processor for the EDRS layer would assign two different roles to one and the same actor within a single processing chain and to systems having similar functioning and role, for the Commission, on the one hand, and for the Member States' competent authorities, on the other hand.

13. In light of the above, the EDPS invites the co-legislator to consider whether it may be appropriate to designate the Commission as a controller (rather than as a processor) with respect to the EDRS. Should the co-legislator decide to maintain the role of the Commission as a processor, the EDPS recommends providing that the arrangements that would need to govern the processing by the Commission on behalf of the Member States' competent authorities as provided for under Article 29(3) EUDPR be put in place by way of a delegated or implementing act.

14. In addition, the EDPS notes that Article 56f(3) to (6) of Directive 2005/36/EC (as amended by the Proposal) does not address the role that the Commission should be assigned with respect to every processing of personal data to which the implementation of the Proposal would give rise. In particular, the EDPS recommends providing that the Commission acts as a controller in the following cases: (i) when the Commission anonymises personal data extracted from the EDRS for monitoring and reporting purposes, as provided for under Article 60(2) of Directive 2005/36/EC (as amended by the Proposal); and (ii) when the Commission assesses, at the request of a competent authority, the authenticity of third-country qualifications, as provided for under article 59c of Directive 2005/36/EC (as amended by the Proposal).

15. The EDPS would also welcome further clarifications on the designation of the competent authorities of the Member States as joint controllers under Article 56f(3) of Directive 2005/36/EC, whereas they appear to be designated as separate controllers under Article 56f(3). In this regard, the EDPS also notes that the IMI Regulation mainly designates each

[26] Article 56b(4) of Directive 2005/36/EC (as amended by the Proposal), Recital 21 and the legal and financial statement of the Proposal, point 4.3.
[27] Article 56f(8) (a) of Directive 2005/36/EC (as amended by the Proposal).
[28] Article 8 (role of the Commission) and Article 21 (supervision) of the IMI Regulation. See also section 2 of the https://ec.europa.eu/internal_market/imi-net/_docs/data_protection/privacy_statement_en.pdf.

competent authority as a controller with respect to its own data processing activities[29]. Should the co-legislator retain the qualification of the competent authorities of the Member States as joint controllers, the EDPS would also recommend providing that the arrangements that need to govern the processing as provided for under Article 26(1) GDPR be put in place by way of a delegated or implementing act[30].

3.2. Automated decision-making

16. Article 56f(7) of Directive 2005/36/EC (as amended by the Proposal) would set forth an obligation for Member States to implement appropriate safeguards where the processing of personal data by the competent authorities of the host or the home Member State in the context of the recognition of professional qualifications involves automated individual decision-making concerning the applicant within the meaning of Article 22(1) GDPR.[31]

17. The EDPS understands that this provision is meant to address the fact that the EDRS will integrate an AI module to support the decision-making of the Member States' competent authorities. According to the legislative financial and digital statement, the support offered by this module will include the following functions: "evidence classification, evidence authenticity and veracity detection (detection of tampering, forgeries, etc.), translation, matching of evidence against national procedure requirements (including analysis of substantial difference in training requirements), [...] identification of similar previously assessed cases with a view to promoting consistency in decision-making")"[32]. The EDPS notes that this list of functions does not entirely correspond to that present in Recital 21, which is broader and includes other functions (assessment of substantial differences in training, indication of compensation measures, identification of similar cases). To enhance legal certainty and to allow a better assessment of the impact of the processing via the AI module on fundamental rights and freedoms, the EDPS recommends specifying the use-cases of the AI module in the enacting terms of the Proposal. It also recommends providing that the use of AI must be accompanied by safeguards ensuring accuracy and fairness to avoid discriminatory outputs.

18. The EDPS also notes that the Proposal does not specify whether the use of the EDRS by the competent authorities of the Member States would constitute automated decision-making, including profiling, within the meaning of Article 22(1) GDPR. Article 56f(7) of Directive 2005/36/EC (as amended by the Proposal) seems to imply that this could be the case (depending on all relevant circumstances of how Member States' competent authorities would rely on the information provided by the AI module of the EDRS). The legislative financial and digital statement (p. 29) specifies that the AI support module is not meant to replace human oversight and that "the decisions on the recognition, including the statement of reasons, should remain the sole responsibility of the competent authorities". Hence, it seems to be possible that meaningful human intervention on the side of the Member States' competent authorities would occur for each document being checked, but it is not excluded that Member States' competent authorities would simply follow the

[29] Article 6(4) and 7(3) of the IMI Regulation.
[30] EDPS Guidance for co-legislators on key elements of legislative proposals, 7 May 2025, p. 11.
[31] Article 56f(7)(a) to (d) of Directive 2005/36/EC (as amended by the Proposal)
[32] COM (2026) 995 final, pp. 28-30 of the legislative financial and digital statement.

output of the AI system[33] or draw strongly on that output when deciding to reject an application for the recognition of qualifications[34]. In these last two scenarios, despite there potentially being human involvement, it would not be considered "meaningful" so as to exclude the decision of the Member States' competent authorities from the scope of Article 22(1) GDPR.

19. Against this background, and to ensure a robust level of protection for applicants (data subjects), the EDPS recommends providing the safeguards listed in Article 56f(7) of Directive 2005/36/EC (as amended by the Proposal) to applicants regardless of whether the processing of their personal data falls under the scope of Article 22(1) GDPR.

4. Processing of personal data relating to criminal convictions and offences

20. Article 56(2) of Directive 2005/36/EC (as amended by the Proposal) provides for the exchange, between the home and the host Member States, of "information regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for the pursuit of activities under this Directive". The EDPS understands that this provision of the Proposal needs to be read together with Article 8(1) of Directive 2005/36/EC (as amended by the Proposal), which provides that "the competent authorities of the host Member State may ask the competent authorities of the Member State of establishment, in the event of justified doubts, to provide any information relevant to the legality of the service provider's establishment and good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature".

21. Taking into account the impact that the processing may have on the data subjects' possibilities to practice a regulated profession within the EU, the EDPS considers that the Proposal should provide that the exchange of data provided under Article 56(2) of Directive 2005/36/EC (as amended by the Proposal) and Article 8(1) of Directive 2005/36/EC (as amended by the Proposal) is only allowed when the law of the host Member State requires that such data be provided for accessing the profession (as already specified by the Proposal with respect to the provision of data relating to the physical or mental health of the applicant)[35]. In line with the data minimisation principle, the EDPS also recommends replacing, in Article 56(2) of Directive 2005/36/EC (as amended by the Proposal), the words "are likely to have" by "have" and providing, by way of recitals, examples of "circumstances" to which this provision would refer.

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[33] Article 29 Working Party, Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, adopted on 3 October 2017 and last revised on 6 February 2018, p. 21: "To qualify as human involvement, the controller must ensure that any oversight of the decision is meaningful, rather than just a token gesture. It should be carried out by someone who has the authority and competence to change the decision".

[34] See, by analogy, Judgment of the Court of Justice of 7 December 2023, *Schufa Holding*, C-634/21, ECLI:EU:C:2023:957, paragraphs 61 and 62.

[35] See point (e) of Annex VII to Directive 2005/36/EC as amended by the Proposal.

5. Other specific remarks

22. In order to ensure coordinated supervision (as the Commission is supervised by the EDPS and the competent authorities of the Member States by their respective national data protection supervisory authority) and avoid risks of fragmentation in the supervision of the EDRS, the EDPS recommends adding to the Proposal a provision similar to Article 21 of the IMI Regulation (on coordinated supervision).

23. Article 56f(10) of Directive 2005/36/EC as amended by the Proposal provides that the competent authorities of the Member States must determine the retention periods applicable to the processing operations for which they are responsible and requires the Commission to delete the record of the procedure and the documents used therein after 36 months. The EDPS recommends providing clarification as to how these retention periods would apply, and in particular as to how these two rules interact when data contained in the record of the procedure would still be needed after the 36 months period. This may be the case where the recognition of the professional qualification (or lack thereof) is being appealed in a Member State. Alternatively, for the sake of legal certainty, the EDPS recommends establishing a maximum retention period for Member States' competent authorities of the personal data following the completion of the recognition procedure.

6. Conclusions

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

(1) to clarify whether the Commission acts as a processor or a controller with respect to the processing of personal data carried out through the EDRS and ensure consistency with the chosen role throughout the Proposal;

(2) to clarify that the Commission acts as a controller (i) when it anonymises personal data extracted from the EDRS for monitoring and reporting purposes, as provided for under Article 60(2) of Directive 2005/36/EC (as amended by the Proposal); and (ii) when it assesses, at the request of a competent authority, the authenticity of third-country qualifications, as provided for under article 59c of Directive 2005/36/EC (as amended by the Proposal);

(3) to consider whether the qualification of the competent authorities of the Member States as joint controllers should be retained and if so, provide for empowerment to specify the necessary arrangements pursuant to Article 26 GDPR;

(4) to clarify the functions of the AI support module in the EDRS and provide that the use of AI must be accompanied by safeguards ensuring accuracy and fairness to avoid discriminatory outputs;

(5) to provide the safeguards listed in Article 56f(7) of Directive 2005/36/EC (as amended by the Proposal) to applicants regardless of whether the processing of their personal data falls under the scope of Article 22(1) GDPR;

(6) to provide that the exchange of data as organised under Article 56 (2) of Directive 2005/36/EC (as amended by the Proposal) and Article 8(1) of Directive 2005/36/EC (as amended by the Proposal) is only allowed when the law of the host Member State requires that such data be provided for accessing the profession;

(7) to replace, in Article 56(2) of Directive 2005/36/EC (as amended by the Proposal), the words "are likely to have" by "have" and providing, by way of recitals, examples of "circumstances" that are targeted by this provision;

(8) to add to the Proposal a provision similar to article 21 of the IMI Regulation; and

(9) to clarify how the retention period rules interact when data contained in the record of the procedure would be needed after the 36 months retention period provided for under Article 56f (10) of Directive 2005/36/EC (as amended by the Proposal) or to establish a maximum data retention period for Member States' competent authorities following the completion of the recognition procedure.

Brussels, 6 November 2026

(e-signed)
Wojciech Rafał WIEWIÓROWSKI