

EDPS comments on a draft Commission Implementing Regulation amending Implementing Regulation (EU) No 1352/2013 establishing the forms provided for in Regulation (EU) No 608/2013.

1 Introduction

Context of the draft Implementing Regulation

- Pursuant to Regulation (EU) No 608/2013 concerning customs enforcement of intellectual property rights (IPR), IP right holders may request that customs authorities take action on goods suspected of infringing an IPR and may request an extension of the period during which the customs authorities are to take action in accordance with a previously granted application.
- The central EU database called anti-Counterfeit and anti-Piracy Information System (COPIS) stores all companies' applications for action. Articles 6(1) and 12(7) of Regulation (EU) No 608/2013 provide that standard application for action and the extension request forms shall be established by the Commission by means of implementing acts.
- As described in the documentation provided, the draft Commission Implementing Regulation to amend Implementing Regulation (EU) No 1352/2013 will adapt the forms to the General Data Protection Regulation (EU) No 2016/679 (‘the GDPR’)¹ and Regulation (EU) 2018/1725 of the European Parliament and of the Council (‘Regulation (EU) 2018/1725’)². It will also add the European Union Intellectual Property Office (EUIPO) as agency to process personal data submitted by the company in order to improve the understanding of the geographical scope and impact of infringements of intellectual property rights.

Scope of the comments

- The present comments concern the draft Commission Implementing Regulation amending Implementing Regulation (EU) No 1352/2013 establishing the forms provided for in Regulation (EU) No 608/2013 (‘the draft Implementing Regulation’).

¹ 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).

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 L 295, 21.11.2018).

- They are issued pursuant to Article 42(1) Regulation (EU) 2018/1725, following a request for consultation from the European Commission of 5 June 2020.
- The scope of these comments is to provide recommendations on the draft Commission Implementing Regulation, with a particular focus on the newly added data protection and privacy statements, which will adapt the legislation at stake.

2 EDPS comments

2.1. General comments

- The EDPS welcomes the decision to update the Annexes in accordance and compliance with the most recent data protection legislation, as well as the specific reference made in the draft Implementing Regulation's preamble to the GDPR and to Regulation (EU) 2018/1725.
- In particular, we note the insertion of personal data protection statement in the Annexes to the draft Implementing Regulation, to which our comments in the section below refer.

2.2. Comments on the personal data protection and privacy statement in the Annexes to the draft Implementing Regulation

- The EDPS welcomes that the draft data protection and privacy statement in the three Annexes to the draft Implementing Regulation provide clarity and transparency on the data processing purpose, the modalities of collection and the protection of personal data within the COPIS system.
- The data protection and privacy statement provides that, where the competent customs authority of each Member State processes personal data, the GDPR will apply. It is our understanding that the national Customs Authorities of each Member State would act as controllers of the processing operations at hand. Therefore, we suggest providing for additional clarity in that regard, namely by explicitly referring to the national Customs Authorities being controller(s) of the processing operations. The EDPS welcomes that the draft already provides for a web link to the different contact points of the customs authorities of each MS at the end of the privacy statement.
- The draft data protection notice also states that, where the European Commission will be acting as a processor on behalf of Member States, the Regulation 2018/1725 will apply. In this regard, and in line with the transparency requirements, we recommend adding a contact point within the European Commission for data subjects. Moreover, we suggest for the Commission to explain in the statement the parts of the processing operations for which it would be a processor.
- The EDPS notes that the draft data protection statement clearly refers to EUIPO's involvement in receiving infringement data from the Commission within the mandate

provided by the Member States. Such data collection aims at achieving a deeper analysis of the data and improving the understanding of the scope and impact of the IPR. We welcome the reference to EUIPO's processing operation number in the draft statement since it helps data subjects to identify the agency's roles and responsibilities in the context of the processing operation within the COPIS system. It is our understanding that EUIPO acts as a separate controller within the meaning of data protection law for the observatory process, and as a processor of the data contained in the Customs Applications for Action (AFA) on behalf of the controllers of COPIS (the national Custom authorities). In that regard, we recommend adding a web link to such processing operation number, in order for the data subject to consult this in an easier way.

- Lastly, the EDPS also welcomes that the draft already provides for a web link to the different contact points of the customs authorities of each MS as well as data protection supervisory authorities at the end of the privacy statement. However, the list is not complete and the EDPS urges the Commission to make sure that the list is fully updated and completed before the amendment enters into force. A complete and updated list of supervisory authorities can be found at the following link: https://edpb.europa.eu/about-edpb/board/members_en.

Brussels, 24 June 2020