



Comments of the EDPS on the draft Delegated Regulation amending Delegated Regulation 2015/2446 as regards common data requirements, and Delegated Regulation (EU) 2016/341 as regards the codes to be used in certain forms

1. Introduction and background

- Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC)¹ delegates to the Commission the power to supplement certain non-essential elements of the UCC, in accordance with Article 290 TFEU. The Commission has exercised these powers by adopting on 28 July 2015 the Commission Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code².
- This Commission Delegated Regulation (EU) 2015/2446 establishes provisions of general application to supplement the Code in accordance with the Commission's delegated powers and with a view to ensuring a clear and proper application of the UCC. Delegated Regulation (EU) 2015/2446 must therefore be regularly updated to take into account developments on legislation and on the deployment of the UCC IT systems.
- The EDPS was consulted by the Commission on the draft Delegated Regulation amending Delegated Regulation 2015/2446 as regards common data requirements, and Delegated Regulation (EU) 2016/341 as regards the codes to be used in certain forms ("the draft Delegated Regulation").
- The draft Delegated Regulation aims at harmonising the common data requirements for the exchange and storage of information between customs authorities as well as between customs authorities and economic operators. Such horizontal harmonisation is necessary to ensure interoperability between the customs electronic systems used by the national competent public authorities for the different types of declarations, notifications and proof of customs status of Union goods that are set out in Annex B to Delegated Regulation (EU) No 2015/2446.
- These comments are provided in reply to the request for consultation by the Commission, Directorate-General for Taxation and Customs (DG TAXUD) to the EDPS dated 29 June 2020 pursuant to Article 42(1) of Regulation (EU) 2018/1725. We limited our comments below to the provisions of the draft that are particularly relevant from a data protection perspective.

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1–101

² OJ L 343, 29.12.2015, p. 1–557

2. EDPS comments

2.1. Processing of personal data

- **We welcome harmonisation and update of the common data requirements** for declarations and notifications to the customs authorities as well as for the customs status of “Union goods” that are set out in Annex B to Delegated Regulation (EU) No 2015/2446 since such harmonisation would enhance the data quality and efficiency of customs declarations, notifications and proof of the customs status of “Union goods”.
- The EDPS notes that the exchange and storage of information between customs authorities as well as between customs authorities and economic operators mainly involves information concerning legal persons.
- In this context, we would like to recall the judgement of the Court of Justice of European Union in Joint Cases C-92/09, *Volker und Markus Schecke Gbr v. Land Hessen*, and C-93/09, *Eifert v. Land Hessen and Bundesanstalt für Landwirtschaft und Ernährung*³, in which the Court ruled that the name of a legal person is to be considered personal data if the official title of the legal person identifies one or more natural person. Consequently, it cannot be excluded that the common data requirements would also concern the processing of personal data falling under the scope of Regulation (EU) 2016/679 (“GDPR”)⁴
- Nevertheless, **considering the limited categories of personal data at stake** (e.g. name and address of an economic operator that may lead to identification of the company’s owner), and the fact that such personal data are already included in the current version of Annex B, the EDPS concludes that the draft Delegated Regulation **does not raise particular data protection issues** that would merit specific recommendations.

2.2. Electronic systems of custom forms exchange and storage

- Even though the present consultation only concerns the update to Annex B, it also refers to the newly introduced Annex C on the declarations, notifications and proof of the customs status of Union goods and related projects in Implementing Decision (EU) 2019/2151 UCC Work Program. The EDPS notes the deployment of the new or upgraded electronic systems (national and trans-European) is envisaged with the aim to support the automation of custom forms exchange and storage.
- In this context, we would like to emphasise that any such electronic systems must comply with the data protection requirements under the GDPR and Regulation (EU)

³ Judgment of the European Court of Justice of 9 November 2010 in Joint Cases C-92/09 *Volker und Markus Schecke Gbr v. Land Hessen*, and C-93/09, *Eifert v. Land Hessen and Bundesanstalt für Landwirtschaft und Ernährung*.

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. 1–88.

1725/2018⁵, where applicable. **The EDPS expects to be consulted by the Commission in due time prior to the adoption of any future legal acts related to these systems,** in line with Regulation (EU) 2018/1725.

Brussels, 16 July 2020

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. 39–98