

Formal comments of the EDPS on the draft Implementing Regulation amending Implementing Regulation 2015/2447 as regards formats and codes of common data requirements and certain rules on surveillance

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 the Commission Delegated Regulation (EU) 2015/2447 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.
- The Commission Delegated Regulation (EU) 2015/2447 must be amended to further harmonize the customs declaration and notification requirements, taking into account the necessary updates as well as the amendments to Commission Delegated Regulation (EU) 2015/2446, on which the EDPS provided his Opinion on 16 July 2020.
- The EDPS was consulted by the Commission on the draft Delegated Regulation amending Delegated Regulation 2015/2447 as regards the formats and codes of common data requirements and certain rules on surveillance (“the draft Delegated Regulation”).
- The draft Delegated Regulation aims at updating and 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.
- 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 30 July 2020 pursuant to Article 42(1) of Regulation (EU) 2018/1725³.

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 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558–893.

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 (Text with EEA relevance), OJ L 295, 21.11.2018, p. 39–98.

We limited our comments below to the provisions of the draft that are relevant from a data protection perspective.

2. EDPS comments

- We welcome the harmonisation and updates of the formats and codes of the common data requirements for declarations, notifications and proof of the customs status of the Union goods to the customs authorities that are set out in the Annexes to the draft Delegated Regulation, 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*⁴, 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”).⁵
- Furthermore, the EDPS notes that the draft Delegated Regulation entails the processing of limited categories of personal data for the performance of the customs declaration obligations pursuant to the UCC (e.g. name, identification number and address of an economic operator that may lead to identification of the company’s owner; and name of the contact person for the economic operator, of the person lodging the customs good manifest, of the person requesting a proof of the customs status of Union goods, of the person notifying the arrival of goods following movement under temporary storage).
- In the light of the above, the EDPS concludes that the draft Delegated Regulation does not raise data protection issues that would merit specific recommendations.

Brussels, 31 August 2020

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⁴ 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*.

⁵ 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.