

## **EDPS formal comments on a Proposal for a Regulation of the European Parliament and of the Council establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013**

### **1. Introduction and background**

- **The Commission proposal for a Regulation of the European Parliament and of the Council establishing the EU Single Window Environment for Customs and amending Regulation (EU) No 952/2013** (the ‘Proposal’) aims to provide a collaborative framework between customs and partner competent authorities for a fully coordinated and efficient goods clearance process. An interoperable EU Single Window environment would streamline electronic information sharing and collaboration between these authorities, facilitating trade and ensuring an efficient enforcement of the regulatory formalities required for the international trade in goods.
- The Proposal builds on the existing voluntary pilot project called EU Customs Single Window Certificates Exchange (‘EU CSW-CERTEX’), a collaboration between DG TAXUD and other Directorates-General. The pilot project allows customs authorities to automatically verify compliance with a number of non-customs documents submitted with the customs declaration. The Proposal foresees a mandatory EU CSW-CERTEX system that would interconnect national single window environments for customs to Union systems developed for the management of Union non-custom formalities and enable information exchanges between these two domains, transforming the data in a format understandable by the recipient system where necessary.
- In order to address the problems affecting the goods clearance process, such as insufficient coordination and fragmented interoperability between customs and partner competent authorities, the Proposal pursues three specific objectives, namely:  
(1) the definition of a **governance framework for enhanced cooperation** between customs and partner competent authorities and the development of interoperable solutions where beneficial and appropriate;  
(2) the improvement of working practices between the regulatory authorities involved in international trade to enable **more automated, electronic and integrated processes** for dealing with the goods clearance; and  
(3) the determination of a **framework for data harmonisation and re-use of data** for the fulfilment of different formalities required by customs and non-customs authorities for international trade.
- According to the explanatory memorandum and Proposal, the processing of personal data within the EU Single Window Environment for Customs will take place for the purpose of 1) facilitating information sharing between the national environments for customs and Union non-customs systems, and 2) performing data transformation, where necessary, to run processes seamlessly across customs and non-customs digital domains.

- The categories of personal data that may be processed would depend on the formality concerned. In general, the data subjects concerned would be natural persons whose name may be contained in the customs declaration or in the supporting documents, staff of customs or partner competent authority or certified bodies, as well as Commission staff and any third party providers acting on its behalf (e.g. for electronic signatures) involved in operational and maintenance activities related to EU CSW-CERTEX.
- The present formal comments are issued pursuant to Article 42(1) Regulation (EU) 2018/1725, following a request for consultation from the European Commission of 30 October 2020.

## **2. The EDPS Comments**

### **2.1. General comments**

- The EDPS welcomes the specific provisions on the processing of personal data under Regulation (EU) 2016/679<sup>1</sup> ('GDPR') and Regulation (EU) 2018/1725<sup>2</sup> ('the Regulation') in Articles 6 and 7 (and Recital 12) on the functioning of the EU CSW-CERTEX and Article 9 (and Recital 15) on the functioning of the national single window environments for customs.

### **2.2. The processing of personal data in the EU CSW-CERTEX**

- Article 6(1) of the Proposal specifies the purposes of the processing of personal data to be made in EU CSW-CERTEX, i.e. (1) enabling exchanges of information between national single window environments for customs and Union non-customs systems and (2) the performance of the transformation of data listed in Article 10(2), where necessary, to enable the exchange of information. Article 6(2) lists the categories of data subjects concerned by the processing and Article 6(3) describes the type of data to be processed. Article 6(4) states that the system shall not store any information exchanged between the national single window environments for customs and Union non-customs systems and that the personal data's transformation referred shall be performed through information technology infrastructure located in the Union.
- We note that the term 'data transformation', in addition to being referred to in the explanatory memorandum, is included in recital 10 and Article 6(1) and (5) of the Proposal. The EDPS considers that, for purpose of legal certainty, a definition of the term 'data transformation' should be included in the Proposal.
- The EDPS notes that, according to Article 7 of the Proposal, the Commission shall be a joint controller within the meaning of Article 28(1) of the Regulation (EU) 2018/1725 and customs authorities and partner competent authorities shall be joint controllers within the meaning of Article 26(1) of the GDPR. The EDPS acknowledges that Article 7(2) of the draft Regulation provides for the responsibilities

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<sup>1</sup> 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.

<sup>2</sup> 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.

of the joint controllers to be determined by means of implementing acts. In this regard, the EDPS welcomes that Article 7(3) of the Proposal, in line with the wording of Article 26 GDPR and 28 of the Regulation, provides for a minimum list of responsibilities by the joint controllers to ensure that the joint processing is compliant. The EDPS welcomes that the upcoming implementing acts will provide for a joint controllership arrangement and recalls the legal requirement for a consultation of the EDPS under Article 42(1) of the Regulation.

- The EDPS recalls that the arrangement, in addition to allocating the relevant responsibilities and providing for information and contacts of the entities involved, could also identify a contact point for data subjects. Doing so can improve clarity and transparency to data subjects and help to ensure that adequate follow-up is provided to each data subject request. In this context, we draw attention to the EDPS Guidelines on the role of controller, processor and joint controllership under Regulation (EU) 2018/1725<sup>3</sup>, aimed at assisting EUIs in their roles under the meaning of data protection law, together with the EDPB Guidelines on the concepts of controller and processor in the GDPR<sup>4</sup>.
- The EDPS notes that Article 16 of the Proposal will allow access of Partner Competent Authorities to the EORI system to validate relevant data of economic operators. In this regard, it should be noted that data subjects should also be informed of such potential access in the information provided to data subjects in relation to the EORI registration forms (a competence and responsibility of Member States' customs authorities).

### **2.3. The processing of personal data in the National single window environments for customs**

- The EDPS notes that Article 9(1) of the Proposal states that the processing of personal data within the national single window environments for customs shall take place in accordance with the GDPR separately from the processing operations referred to in Article 6 of the Proposal. Article 9(2) adds that Each Member State shall be the sole controller of the data processing operations taking place within its single window environment for customs. The EDPS recommends clearly specifying, in the future implementing act on the respective responsibilities of the joint controllers, which processing activities fall within the scope of the joint controllership and which processing activities fall under the sole control of the Member States, in order to ensure a clear understanding of the allocation of responsibilities and thus foster legal certainty. The EDPS also encourages the Commission to further clarify how Member States should cooperate in case a data subject submits a request relating to the sole control of another Member State in order to ensure an effective exercise of data subject rights.

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(*e-signed*)

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<sup>3</sup> EDPS Guidelines on the concepts of controller, processor and joint controllership under Regulation 2018/1725, available at [https://edps.europa.eu/sites/edp/files/publication/19-11-07\\_edps\\_guidelines\\_on\\_controller\\_processor\\_and\\_jc\\_reg\\_2018\\_1725\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/19-11-07_edps_guidelines_on_controller_processor_and_jc_reg_2018_1725_en.pdf), pp. 28-29.

<sup>4</sup> EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR [https://edpb.europa.eu/sites/edpb/files/consultation/edpb\\_guidelines\\_202007\\_controllerprocessor\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_202007_controllerprocessor_en.pdf), pp. 41-42.