

Formal comments of the EDPS on the draft Implementing Regulation establishing the forms provided for in Regulation (EU) No 2018/1672 of the European Parliament and the Council on controls on cash entering or leaving the Union and laying down technical rules for the effective exchange of information through the Customs Information System (CIS)

1. Introduction and background

- Article 3(3) and Article 4(3) of Regulation (EU) No 2018/1672 (the “**Cash Controls Regulation**”)¹ requires that movement of accompanied and unaccompanied cash of a value of EUR 10,000 or more entering or leaving the Union, is registered in writing or electronically by using the declaration form referred to in point (a) of Article 16(1) of the said regulation.
- The draft Implementing Regulation establishing the forms provided for in Regulation (EU) No 2018/1672 of the European Parliament and the Council on controls on cash entering or leaving the Union and laying down technical rules for the effective exchange of information through the Customs Information System (CIS) (the “**draft Implementing Regulation**”) lays down the detailed rules for the drawing up, the content, and the use of the declaration form referred to in Article 3(3) and Article 4(3) of the Cash Controls Regulation.
- These comments are provided in reply to the request by the Commission, Directorate-General for Taxation and Customs (DG TAXUD) to the EDPS dated 25 January 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 (“**the EUDPR**”)² on the draft Implementing Regulation. We limited our comments below to the provisions of the draft Implementing Regulation that are relevant from a data protection perspective.
- A previous version of the draft Implementing Regulation was submitted to the EDPS and informal comments were provided.

2. EDPS comments

- The EDPS welcomes the harmonisation and setting out of rules on the drawing up, the content and the use of the declaration forms required in the context of controls on cash entering or leaving the Union, as well as the rules for the effective exchange of information through the Customs Information Systems (CIS).

¹ Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005, OJ L 284, 12.11.2018, p. 6–21

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

- We also welcome the reference to Regulation (EU) 2016/679 (“the GDPR”)³ and to the EUDPR under recital 11⁴ of the draft Implementing Regulation.
- In the EDPS view, the **declaration forms** set out in Annex I, parts 1 to 5 and in Annex II do not raise data protection concerns. In particular, he considers that the type and amount of data required in the declaration forms of Annex I, including *inter alia* the identification details of the carrier, the owner, the recipient and the declarant of the cash, is in line with the principles of data minimisation and the principle of proportionality. In this regard, we recall that pursuant to Article 5(1)(c) GDPR personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.
- The EDPS notes that Annex II contains a declaration form for the transmission of anonymized risk information and risk analysis results. He recalls that in accordance with Regulation (EU) 2018/1672, by its definition, the **form for the exchange of anonymised risk information** should **not** contain personal data, as defined in point (1) of Article 4 of the GDPR, namely any “*information relating to an identified or identifiable natural person*”.
- Having regard to aspects concerning the processing of data collected via the forms, it is the EDPS’s understanding that a new dedicated feature is under development within the Customer Information System (CIS). At this stage, he would like to remind the importance of ensuring the full **respect of data protection by design and by default principles** as defined in Article 27 EUDPR, while also determining appropriate technical and organizational security measures as of Article 33 EUDPR.
- Moreover, the EDPS has been informed that a dedicated file upload feature is under configuration in CIS that will involve personal data processing. The EDPS reiterates the need to embed secure connections protocols, access control and logging features for minimizing risks related to data breaches and improving the traceability of actions performed on the system by different authorized users. In this context, we recommend the consultation of the EDPS **Guidelines on the protection of personal data in IT governance and IT management of EU institutions**⁵
- Concerning **data retention periods** for the personal data contained in the forms, the EDPS notes that Article 13(4) of Regulation (EU) 2018/1672 explicitly states a retention period of five years from the date on which the data were obtained. The personal data shall be erased upon the expiry of that period. We welcome the clarity in the specification of the retention period, and insist that logs shall be kept in a form which permits identification of data subjects for no longer than is necessary for the aimed purpose as of Article 4(1)(e) EUDPR. To ensure this, the EDPS recommends the **adoption of internal policies that specify deletion/anonymization criteria** and the procedures thereto.

³ 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) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

⁴ “Where it is necessary for the purposes of this Regulation to process personal data, this should be carried out in accordance with Union law on the protection of personal data. Any processing of personal data based on this Regulation is subject to Regulations (EU) No 2016/6794 and (EU) No 2018/17255 of the European Parliament and of the Council.”

⁵ EDPS **Guidelines on the protection of personal data in IT governance and IT management of EU institutions**, March 2018, available at: https://edps.europa.eu/sites/edp/files/publication/it_governance_management_en.pdf

- Lastly, the EDPS recommends designing and adopting specific measures for minimizing risks that can emerge from errors in data inserted by the competent authorities. In case of requests made by data subjects, competent authorities should have the technical possibility to rectify wrong data and propagate the modification.

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(e-signed)