



Formal comments of the EDPS on a draft Commission Implementing Regulation laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods.

1. Introduction and background

- The **draft Commission Implementing Regulation laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods ('the Proposal')** lays down the detailed arrangements for the establishment of a centralised electronic system (the 'ICG system') for the storage and exchange of information between Member States administrations and the accomplishment of formalities by operators, who seek to import cultural goods into the Union, namely, import licences and importer statements.
- As provided in Recitals 1 and 2 of the Proposal, in order to properly implement Regulation (EU) 2019/880¹, it is necessary to lay down specific rules for the establishment of an import licensing system for certain categories of cultural goods listed in Part B of the Annex to that Regulation and regarding an importer statement system for the categories listed in Part C of that Annex to Regulation. Furthermore, the Recital 3 of the Proposal considers that it is necessary to lay down rules regarding the exceptions to the requirements to obtain an import licence or to submit an importer statement under certain conditions.
- These comments are provided in reply to the request by the Commission of 30 March 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')² on the Proposal. We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.

2. Comments

- The EDPS notes that Article 20 of the Proposal, on joint controllership, provides that the Commission and the Member States shall be regarded as data controllers of the processing operations necessary for the establishment, operation and maintenance of

¹ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods, OJ L 151, 7.6.2019, p. 1.

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.

the ICG system. As Article 20 of the Proposal clearly refers to joint controllership, the **EDPS recommends rewording it, by explicitly clarifying that the Commission and the Member States shall be regarded as joint controllers of the processing of personal data.**

- The EDPS notes that, in line with Article 20 of the Proposal, the Commission and the Member States shall enter into a joint controllership arrangement at the latest three years after the entry into force of the Proposal. In this regard, the **EDPS recommends at least outlining the roles and responsibilities of the joint controllers** in the Proposal, including a **contact point** to ensure that the exercise of data subject's rights is adequately ensured. The EDPS recalls that, in line with Article 26 GDPR³ and Article 28 of Regulation (EU) 2018/1725⁴ **the determination of the joint controllers respective responsibilities by means of an arrangement must be done before the operation of the system** and must in particular regard the **exercise of data subject's rights and the duties to provide information**. In addition to allocating the relevant responsibilities and providing for information and contacts of the entities involved, a contact point for data subjects could also be identified. Doing so improves clarity and transparency to data subjects and helps ensuring that adequate follow-up is provided to each data subject request.
- Additionally, the distribution of responsibilities should cover other data protection obligations such as the legal basis for the processing of personal data, adequate technical and organisational measures, data breach notification obligations⁵, data protection impact assessments ('DPIAs'), any possible use of processors, third country international data transfers and modalities to ensure the exercise of data subject's rights. In this context, we draw attention to the EDPS Guidelines on the role of controller, processor and joint controllership under Regulation (EU) 2018/1725⁶, aimed at assisting EUIs in their roles under the meaning of data protection law,

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), OJ L 119, 4.5.2016.

⁴ 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.

⁵ Especially for the data breaches notification obligation, it should be clarified if the Commission will be responsible (hence the EDPS will be notified) or the member states (hence the national DPAs will be informed), or if a cooperation scheme is necessary. This will affect also who will need to notify the data subjects.

⁶ 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, pp. 28-29.



together with the EDPB Guidelines on the concepts of controller and processor in the GDPR⁷.

- Furthermore, in line with the EDPB Guidelines, the arrangement between joint controllers should “*be made in the form of a binding document such as a contract or other legal binding act under EU or Member State law to which the controllers are subject*”. Consequently, the **EDPS recommends specifying in the Proposal the legal form, in which the arrangement between joint controllers will be made**. In this regard, the EDPS also recalls the legal requirement for a consultation of the EDPS under Article 42(1) of the Regulation (EU) 2018/1725 in case a joint controllership arrangement will be made in the form of implementing or delegated act.
- Finally, the EDPS notes that, pursuant to Article 24(2) of the Proposal, “*[e]ach input, modification and deletion of data shall be recorded*”. However, the same Article does not provide that viewing information shall be logged. Consequently, the **EDPS recommends assessing and adding, if necessary, such logging**, in particular, if it would be useful in the context of a complaint, or access request by data subjects (regardless if they have access to the central system or not).

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⁷ 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, pp. 41-42.