



Formal comments of the EDPS on a draft Commission Implementing Regulation laying down detailed rules for the application of Council Regulation (EU) No 904/2010, as regards the special scheme for small enterprises

1. Introduction and background

- The following comments concern a draft Commission Implementing Regulation laying down detailed rules for the application of Council Regulation (EU) No 904/2010, as regards the special scheme for small enterprises ('the draft Implementing Regulation').
- Council Directive (EU) 2020/285¹ has updated the special scheme for small enterprises provided by Council Directive 2006/112/EC² and amended Council Regulation (EU) No 904/2010³ with provisions on Member States' administrative cooperation and exchange of information for the purpose of monitoring the correct application of that special scheme.
- These comments are provided in reply to the formal request by the Commission on 30 July 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')⁴. We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
- These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR.

2. EDPS Comments

- Articles 17(1)(g), 21(2b), 32(1), 37a and 37b of Council Regulation (EU) No 904/2010 concern the storage, the automated enquiry and the transmission of information

¹ Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

³ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

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).

relating to the special scheme for small enterprises provided by Council Directive 2006/112/EC. The EDPS notes that the purpose of the draft Implementing Regulation is to establish the technical details (and common electronic messages) for the implementation of these provisions, pursuant to the legal obligations stemming from Articles 17(2), 37a(2) and 37b(4) of Council Regulation (EU) No 904/2010.

- The EDPS notes that Council Regulation (EU) No 904/2010 already makes references to the GDPR⁵ and EUDPR and contains provisions on the processing of personal data⁶ in the context of the administrative cooperation and the fight against fraud in the field of value added tax (VAT), which also apply to the Member States' administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises.
- The EDPS considers that the draft Implementing Regulation does not raise concerns having regard to the right to the protection of personal data and has no specific comments on the draft Implementing Regulation.

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[e-signed]

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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).

⁶ Article 55(5) of the Council Regulation (EU) No 904/2010 states that:

'[a]ll storage, processing or exchange of information referred to in this Regulation is subject to Regulations (EU) 2016/679 and (EC) No 45/2001 of the European Parliament and of the Council. However, Member States shall for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Articles 12 to 15, 17, 21 and 22 of Regulation (EU) 2016/679. Such restrictions shall be limited to what is strictly necessary in order to safeguard the interests referred to in point (e) of Article 23(1) of that Regulation, in particular to:

(a) enable the competent authorities of the Member States to fulfil their tasks properly for the purposes of this Regulation; or

(b) avoid obstructing official or legal enquiries, analyses, investigations or procedures for the purposes of this Regulation and to ensure that the prevention, investigation and detection of tax evasion and tax fraud is not jeopardised.

The processing and storage of information referred to in this Regulation shall be carried out only for the purposes referred to in Article 1(1) of this Regulation and the information shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for any other purposes, such as commercial purposes, shall be prohibited. The storage periods of this information shall be limited to the extent necessary to achieve those purposes. The storage periods of the information referred to in Article 17 of this Regulation shall be determined as per the limitation periods provided for in the legislation of the Member State concerned but no longer than ten years'.