

EDPS formal comments on the draft Commission Implementing Regulation specifying the details of the electronic interface between national customs systems and the information and communication system for market surveillance, and the data to be transmitted by means of that interface

1. Introduction and background

- The Commission Implementing Regulation (‘the draft Regulation’) lays down, in accordance with the Regulation (EU) 2019/1020¹, the details for the interface between national custom systems and the Information and Communication System for Market Surveillance (hereinafter, “the ICSMS”), including the data to be transmitted through it.
- These comments are provided in reply to the formal request by the Commission of 23 September 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 (‘the EUDPR’)². 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. Comments

- The EDPS notes, from the specification **of the data to be transmitted** under Article 2 and Annex 1 to the draft Regulation, that it is not very likely that the information in question would include personal data. The EDPS also notes that the provisions under Article 4 of the draft Regulation, **specifying** among others: **the purposes** for which the processing of personal data may take place in the interface, **the categories of data subjects** and **the categories of personal data**.

¹ Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (Text with EEA relevance.), OJ L 169, 25.6.2019.

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, OJ L 295, 21.11.2018.



- The EDPS observes the need to ensure that the data protection provisions laid down in the draft Regulation are consistent with those established in the Proposal for a Regulation establishing the European Union Single Window Environment for Customs (“the Single Window Regulation”)³.
- The aforesaid need for consistency stems from the fact that the ICSMS technically relies on the communication system EU SWE-C⁴, regulated under the Single Window Regulation, which provides an integrated set of interoperable electronic services at Union and national level to support interaction and information exchange.
- The EDPS therefore welcomes **the alignment of the provisions under Article 4** of the draft Regulation to the provisions under Article 6 of the Single Window Regulation.
- Recital 5 of the draft Regulation, referring to the **application of the GDPR⁵ and the EUDPR** and providing **the review** of the data protection provisions of the draft Regulation in the light of the provisions of the finally adopted Single Window Regulation, is also a welcome specification.
- The EDPS also welcomes **the alignment of the provisions under Article 5** of the draft Regulation to the provisions under Article 7 of the Single Window Regulation, that clarify roles and responsibilities of the different actors involved in ICSMS having regard to the processing of personal data.

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(e-signed)

Wojciech Rafał WIEWIÓROWSKI

³ 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, COM/2020/673 final. The EDPS has issued formal comments on this Proposal on 20 November 2020, available at:

https://edps.europa.eu/system/files/2021-03/2020-0197_formal_comments_on_a_proposal_for_a_regulation_of_the_ep_and_edps_en_0.pdf

⁴ Recital 54 of Regulation (EU) 2019/1020 specifies that: “*In order to use the EU Single Window environment for customs and therefore to optimise and unburden the data transfer between customs and market surveillance authorities, it is necessary to set up electronic interfaces that allow automatic data transfer. Customs and market surveillance authorities should contribute to determine the data to be transmitted. Additional burden for customs authorities should be limited and the interfaces should be highly automated and easy-to-use.*”

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