



EUROPEAN DATA PROTECTION SUPERVISOR

**EDPS formal comments on the draft Commission Implementing Regulation laying down detailed rules for the application of Council Regulation (EU) No 904/2010 as regards the creation of a central electronic system of payment information (CESOP) to combat VAT fraud**

**1. Introduction**

- On 6 January 2021, the European Commission, Directorate-General Taxation and Customs Union (DG TAXUD) consulted the EDPS on the draft Commission Implementing Regulation laying down detailed rules for the application of Council Regulation (EU) No 904/2010<sup>1</sup> as regards the creation of a central electronic system of payment information (CESOP) to combat VAT fraud ('the draft Implementing Regulation'). With the same consultation request, the European Commission requested the opinion of the EDPS on the different technical solutions that have been identified to crosscheck CESOP payment data against data hosted in other EU tax databases, in particular the VAT Information Exchange System (VIES) and the (Import) One Stop Shop ([I]OSS).
- The draft Implementing Regulation aims to lay down rules regarding the format and content of the electronic form for the collection of data<sup>2</sup>, the roles and responsibilities of the Commission and Member States as regards controllership of CESOP<sup>3</sup>, the security procedures<sup>4</sup>, the details of the system functionalities and the role of the Commission in technically managing the system and the rules regarding access to CESOP<sup>5</sup>.

---

<sup>1</sup> 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.

<sup>2</sup> Article 24b(1), point (b) of Council Regulation (EU) 2020/283 of 18 February 2020 amending Regulation (EU) 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud, OJ L 62, 2.3.2020, p. 1.

<sup>3</sup> See Article 24e, point (h) of Council Regulation (EU) 2020/283 of 18 February 2020 amending Regulation (EU) 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud, OJ L 62, 2.3.2020, p. 1.

<sup>4</sup> See Article 24e, point (g) of Council Regulation (EU) 2020/283 of 18 February 2020 amending Regulation (EU) 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud, OJ L 62, 2.3.2020, p. 1.

<sup>5</sup> See Article 24e, point (a) of Council Regulation (EU) 2020/283 of 18 February 2020 amending Regulation (EU) 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud, OJ L 62, 2.3.2020, p. 1.

- On 14 March 2019, the EDPS issued an Opinion<sup>6</sup> related, among other legislative proposals, to the draft Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud in the field of “e-commerce”<sup>7</sup>.
- These comments are provided in reply to the formal request by the Commission pursuant to Article 42(1) of Regulation (EU) 2018/1725 (‘the EUDPR’)<sup>8</sup>. 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

### 2.1 Draft Implementing Regulation

- The EDPS welcomes recital (8) of the draft Implementing Regulation, stipulating that the processing of personal data under this Regulation as well as the responsibilities of Member States and the Commission is subject to the rules laid down in Regulation (EU) 2016/679 (‘the GDPR’)<sup>9</sup> and the EUDPR.
- The EDPS also welcomes the designation of roles and responsibilities of the Member States and the Commission, whereby Member States are jointly considered as controllers of CESOP and the Commission is identified as processor. The role of the Commission as **processor** is due in particular to the limited responsibilities of the Commission as regulated under Article 7(2) (a)-(f) of the draft Implementing Regulation. Indeed, in this regard it is important to note that in order to qualify as controller the entity shall actually exert a decisive influence on the purposes and means of the processing<sup>10</sup>.

---

<sup>6</sup> EDPS Opinion 1/2019 on two legislative proposals relating to combating VAT fraud, 14 March 2019.

<sup>7</sup> The draft Proposal has been adopted as Council Regulation (EU) 2020/283 of 18 February 2020 amending Regulation (EU) 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud.

<sup>8</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, p. 39.

<sup>9</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) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1.

<sup>10</sup> See EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR Version 2.0 Adopted on 07 July 2021, paragraph 30. The EDPS Opinion 1/2019 on two legislative proposals relating to combating VAT

- The EDPS also notes that the tasks of the Commission, on the one hand, and of the Member States, on the other hand, are specified under Article 1, 2, 3, and 6. Article 7 takes into account the respective roles and responsibilities of the Member States and of the Commission, expressly referring to the joint controllership of Member States in Article 7(1) and to the Commission as processor in Article 7(2)<sup>11</sup>.
- Having regard to the electronic standard form for the transmission of data to CESOP, provided pursuant to Article 3(2) of the draft Implementing Regulation and Article 243d of Directive 2006/112/EC<sup>12</sup> as amended by Council Directive (EU) 2020/284<sup>13</sup>, the EDPS notes that the “data elements” of the forms (boxes 1-15) correspond to the data elements in Article 243d of Directive 2006/112/EC.
- Moreover, the EDPS welcomes Article 5 of the draft Implementing Regulation related to access to CESOP, in particular the requirement to provide designated Eurofisc liaison officials with unique personal user identification to access CESOP.
- Finally, the EDPS observes that according to Article 1 of the draft Implementing Regulation the Commission shall develop technical measures for the establishment of CESOP. In this regard, the EDPS recalls that the Commission must ensure compliance with the provisions on **security** of processing under the EUDPR, in particular following the EDPS “Guidelines on the protection of personal data in IT governance and management of EU institutions”<sup>14</sup>.

## 2.2 Technical options for cross-checks of payees’ data in CESOP

- The EDPS observes that, as specified in the request for consultation, all data in CESOP will be made available to specifically accredited Eurofisc liaison officials with a view to performing risk analysis and searches to combat VAT fraud. This restriction is important to ensure compliance with the principle of purpose limitation, as well to ensure strict control on access to data. The same specification should apply to the cross-check of CESOP data with data from OSS and VIES.

---

fraud, of 14 March 2019, referring instead, at paragraph 13, to the Commission role as controller, predates the Guidelines. Moreover, in the assessment of the controller/processor role, it is key to always assess all relevant legal and factual circumstances related to the factual ability to exercise control. In this regard, see also EDPS Guidelines on the concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725, of 7 November 2019, at page 7, referring to “the factual influence that the controller has over the processing operation”.

<sup>11</sup> See also recital (8) of the draft Implementing Regulation.

<sup>12</sup> 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.

<sup>13</sup> Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers, OJ L 62, 2.3.2020, p. 7.

<sup>14</sup> EDPS Guidelines on the protection of personal data in IT governance and IT management of EU institutions, 23 March 2018.

- According to Article 24c of Council Regulation (EU) 2020/283 amending Council Regulation (EU) No 904/2010, on the basis of which the draft Implementing Regulation is adopted ('the basic act'), the CESOP shall have the capability with regard to information transmitted in accordance with Article 24b(3) to analyse the information stored, together with the relevant targeted information communicated or collected pursuant to Council Regulation (EU) No 904/2010.
- The EDPS notes that data from OSS and from VIES are relevant information communicated or collected pursuant to Council Regulation (EU) No 904/2010. Indeed, Council Regulation (EU) No 904/2010 is the legal basis for VIES which permits the exchange of VAT registration and turnover data<sup>15</sup>, as well as the legal basis for OSS data<sup>16</sup>.
- For both systems, the purpose is to enable the competent authorities of the Member States to cooperate and to exchange information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud.
- In the request for consultation, the Commission asks the opinion of the EDPS regarding different technical options to organise the crosscheck of bulk payees' data in CESOP with the OSS and VIES databases. In particular, the Commission wishes to ascertain whether it would be compliant with data protection rules if the system would automatically share the information held in the national VIES and OSS systems with CESOP, allowing it to create a central copy of all the national databases ("push model"), as opposed to an on demand exchange of information ("pull model").
- The EDPS observes that the document entitled "CESOP-VIES Interface", attached to the request for consultation, already notes that "*there is uncertainty if the legal basis permits Member States to push data to CESOP, and if CESOP is permitted to store the information centrally.*" The EDPS also notes that the relevant VAT information is currently stored in Member States' databases and there is no central database at EU level.
- The EDPS also notes that Article 24c(1)a of the basic act provides that CESOP will store information transmitted in accordance with Article 24b(3) of the basic act, but does not contain similar wording in relation to the "relevant targeted information communicated or collected pursuant to this Regulation". Moreover, the use of the wording "targeted information" would suggest that the analysis be carried out in relation to specific requests, i.e. "on demand". For these reasons, the EDPS considers that Article 24b(3) of the Basic Act does not provide a sufficient lawful basis for CESOP to maintain a central copy of all national databases. Similar considerations apply to the cross-check of CESOP data with data in the OSS system.

---

<sup>15</sup> See also: [https://ec.europa.eu/taxation\\_customs/vat-and-administrative-cooperation\\_en](https://ec.europa.eu/taxation_customs/vat-and-administrative-cooperation_en)

<sup>16</sup> See also: [https://ec.europa.eu/taxation\\_customs/business/vat/vat-e-commerce/oss\\_en](https://ec.europa.eu/taxation_customs/business/vat/vat-e-commerce/oss_en)

- Having regard to the *on demand* information requests to query VIES and OSS, the EDPS considers that this option, also as on demand ‘batch requests’<sup>17</sup>, could be implemented in compliance with data protection rules and principles under GDPR and the EUDPR. In this regard, the EDPS underlines the importance of:
  - ensuring compliance with the requirement of purpose limitation (use of the data are only for the purpose of countering VAT fraud);
  - applying strict access control measures, enabling access only to designated Eurofisc officials.

Brussels, 2 February 2022

(e-signed)  
Wojciech Rafał WIEWIÓROWSKI

---

<sup>17</sup> By ‘batch requests’ we mean multiple requests in one message.