



EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

9 November 2022

Opinion 22/2022

on the Proposal for a Council Regulation
amending Regulation (EU) No 389/2012 as
regards the exchange of information
maintained in the electronic registers
concerning economic operators who move
excise goods between Member States for
commercial purposes

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 ‘With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies’, and under Article 52(3) ‘...for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data’.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years.

*Under **Article 42(1)** of Regulation 2018/1725, the Commission shall ‘following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals’ rights and freedoms with regard to the processing of personal data’.*

This Opinion relates to [insert full name of the legislative Proposal or Recommendation or Proposal to the Council Pursuant to Article 218 TFEU]. This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Regulation (EU) 2018/1725. This Opinion is limited to the provisions of the draft Proposal that are relevant from a data protection perspective.

Executive Summary

The EDPS notes that the draft Proposal would introduce the following amendments to Council Regulation EU (No) 389/2012:

- according to the new Article 19(4), the information contained in the national registers concerning all economic operators engaged in movements of excise goods as referred to in Chapter IV, and Chapter V, Section 2, of Council Directive (EU) 2020/262 shall be automatically exchanged via a central register;
- according to the new Article 20(1), the Commission must ensure that all persons involved in the movement of excise goods can obtain confirmation by electronic means of the validity of excise numbers held in the central register.

The EDPS considers that these amendments do not raise significant data protection issues, notably since the information to be provided in the context of administrative cooperation in the field of excise duties are not modified by the proposed amendments.

The EDPS also notes that the proposed amendments would not impact on the already established means for the processing of personal data in the context of Council Regulation EU (No) 389/2012.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 24 October 2022 the European Commission adopted the Proposal for a Council Regulation amending Regulation (EU) No 389/2012 as regards the exchange of information maintained in the electronic registers concerning economic operators who move excise goods between Member States for commercial purposes ('the Proposal').
2. The objective of the Proposal according to the explanatory memorandum is to introduce the obligations of Member States regarding the exchange of data of economic operators moving goods under Chapter V, section 2 of Directive (EU) 2020/262 maintained in the national registers with the central register, enabling full exchange of information and reducing the administrative burden on economic operators as well as the risk of fraud and improving the administrative cooperation between the competent authorities of the Member States.

To achieve these objectives, the Proposal seeks to align the procedure of exchanging the data of economic operators moving goods under Duty Suspension with the exchange of data of the economic operators moving goods under Duty Paid. This alignment will contribute to the digitalisation of the monitoring of movements of excise goods released for consumption in the territory of one Member State and moved to the territory of another Member State in order to be delivered there for commercial purposes and improve the fight against tax fraud, according to the explanatory memorandum.

3. In accordance with Article 36 of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast)², as from 13 February 2023 all intra-EU movements of excise goods released for consumption in one Member State and moved to another Member State to be delivered there for commercial purposes (so-called "Duty Paid movements") will be monitored through the computerised system, that is the Excise Movement and Control System (EMCS). Until 13 February 2023, EMCS is only covering intra-EU movements of excise goods in suspension of excise duty.

¹ OJ L 295, 21.11.2018, p. 39.

² OJ L 58, 27.2.2020, p. 4.

The extension of the computerised system to Duty Paid movements by Council Directive (EU) 2020/262 requires to extend also the scope of Regulation (EU) No 389/2012.

4. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 26 October 2022, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital (6) of the Proposal. In this regard, the EDPS also positively notes that he was already previously informally consulted pursuant to recital 60 of EUDPR.

2. General remarks

5. Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 ('the Regulation')³ lays down the conditions under which the competent authorities in the Member States for the application of the legislation on excise duties are to cooperate with each other, and with the Commission, in order to ensure compliance with that legislation. To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange, by electronic means or otherwise, information that is necessary to ensure the correct application of legislation on excise duties.
6. Article 19(1) of the Regulation provides for an electronic database containing *inter alia* a register of economic operators belonging to one of three categories, *inter alia* registered consignees and registered consignors.

The content of the registers is provided for by Article 19(2) of the Regulation. It consists of the unique excise number issued by the competent authority in respect of an economic operator or premises; the name and address of the economic operator or premises; the excise product category and/or the excise product code; further information on authorisations for registered consignees; and other specified information. The EDPS observes that these datasets do not necessarily have to constitute personal data; however, based on the individual circumstances, this may be the case, for example when the economic operator is a sole proprietor or the name of a company refers to its majority owner. Therefore the EDPS considers it necessary and welcomes that the Proposal is based on the presumption that personal data is exchanged.

7. Article 19(4) of the Regulation provides for an automatic exchange of the data referred to in paragraph 2 via a central register. The Proposal replaces the limitation of this provision to excise goods under duty suspension arrangements and widens it to (all) goods referred to in Chapter IV and Chapter V, Section 2, of Council Directive (EU) 2020/262, extending the exchange via a central register to Duty Paid movements.

In practice these provisions allow the consignor and consignee to document a movement of excise goods at every stage through an electronic Administrative Document (eAD), issued by the original consignor and containing information on the consignment and the planned movement within the EU. The eAD is validated by the Member State of dispatch using a

³ Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004, OJ L 121, 8.5.2012, p. 1–15.

European register of operators, and then the eAD is electronically transmitted by the Member State of dispatch to the Member State of destination, which forwards it to the consignee. At receipt of the excise goods, the consignee submits an electronic report of receipt, which is forwarded by the Member States involved to the consignor who can then discharge the movement and recover financial guarantees they had to make.

8. In addition, according to the new Article 20(1), the Commission must ensure that all persons involved in the movement of excise goods can obtain confirmation by electronic means of the validity of excise numbers held in the central register.

The EDPS notes that this legislative consultation is not the right occasion to deal in all details with the Excise Movement Control System and its technical implementation. The following comment is therefore without prejudice to the practical implementation.

3. Comments

9. The EDPS considers that the amendments of the Regulation by the Proposal do not raise significant data protection issues, notably since the information to be provided in the context of administrative cooperation in the field of excise duties are not modified by the proposed amendments. The EDPS also notes that the proposed amendments would not impact on the already established means for the processing of personal data in the context of the Regulation.
10. Given the subject matter and the provisions of the Proposal, which do not raise significant issues having regard to the protection of personal data, the EDPS has no comments on the draft Proposal.

4. Conclusions

11. In light of the above, the EDPS refrains from making any recommendations.

Brussels, 9 November 2022

(e-signed)

Wojciech Rafał WIEWIÓROWSKI