

EDPS Formal comments on the draft Commission Delegated Regulation supplementing Regulation (EU) 2022/2399 of the European Parliament and of the Council by specifying the data elements to be exchanged through the European Union Customs Single Window Certificates Exchange System and amending that Regulation as regards the list of Union non-customs formalities covered by the EU Single Window Environment for Customs and on the draft Commission Implementing Regulation laying down rules for information exchange in the European Union Customs Single Window Certificate Exchange System pursuant to Regulation (EU) 2022/2399 of the European Parliament and of the Council

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 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 ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 4 May 2024, the European Commission consulted the EDPS on the draft Commission Delegated Regulation supplementing Regulation (EU) 2022/2399 of the European Parliament and of the Council by specifying the data elements to be exchanged through the European Union Customs Single Window Certificates Exchange System and amending that Regulation as regards the list of Union non-customs formalities covered by the EU Single Window Environment for Customs ('the draft Delegated Regulation') and on the draft Commission Implementing Regulation laying down rules for information exchange in the European Union Customs Single Window Certificate Exchange System pursuant to Regulation (EU) 2022/2399 of the European Parliament and of the Council ('the draft Implementing Regulation').
2. The objective of the draft Delegated Regulation is to amend Part A and Part B of the Annex to Regulation (EU) 2022/2399² as regards Union non-customs formalities and

¹ OJ L 295, 21.11.2018, p. 39.

² Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013, OJ L 317, 9.12.2022, p. 1–23.

their respective Union non-customs systems, as well as to specify the data elements to be exchanged through EU CSW-CERTEX.

3. The objective of the draft Implementing Regulation is to lay down rules for the functioning of EU CSW-CERTEX, including rules on the protection of personal data and for the joint controllership between the Commission, customs authorities and partner competent authorities for EU CSW-CERTEX. The draft Implementing Regulation would also lay down a work programme for the incorporation of Union non-customs systems and formalities in EU CSW-CERTEX.
4. The draft Delegated Regulation is adopted pursuant to Article 5(6) and 5(7) and 10(3) of Regulation (EU) 2022/2399. The draft Implementing Regulation is adopted pursuant to Article 7(2), Article 10(4) and Article 19 of Regulation (EU) 2022/2399.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in recital 18 of the draft Delegated Regulation and in recital 19 of the draft Implementing Regulation.
6. The EDPS welcomes the fact that the Commission informally consulted the EDPS on the draft Delegated and Implementing Regulation.
7. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related Implementing or Delegated acts³.
8. 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 and are limited to the provisions of the draft Delegated and Implementing act that are relevant from a data protection perspective.

2. Comments

9. The EDPS takes note of the proposed amendments relating to the data elements to be exchanged through EU CSW-CERTEX as specified in the draft Delegated Regulation. The EDPS has no comments relevant from a data protection perspective on the draft Delegated Regulation.

³ In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

10. The EDPS welcomes that the draft Implementing Regulation would lay down rules to help ensure the protection of personal data during the functioning of EU CSW-CERTEX (Chapter II).
11. The EDPS notes that Article 12 of the draft Implementing Regulation specifies which processing activities performed by EU CSW-CERTEX fall within the scope of joint controllership. As clarified by recital 14, it is the customs authorities, partner competent authorities and the Commission that act as joint controllers. The EDPS recommends specifying this also in the enacting terms of the draft Implementing Regulation⁴.
12. The EDPS has no further comments on the draft Implementing Regulation.

Brussels, 31 May 2024

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁴ For instance, by adding the wording “of the Commission, of customs authorities and of partner competent authorities” after the wording “joint controllership” in Article 12(1).