



Formal comments of the EDPS on the draft Commission Implementing Regulation amending Implementing Regulation (EU) No 79/2012 as regards the storage of and automated access to the information on the VAT exempted importations under the ‘import scheme’

1. Introduction

- On 1 June 2021, the European Commission consulted the European Data Protection Supervisor (EDPS) on the draft Commission Implementing Regulation amending Implementing Regulation (EU) No 79/2012 as regards the storage of and automated access to the information on the VAT exempted importations under the ‘import scheme’ (hereinafter, “the draft Implementing Regulation”).
- The draft Implementing Regulation introduces a technical amendment to the Implementing Regulation (EU) No 79/2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax¹, replacing its Article 5a(1) by the following: “*The storage of and automated access by competent authorities to the information referred to in Article 17(1), points (e) and (f), of Regulation (EU) No 904/2010 shall take place using the electronic system referred to in Article 56(1) of Commission Implementing Regulation (EU) 2015/2447.*”
- The amendment specifies that the storage of and automated access to information on VAT exempted importations will take place using the existing electronic systems referred to under Article 56(1) of the Commission Implementing Regulation (EU) 2015/2447 (the Electronic system relating to surveillance of the release for free circulation or the export of goods)².

2. Comments

- It cannot be excluded that the information to be exchanged³ pursuant to the draft Implementing Regulation can be considered in certain, even if limited, cases to

¹ Commission Implementing Regulation (EU) No 79/2012 of 31 January 2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010 concerning administrative cooperation and combating fraud in the field of value added tax, OJ L 29, 1.2.2012, p. 13–32.

² Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558–893.

³ See in this regard recitals (1) and (2) of the draft Implementing Regulation: “(1) Article 17(1)(e) of Regulation (EU) No 904/2010 was inserted by Regulation (EU) 2017/2454 in order to collect information on the total value of the imports of goods exempted under Article 143(1), point (ca), of Council Directive 2006/112/EC³. [...] (2) Article 17(1)(e) and Article 21(1) of Regulation (EU) No 904/2010 require Member States to store information on value added tax (‘VAT’) exempted importations collected by them under Article 143(1), point (ca), of Council Directive 2006/112/EC

constitute personal data (e.g. when it relates to an economic operator identifiable as a natural person). At the same time, the electronic system that would be used for the storage and automated access to this information (i.e., the Electronic system relating to surveillance of the release for free circulation or the export of goods) is already in use as a well-established communication channel among Member States' competent authorities in the field of VAT administrative cooperation. The EDPS therefore considers that the draft Implementing Regulation does not contain provisions which would raise concerns having regard to the right to the protection of personal data.

- In the light of the above, the EDPS has no recommendations to be made having regard to the draft Implementing Regulation.

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and to grant other Member States automated access to that information, with a view to helping Member States identify discrepancies in VAT reporting and potential VAT frauds.”

Article 17(1)(f) of Regulation (EU) No 904/2010 refers to: “*information which it [each member State] collects pursuant to points (a) and (b) of Article 143(2) of Directive 2006/112/EC, as well as the country of origin, the country of destination, the commodity code, the currency, the total amount, the exchange rate, the item price and the net weight.*”