

EDPS Formal comments on a draft Commission Implementing Decision amending Implementing Decision C(2019)2866 as regards the update of the standard forms and the service level agreement

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 16 September 2024, the European Commission consulted the EDPS on the draft Commission Implementing Decision amending Implementing Decision C(2019)2866² as regards the update of the standard forms and the service level agreement ('the draft Implementing Decision').
2. Regulation (EU) No 904/2010³ lays down rules and procedures to enable the competent authorities of Member States to cooperate and to exchange with each other any information to assess and control the correct application of VAT rules. The standard forms require regular updates to maintain their relevancy and usability by tax authorities for the purposes of Regulation (EU) No 904/2010 to request and provide feedback on VAT information following a request for information and for administrative enquiries, as well as in case of a spontaneous exchange⁴.
3. Furthermore, Article 53 of Regulation (EU) No 904/2010 provides for the adoption of a service level agreement ('SLA') ensuring the technical quality and quantity of the services to be delivered by the Commission and the Member States for the functioning of the communication and information exchange systems as provided for in the Regulation⁵.

¹ OJ L 295, 21.11.2018, p. 39.

² Commission Implementing Decision C(2019) 2866 of 3 May 2019 laying down detailed rules for the application of Council Regulation (EU) No 904/2010 with regard to the standard forms, the automated enquiry of certain information and the service level agreement.

³ 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.

⁴ Recital (2) of the draft Implementing Decision.

⁵ Recital (3) of the draft Implementing Decision.

4. The objective of the draft Implementing Decision is to lay down detailed rules for the application of Regulation (EU) No 904/2010 with regard to the standard forms, the automated enquiry of certain information and the adopted service level agreement.
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 recommends to include a reference to this consultation in a recital of the draft Implementing Decision.
6. 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 acts⁶.
7. 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 implementing regulation that are relevant from a data protection perspective.

2. Comments

2.1. General comments

8. The EDPS recommends including in the draft Implementing Decision a recital recalling that any processing of personal data pursuant to the draft Implementing Decision is subject to the rules laid down in Regulation (EU) 2016/679 ('the GDPR')⁷ and the EUDPR.

2.2. Exchange of additional information in order to assess and control the correct application of VAT (Annex I)

9. The draft Implementing Decision would update the standard forms and the service level agreement used the application of Regulation (EU) No 904/2010.
10. Annex I to the draft Implementing Decision modifies the content of these standard forms, adding new data fields to maintain the relevancy and usability of the standard

⁶ 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.

⁷ 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.

forms by tax authorities for the purposes of Council Regulation (EU) No 904/2010. These new fields are, in particular:

- the information regarding the directors, managers, sole entrepreneur⁸;
- the information regarding associates, partners, beneficial owners, agents or other people involved⁹;
- and the identification of the name of the bank account holder and of the number of the account from which and/or to which the payment for transport was made¹⁰.

11. The EDPS considers that these new data fields do not raise concerns from the data protection point of view, therefore the EDPS has no specific comments.

2.3. Service Level Agreement (Annex II)

12. Article 53 of Council Regulation (EU) No 904/2010 specifies that the Commission and the Member States must ensure that existing or new communication and information exchange systems which are necessary to provide for the exchanges of information described in Council Regulation (EU) No 904/2010 are operational. The same provision calls for the establishment of a SLA ensuring the technical quality and quantity of the services to be delivered by the Commission and the Member States for the functioning of those communication and information exchange systems.

13. The EDPS notes that Annex II to the draft Implementing Decision provides updated technical details of the SLA. In particular, the updated SLA adds to the current version of the SLA the following systems: the Central Electronic System of Payment information ('CESOP')¹¹, Transaction Network Analysis ('TNA')¹², VIES-on-the-Web¹³, the Small Enterprise Special Scheme¹⁴ and the Electronic Forms Central Application ('eFCA')¹⁵.

⁸ Point B8 of the standard forms.

⁹ Point B9 of the standard forms.

¹⁰ Point C18 of the standard forms.

¹¹ See Annex II, 5.1.3.1. of the SLA, The CESOP is a central electronic system of payment information to combat VAT fraud.

¹² See Annex II, 5.1.3.3. of the SLA, referring to the TNA application, which supports Eurofisc in the swift exchange, processing and analysis of targeted information on cross-border fraud.

¹³ See Annex II, 5.1.3.5. of the SLA, referring to the VIES-on-the-Web Internet application, including VIES-on-the-Web API and Interactive services, allows persons involved in the intra-Community supply of goods or of services to obtain confirmation of the validity of the VAT identification number of any specified person

¹⁴ See Annex II, 5.1.3.7. of the SLA, referring to the SME-on-the-Web Internet application, including SME-on-the-Web API and Interactive services, allows to check the validity of the individual EX identification number of a trader as well as whether the economic operator avails itself of the exemption under the special scheme for small enterprises in Member States where they are not established.

¹⁵ See Annex II, 5.1.3.9. of the SLA, referring to the eFCA Internet application, including eFCA API web services will support the exchange of information between Member States (MSs) in the context of the administrative cooperation as described in Regulation 904/2010 implementing in a web interface a Standard form for a request for information and for administrative enquiries, spontaneous exchange of information and feedback.

14. The EDPS recalls the need to ensure clarity regarding the data protection roles and responsibilities of the Commission and of the Member States competent authorities having regard to the determination of the purposes and means of the processing of personal data. In this regard, the EDPS positively notes that such clarity has been provided by way of other implementing acts, at least for certain systems¹⁶. The EDPS recommends ensuring that a clear definition of roles and responsibilities is in place of all systems¹⁷.

Brussels,

¹⁶ See e.g. Commission Implementing Regulation (EU) 2022/1504 of 6 April 2022 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 C/2022/2043, OJ L 235, 12.9.2022, p. 19–27.

¹⁷ In this regard, the EDPS recalls that the obligation to put in place a contract or legal act that is binding on the processor with regard to the controller in any event exists by virtue of direct applicability of the GDPR and EUDPR and does not necessarily need to be provided by way of an implementing act.