



EDPS Formal comments on the draft Commission Implementing Decision amending Commission Implementing Decision (EU) 2019/417 laying down guidelines for the management of the European Union Rapid Information System ‘RAPEX’

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. The European Commission issued a draft Commission Implementing Decision amending Commission Implementing Decision (EU) 2019/417 laying down guidelines for the management of the European Union Rapid Information System ‘RAPEX’ (‘the draft Implementing Decision’).
2. The objective of the draft Implementing Decision is to establish a joint controllership arrangement between the Commission and competent national authorities concerning the personal data processed in the European Rapid Information System ‘Safety Gate/RAPEX’ for dangerous non-food products established under Article 12 of Directive 2001/95/EC on general product safety².
3. The Commission and competent national authorities are joint controllers of the personal data processed in Safety Gate/RAPEX. In line with Article 26 of Regulation (EU) 2016/679 (‘the GDPR’)³ and Article 28 of EUDPR, joint controllers shall in a

¹ OJ L 295, 21.11.2018, p. 39.

² Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, OJ L 11, 15.1.2002, p. 4–17.

³ 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), OJ L 119, 4.5.2016, p. 1-88.



transparent manner determine their respective responsibilities for compliance with the obligations under these Regulations by way of an arrangement. The present decision sets out the responsibilities of the Commission and the competent national authorities as regards the personal data processed in Safety Gate/RAPEX.

4. These comments are issued in reply to the formal request by the Commission of 2 December 2022, pursuant to Article 42(1) the EUDPR. We limited our comments below to the provisions of the draft Implementing Decision that are relevant from a data protection perspective.
5. 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

6. Article 26 of the GDPR and Article 28 of the EUDPR provide that the determination of the respective responsibilities for compliance with the obligations under the GDPR is to be carried out by joint controllers “*in particular*” as regards the exercising of the rights of the data subject and the duties to provide information referred in Articles 13 and 14 of the GDPR and Articles 15 and 16 of the EUDPR, unless and in so far as the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject.
7. The use of the terms “*in particular*” indicates that the obligations subject to the allocation of responsibilities for compliance by each party involved as referred in this provision are non-exhaustive. It follows that the distribution of the responsibilities for compliance among joint controllers is not limited to the topics referred in Article 26 of the GDPR and Article 28 of EUDPR, but extends to other controller’s obligations. Indeed, joint controllers need to ensure that the whole joint processing fully complies with the GDPR and EUDPR⁴. In this perspective, the EDPS recommends specifying in the draft Implementing Decision the additional compliance measures and related obligations concerning the use of a processor(s) by one (or more) of the joint controllers⁵.

⁴ See [EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR](#), issued on 2 September 2020, p.40.

⁵ Article 28 GDPR and article 29 EUDPR.

8. Furthermore, in line with the EDPB Guidelines on Data Protection Impact Assessments (DPIA) “*when the processing operation involves joint controllers, they need to define their respective obligations precisely. Their DPIA should set out which party is responsible for the various measures designed to treat risks and to protect the rights and freedoms of the data subjects*”.⁶ As a result, the EDPS recommends specifying in the draft Implementing Decision the cooperation between the joint controllers when carrying out DPIA⁷.
9. Given the subject matter and the provisions of the draft Implementing Decision, the EDPS has no further comments.

Brussels, 27 January 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁶ [EDPB Guidelines on Data Protection Impact Assessment \(DPIA\) and determining whether processing is “likely to result in a high risk” for the purposes of Regulation 2016/679](#), WP 248.rev01, p.7; [EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR](#), issued on 2 September 2020, p. 41.

⁷ Articles 35 GDPR and Article 39 EUDPR.