EDPS Formal comments on the draft Commission Implementing Regulation laying down provisions on electronic licences for the export of cultural goods under Council Regulation (EC) No 116/2009 and repealing Commission Implementing Regulation (EU) No 1081/2012

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 28 October 2025, the European Commission consulted the EDPS on the draft Commission Implementing Regulation laying down provisions on electronic licences for the export of cultural goods under Council Regulation (EC) No 116/2009 and repealing Commission Implementing Regulation (EU) No 1081/2012 ('the draft implementing regulation').
2. The draft implementing regulation would be adopted pursuant to Article 7 of Council Regulation (EC) No 116/2009 ('the basic act').[2]
3. The objective of the draft implementing regulation is to specify, among others:

   (1) types and common rules for export licenses[3];

   (2) the template to be used for standard export licences[4];

   (3) aspects related to specific open licences[5] and general open licences[6];

[1] OJ L 295, 21.11.2018, p. 39.
[2] Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (Codified version), OJ L 39, 10.2.2009, pp. 1–7.
[3] Article 2 of the draft implementing regulation.
[4] Article 4(10) of the draft implementing regulation.
[5] Article 5(3) of the draft implementing regulation.
[6] Article 6(3) of the draft implementing regulation.

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(4) rules on the use of the electronic system for the export of cultural goods ('ECG system')[7] for the submission and processing of export licences[8];

(5) the deployment of the ECG system and access rights of the Commission to the system[9];

(6) the setting up of contact points for the ECG system[10];

(7) provisions on contingency arrangements[11]; and

(8) rules concerning the protection of personal data related to export licences[12].

4. The draft Commission implementing regulation would repeal Commission implementing Regulation (EU) No 1081/2012[13]. The draft implementing regulation is accompanied by three annexes, specifying: the information to be provided in the template for the standard export licence[14]; in the template for the specific open licence[15]; in the template for the general open licence[16].
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 13 of the draft implementing regulation.
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 acts[17].
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.

[7] The ECG system would be established by 2 October 2031 pursuant to Article 13 of the draft implementing regulation.
[8] Article 8 of the draft implementing regulation.
[9] Article 9 of the draft implementing regulation.
[10] Article 10 of the draft implementing regulation.
[11] Article 11 of the draft implementing regulation.
[12] Article 12 of the draft implementing regulation, joint controllership.
[13] Article 14 of the draft implementing regulation.
[14] Annex I to the draft implementing regulation.
[15] Annex II to the draft implementing regulation.
[16] Annex III to the draft implementing regulation.
[17] 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.

2. Comments

8. The EDPS notes that the application of the draft implementing regulation would entail the processing of personal data, notably personal data to be provided in the context of the application for an export licence of cultural goods, such as the name and contact details of the applicant[18]. The EDPS further notes that personal data would be processed by both the Commission and Member States in the context of a new system (ECG system) to be set up as an independent module of Traces[19].

9. Against this background, the EDPS welcomes that the draft implementing regulation includes a section dedicated to the protection of personal data related to export licenses. The section aims to clarify certain responsibilities of the Commission[20], on the one hand, and of the Member States customs and competent authorities[21], on the other hand, in the context of the joint controllership[22] for the processing of personal data for the establishment, operation and use of the ECG system.

10. Regarding the allocation of responsibilities included in the draft implementing regulation, the EDPS understands that further specifications would be made in the context of the joint controllership arrangement.[23] Already at this stage, however, the EDPS considers that two of the responsibilities allocated in the draft implementing regulation require further consideration, namely: (1) the notification of personal data breaches, and (2) the exercise of data subject rights.

11. As regards the notification of personal data breaches, Article 12(2)(d) of the draft implementing regulation provides that the Commission shall be responsible for notifying any personal data breach of the ECG system to the European Data Protection Supervisor, pursuant to Article 34 EUDPR, and to communicate the personal data breach to the data subjects, pursuant to Article 35 EUDPR. The EDPS welcomes this specification but recalls that such notification would be without prejudice to the notification obligation of Member States customs and competent authorities to notify, as joint controllers, a personal data breach in accordance with

[18] See Annex II, data field 13, of the draft implementing regulation.
[19] 'Traces' means the system referred to in Article 4, point (51), of Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health (Animal Health Law) (OJ L 84, 31.3.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/429/oj). (Article 1(5) of the draft implementing regulation).
[20] Article 12(2) of the draft implementing regulation.
[21] Article 12(3) of the draft implementing regulation.
[22] In this context, the EDPS draws attention to the EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR, issued on 7 July 2021, providing guidance on the definition of joint controllership, at pages 18-25.
[23] The EDPS would like to recall that the both the EDPS and EDPB have issued Guidelines offering indications on the data protection aspects to be addressed in the joint controllership agreement. See EDPS Guidelines on the concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725, issued on 7 November 2019, at pages 27-29; EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR, issued on 7 July 2021, at pages 18-25.

the conditions set out in Article 33 GDPR[24], and to communicate the personal data breach to the data subjects in accordance with Article 34 GDPR.

12. As regards the exercise of data subject rights, the EDPS notes that Article 12(2)(a) of the draft implementing regulation provides that the Commission shall be responsible for determining and implementing the technical means in the ECG system to inform data subjects and enable them to exercise their rights. Article 12(3)(a) of the draft implementing regulation specifies that Member States customs and competent authorities shall be responsible for ensuring that the data subjects rights are exercised in compliance with the GDPR. The EDPS recalls that pursuant to Articles 26 GDPR and Article 28 EUDPR, joint controllers shall in a transparent manner determine their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercise of the rights of the data subject, unless, and in so far as, the respective responsibilities of the joint controllers are determined by Union or Member State law to which the joint controllers are subject. The EDPS understands that Articles 12(2)(a) and Article 12(3)(a) aim to already assign certain responsibilities and that further responsibilities may be specified by way of the joint arrangement. The EDPS wishes to recall, however, that irrespective of the terms of the arrangement referred to in paragraph 1[25], the data subject may exercise his or her rights as data subject in respect of and against each of the joint controllers[26].

13. The EDPS notes that the Commission and the Member States' customs and competent authorities would be required to enter into a joint controllership agreement at least three years after the entry into force of the implementing regulation[27]. The EDPS recalls that, in line with Article 26 GDPR and Article 28 EUDPR, the determination of the joint controllers' respective responsibilities by means of an arrangement must be done before the operation of the system. The EDPS therefore recommends adding "*and in any case before the applicability of the implementing regulation, as specified in Article 15*"[28].

[24] According to Article 33(1) GDPR, in the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the supervisory authority competent in accordance with Article 55, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the supervisory authority is not made within 72 hours, it shall be accompanied by reasons for the delay.
[25] Respectively, of Article 26 GDPR and Article 28 EUDPR.
[26] Article 26(3) GDPR and Article 28(3) EUDPR.
[27] Article 12(4) of the draft implementing regulation.
[28] 2 October 2031.

14. Finally, the EDPS recommends adding in Article 12 the specification of the maximum data retention period applicable to the storage of personal data.

Brussels, 18 December 2025

(e-signed)
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