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Summary of the Opinion of the European Data Protection Supervisor on the Proposal for a Council Decision on the position to be taken on behalf of the European Union within the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

(C/2023/918)

(The full text of this Opinion can be found in English, French and German on the EDPS website https://edps.europa.eu)

On 4 September 2023, the European Commission issued a Proposal for a Council Decision on the position to be taken on behalf of the European Union within the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Proposal').

The aims of the Proposal is to enable the administrative cooperation between the competent tax authorities in the European Union and their homologue in the United Kingdom. Since this cooperation, as further specified in the service level agreement that forms one of the annexes to the Proposal (Annex I), entails the processing of personal data, also by the Commission, the EDPS recommends referring to compliance with the GDPR ([1]) and the EUDPR ([2]) in a recital of the Proposal.

Moreover, the EDPS recommends to include in the Proposal a specific reference to the adequacy decision as the legal basis allowing for the transfer of personal data by competent authorities in the European Union to competent authorities in the United Kingdom. The EDPS also recommends to supplement the service level agreement (referred to in Annex I to the Proposal) with specific provisions, specifying all relevant data protection aspects.

1. Introduction

1. On 4 September 2023, the European Commission issued a Proposal for a Council Decision on the position to be taken on behalf of the European Union within the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Proposal').

2. The Proposal is accompanied by four Annexes, providing:

   — a draft Decision of the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Trade Specialised Committee') on the procedure for the conclusion of a service level agreement (Annex I);

   — a draft Decision of the Trade Specialised Committee on the amount and modalities of the financial contribution to be made by the United Kingdom of Great Britain and Northern Ireland to the general budget of the Union in respect of the cost generated by its participation in the European Information Systems (Annex II);

([1]) 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).

([2]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons 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 (OJ L 295, 21.11.2018, p. 39).

— a draft Decision of the Trade Specialised Committee laying down implementing rules for provisions relating to recovery assistance of the Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for recovery of claims (Annex III);

— a draft Decision of the Trade Specialised Committee on standard forms for the communication of information and statistical data, the transmission of information via the Common Communication Network and the practical arrangements for the organisation of contacts between central liaison offices and liaison departments (Annex IV).

3. The objective of the Proposal ([3]) is to establish the position to be taken on the European Union's behalf in the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties for the adoption of the decision for the implementation of the Protocol on administrative cooperation and combating fraud in the field of value added tax and on mutual assistance for the recovery of claims relating to taxes and duties ('the VAT Protocol', 'PVAT'), as laid down in Article 39(2) PVAT of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Agreement') ([4]).

4. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 4 September 2023, pursuant to Article 42(1) of EUDPR. The EDPS remarks that the reference to this consultation in a recital of the Proposal is missing. Therefore, the EDPS recommends inserting such reference in a recital of the Proposal.

3. **Conclusions**

12. In light of the above, the EDPS makes the following recommendations:

(1) to add a reference to the consultation of the EDPS pursuant to Article 42(1) EUDPR in a recital of the Proposal;

(2) to insert a recital in the Proposal specifying that 'the processing of personal data in the context of this Council Decision shall comply with Regulation (EU) 2016/679 and with Regulation (EU) No 2018/1725';

(3) to include including in the Proposal a specific reference to the adequacy decision as the legal basis allowing for the transfer of personal data by competent authorities in the European Union to competent authorities in the United Kingdom;

(4) to accompany by specific provisions the service level agreement (referred to in Annex I to the Proposal), specifying all relevant data protection aspects.

Brussels, 11 October 2023.

Wojciech Rafał WIEWIÓROWSKI

([3]) COM(2023) 504 final, page 1.
([4]) OJ L 149, 30.4.2021, p. 10.