EUROPEAN DATA PROTECTION SUPERVISOR

Executive summary of the Opinion on the proposal for a regulation amending Regulation (EC) No 273/2004 on drug precursors and the proposal for a regulation amending Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors

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

(2013/C 357/06)

I. **Introduction**

I.1. *Context of the proposals*

1. On 27 September 2012 the Commission adopted the proposal for a regulation amending Regulation (EC) No 273/2004 on drug precursors and the proposal for a Regulation amending Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (hereinafter: 'the proposals'). The EDPS was consulted on the same day.

2. The proposals amend Regulation (EC) No 273/2004 ([1]) and Regulation (EC) No 111/2005 ([2]) (hereinafter: 'the Regulations'), which implement the 1988 UN Convention against illicit drug trafficking (hereinafter: 'the UN Convention') ([3]). Article 12 of the UN Convention requires the Parties to control the trade of the substances used to illicitly manufacture narcotic drugs and psychotropic substances (hereinafter 'drug precursors'). The control of these substances aims at fighting against illicit drug trafficking by reducing their supply ([4]). However, as drug precursors also have licit industrial uses ([5]), their trade cannot be prohibited.

3. The UN Convention and the Regulations aim at recognising and protecting legal trade of drug precursors while, at the same time, discouraging their diversion for illicit purposes. Currently, Regulation (EC) No 273/2004 governs the monitoring of intra-EU trade, while the control of external trade is governed by Regulation (EC) No 111/2005. Both are implemented by Commission Regulation (EC) No 1277/2005 ([6]).

4. Measures to control intra-EU trade imply the processing of data of operators since they include the obligation for certain industry operators to appoint a responsible officer and notify his contact details to the competent authorities, obtain a licence or registration, ask customers to declare the uses of the drug precursors provided to them and immediately notify the competent authorities in case they suspect an order or transaction might be aimed at diverting drug precursors for illicit purposes.

([1]) Regulation (EC) No 273/2004 on drug precursors, OJ L 47, 18.2.2004, p. 1.
([2]) Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, OJ L 22, 26.1.2005, p. 1.
([3]) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988.
([4]) This is combined with measures aimed at reducing the demand of illicit drugs. See the EU Drug Strategy 2005-2012, endorsed by the European Council of November 2004 (15074/04 CORDROGUE 77 SAN 187 ENFOPOL 187 RELEX 564) and the EU Drugs Action Plan 2009-2012 (2008/C 326/09).
([5]) E.g., in the synthesis of plastics, pharmaceuticals, cosmetics, perfumes, detergents and aromas.
([6]) Commission Regulation (EC) No 1277/2005 of 27 July 2005 laying down implementing rules for Regulation (EC) No 273/2004 on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, OJ L 202, 3.8.2005, p. 7.

5. As regards the control of external trade, the processing of data of operators is also necessary, as operators are obliged, for example, to apply to competent authorities for authorisation before importing or exporting drug precursors. Obligations for EU competent authorities include notifying certain third countries before an export of drug precursors takes place, and communicating to the Commission the result of their monitoring measures.

6. Following criticisms by the UN International Narcotics Control Board (hereinafter: 'the UN INCB') and by the 2010 Commission report [1] on specific weaknesses of the current measures, the new proposals include, among others, the following amendments to the Regulations:

— the creation of a European Database on Drug Precursors (hereinafter: 'the European Database'),

— the reinforcement of the harmonised registration provisions,

— the extension of the registration requirement to users of acetic anhydride [2].

I.2. *Aim of the Opinion*

7. Most of the measures required, such as the obligation for operators to report suspect transactions or the cooperation with third countries, imply the processing of data relating to operators which are usually companies and/or legal persons. However, in many cases natural persons will be also identifiable. The aim of the present Opinion is to analyse the impact of these control measures in the protection of privacy and personal data of such persons. As many of these measures are already currently laid down by the Regulations, the Opinion will not only refer to the new texts but also to parts of the current Regulations that are not being amended by the proposals.

8. Therefore, the present Opinion will address the following legislative texts:

— proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 273/2004 on drug precursors (hereinafter: 'the intra-EU trade proposal'),

— Regulation (EC) No 273/2004 on drug precursors (hereinafter: 'the intra-EU trade regulation'),

— proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (hereinafter: 'the external trade proposal'),

— Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (hereinafter: 'the external trade regulation'),

— Commission Regulation (EC) No 1277/2005 (hereinafter 'the implementing regulation'), which will be progressively replaced by the implementing and delegated acts to be adopted pursuant to the proposals.

Where needed, the Opinion will also refer to the UN Convention on which the Regulations are based.

III. **Conclusions**

64. The EDPS welcomes the general references to the applicability of EU data protection legislation, the fact that many of the categories of data to be processed are specified and the fact that the principle of purpose limitation is mentioned in the external trade proposal.

65. However, he recommends laying down in the main legislative texts the essential elements of the processing operations such as the exclusion of the processing of sensitive data. All the categories of data to be processed should also be specified preferably in the proposals, and at least by delegated acts.

[1] Report from the Commission to the Council and the European Parliament pursuant to Article 16 of Regulation (EC) No 273/2004 and to Article 32 of Council Regulation (EC) No 111/2005 on the implementation and functioning of the existing EU legislation on drug precursors (COM(2009) 709 final).

[2] Acetic anhydride (AA) is the main drug precursor for heroin. The registration requirement related to AA currently applies only to operators placing AA on the market, not to users of the substance.

66. He also recommends:

— adding to the intra-EU trade proposal that personal data on suspicious transactions may only be used for the purpose of preventing the diversion of scheduled substances,

— laying down maximum retention periods in the proposals for all processing operations and specifying in the proposals that data on suspicious transactions has to be deleted as soon as they are not necessary any more,

— justifying in the Preambles of the Regulations the necessity of every specific retention period,

— adding a new article to the proposals on how information on the processing operations should be provided to data subjects,

— as regards international transfers of personal data, including data protection safeguards in the text of the external trade regulation and in an international binding text or in binding agreements with the recipient third countries,

— as regards the European Database, if operators need to have access to it or it is to be used for additional purposes, this should be specified in the substantive part of the proposals,

— ensuring the supervision of the European database by a system of coordinated supervision between the EDPS and national Data Protection Authorities, similar to what is foreseen for the Internal Market Information System,

— as regards the register of European operators and the processing of summaries of transactions through the European database, specific data protection and security safeguards should be added, preferably to the proposals and at least by delegated or implementing acts,

— if the European Database is to be used for purposes other than those stated in Article 1(9) of the intra-EU trade proposal (e.g., for the processing of customs declarations), this should be specified in the substantive part of the proposals.

67. As regards the principle of purpose limitation, the EDPS would like to remind that the interconnection and exchange or correlation of data of the European database with other databases managed by the Commission or by other entities for different purposes should in principle not be allowed.

Done at Brussels, 18 January 2013.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor