

General Overview on the European Commission ‘RFID Privacy and Data Protection Recommendation’

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INTRODUCTION

On May 12 2009, the European Commission adopted its RFID Privacy and Data Protection Recommendation after 2 years of multi-stakeholder dialogue, including industry (solution providers and final users), consumer groups and standard organizations. The European Commission’s (EC) Press release and text can be found [here](#). The EU Commission has also published a short [citizen's summary](#).

GS1 EPCglobal has prepared a series of FAQs to help the EPCglobal Community understand the main elements of this policy instrument.

Please note that this text is meant to provide early guidance on the EU Commission’s text, and does not intend to replace the original text. The Recommendation is flexible and this document represents the first interpretation of it. GS1 EPCglobal’s Public Policy Steering Committee (PPSC) will be involved in the next steps of implementation and more detailed guidance will be provided to the GS1 EPCglobal Community on an on-going basis.

FREQUENTLY ASKED QUESTIONS ON THE EUROPEAN COMMISSION ‘RFID PRIVACY AND DATA PROTECTION RECOMMENDATION’

1. What is the EC RFID Privacy and Data Protection Recommendation?

The EC Recommendation on RFID is the first EU policy instrument that includes guidance on how to implement Radio Frequency Identification (RFID) in accordance with recognized privacy and data protection principles enshrined in the current EU Privacy and Data Protection framework. The EC Recommendation does not intend to change or amend current EU Privacy and Data protection legislation.

Contrary to classical EU legislation, like a Directive or a Regulation, a Recommendation is a non binding instrument, although the European Commission strongly encourages its effective implementation.

2. To whom is it addressed?

The EC Recommendation is addressed to the 27 Member states of the European Union, but it gives precise indications to organizations that use or deploy an RFID application (RFID operators) on how to do this in a privacy friendly way.

3. What is the scope of the EC Recommendation?

The EC Recommendation applies to the deployment and design of RFID applications in general. However, it indicates that certain sectors require specific attention such as healthcare, e-ticketing and biometrics.

There are some specific provisions that apply exclusively to retail applications.

4. What are the main elements of the EC Recommendation?

The EC Recommendation has three main pillars: information and transparency on RFID use, privacy and security assessments, and retail deactivation based on the outcome of privacy assessments. In addition, the EC Recommendation supports the need to raise awareness about the technology and the development of codes of practice by relevant stakeholders. The European Commission considers that awareness raising and codes of practice are particularly relevant for the adoption of the technology by small and medium enterprises (SMEs) and these measures can help increase the level of consumer acceptance.

5. What are the main steps that the EC Recommendation suggests RFID operators take when deploying an RFID application?

- ✓ **RFID operators should make simple information available about the who, what, why and how of an RFID application**, such as the name of the RFID operator (**who**), description of the RFID application (**what and why**), whether it collects or processes personal identifiable information and the measures that are in place to mitigate privacy risks, in the event such privacy risks are likely to occur (**how**).

The EC Recommendation is flexible as to how this information is provided (websites, brochures, posters etc) as long as it is easy to understand by the consumer.

- ✓ **Indicate the presence of readers** to individuals, through a sign, and where they can get more information. For example, the sign can be placed in a location visible to consumers, at the entrance to a retail store, at the entrance of a building, etc.
- ✓ **Conduct a Privacy Impact Assessment** if the RFID operator is likely to process or link to personal identifiable information and give it to the local Data Protection Authority 6 weeks prior to the deployment of the application.

6. What is meant by deactivation, for the purposes of this EC Recommendation?

The Recommendation defines it as follows: “deactivation of the tags should be understood as any process that stops those interactions of a tag with its environment which do not require the active involvement of the consumer”.

7. What is a Privacy Impact Assessment?

The term Privacy Impact Assessment is not defined in the Recommendation.

A Privacy Impact Assessment is a checklist or tool to ensure that new or modified electronic collections of information on individuals:

- Are evaluated for privacy risks
- Are designed in accordance with Data Protection principles (collection, accuracy, retention, purpose limitation, access etc)
- Ensure the proper privacy protection measures are in place.

8. What are the specific provisions for the retail sector?

In addition to the general provisions, the EC Recommendation contains specific recommendations for the **retail sector**:

- ✓ A logo or sign on tagged products to indicate the presence of a tag
- ✓ A retailer should conduct a **Privacy Impact Assessment (PIA)** of its RFID application to determine whether there are privacy risks derived from the application if any, and the measures it has taken to mitigate those risks. The results of the Privacy assessment lead to **two** possible scenarios:
 - **In case the PIA indicates that personal data is processed in the application or there are privacy risks derived from the application**, the retailer should deactivate the tag by default at the Point of Sale, unless the consumer gives his or her consent to keep the tag operational.
 - **In case the PIA indicates that there are no likely privacy risks derived from the RFID application**, the consumer could request deactivation of tags after the Point of sale, immediately (after Point of Sale but before Point of Exit) or at a later stage. In these cases, the retailer should provide the means for the consumer to deactivate or remove the tag (e.g. deactivation kiosk at the disposal of consumers, in case of embedded tags). In case of removable tags, the consumer can remove them at their convenience.
- ✓ In all cases the consumer should be able to verify that the deactivation is effective.
- ✓ Deactivation cannot prevent lawful returns, warranties etc. In other words, deactivation of the RFID tag cannot result in the reduction of **legally recognized** rights.

The deactivation provisions do not apply to retailers that do not use RFID technology.

9. Could this EC Recommendation be subject to change?

3 years from the date of publication in the EU Official Journal, the European Commission will take stock of the measures taken by Member states to support the implementation of this EC Recommendation and examine the effectiveness of the Recommendation, in particular those related to the use of RFID in retail. The European Commission might amend or take additional (possibly binding) measures based on its findings.

Is this EC Recommendation ready to be applied or are there some implementation issues?

Only in part. There is currently no EU wide Privacy Assessment Framework available for RFID operators. The Recommendation indicates that the European Commission and stakeholders will work on a European Privacy Impact Assessment Framework that will serve as a starting point for the development of Privacy Impact Assessment models ready to use. The Privacy Impact Assessment framework will be endorsed by the EU Data Protection Authorities, gathered under the Article 29 Working Party.

GS1 EPCglobal's Public Policy Steering Committee (PPSC) is currently working on a guidance document on criteria for a Privacy Impact Assessment with particular attention to RFID consumer facing applications. This guidance document will be shared with the EU

Commission and in absence of an EU Commission PIA Framework it will serve to gain experience and show policy makers that industry can self regulate. In addition, there is currently no European harmonized logo to indicate the presence of RFID tags on products. The European Commission has recommended that such a project is led by the European Standardization Organizations, with the support of relevant stakeholders. For the moment, It is strongly recommended that GS1 EPCglobal subscribers continue using the EPC symbol on tagged products or on the product packaging. GS1 EPCglobal will continue working towards the acceptance of a global symbol or symbols for RFID applications.

The European Commission will soon begin to work on an implementation roadmap with stakeholders and GS1 EPCglobal will participate in this process.

10. What does GS1 EPCglobal think of the European Commission (EC) Recommendation?

a) Is an EC Recommendation the right approach?

Yes. GS1 EPCglobal considers that the choice of instrument (an EC Recommendation) is the right one. A Recommendation simultaneously provides guidance both to RFID operators and Member States, and allows the necessary flexibility to make that guidance practical. GS1 EPCglobal also supports all efforts to avoid 27 different approaches to privacy and data protection in the area of RFID and the subsequent fragmentation of the internal market.

GS1 EPCglobal has always strived for policy that is both practical and that leads to consumer acceptance of RFID technology. In order to underpin consumer acceptance, it is essential to address privacy and data protection concerns.

b) What is the GS1 EPCglobal community's main challenge from now on?

Part of the work of GS1 EPCglobal will be to explain that in some cases there are benefits of RFID technology that extend beyond the point of sale. These range from RFID being an integral part of the functioning of the product, to issues of consumer redress such as more convenient warranties and easier returns, faster recalls and end of life processes. GS1 EPCglobal will continue to work to find consumer choice options other than deactivation that will allow consumers to reap the full benefits that this technology has to offer.

For more detailed information, please contact Marisa Jimenez at marisa.jimenez@gs1.org or Elizabeth Board at eboard@epcglobalinc.org.