



Opinion of the European Data Protection Supervisor

on the proposal for a Regulation of the European Parliament and of the Council on simplifying the transfer of motor vehicles registered in another Member State within the Single Market

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data², and in particular Article 28(2) thereof,

HAS ADOPTED THE FOLLOWING OPINION

I. INTRODUCTION

I.1. Consultation of the EDPS

1. On 4 April 2012, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on simplifying the transfer of motor vehicles registered in another Member State within the single market ('the Proposal')³. On the same day, the Proposal was sent by the Commission to the EDPS for consultation.
2. Before the adoption of the Proposal, the EDPS was given the opportunity to provide informal comments. Most of these comments have been taken into account in the Proposal. As a result, the data protections safeguards in the Proposal have been strengthened.
3. The EDPS welcomes the fact that he is formally consulted by the Commission and that reference to the present consultation has been made in the preamble of the Proposal.

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.01.2001, p. 1.

³ COM(2012) 164 final.

I.2. Objective and scope of the Proposal

4. The objective of the Proposal is to simplify the formalities and conditions for the registration of vehicles registered in another Member State. It is aimed at removing obstacles to the free movement of goods and at facilitating the exercise by citizens of their rights under EU law. The Proposal focuses only on vehicle re-registration modalities and not on the initial vehicle registration procedure.
5. Motor vehicle registration constitutes the administrative authorisation for the entry of vehicles into service in road traffic, involving their identification and the issuing of a registration number. At the end of the registration procedure, Member States issue a registration certificate which certifies that the vehicle is registered in a Member State. There are many circumstances in which holders of a registration certificate need to re-register the vehicle with another Member State's vehicle registration authority. To this end, the Proposal will:
 - clarify in which Member State a motor vehicle transferred between Member States should be registered;
 - reduce the time of re-registration procedures; and
 - provide for a simplified registration procedure that includes the recognition of documents and roadworthiness tests issued in another Member State and the facilitation of data exchange between national registration authorities.

I.3. Scope of EDPS comments

6. The EDPS welcomes that most of his previous informal comments have been taken into account in the Proposal. In this Opinion, the EDPS will therefore only briefly describe the relevance of data protection in the context of vehicle re-registration. Then, he will provide a few further recommendations on specific data protection aspects that govern the exchanges of data amongst national motor vehicle registers.

II. ANALYSIS OF THE PROPOSAL

II.1. Applicability of data protection law

7. The personal data of several individuals may be involved in the course of re-registration procedures, i.e. the person who filed the request for re-registration, the holder of the previous registration and/or the person mentioned in the registration certificate.
8. Although the list of the data to be exchanged amongst competent authorities for purpose of re-registration seems to contain only information about vehicles, all information that can be exchanged for re-registration purposes often also relates to individuals (see point 7), either through the request itself, through the registration certificate (which must contain personal data of the holder of the previous registration and of the person mentioned in the certificate as part of the obligatory information set out in the harmonised registration certificate), and/or through information contained in the national register (e.g. the registration certificate identification number may refer to an individual identified in the national register). These individuals are also involved in or even responsible for the timely performance of re-registration. All this information

will therefore often relate to an identifiable natural person and constitute personal data under Article 2(a) of Directive 95/46/EC⁴.

9. It is therefore important that the processing of personal data in the context of this Proposal is done in accordance with the EU data protection framework, as laid down in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, Article 16 of the Treaty on the Functioning of the European Union as well as Directive 95/46/EC.
10. In this view, the EDPS welcomes that recital 8 of the Proposal provides explicit reference to applicable data protection law and that Article 7 requires that the processing of data by the motor vehicle registration authorities shall be carried out in accordance with Directive 95/46/EC and under the supervision of national data protection authorities. From a data protection perspective, national vehicle registration authorities are the controllers of the personal data processed within their register and they must therefore ensure compliance of the processing with data protection law.
11. The EDPS furthermore welcomes the inclusion in Article 7(3) of specific data protection safeguards, such as the respect of purpose limitation, the verification of the necessity, accuracy and proportionality of the data by the recipient authority, and the obligation for recipient authorities to ensure the rectification or deletion of incorrect data or of data that should not have been provided. The EDPS is also satisfied about the inclusion of Article 9, which sets forth certain transparency obligations upon vehicle registration authorities, such as providing information easily accessible to the public about registration of vehicles and contact details where to be contacted directly.

II.2. Exchanges of data amongst national vehicle registers authorities

12. The exchanges of data amongst vehicle registration authorities have been found necessary by the Court of Justice of the EU, in particular in finding out any data that may be missing. Such cooperation amongst vehicle registration authorities is required to complement the principle of mutual recognition of registration and roadworthiness information⁵. The Proposal aims at establishing the principles and the modalities of such exchanges of information amongst vehicle registration authorities.

Categories of vehicle registration data exchanged

13. The specific fields of data that can be exchanged by registration authorities among those available in national vehicle registers are defined in Annex I of the Proposal. The EDPS welcomes that many of these data fields that can be exchanged are the ones defined under Directive 1999/37/EC⁶ on the registration documents for vehicles, which harmonises the form and content of the registration certificate. Such data fields cover the same data as the ones initially collected by the relevant national registration authority for purpose of the initial registration.
14. Other data fields that are not currently harmonized could also be exchanged after the entry into force of the proposed Regulation. These data would notably include data

⁴ See also Article 29 Working Party Opinion 4/2007 on the concept of personal data, 20 June 2007, available at: http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2007/wp136_en.pdf

⁵ See case C-297/05, *Commission of the European Communities v Kingdom of the Netherlands*, OJ C 269 from 10.11.2007, p.6, para 79.

⁶ OJ L 138 1.6.1999, p.57.

about stolen vehicles, certificates or plates. These may be considered sensitive under data protection law pursuant to Article 8(5) of Directive 95/46/EC (as concerns data relating to offences, which may also be interpreted to include data relating to suspicions of offences under national data protection laws).

15. The Proposal clarifies that the processing of data about stolen vehicles, plates and/or certificates is based on Council Decision 2004/919/EC of 22 December 2004 on tackling vehicle crime with cross-border implications⁷. That Decision obliges each Member State to ensure that its competent authorities take the necessary steps to prevent abuse and theft of vehicle registration documents. The Decision obliges national vehicle registration authorities to be informed by law enforcement authorities of whether a vehicle that is in the process of being registered is known to have been stolen.
16. The EDPS however underlines that the manner in which information about stolen vehicles, plates and/or certificates is obtained by national vehicle registration authorities from law enforcement authorities must follow national rules. In any event, the EDPS stresses that no direct access by national motor vehicle registration authorities to law enforcement databases should be authorised, as direct access by third parties to law enforcement databases would raise strong privacy concerns.
17. The EDPS welcomes that the information exchanged between national motor vehicle registration authorities in respect of stolen vehicles, plates and/or certificates does not provide any detail such as information relating to names, suspicions, dates and places of the theft, but that it provides for a hit/no hit system (as indicated in Annex I, data fields 55 and 56, where the only data collected is: 'Yes/No').
18. In order to ensure that only the data strictly necessary for purpose of vehicle re-registration are processed, the EDPS recommends that the open data field 54 of Annex I, entitled 'reason for the destruction', is further specified with pre-defined fields to choose from. This would also ensure that no sensitive data is included therein.

Transfers of data amongst vehicle registration authorities

19. According to Article 7 of the Proposal, vehicle registration authorities must grant to vehicle registration authorities of the other Member States access to the data stored in the official vehicle registers on the data items set out in Annex I. The EDPS welcomes that Article 7 foresees that the exchange of information will take place between motor vehicle registration authorities only.
20. The EDPS advises to make clear in Article 4(3) that the obligation for a motor vehicle registration authority to gather the information in Annex I from another competent authority and to transfer the data to its own register can only apply to data that the host competent authority would be authorised to process pursuant to EU and/or its national law. The exchange of information mechanism should not be used by competent authorities to contravene national laws which would not allow their processing of certain criminal data (i.e. data relating to stolen vehicles, plates or certificates).
21. As indicated in paragraph 11 above, the EDPS particularly welcomes the data protection safeguards included in Article 7(3), which impose on vehicle registration

⁷ OJ L389, 30.12.2004, p. 28.

authorities receiving the data to respect the purpose limitation principle, to verify the necessity, accuracy and proportionality of the data, and to ensure their correction and deletion where necessary.

22. The EDPS also underlines that, as soon as the data are transferred to the own register of the recipient authority, the data will then be retained in accordance with the rules applicable to the retention of data by that recipient authority. In order to ensure more transparency on the modalities of the processing and of the data retention, the EDPS recommends adding in Article 9 that vehicle registration authorities should make easily accessible to the public the rules governing the processing of data in the context of the re-registration of vehicles, which should include information on time limits for retention as well as the necessary information foreseen in Articles 10 and 11 of Directive 95/46/EC.

Refusal to register a vehicle for purpose of preventing and combating vehicle crime

23. Article 5 defines in which cases registration authorities are entitled to refuse, as a result of the exchange of information, the registration of a motor vehicle that was registered in another Member State. The same limitations apply to requests for temporary registration (Article 6). The main objectives of such a refusal are to ensure road safety and to prevent fraud, such as the use of re-registration for legalising stolen vehicles or stolen documents.
24. Articles 5(1)(d) and 6(3)(b) provide that a national vehicle registration authority may refuse registration where the information gathered through electronic exchange indicates that: (i) the vehicle is seriously damaged, stolen or destructed, (ii) the vehicle registration documents are stolen unless the holder of the registration certificate can clearly demonstrate ownership of the vehicle, or (iii) the date of the next mandatory roadworthiness certificate has passed. Any decision to refuse re-registration must be duly substantiated. Article 5(2) describes the procedure for challenging the decision.
25. The EDPS welcomes that the cases in which a refusal to re-register a vehicle may be issued refer to clear and specific situations, as this allows for legal certainty. The EDPS is also satisfied that the cases in which a negative decision may be adopted are based on a specific legal basis, in particular Directive 2000/53/EC on end-of life vehicles, and Council Decision 2004/919/EC of 22 December 2004 on tackling vehicle crime with cross-border implications.

Modalities of the electronic exchange of vehicle registration data

26. The EDPS welcomes that Article 7(2) sets forth very strict access control measures upon vehicle registration authorities, who must prevent data from being accessed or processed by unauthorized persons, from being interrogated or transferred without authorisation, and from being inappropriately read or copied during transmission. He is also satisfied that Annex II mentions the respect of security and data protection and that communications exchanged via that software application should be secure and that messages should be encrypted.
27. The Proposal foresees that the modalities of the data exchanges will be defined further in implementing acts, in particular to specify common procedures and specifications for the software application allowing for the electronic exchange of vehicle registration data, including the format of the data exchanged, the technical procedures

for electronic consultation of, and access to, the national electronic registers, access procedures and security mechanisms, and to establish the format and the model of the professional vehicle registration certificate.

28. The EDPS however considers that it should be clarified in the Proposal what is the software application mentioned in Annex II, and what would be the role of the Commission, if any, in facilitating the interoperability between national registers. Furthermore, the EDPS underlines that if the Commission intends to rely on existing pan-European infrastructures facilitating the electronic exchange of other vehicle-related data, it should be ensured during the practical implementation phase that data exchanged with national motor vehicle registration authorities through that platform are appropriately segregated from other data so that these authorities do not have access to any other data, including law enforcement data, that may also be exchanged via that platform.
29. Furthermore, the EDPS recommends that a regular verification and adaptation of security measures is carried out, in view of technical developments and of risk analysis. The EDPS would therefore suggest adding in Article 7(4) that the Commission should evaluate regularly the adequacy of the security measures, taking into account technological developments and the evolution of risks and that it should update the security measures where necessary. Such update could cover technical measures in the tools and the delegated measures.

III. CONCLUSION

30. The EDPS welcomes that data protection requirements have been appropriately considered in the Proposal, and that several specific data protection safeguards have been expressly included in the Proposal, in particular in its Article 7. The EDPS also welcomes that the specific list of data that may be exchanged amongst vehicle registration authorities has been clearly defined in Annex I of the Proposal.
31. The EDPS further recommends to:
 - specify in Annex I the 'reasons for the destruction' in pre-defined fields to choose from;
 - make clear in Article 4(3) that the obligation for a motor vehicle registration authority to gather the information in Annex I from another competent authority and to transfer the data to its own register can only apply to data that the recipient competent authority would be authorised to process pursuant to EU law and/or its national law;
 - add in Article 9 that vehicle registration authorities should make easily accessible to the public the rules governing the processing of data in the context of the re-registration of vehicles, which should include information on time limits for retention as well as the necessary information foreseen in Articles 10 and 11 of Directive 95/46/EC;
 - clarify in the Proposal what is the software application mentioned in Annex II which will be used for the electronic exchanges of data, and what would be the

role of the Commission, if any, in facilitating the interoperability between national registers;

- ensure that, if data are exchanged amongst national vehicle registration authorities through an existing pan-European infrastructure, they are appropriately segregated from other data that may be exchanged therein;
- add in Article 7(4) that the Commission should evaluate regularly the adequacy of the security measures, taking into account technological developments and the evolution of risks and that it should update the security measures where necessary.

Done in Brussels, 9 July 2012

(signed)

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