



EDPS Formal comments on the Commission implementing regulation laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244

1. Introduction and background

1.1. Context of the draft Proposal

Directive 2009/101/EC¹, as amended by Directive 2012/17/EU as regards the interconnection of central, commercial and companies registers², both now repealed by Directive (EU) 2017/1132 relating to certain aspects of company law³, has established the Business Registers Interconnection System ('BRIS'). BRIS has been further detailed under the Commission Implementing Regulation (EU) 2015/884 of 8 June 2015 establishing technical specifications and procedures required for the system of interconnection of registers established by Directive 2009/101/EC of the European Parliament and of the Council⁴, repealed by Implementing Regulation (EU) 2020/2244 of 17 December 2020 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2015/884⁵.

BRIS is a system interconnecting business registers of Member States via a European Central Platform ('CEF'). It provides for a single point of access via the European e-Justice Portal, through which citizens, businesses and public administrations can search for information on companies and their branches opened in other Member States. CEF eDelivery (one of the building blocks of the European Commission's Connecting Europe Facility) allows for the secure exchange of messages between Member State business registers. Users of BRIS can also benefit from the login system, as the e-Justice Portal uses CEF-eDelivery.

Article 24 of Directive (EU) 2017/1132, as amended by Directive (EU) 2019/2121 as regards cross-border conversions, mergers and divisions⁶, in particular Article 1(3) thereof, requires the Commission to adopt implementing acts by 2 July 2021. Such implementing acts shall regulate

¹ Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

² Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers (OJ L 156, 16.6.2012, p. 1).

³ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

⁴ OJ L 144, 10.6.2015, p. 1.

⁵ OJ L 439, 29.12.2020, p. 1.

⁶ Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (OJ L 321, 12.12.2019, p. 1).

the detailed list of data to be transmitted for the purpose of exchanging information between registers and for the purposes of disclosure, as referred to in Articles 86g, 86n, 86p, 123, 127a, 130, 160g, 160n and 160p of Directive (EU) 2017/1132.

The draft Commission Implementing Act aims at implementing these new elements required by Directive (EU) 2019/2121 (recasting), replicating the existing BRIS Implementing Regulation (EU) 2020/2244 and repealing it.

1.2. Background information and scope of the comments

The EDPS issued an Opinion⁷ on the European Commission proposal, which led to the adoption of Directive (EU) 2019/1151.

The EDPS comments below concern the draft Commission Implementing Regulation laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2020/2244. They are issued pursuant to Article 42(1) of Regulation (EU) 2018/1725⁸ ('the Regulation (EU) 2018/1725'), following a request for consultation, from the European Commission, Directorate-General for Justice and Consumers (DG JUST) dated 15 February 2021.

2. Comments

2.1. General comments

The EDPS welcomes that the draft Implementing Regulation contains specific reference to the applicability of the General Data Protection Regulation⁹ ('GDPR') and the Regulation (EU) 2018/1725 to the processing of personal data involved (Recital 8), and to the EDPS consultation (Recital 9). He recommends however to only refer, in Recital 9 to this consultation and not also to the consultation related to the implementing act which would be repealed by this one.

2.2. Defining the roles and responsibilities

In the context of the previous EDPS consultation on the Commission Implementing Regulation (EU) 2020/2244, the EDPS recommended clarifying, in the implementing act, the allocation of the roles and responsibilities between the European Commission and the Member States in relation to personal data processing.

In its reply dated 7 December 2020¹⁰, the European Commission indicated that to its understanding 'the Commission and the Member States are separate controllers, responsible for data protection within their respective areas/parts of the system (Business Registers

⁷ EDPS Opinion 6/2018 EDPS Opinion on the proposal amending Directive 2017/1132 as regards the use of digital tools and processes in company law.

⁸ 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).

⁹ 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).

¹⁰ Ares(2020)7398554.

Interconnection System or BRIS). National business registers are responsible for the data which they collect, store and disclose, while the Commission ensures the protection of data of the national business registers during its transfer through the European Central Platform of BRIS' and that 'the separate controllership of the parties involved in the functioning of the system [would] be clearly laid out in the Data protection record'.

As of today, this allocation of responsibilities has not been clearly laid down in the data protection record (No DPR-EC-03328.1). The EDPS reiterates its previous comments and considers the adoption of this new Implementing Act as an opportunity to bring legal certainty for data subjects as to the roles and responsibilities of the Commission and the Member States in this context.

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(e-signed)