



Formal comments of the EDPS on the Commission Implementing Regulation on the functionalities of the public interface connected to the Internal Market Information System for posting drivers in road transport

1. Introduction and background

- Pursuant to Article 1(11)(a) of Directive (EU) 2020/1057¹ road transport operators may be required to submit a posting declaration to the national competent authorities of a Member State to which a driver is or has been posted, using a multilingual standard form of the public interface connected to the Internal Market Information System ('IMI'), established by Regulation (EU) No 1024/2012².
- **The draft Commission Implementing Regulation on the functionalities of the public interface connected to the Internal Market Information System for posting drivers in road transport** ('the draft Implementing Regulation') aims to specify the functionalities of the public interface connected to IMI described in Article 1(11) of Directive (EU) 2020/1057 for the purpose of facilitating the implementation of the procedure described therein.
- These formal comments are provided in reply to the request by the Commission of 4 June 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')³. The EDPS was informally consulted prior to the adoption of the draft Implementing Regulation on 8 of February 2021. We limited our comments below to the provisions of the Implementing Regulation that are relevant from a data protection perspective.
- These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR.

¹ Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, OJ L 249, 31.7.2020, p. 49–65.

² Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'), OJ L 316, 14.11.2012, p. 1–11

³ 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. 39–98.

2. Comments

- The EDPS welcomes that Recital (16) of the draft Implementing Regulation contains a specific reference to the applicable EU data protection legal framework, in particular the EUDPR⁴.
- The EDPS notes that, pursuant to Article 2 (1)3 of the draft Implementing Regulation, additional information apart from the posting declarations will be processed. For example, the details of the transport manager and the drivers would also be included in the operator's accounts. The EDPS underlines that any personal data should be deleted without undue delay when it is no longer necessary in relation to the purposes for which they were collected or otherwise processed. While Article 4 of the draft Implementing Regulation⁵ provides for useful functionalities relating to the review and deletion of certain personal data, it does not address all processing of personal data envisaged by Article 2. **The EDPS recommends further clarifying the retention periods for the additional processing of personal data envisaged by Article 2.**
- The EDPS takes note of the Annex to the note to the EDPS accompanying the draft Implementing Regulation, where the Commission clarifies its role as controller and the cloud provider as a processor. The EDPS agrees with the Commission's assessment. However, the EDPS also notes that Directive (EU) 2020/1057 does not explicitly allocate such roles. Therefore, in the light of transparency and with the aim of ensuring the exercise of data subject's rights, **the EDPS recommends clarifying the role and responsibilities of the Commission and the cloud provider in the draft Implementing Regulation itself.**

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⁴ Recital (16) states that “[w]here it is necessary for the purposes of this Regulation to process personal data, this should be carried out in accordance with Union law on the protection of personal data. Any processing of personal data based on this Regulation is subject to Regulation (EU) No 2018/1725 of the European Parliament and of the Council.”

⁵ Article 4 states that:

“1. The public interface connected to IMI shall allow for the deletion of all data stored in that public interface when those data are no longer needed for the purposes for which they were collected and processed. The public interface shall allow for the sending of a reminder to the economic operator to review and delete, when necessary, the driver's personal data.

2. The public interface shall allow for the automatic deletion of the posting declarations which have been submitted through that public interface after the 24-month period referred to in Article 1(13) of Directive (EU) 2020/1057.

3. Where documents have been submitted by the operator as part of a request for documents, the requested documents shall remain available for no longer than necessary for the purposes for which they were collected and not longer than for 12 months after the closure of the request.”