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From: Mr Wojciech Rafał WIEWIOROWSKI, European Data Protection Supervisor

On: 25 April 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

Subject: Opinion 13/2023 on the Proposal for a Directive of the European Parliament and of the Council on driving licences, amending Directive (EU) 2022/2561 of the European Parliament and of the Council, Regulation (EU) 2018/1724 of the European Parliament and of the Council and repealing Directive 2006/126/EC of the European Parliament and of the Council and Commission Regulation (EU) No 383/2012

Delegations will find attached the above-mentioned document with the letter from Mr Wojciech Rafał WIEWIOROWSKI, European Data Protection Supervisor, added.

Encl.: Opinion 13/2023 on the Proposal for a Directive of the European Parliament and of the Council on driving licences, amending Directive (EU) 2022/2561 of the European Parliament and of the Council, Regulation (EU) 2018/1724 of the European Parliament and of the Council and repealing Directive 2006/126/EC of the European Parliament and of the Council and Commission Regulation (EU) No 383/2012.



EUROPEAN DATA PROTECTION SUPERVISOR

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WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

H.E. Ambassador Lars DANIELSSON
Permanent Representative of Sweden
to the European Union
1000 Brussels

Ms Thérèse BLANCHET
Secretary-General
Council of the European Union

Brussels, 25 April 2023
WRW/MD/asj/D(2023)1199 C2023-0448
Please use edps@edps.europa.eu for all correspondence

Subject: Opinion of the European Data Protection Supervisor on the Proposal for a Directive of the European Parliament and of the Council on driving licences, amending Directive (EU) 2022/2561 of the European Parliament and of the Council, Regulation (EU) 2018/1724 of the European Parliament and of the Council and repealing Directive 2006/126/EC of the European Parliament and of the Council and Commission Regulation (EU) No 383/2012

Your Excellency,
Dear Secretary-General,

Having regard to Article 42(1) of 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, please find enclosed our Opinion on the Proposal for a Directive of the European Parliament and of the Council on driving licences, amending Directive (EU) 2022/2561 of the European Parliament and of the Council, Regulation (EU) 2018/1724 of the European Parliament and of the Council and repealing Directive 2006/126/EC of the European Parliament and of the Council and Commission Regulation (EU) No 383/2012.

We have sent a copy of this Opinion to the President of the European Commission and the President of the European Parliament.

Yours sincerely,

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

Encl.: Opinion

Cc: Mr Serge DE BIOLLEY, Director for Justice, Secretariat General of the Council

Contact persons: Michèle Dubrocard (tel: 02/283.19.74), Leda Bargiotti (tel: 02/283.23.99)



Postal address: rue Wiertz 60 - B-1047 BRUSSELS
Offices: rue Montoyer 30 - B-1000 BRUSSELS
E-mail: edps@edps.europa.eu
Website: www.edps.europa.eu
Tel.: 32 2-283 19 00 - Fax: 32 2-283 19 50



EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

25 April 2023

Opinion 13/2023

on the Proposal for a Directive of the European Parliament and of the Council on driving licences, amending Directive (EU) 2022/2561 of the European Parliament and of the Council, Regulation (EU) 2018/1724 of the European Parliament and of the Council and Repealing Directive 2006/126/EC of the European Parliament and of the Council and Commission Regulation (EU) No 383/2012

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The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 ‘With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies’, and under Article 52(3) ‘...for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data’.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years.

*Under **Article 42(1)** of Regulation 2018/1725, the Commission shall ‘following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals’ rights and freedoms with regard to the processing of personal data’.*

This Opinion relates to the Proposal for a directive of the European Parliament and of the Council on driving licences, amending Directive (EU) 2022/2561 of the European Parliament and of the Council, Regulation (EU) 2018/1724 of the European Parliament and of the Council and repealing Directive 2006/126/EC of the European Parliament and of the Council and Commission Regulation (EU) No 383/2012¹ pursuant to Article 91(1) point (c) of the Treaty on the Functioning of the European Union (TFEU). This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Regulation (EU) 2018/1725. This Opinion is limited to the provisions of the Proposal that are relevant from a data protection perspective.

¹ COM(2023)127 final.

Executive Summary

On 1 March 2023 the European Commission issued a Proposal for a Directive of the European Parliament and of the Council on driving licences, amending Directive (EU) 2022/2561 of the European Parliament and of the Council, Regulation (EU) 2018/1724 of the European Parliament and of the Council and repealing Directive 2006/126/EC of the European Parliament and of the Council and Commission Regulation (EU) No 383/2012² ('the Proposal').

The general objectives of the Proposal, as stated by the Commission, are to improve road safety, facilitate free movement as well as respond to the need for an increased sustainability and digital transformation of road transport.

The EDPS recognises that the objectives the Proposal aims to achieve, in particular promoting road safety and facilitating the free movement of individuals are legitimate purposes that qualify as public interest tasks. At the same time, it is important to ensure that the envisaged measures constitute an appropriate tool with regard to the objectives pursued by the Proposal.

The EDPS welcomes the intention to align the Proposal with the Union legislation on data protection. The EDPS also welcomes the additional safeguards provided for by the Proposal to ensure the protection of personal data during the verification of the driving rights of the holder of the driving licence. Also positive is the clarification that the Proposal would not provide a legal basis for setting up or maintaining databases at EU/national² level for the storage of biometric data.

At the same time, the EDPS regrets the absence of a specific assessment on the necessity and proportionality of broadening the use of the network for the exchange of information related to driving licences between national authorities (RESPER) to prevent, detect and investigate criminal offences and recommends limiting the processing of driving licence data to road traffic-related offences.

Furthermore, the EDPS considers that with regard to the use of electronic applications for the verification of mobile driving licences, it should be ensured that no personal data other than those necessary for the verification of the driving rights of the holder of the mobile driving licence are used for this purpose. Finally, the EDPS recommends making the use of the European Digital Identity Wallet for the purpose of implementing the app that would hold the digital licence optional.

² COM(2023)127 final

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 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 data ('EUDPR')³, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 1 March 2023 the European Commission issued a Proposal for a Directive of the European Parliament and of the Council on driving licences, amending Directive (EU) 2022/2561 of the European Parliament and of the Council, Regulation (EU) 2018/1724 of the European Parliament and of the Council and repealing Directive 2006/126/EC of the European Parliament and of the Council and Commission Regulation (EU) No 383/2012⁴ ('the Proposal').
2. The Proposal is part of a larger legislative package, referred to as the 'Road Safety Package' which also includes:
 - a. a Proposal for a Directive amending Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences⁵;
 - b. a Proposal for a Directive on the Union wide effect of certain driving disqualifications disqualification⁶.
3. This Proposal has been announced in the Commission Work Programme 2022, Annex II (REFIT initiatives), under the heading 'A New Push for European Democracy'⁷.
4. The general objectives of the Proposal, as stated by the Commission, are to improve road safety, facilitate free movement as well as respond to the need for an increased sustainability and digital transformation of road transport⁸. In this regard, the Proposal lays down measures to improve driving skills, knowledge and experience as well as reduce and punish dangerous behavior; ensure adequate physical and mental fitness of drivers across the EU; remove inadequate or unnecessary barriers affecting applicants and holders of driving licences.

³ OJ L 295, 21.11.2018, p. 39.

⁴ COM(2023)127 final

⁵ COM(2023) 126 final

⁶ COM(2023) 128 final.

⁷ COM(2021) 645 final, Annex II, p 11

⁸ COM(2023)127 final, p. 4.

5. The Proposal is linked to the policy goals of several strategic documents:
 - a. The Strategic Action Plan on Road Safety⁹;
 - b. The EU Road Safety Policy Framework 2021-2030 – next steps towards “Vision Zero”¹⁰;
 - c. Valletta Declaration on Improving Road Safety¹¹;
 - d. Sustainable and Smart Mobility Strategy of 2020¹²;
 - e. The UN Global Plan for the Decade of Action for Road Safety 2021-2030¹³.
6. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 1 March 2023, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 42 of the Proposal.

2. General remarks

7. The EDPS fully supports the aim of the Commission in adopting a Proposal to promote further road safety, the free movement of individuals as well as respond to the need for an increased sustainability and digital transformation of road transport.
8. The EDPS particularly welcomes the intention to align the Proposal with the Union legislation on data protection. In this regard, Recital 4 of the Proposal, states that: *“It should be ensured that personal data processing for the implementation of this Directive complies with the data protection framework of the Union, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council”*. The EDPS underlines that it is essential that the Proposal is fully in line with the EU *acquis* in the field of data protection which includes the GDPR and the Directive (EU) 2016/680 (LED)¹⁴. In particular, the LED applies where the exchange of driving licence data takes place in the context of criminal procedures for the purpose of prevention, investigation, detection or prosecution of criminal offences. Furthermore, the EDPS recalls that, since the Proposal would introduce electronic applications for mobile driving licences (Article 5(2)), such processing may fall within the scope of Directive 2002/58/EC¹⁵ to the extent it would imply storing of information or retrieving information from terminal equipment (‘e-Privacy Directive’). Therefore, in the

⁹ COM(2018) 293 final, Annex I, Europe on the Move. Sustainable Mobility for Europe: safe, connected and clean.

¹⁰ SWD(2019) 283 final.

¹¹ Council conclusions on road safety endorsing the Valletta Declaration (Valletta, 28 – 29 March 2017) 9994/17.

¹² COM(2020)789 final.

¹³ https://cdn.who.int/media/docs/default-source/documents/health-topics/road-traffic-injuries/global-plan-for-road-safety.pdf?sfvrsn=65cf34c8_35&download=true

¹⁴ Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131

¹⁵ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, OJ L 201, 31 7.2002. p. 37–47.

interest of legal certainty, the EDPS considers that also a reference to the LED and e-Privacy Directive should be introduced in Recital 4.

9. The EDPS also welcomes the additional safeguards provided for by the Proposal to ensure the protection of personal data disclosed during the verification process¹⁶. More specifically, Member States must ensure for both physical and mobile driving licences that the personal data necessary for the verification of the information reported on the physical driving licence is not retained by the verifier and that the issuing authority of the driving licence is not notified about the verification process.
10. Also positive is the clarification that the Proposal would not provide a legal basis for setting up or maintaining databases at EU/national level for the storage of biometric data¹⁷.
11. Notwithstanding the overall positive assessment, the EDPS regrets that no specific assessment has been carried out with regard to the envisaged measure enabling the use of the network for the exchange of information related to driving licences between national authorities (RESPER) to exchange information to prevent, detect and investigate criminal offences¹⁸.
12. Furthermore, the obligation for the Member States to base the electronic applications on the European Digital Identity Wallet pursuant to Article 5(2) of the Proposal also raises concerns as to whether this measure is necessary and proportionate in view of the purpose of the processing, as further elaborated in section 5 below.
13. In this Opinion, the EDPS will focus his analysis on two main issues: (i) whether it is sufficiently demonstrated that the additional purposes for the exchange of driving license information is necessary in order to achieve the purposes pursued, (ii) whether the mandatory recourse to the European Digital Identity Wallet respects the necessity and proportionality principles.

3. Legitimacy and necessity of additional purposes

14. The EDPS recognises that the objectives pursued by the proposal, in particular with regard to promoting road safety and facilitating the free movement of individual are legitimate purposes that qualify as public interest tasks. At the same time, it is important to ensure that the envisaged measures constitute an appropriate tool with regard to the objectives pursued by the Proposal, taking into account the fact the EU/EEA driving licence framework covers more than 250 million drivers¹⁹ and the consequent impact the measures envisaged in the Proposal will have on the privacy of the individuals concerned.
15. In this respect, the extension of the use of the EU driving licence network (RESPER) for the exchange of information to prevent, detect and investigate criminal offences as referred to

¹⁶ COM(2023)127 final, Articles 4(7) and 5(4) read in conjunction with Recital 5.

¹⁷ COM(2023)127 final, Recital 8

¹⁸ COM(2023)127 final, Article 19(2)(c).

¹⁹ SWD (2023)128 final, p.1.

in Prüm II introduced in Article 19(2)(c) of the Proposal raises a number of concerns from a data protection perspective.

16. The use of RESPER for the purpose of preventing, detecting and investigating criminal offences raises questions on the necessity and proportionality of such measure, as it would result in all individuals who have a driving licence to be potentially subject to information exchange among law enforcement authorities. The broadening of the use of RESPER for law enforcement purposes constitutes an exemption to one of the fundamental principles of data protection, i.e. purpose limitation enshrined in Article 5(1)(b) of the GDPR. While the right to privacy and data protection is not an absolute right, according to settled case law, the protection of the right to privacy requires that derogations from and restrictions to the right to data protection “must apply in so far as is strictly necessary”. Furthermore, an objective of general interest must be reconciled with the fundamental rights affected by the measure, “by properly balancing” such objective against the rights at issue²⁰. Consequently, access, retention and further use of personal data by public authorities within the remit of law enforcement measures must not exceed the limits of what is strictly necessary, assessed in the light of the Charter, otherwise it “cannot be considered to be justified, within a democratic society”²¹.
17. In this respect, the Explanatory Memorandum states that there is a need to update the current EU rules on driving licences to support the efforts to reduce road fatalities and serious injuries and reduce the administrative obstacles to the free movement of individuals²². The need to reduce road fatalities and serious injuries is justified by the fact that, while the number of road fatalities has gone down by 61.5% from around 51,400 in 2001 to around 19,800 in 2021, the 2011 White Paper’s target to halve road casualties by 2020 compared to 2010 was missed. In addition, a slowdown in the reduction of the number of road deaths was reported around 2014²³. Furthermore, the ex-post evaluation of the Driving Licence Directive found that, there still is a high number of unfit drivers on EU roads²⁴. To address this issue, the Driving Licence Directive was amended in 2018 to enable the use of RESPER to control the compliance with the Directives on driving licences, on professional qualifications and Directive (EU) 2015/413²⁵ (‘CBE Directive’). However, according to the impact assessment the vast majority of law enforcement authorities are not using RESPER for the purpose of control. Two main reasons have been identified for this shortcoming:
 - a. the lack of legal certainty on whether RESPER can be used for the purposes of the CBE Directive (relying on EUCARIS). In this respect, according to the Impact Assessment accompanying the Proposal the formulation of Article 15 of the Driving licence Directive appears to be unclear. In addition, Article 4(4) of the CBE Directive stipulates that Member States must ensure that the exchange of information under

²⁰ Judgment of the Court of Justice of 6 October 2020, *Privacy International*, C-623/17, ECLI:EU:C:2020:790, paragraph 68 and jurisprudence referred therein.

²¹ Judgment of the Court of Justice of 6 October 2020, *Privacy International*, C-623/17, ECLI:EU:C:2020:790, paragraph 81.

²² COM(2023)127 final, p. 2

²³ SWD (2023)128 final, p.1.

²⁴ SWD (2023)128 final, p.9

²⁵ Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences Text with EEA relevance, OJ L 68, 13.3.2015, p. 9–25.

licence would process the information received through the notification only for the purpose of responding to the verification request.

22. At the same time, taking into account the overall environment where the electronic applications established for mobile driving licences will be integrated, the EDPS considers **necessary** to ensure that no personal data other than those necessary for the verification of the driving rights of the holder of the mobile driving licence are used for this purpose. An additional question related to the electronic applications is the link with the Proposal³² aiming at revising Regulation (EU) No 910/2014 (eIDAS Regulation)³³, currently under negotiation. More specifically, Article 5(2) of the Proposal on Driving Licences establishes an obligation to base the electronic applications on the European Digital Identity Wallet³⁴, which according to the Explanatory Memorandum, will ensure a high level of security and privacy³⁵.
23. While the EDPS welcomes the intention to ensure a high level of security and privacy, the necessity to make the use of the European Digital Identity Wallet obligatory must be adequately weighted against the risks that such use brings for the rights and liberties of the data subjects. In this regard, the EDPS recalls that - according to the Proposal under negotiation - to facilitate the use of the European Digital Identity Wallets, Member States will have to include a unique and persistent identifier³⁶, which constitutes a significant interference with the rights and liberties of the data subject, as already highlighted in his Formal Comments³⁷. Indeed, the creation and issuing of a unique and persistent identifier may facilitate profiling and electronic surveillance of individuals with potential significant adverse impact on the rights of individuals, including the right to protection of personal data and privacy.
24. Against this background and in the absence of an impact assessment demonstrating the necessity to make the use of the European Digital Identity Wallet obligatory, the EDPS recommends making such use optional, leaving the possibility to use less intrusive means.

5. Other comments

25. Recital 5 of the Proposal provides Article 6(1)(e) and - where applicable- Article 9(2)(g) as the legal basis for the storage of an obligatory set of personal data in the physical driving licences and their microchips or QR codes and the mobile driving licences. The EDPS points out that the personal data stored in the physical (and microchips or QR code) and mobile driving licence would be used to prove and verify a person's right to drive and identity. Therefore, the EDPS considers that Recital 5 should be amended by indicating that the

³² COM(2021) 281 final.

³³ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, OJ L 257, 28.8.2014, p. 73-114.

³⁴ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, p. 73-114

³⁵ COM(2023) 127 final, p. 12

³⁶ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity, COM(2021) 281 final, Article (1) (12)

³⁷ https://edps.europa.eu/system/files/2021-07/21-07-28_formal_comments_2021-0598_d-1609_european_digital_identity_en.pdf

Proposal provides the legal basis to store personal data for the purposes of proving and verifying the person's right to drive and identity, instead of only referring to 'storage'.

26. Finally, the EDPS takes note that Member States may decide to introduce a microchip as part of the physical driving licence in line with Article 4(5) of the Proposal and that the Proposal specifies in Annex I, Part D the minimum set of data that the microchip should store. At the same time, the Proposal does not define the retention period for the personal data stored in the microchip. To ensure lawful and fair processing the EDPS recommends determine more precisely specific requirements related to the microchip. Furthermore, unless a longer retention period is justified, the EDPS recommends aligning the retention period with the validity of the driving licence. Similarly, the Proposal should also spell out the data retention period for the personal data stored in the QR code, if Member States decides to make use of it in line with Article 4(6) of the Proposal.

6. Conclusions

27. In light of the above, the EDPS makes the following recommendations:

- (1) To clarify the relationship of the Proposal with the existing legal framework on data protection in the EU as well as the e-Privacy Directive;
- (2) To modify Article 19(2)(c) by limiting the use of RESPER to enabling access to driving licence data for the purpose of preventing, detecting and investigating criminal offences related to road traffic;
- (3) To include a provision to ensure that no personal data other than those necessary for the verification of the driving rights of the holder of the mobile driving licence are processed for this purpose in the context of the electronic application for the digital driving licences;
- (4) To make the use of the European Digital Identity Wallet for the purpose of implementing the app that would hold the digital licence optional.

Brussels, 25 April 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI