



EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

25 April 2023

Opinion 12/2023

on the Proposal for a Directive of the
European Parliament and the Council
on the Union-wide effect of certain
driving disqualifications

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 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the Union-wide effect of certain driving disqualifications¹ Pursuant to Article 91(1) point (c) 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)128 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 the Union-wide effect of certain driving disqualifications ('the Proposal').

The objective of the Proposal is to improve road safety across the Union, by laying down rules providing for Union-wide effect of driving disqualifications for major road-safety related offences, committed in a Member State other than the one that issued the driving licence of the offender.

The EDPS is satisfied with the elements given in the Explanatory Memorandum and the Preamble of the Proposal as they are sufficiently detailed and founded to support the legitimacy of the Proposal and the necessity to exchange information with the Member State of issuance.

The EDPS welcomes the fact that the Proposal aims to limit the exchange of personal data with the Member State of issuance to what is necessary to comply with the obligations laid down in the Proposal.

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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')², 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 the Union-wide effect of certain driving disqualifications³ ('the Proposal').
2. The Proposal forms part of a larger legislative package, referred to as the 'Road Safety Package' which also includes:
 - a. Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences⁴ and
 - b. Directive 2006/126/EC on driving licences⁵.
3. The objective of the Proposal is to improve road safety across the Union, by laying down rules providing for Union-wide effect of driving disqualifications for major road-safety related offences, committed in a Member State other than the one that issued the driving licence of the offender⁶.
4. 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 31 of the Proposal.

2. General remarks

5. The EDPS welcomes the objectives pursued by the Proposal, notably to reduce the number of road fatalities, which constitutes a legitimate public interest. At the same time, it is important to ensure that the measures envisaged by the Proposal constitute an appropriate tool with regard to this objective of reducing road fatalities, taking into account the direct

² OJ L 295, 21.11.2018, p. 39.

³ COM(2023)128 final.

⁴ COM(2023) 126 final.

⁵ COM(2023) 127 final.

⁶ COM(2023)128 final , p. 15 and Recital 8.

data protection implications, as it would enable the exchange of personal data of the offenders with the Member State of issuance.

6. The Explanatory Memorandum states that despite the fact that over the past 20 years EU roads have become safer, such improvement has not been strong enough and slowed down around 2014⁷. As a consequence, the Transport Ministers of the Member States of the Union issued a ministerial declaration on road safety at the informal transport Council in Valletta in March 2017⁸.
7. The Valletta Declaration explicitly called for action on the issue of mutual recognition of driving disqualifications concerning non-resident drivers, which is a key aspect in ensuring a consistent enforcement of sanctions for road traffic offences committed in the Union. In this context, the Proposal aims at providing for a Union-wide effect of driving disqualifications.
8. The Explanatory Memorandum further states that the absence of a specific and efficient EU framework for driving disqualifications poses challenges to prevent abuses by road traffic offenders and impacts road safety. This is due to the fact that the sanction of driving disqualification cannot be granted a Union-wide effect where the offence is committed in a Member State other than the one which issued the driving licence. Since the issuance of a driving licence is a sovereign act, the driving licence cannot be withdrawn with the same effect by another Member State. Only the Member State that issued the driving licence can withdraw it with a Union-wide effect. Other Member States can only restrict the right to drive as regards their respective territory.⁹
9. While improvements to provide a Union-wide effect of driving disqualifications seemed to materialise with the adoption of Directive 2006/126/EC, Article 11(4) of the said Directive did not provide the necessary clarity. The Court of Justice of the European Union (CJEU) interpreted the provision in question in several instances¹⁰. In addition, the CJEU highlighted that the obligation for the competent authorities to consult each other would not have been effective and enforceable until a system is put in place for the exchange of information on disqualifications between Member States, allowing to verify if a disqualification imposed abroad is pending or has been imposed on a driving licence applicant¹¹.
10. The Proposal thus puts in place a framework whereby the Member State that has issued the driving licence will have to provide an auxiliary Union-wide effect - in line with the national legislation - to a driving disqualification that was imposed by another Member State. Such a framework would enable the EU to reach similar results as if the decisions leading to driving disqualifications were mutually recognised, while also catering to the specificities of road transport and ensuring that there is no overlap between the Union-wide effect of driving disqualifications and the instruments used in the field of criminal cooperation.

⁷ COM(2023)128 final , p.1.

⁸ See: https://eumos.eu/wp-content/uploads/2017/07/Valletta_Declaration_on_Improving_Road_Safety.pdf; in June 2017, the Council adopted conclusions on road safety endorsing the Valletta Declaration (see document 9994/17).

⁹ COM(2023)128 final , p.2.

¹⁰ Judgement of 20 November 2008, Weber, Case C-1/07, ECLI:EU:C:2008:640; Judgement of 2 December 2010, Scheffler, Case 334-09, ECLI:EU:C:2010:731; Judgement of 26 April 2012, Hofmann, C-419/10, ECLI:EU:C:2012:240, para. 71; Judgement of 23 April 2015, Aykul, C-260/13, CECLI:EU:C:2015:257; Judgement of 21 May 2015, Wittmann, C-339/14; ECLI:EU:C:2015:333

¹¹ COM(2023)128 final , p. 12.

11. The scope of the Proposal is limited to specific serious infringements that most contribute to road traffic accidents and fatalities, i.e. excessive speeding; drink-driving; driving under the influence of drugs and causing death or serious bodily injury as a result of any road safety related traffic offence¹².
12. The EDPS welcomes the fact that the Proposal aims to limit the exchange of personal data with the Member State of issuance to what is necessary to comply with the obligations laid down in the Proposal¹³. Such exchange of information is supposed to take place using the standard certificate for the notification of a driving disqualification provided for in Article 5 of the Proposal, which lays down the most important elements that the certificate should contain, including a minimum set of personal data, in line with the principle of data minimisation enshrined in Article 5(1)(c) of the GDPR.
13. Furthermore, the EDPS welcomes that Recital 23 refers to the right to the protection of natural persons in relation to the processing of their personal data.
14. The EDPS notes that, in accordance with Article 5(1), the Commission must, by means of an implementing act, establish the format and content of the standard certificate for the notification of a driving disqualification. In this regard, the EDPS recalls that, when a proposal for an implementing act might have an impact on the protection of personal data, the European Commission is under the obligation to consult the EDPS pursuant to Article 42 EUDPR. The EDPS considers that this is very likely to apply to the forthcoming implementing act(s) to be adopted pursuant to Article 5(1) of the Proposal.
15. Against this background, the EDPS is satisfied with the elements given in the Explanatory Memorandum and the Preamble of the Proposal as they are sufficiently detailed and founded to support the legitimacy of the Proposal and the necessity to exchange the personal data listed under the standard certificate with the Member State of issuance.

3. Conclusions

16. In light of the above, the EDPS considers that the Proposal provides for sufficient justification for the establishment of a framework providing for Union-wide effect of driving disqualifications for major road-safety related offences committed in a Member State other than the one that issued the driving licence of the offender. The EDPS further considers that the Proposal limits in an adequate manner the personal data to be exchanged with the Member State of issuance to comply with the obligations laid down in the Proposal.
17. The EDPS recalls that he expects to be consulted on the forthcoming implementing act(s) to be adopted pursuant to Article 5(1) of the Proposal.

Brussels, 25 April 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

¹² COM(2023)128 final , p.3.

¹³ COM(2023)128 final , Recital 24.