



Opinion of the European Data Protection Supervisor

on the proposal for a Directive of the European Parliament and of the Council amending Directive 2006/126/EC of the European Parliament and of the Council as regards driving licences which include the functionalities of a driver card

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

1. On 11 November 2011, the Commission adopted a proposal for a Directive of the European Parliament and of the Council amending Directive 2006/126/EC of the European Parliament and of the Council as regards driving licences which include the functionalities of a driver card ('the Proposal')³.
2. The Proposal is part of the measures put forward by the Commission to strengthen the deployment of digital tachographs in the European Union, as announced in the Communication on 'Digital Tachograph: Roadmap for future activities'⁴. The Proposal complements the proposal for a Regulation on recording equipment in road transport amending Regulation (EEC) No 3821/85 adopted by the Commission on 19

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.01.2001, p. 1.

³ COM (2011) 710 final.

⁴ COM (2011) 454 final.

July 2011 (the 'Proposal for a regulation on recording equipment in road transport')⁵, on which the EDPS issued an Opinion on 5 October 2011⁶.

I.1. Consultation of the EDPS

3. The Proposal was sent by the Commission to the EDPS for consultation on 11 November 2011, pursuant to Article 28(2) of Regulation (EC) No 45/2001.
4. The EDPS regrets that he was not given the possibility to provide informal comments to the Commission before the adoption of the Proposal. The EDPS recommends that reference to the present consultation be made in the preamble of the Proposal.

I.2. General background

5. The Proposal sets forth the legal basis and modalities for merging professional drivers' card with their driving licence, thereby giving effect to Article 27 of the Proposal for a regulation on recording equipment in road transport in which the principle of such merger was laid down. Article 27 of that Proposal provides that, with effect from 19 January 2018, driver cards shall be incorporated into driving licences and issued, renewed, exchanged and replaced in accordance with the provisions of Directive 2006/126/EC.
6. The driver card⁷ is a component of the tachograph system set up under Regulation (EEC) No 3821/85. The driver card is allocated to the professional driver and enables the cardholder to be identified by the recording equipment. It also enables data related to driver activities to be stored into the card, for possible control afterwards. It contains a certain amount of data, which have been specified in Annex IB to Regulation (EEC) No 3821/85, including information about the driving licence; this annex, however, will be revised in order to be updated to technological progress after the Proposal for a regulation on recording equipment in road transport is adopted.
7. The merger of professional drivers' card with their driving licence was identified by the Commission, as a result of a stakeholders' consultation and an impact assessment⁸, as a solution for reducing frauds as well as simplifying administrative burden and costs for the issuance of these documents. The aim of the Proposal is to allow the "co-existence of two functions merged into a sole document, i.e. the driving licence having the functionalities of a driver card"⁹.

⁵ Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and the Council, COM (2011) 451 final.

⁶ Available on the EDPS website at the following address:
http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2011/11-10-05_Tachographs_EN.pdf.

⁷ According to Article 1(t) of Annex IB of Regulation (EEC) No 3821/85, a driver card is 'a tachograph card issued by the authorities of a Member State to a particular driver. *The driver card identifies the driver and allows for storage of driver activity data*'.

⁸ Although no privacy assessment was done.

⁹ See Explanatory memorandum, COM(2011)710 final, page 3.

I.3. Data protection issues raised by the Proposal

8. As was already underlined by the EDPS in his Opinion on the Proposal for a regulation on recording equipment in road transport¹⁰, the envisaged merger of the driver card with the driving licence might affect the current protection afforded to drivers' data.
9. Considering the potential amount of information recorded about driver activities and their whereabouts (such as date, time, distance, geolocalisation, speed, etc), the driver card is more than a simple identity card certifying that the person is a professional driver. It is therefore more intrusive from a data protection viewpoint since it is aimed at monitoring a person's compliance with social rules in the field of road transport.
10. It is therefore essential that the processing of data in the context of driving licences incorporating driver cards is done in accordance with the EU data protection framework, as set out 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/EC¹¹.
11. In this Opinion, the EDPS will focus his analysis on two main issues: (i) whether it is sufficiently demonstrated that the merger of the driving licence with the driver card is necessary in order to achieve the purposes pursued in view of the privacy implications of such merger, and (ii) whether it is sufficiently ensured that the processing of drivers' data in one single card respects the proportionality principle.

II. ANALYSIS OF THE PROPOSAL

II.1. Necessity of integrating driver cards with driving licences?

12. The integration of professional driver cards with their driving licences raises a number of concerns from a privacy and data protection perspective. First and foremost, the EDPS notes that the necessity of integrating the driver card into the driving licence has not been sufficiently demonstrated. The Commission indicates in its explanatory memorandum of the Proposal that this is 'a solution' to help fight against fraud and misuse of driver cards; under a data protection viewpoint, it does not however demonstrate that such merging would be the best way to do so, and whether other means, less intrusive, could be considered.
13. It must also be taken into account that the merger of these two cards, which pursue two totally different purposes, would go against the purpose limitation principle set forth in Article 6(1)(b) of Directive 95/46/EC. The driver card is more than a simple identity card certifying that the person is a professional driver, as it serves for the purpose of monitoring compliance of the professional driver with social rules in road transport. The Commission itself identifies that there will be "two functions merged into a sole document, i.e. the driving licence having the functionalities of a driver card"¹².

¹⁰ See footnote 6.

¹¹ 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 data, OJ L 281, 23.11.1995, p. 31.

¹² See Explanatory memorandum, COM(2011)710 final, page 3.

14. The modalities of the merger also present specific risks in terms of privacy and data protection, which have not yet been addressed. The obligation pursuant to Article 1 of the Proposal for Member States to embed a microchip in all the new integrated driving licences that will be delivered to drivers raises concerns as to whether such measure is necessary and proportionate in view of the purposes of the processing. The impact on the processing of the merging of the two cards and of the use of a microchip in the new integrated driving licence must be assessed thoroughly. The EDPS therefore recommends that the integration of the driver card into the driving licence should only be envisaged after a privacy and security impact assessment has been carried out. This should be clearly mentioned in Article 1 of the Proposal.
15. It is yet unclear how the merger of all the driving documents in relation to professional drivers will take place, and whether the new integrated driving licence would also contain their data about their capacity to drive other types of vehicles for private use. If so, clear mechanisms should be put in place to ensure that each portion of the card is only accessed by those persons who are authorised to do so. The EDPS is also concerned that such possibility may lead Member States to expand the use of the microchip to all driving licences, including those for private use. The choice for the use of such a technology in identity documents relating to driving capacity has an impact on the privacy and data protection of individuals in particular in relation to the type and amount of information that it may contain and any choice on this should not be driven by technical facilities. The decision should remain subject to a transparent public debate as well as the definition in the law of appropriate safeguards to ensure the privacy and data protection of individuals.
16. Furthermore, the EDPS underlines that the use of drivers' data must also be carefully assessed in the broader context of intelligent transport systems and the extent to which drivers' data might be further used and combined with other data collected from other systems embedded in the vehicle (such as eCall, eToll, etc). The EDPS calls on the legislator to take due account of the principles of purpose limitation, necessity and proportionality when developing future legislative proposals concerning the use and further processing of drivers' data in the context of intelligent transport systems.

II.2. Proportionality of the processing of professional drivers' data

17. Even if the merger of the two cards were proven to be necessary, the processing of personal data in that single card would nonetheless have to comply with all the data protection principles and rules set forth in Directive 95/46/EC, and in particular the proportionality principle.
18. The EDPS notes that Directive 2006/126/EC only includes a mere reference to 'data protection rules' in its Article 1(2) without spelling them out clearly. He recommends clarifying in a substantive article of the Proposal that the processing of data carried out in respect of driving licences shall be done in accordance with national rules which implement Directive 95/46/EC. It must be underlined that the processing carried out in respect of driving licences includes not only the data processed in the microchip but also all other types of data processing made around the card, such as the issuance of the driving licence, the monitoring of their validity and controls performed by competent authorities monitoring the respect of social rules in road transport.
19. As concerns the details of the processing, recital (2) of the Proposal provides that 'driving licences and driver cards share an almost identical design and set of data

fields'. This statement is misleading for two reasons: first, the exact data fields that will be processed in the driver card are still unknown; second, it can be assumed that they will necessarily go beyond those that have been defined for the driving licence, since the purpose of the driver card is to monitor a driver's behaviour to ensure compliance with social rules in road transport.

20. While the categories of data contained in the driving licence are clearly laid out in detail in Annex I to Directive 2006/126/EC¹³, the specifications for the data to be stored in the microchip of the driving licence have not yet been defined by the Commission. For instance, it is still unclear whether the microchip might contain biometric data (such as fingerprints, or iris scan). Furthermore, as the EDPS underlined in his Opinion on the Proposal for a regulation on recording equipment in road transport¹⁴, the details of the processing in the driver's card are also not yet been defined with certainty and depend on the revision of the Annexes of the Regulation (EEC) No 3821/85 on tachographs, which process will only be started after the proposal for amending the regulation on tachographs is adopted. It is therefore difficult at this stage to evaluate with sufficient certainty whether the envisaged data processing will comply with the proportionality principle.
21. As to the foreseeable extent of data that will be processed in the microchip concerning drivers' data, Article 1 of the Proposal only mentions the driver card identification data, as referred to in Section IV, point 5.2 of Annex IB of Regulation (EEC) No 3821/85, while on the other hand Article 7(a) of the Proposal provides that the driving licence must incorporate 'all the necessary functionalities so that the driving licence can also be used as a driver card'. In order for the driving licence to be used as a driver card, it will have to incorporate all the data fields defined for the driver card, and not only the card identification data. Such data will contain a lot more information than in the driving licence, e.g. data about activities of the driver (such as date, start and end of trip, distance, geolocalisation data, time, speed, etc).
22. The EDPS emphasizes the need to follow a consistent approach when developing measures in two separate legal instruments on driving licences incorporating driver cards -on the one hand the proposal for a Regulation on recording equipment in road transport and on the other hand the proposal for amending the Directive on driving licence- to ensure that the overall design of the processing is privacy friendly, that it respects all the principles of data protection and in particular proportionality, and that it provides sufficient guarantees in terms of data protection as well as appropriate consideration of data subjects' rights.
23. The EDPS in particular recommends that a clear list of data to be processed in the integrated card is defined on the basis of a necessity test. It should be clarified in the Proposal how data subjects' rights to information about the processing, to access their data and to object, as set forth in Articles 10, 11, 12 and 14 of Directive 95/46/EC, can be effectively exercised in the context of such processing. He also stresses that the processing shall be subject to appropriate review by the relevant data protection authorities, in accordance with national law.

¹³ They mainly relate to the driver's identity, date of birth, place and authority of issuance, type of vehicle for which the licence is granted, and whether certain restrictions apply.

¹⁴ See footnote 6, page 5.

24. The EDPS also underlines that the purposes and circumstances under which data can be accessed, and by whom, must be clarified. It should be made clear that access to the data contained in the microchip shall only be permitted for official and clearly defined purposes, but not for other (commercial or non commercial) purposes. Furthermore, it should be specified clearly in the Proposal who is authorised to have access to which data contained in the microchip (i.e. professional driving licence, driver data, private driving licence) and under which circumstances (e.g. what type of access to data of a driver who is not working due to holidays or sickness?), as the mix of the two legal instruments creates uncertainty in this respect.
25. Finally, as concerns records of stolen, lost or defective driving licences incorporating a driver card (Article 7c of the Proposal), the data or categories of data to be retained should be clarified. When defining such data, the principles of proportionality and data minimisation should be applied. It should furthermore be clarified who is/are the competent authority(ies) who should keep record of such data.

III. CONCLUSION

26. The EDPS expresses doubts as to the necessity and the proportionality of the merger of driving licences with driving cards envisaged in the Proposal, which are to be demonstrated. Therefore, it should be explored whether other means, less intrusive, could be pursued to achieve the same aim of combating fraud and reducing costs in respect of professional drivers in road transport.
27. The EDPS recommends in particular to:
 - add a reference to data protection legislation, and in particular Directive 95/46/EC, in a substantive article of the Proposal;
 - provide in Article 1 of the Proposal that the merging of the driver cards with driving licences and the use of the microchip should only be envisaged after a privacy and security impact assessment has been carried out;
 - follow a consistent approach when developing measures about driving licences incorporating driver cards in two separate legal instruments, i.e. the Regulation on recording equipment in road transport and the Directive on driving licences, to ensure that the overall design of the processing is privacy friendly, that it respects all the principles of data protection and in particular proportionality, and that it provides sufficient guarantees in terms of data protection, including the effective exercise of data subjects' rights;
 - specify with more clarity and in more details, on the basis of a necessity test, the data or categories of data to be contained in the microchip, which would include all data defined in the updated Annex IB of Regulation (EEC) No 3821/85 as well as the data that will be specified by the Commission concerning the microchip in driving licences. The definition of the data processed and stored in the microchip should particularly comply with the principles of proportionality and data minimisation;
 - clarify the circumstances under which certain categories of data can be accessed, and by whom;

- state clearly in Article 7c who shall keep records of stolen, lost or defective driving licences incorporating a driver card, and that only the data strictly necessary for such purpose should be retained, in accordance with the principles of proportionality and data minimisation;

Done in Brussels, 17 February 2012

(signed)

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