Formal comments of the EDPS on the Commission draft Implementing Regulation on establishing technical specifications and procedures required for the system of interconnection of registers established by Directive (EU) 2017/1132 of the European Parliament and of the Council

1. Introduction

1.1. Context of the draft Proposal

• Directive 2009/101/EC[1], as amended by Directive 2012/17/EU as regards the interconnection of central, commercial and companies registers[2], both now repealed by Directive (EU) 2017/1132 relating to certain aspects of company law[3], has established the Business Registers Interconnection System ('BRIS').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 Council[4].

• 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) 2019/1151 as regards the use of digital tools and processes in company law[5], requires the Commission to adopt implementing acts by 1 February 2021. Such implementing acts shall regulate (i) the technical specification defining the methods of exchange of information between the register of the company and the register of the branch and the detailed list of data to be transmitted for the purpose of exchange in BRIS[6]; (ii) the procedures and technical requirements for the

[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] Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (OJ L 186, 11.7.2019, p. 80).
[6] This covers the following:

Postal address: rue Wiertz 60 - B-1047 Brussels
Offices: rue Montoyer 30
E-mail: edps@edps.europa.eu - Website: www.edps.europa.eu
Tel.: 02-283 19 00 - Fax: 02-283 19 50

connection of optional access points to the CEF and (iii) the detailed arrangements for and technical details of the exchange of information between registers on disqualified directors in BRIS.

• The draft Commission Implementing Regulation aims at implementing these new elements required by the Directive (EU) 2019/1151 and at repealing the Implementing Regulation (EU) 2015/884.

1.2. Background information and scope of the comments

• The EDPS issued an Opinion[7] 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 on establishing technical specifications and procedures required for the system of interconnection of registers established by Directive (EU) 2017/1132 of the European Parliament and of the Council, together with its Annex ('the draft Implementing Regulation'). They are issued pursuant to Article 42(1) Regulation (EU) 2018/1725[8] ('the Regulation (EU) 2018/1725'), following a request for consultation from the European Commission, Directorate-General for Justice and Consumers (DG JUST) dated 7 July 2020.

2. The EDPS Comments

2.1. General comments

• The EDPS welcomes that the draft Implementing Regulation contains specific reference to the applicability of the General Data Protection Regulation[9] ('GDPR') and the Regulation (EU) 2018/1725 to the processing of personal data involved (Recitals 6 and 7).

2.2. Defining the roles and responsibilities

• The EDPS notes that the draft Implementing Regulation does not clearly allocate the roles and responsibilities between the Member States, the European Commission and other Union institutions, bodies, offices or agencies potentially involved, concerning the processing of personal data within the context of the system of interconnection of registers. The clear distinction of responsibilities between EU institutions and the national authorities is very

– exchanges of information on the opening and termination of winding-up or insolvency proceedings and on striking-off of a company from the register (Articles 20 and 34);
– online registration of branches (Article 28a);
– exchanges of information on the closure of branches (Article 28c);
– exchanges of information on the changes to documents and information of the company (Article 30a).

[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.

relevant, for instance, as under point 14.2.2. of the Annex to the draft Implementing Regulation on the technical requirements, the Commission or the other Union institutions, bodies, offices or agencies would be responsible for carrying out appropriate testing before the connection of optional access points to the platform becomes operational and before any significant changes are made to an existing connection. It is also relevant in order to ensure that the data subjects can fully exercise their rights under the GDPR and Regulation (EU) 2018/1725. **Consequently, the EDPS considers that the draft Implementing Regulation should clarify the division of the roles and responsibilities between the European Commission and the Member States in relation to personal data processing.**

Brussels, 31 July 2020
Wojciech Rafał WIEWIÓROWSKI
(e-signed)