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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System ('the IMI Regulation')
(COM(2011)0522 – C7-0225/2011 – 2011/0226(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Adam Bielan

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

(COM(2011)0522 – C7-0225/2011 – 2011/0226(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0522),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0225/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 7 December 2011¹,
 - having regard to the opinion of the European Data Protection Supervisor of 22 November 2011²,
 - having regard to the Letter from the Article 29 Working Party of 13 December 2011³,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

² Not yet published in the Official Journal.

³ http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/files/2011/20111213_letter_imi_en.pdf

Amendment 1
Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) The purpose of IMI should be to improve the functioning of the internal market by providing an effective, user-friendly tool for the implementation of administrative cooperation between the Member States and the Commission, thus facilitating the application of Union acts set out in the *Annexes* to this Regulation.

Amendment

(3) The purpose of IMI should be to improve the functioning of the internal market by providing an effective, user-friendly tool for ***exchange of information with a view to*** the implementation of administrative cooperation between the Member States and the Commission, thus facilitating the application of Union acts set out in the *Annex* to this Regulation.

Or. en

Amendment 2
Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) In order to ensure transparency, in particular for data subjects, the Union acts for which IMI is to be used should be listed in Annex I to this Regulation. ***Areas of possible further expansion should be set out in Annex II. It is appropriate to identify in Annex II, a set of Union acts where it is necessary to evaluate the technical feasibility; cost efficiency, user friendliness and the overall impact on the system, before it is decided to use IMI for such acts.***

Amendment

(8) In order to ensure transparency, in particular for data subjects, the Union acts for which IMI is to be used should be listed in Annex I to this Regulation.

Or. en

Amendment 3
Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) This Regulation should set out the rules for **using** IMI for the purposes of **administrative cooperation, which may cover inter alia the one-to-one** exchange of information, **notification procedures, alert mechanisms, mutual assistance arrangements and problem solving.**

Amendment

(10) This Regulation should set out the rules for **governing the operation of** IMI for the purposes of exchange of information **related to the application of Union acts listed in Annex I to this Regulation.**

Or. en

Amendment 4
Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) While IMI is in essence a communication tool for public authorities, not open to the general public, **technical means may need to be developed to allow external actors such as citizens, enterprises and organisations to interact with the competent authorities in order to supply information and retrieve data, or to exercise their rights as data subjects. Such technical means should include appropriate safeguards for data protection.**

Amendment

(12) While IMI is in essence a communication tool for public authorities, **it is** not open to the general public.

Or. en

Amendment 5
Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) The exchange of information through IMI follows from the legal obligation on Member States' authorities to **give mutual assistance.** To ensure that the internal

Amendment

(13) The exchange of information through IMI follows from the legal obligation on Member States' authorities **provided for in the Union acts listed in Annex I to this**

market functions properly, information received by a competent authority through IMI from another Member State should not be deprived of its value as evidence in administrative proceedings solely on the ground that it originated in another Member State or was received by electronic means, and it should be treated by the authority in the same way as similar documents originating in its Member State.

Regulation. To ensure that the internal market functions properly, information received by a competent authority through IMI from another Member State should not be deprived of its value as evidence in administrative proceedings solely on the ground that it originated in another Member State or was received by electronic means, and it should be treated by the authority in the same way as similar documents originating in its Member State.

Or. en

Amendment 6
Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The effective monitoring of the application of this Regulation requires the regular provision by the Member States of relevant information to the Commission.

Or. en

Amendment 7
Proposal for a regulation
Recital 21

Text proposed by the Commission

Amendment

(21) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of Union acts, among those listed in Annex II, in which provisions on administrative cooperation and information exchange can be implemented by means of IMI.

deleted

Or. en

Amendment 8
Proposal for a regulation
Article 1 – title

Text proposed by the Commission

Amendment

Subject matter

Purpose and subject matter

Or. en

Amendment 9
Proposal for a regulation
Article 1

Text proposed by the Commission

Amendment

This Regulation lays down rules **for** the **use** of an Internal Market Information System, hereinafter ‘IMI’, for administrative cooperation, including processing of personal data, among competent authorities in the Member States and the Commission.

The purpose of this Regulation **is to** lay down rules **governing** the **operation** of an Internal Market Information System, hereinafter ‘IMI’, for **exchange of information necessary for** administrative cooperation, including processing of personal data, among competent authorities in the Member States and the Commission.

Or. en

Amendment 10
Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. **For the acts listed in Annex II to this Regulation**, the Commission may decide that IMI **shall** be used, taking into account technical feasibility, cost-efficiency, user-friendliness and overall impact on the system. **In such cases, the Commission shall be empowered to include those acts in Annex I following the procedure referred to in Article 23.**

1. The Commission may **propose an amendment to Annex I of this Regulation to if it decides** that IMI **is to** be used **for new legislative acts. That proposal shall be based on an impact assessment** taking into account technical feasibility, cost-efficiency, user-friendliness, **data protection issues** and overall impact on the system.

Amendment 11
Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. The adoption of the delegated act may be preceded by a test phase (pilot project) of a limited duration involving several or all Member States.

deleted

Or. en

Amendment 12
Proposal for a regulation
Article 5 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) ‘Internal Market Information System’ (‘IMI’) means the electronic tool provided by the *European* Commission to facilitate **administrative cooperation** between national administrations and the Commission;

(a) ‘Internal Market Information System’ (‘IMI’) means the electronic tool provided by the Commission to facilitate **exchange of information** between national administrations and the Commission;

Or. en

Amendment 13
Proposal for a regulation
Article 5 – paragraph 2 – point i

Text proposed by the Commission

Amendment

(i) ‘external actors’ means natural or legal persons other than IMI users that may use IMI through technical means and in accordance with a specific pre-defined workflow provided for this purpose;

deleted

Or. en

Amendment 14
Proposal for a regulation
Article 6 – title

Text proposed by the Commission

Amendment

General *purpose*

General *responsibilities*

Or. en

Amendment 15
Proposal for a regulation
Article 6 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Member States shall take all necessary measures to ensure effective application of this Regulation by the competent authorities.

Or. en

Amendment 16
Proposal for a regulation
Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Each Member State shall appoint one national IMI coordinator whose **tasks** shall include:

1. Each Member State shall appoint one national IMI coordinator whose **responsibilities** shall include:

Or. en

Amendment 17
Proposal for a regulation
Article 7 – paragraph 1 – point d

Text proposed by the Commission

(d) ensuring the efficient **functioning** of the system, including timely and adequate responses by competent authorities to requests for **administrative cooperation**.

Amendment

(d) ensuring the efficient **operation** of the system, including timely and adequate responses by competent authorities to requests for **exchange of information**.

Or. en

Amendment 18
Proposal for a regulation
Article 8 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Competent authorities shall fulfil their obligations under this Regulation in the same way as they would if acting at the request of another competent authority in their own country.

Or. en

Amendment 19
Proposal for a regulation
Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. When cooperating by means of IMI, the competent authorities shall ensure that **an adequate** response is provided **within the shortest possible period of time or** within the deadline set by the applicable Union act, acting through IMI users in accordance with administrative cooperation procedures.

1. When cooperating by means of IMI, the competent authorities shall ensure that **a** response is provided **without delay, subject to the provisions of, and** within the deadline set by, the applicable Union act, acting through IMI users in accordance with administrative cooperation procedures.

Or. en

Amendment 20
Proposal for a regulation
Article 9

Text proposed by the Commission

1. The Commission shall ensure the security, availability, maintenance and development of the software and IT infrastructure for IMI. It shall provide **a multilingual system**, training in cooperation with the Member States, and a helpdesk to assist Member States in the use of IMI.

2. The Commission may participate in administrative cooperation procedures involving the processing of personal data where required by a Union act listed in Annex I.

3. The Commission shall register the national IMI coordinators and shall grant them access to IMI.

4. The Commission shall perform processing operations on personal data in IMI where provided for in this Regulation.

5. For the purposes of performing its tasks under this Article and for producing reports and statistics, the Commission shall have access to the necessary information relating to the processing operations performed in IMI.

Amendment

1. The Commission shall ***be responsible for carrying out the following tasks:***

(a) to ensure the security, availability, maintenance and development of the software and IT infrastructure for IMI. It shall, ***in particular,*** provide ***translation functionalities***, training in cooperation with the Member States, and a helpdesk to assist Member States in the use of IMI;

(b) to participate in administrative cooperation procedures involving the processing of personal data where required by a Union act listed in Annex I;

(c) to register the national IMI coordinators and shall grant them access to IMI;

(d) to perform processing operations on personal data in IMI where provided for in this Regulation ***in accordance with the purposes determined by the applicable Union acts set out in Annex I;***

(e) to monitor the application of this Regulation and report back in accordance with Article 26.

5. For the purposes of performing its tasks under this Article and for producing reports and statistics, the Commission shall have access to the necessary information relating to the processing operations performed in IMI.

Or. en

Amendment 21
Proposal for a regulation
Article 10 – paragraph 5

Text proposed by the Commission

5. The use of personal data processed by means of IMI for a specific purpose ***in a way incompatible with that*** original purpose shall be prohibited, unless explicitly provided for by ***law***.

Amendment

5. The use of personal data processed by means of IMI for a specific purpose ***different from the*** original purpose ***as provided for within administrative cooperation procedure*** shall be prohibited, unless explicitly provided for by ***legislative measures adopted in accordance with Article 13 of 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***¹.

¹OJ L 281, 23.11.1995, p. 31.

Or. en

Amendment 22
Proposal for a regulation
Article 10 – paragraph 7

Text proposed by the Commission

7. External actors may use IMI with the technical means provided for this purpose, where necessary to facilitate administrative cooperation between competent authorities in Member States, or in order to exercise their rights as data subjects, or where otherwise provided for by a Union act.

Amendment

deleted

Or. en

Amendment 23
Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

2. IMI actors shall ensure that requests of other IMI actors for confidential treatment of information exchanged by means of IMI are complied with by IMI users working under their authority.

Amendment

2. IMI actors shall ensure that requests of other IMI actors for confidential treatment of information exchanged by means of IMI are complied with by IMI users working under their authority. ***Such requests shall be explicitly transmitted through IMI together with the information to which those requests apply.***

Or. en

Justification

To ensure that all confidential information is treated accordingly, a request of confidentiality shall be attached to the information sent through IMI.

Amendment 24
Proposal for a regulation
Article 12

Text proposed by the Commission

IMI shall be based on administrative cooperation procedures developed and updated for that purpose by the Commission, in close cooperation with the Member States.

Amendment

IMI shall be based on administrative cooperation procedures ***defined***, developed and updated for that purpose by the Commission in close cooperation with the Member States.

Or. en

Amendment 25
Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

1. Personal data processed in IMI shall be blocked at the latest ***eighteen*** months after

Amendment

1. Personal data processed in IMI shall be blocked at the latest ***six*** months after the

the formal closure of an administrative cooperation procedure, unless blocking before that period is expressly requested by a competent authority, on a case-by-case basis.

formal closure of an administrative cooperation procedure, unless blocking before that period is expressly requested by a competent authority, on a case-by-case basis.

Or. en

Amendment 26
Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

Amendment

2. Where an administrative cooperation procedure in IMI establishes a repository of information for future reference by IMI actors, the personal data included in such a repository may be processed for as long as it is needed for this purpose either with the consent of the data subject or where this is necessary to comply with a Union act.

deleted

Or. en

Amendment 27
Proposal for a regulation
Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. Personal data blocked pursuant to this Article shall, with the exception of their storage, only be processed for purposes of proof of an information exchange by means of IMI, or with the data subject's consent.

deleted

Or. en

Amendment 28
Proposal for a regulation
Article 13 – paragraph 4

Text proposed by the Commission

Amendment

4. The blocked data shall be automatically deleted after five years have elapsed from the closure of the administrative cooperation procedure. **deleted**

Or. en

Amendment 29
Proposal for a regulation
Article 13 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall ensure by technical means the blocking and deletion of personal data and their retrieval in accordance with paragraph 3. **deleted**

Or. en

Amendment 30
Proposal for a regulation
Article 14 – paragraph 3

Text proposed by the Commission

Amendment

3. When a natural person ceases to be an IMI user, the personal data relating to him or her shall be blocked by technical means for a period of **five years**. They shall, with the exception of their storage, only be processed for purposes of proof of an information exchange by means of IMI and shall be deleted at the end of the **five-year** period.

3. When a natural person ceases to be an IMI user, the personal data relating to him or her shall be blocked by technical means for a period of **six months**. They shall, with the exception of their storage, only be processed for purposes of proof of an information exchange by means of IMI and shall be deleted at the end of the **six-month** period.

Or. en

Amendment 31
Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

1. IMI actors shall ensure that data subjects are informed about processing of their personal data in IMI and that they have access to a privacy notice explaining their rights and how to exercise them, in accordance with Articles 10 or 11 of Directive 1995/46/EC and national legislation which is in accordance with that Directive.

Amendment

1. IMI actors ***in contact with data subjects*** shall ensure that data subjects are informed about processing of their personal data in IMI and that they have access to a privacy notice explaining their rights and how to exercise them, in accordance with Articles 10 or 11 of Directive 95/46/EC and national legislation which is in accordance with that Directive.

Or. en

Amendment 32
Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission

1. IMI actors shall ensure that the data subject may effectively exercise the right of access to data relating to him or her, and the right to have inaccurate or incomplete data corrected and unlawfully processed data deleted, in accordance with national legislation. The correction and deletion shall be carried out within 60 days by the IMI actor responsible.

Amendment

1. IMI actors shall ensure that the data subject may effectively exercise the right of access to data relating to him or her, and the right to have inaccurate or incomplete data corrected and unlawfully processed data deleted, in accordance with national legislation. The correction and deletion shall be carried out ***as soon as possible, and at the latest*** within 60 days, by the IMI actor responsible.

Or. en

Amendment 33
Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission

Amendment

2. Personal data blocked pursuant to Article 13(1) shall not be rectified or deleted unless it can be clearly demonstrated that such rectification or deletion is necessary to protect the rights of the data subject and does not undermine their value as proof of an information exchange by means of IMI.

deleted

Or. en

Amendment 34
Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the accuracy or lawfulness of data blocked pursuant to Article 13(1) is contested by the data subject, this fact shall be recorded as well as the accurate, corrected information.

3. Where the accuracy or lawfulness of data blocked pursuant to Article 13 is contested by the data subject, this fact shall be recorded as well as the accurate, corrected information.

Or. en

Amendment 35
Proposal for a regulation
Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Personal data may be exchanged in IMI pursuant to this Regulation between IMI actors within the Union and in a third country only where the following conditions are satisfied:

1. Personal data may be exchanged in IMI pursuant to this Regulation between IMI actors within the Union and in a third country only where **all** the following conditions are satisfied:

Or. en

Amendment 36
Proposal for a regulation
Article 23

Text proposed by the Commission

Amendment

Exercise of the delegation

deleted

1. The powers to adopt the delegated acts referred to in Article 4 shall be conferred on the Commission for an indeterminate period of time.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 24 and 25.

Or. en

Amendment 37
Proposal for a regulation
Article 24

Text proposed by the Commission

Amendment

Revocation of the delegation

deleted

1. The delegation of power referred to in Article 3 may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for a revocation.

3. The decision of a revocation shall put an end to the delegation of the powers

specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Or. en

Amendment 38
Proposal for a regulation
Article 25

Text proposed by the Commission

Amendment

Objections to delegated acts

deleted

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force at the date stated in its provisions.

3. If the European Parliament or the Council objects to the adopted delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Or. en

Amendment 39
Proposal for a regulation
Article 26 – paragraph 2

Text proposed by the Commission

2. Every three years, the Commission shall report to the European Data Protection Supervisor on aspects relating to the protection of personal data in IMI, including data security.

Amendment

2. Every three years, the Commission shall report to the European Data Protection Supervisor on aspects relating to the protection of personal data in IMI, including data security. ***That report should focus on practical aspects of application of data protection principles. National Supervisory Authorities shall be able to study and analyse the report in accordance with Article 20(3).***

Or. en

Amendment 40
Proposal for a regulation
Annex II

Text proposed by the Commission

Amendment

Annex deleted

Or. en

EXPLANATORY STATEMENT

I. Commission proposal

Internal Market Information System (IMI) has been in use since 2008 as a free service to Member States in view of improving the exchange of information within the internal market. The system has proved itself as a fast and secure means for cross-border information exchange and administrative cooperation with currently over 6000 registered authorities in all the EU Member States and the EEA countries.

Currently applied for the exchange of information pursuant to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ('the Professional Qualifications Directive') and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ('the Services Directive'), the IMI system still operates on the basis of a Commission decision and a Commission recommendation¹, and as a result lacks a single legal instrument. This has been seen as a major obstacle to further expansion of the IMI system, which has developed as an effective tool for different Member States administrative structures in their day-to-day cooperation with their counterparts in other Member States ensuring a proper channel of information exchange in different languages and guaranteeing at the same time a higher than traditional channels of communication level of data protection.

Diverse Commission communications pave way for future expansion of IMI to other areas of EU law² and promote the establishment of a 'genuine face-to-face electronic network for European administrations'. As a result the Commission proposed in August 2011 the following regulation with a specific purpose of establishing a single legal framework for the IMI system together with a set of rules to ensure its appropriate functioning. This should allow the future expansion of IMI to other sectors of EU law and lay down clear set of rules in terms of its functioning and data protection processing.

II. Rapporteur's overall position

The Rapporteur welcomes the Commission's proposal to establish a set of common rules for the functioning of IMI. A smooth cross-border exchange of information between different authorities in the Member States is essential in our efforts to complete the Single Market. IMI has proven a reliable and efficient tool in the two areas in which it already has been operating, the Professional Qualifications Directive and the Services Directive, and the current proposal

² Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions 'Towards a Single Market Act. For a highly competitive social market economy. 50 proposals for improving our work, business and exchanges with one another', COM(2010) 608 final, proposal No 45 on p. 31.

will allow to further exploit the IMI full potential with clear benefits for the citizens and the internal market.

IMI is a flexible tool which can be adjusted to specific requirements of various legislative areas and its using in a new consolidated form will not only allow for better data protection, but also will make it possible for competent authorities to communicate quicker or in a larger number of policy areas. Last but not least, it will allow for a better cooperation among local level authorities and their better involvement into the Single Market.

In drafting this report, the Rapporteur took into consideration the opinion of the European Data Protection Supervisor and the political commitment outlined on many occasions by the Presidency and the European Commission for a better governance of the Single Market and a strategy for further expanding the IMI System. The Opinion of the European Economic and Social Committee (Rapporteur: Hernández Bataller) was considered and the opinion of the Article 29 Working Party¹ was equally taken into account.

The Rapporteur has included in this draft report a relatively limited number of amendments with the view to improving transparency and legal certainty for the functioning of the IMI System.

(a) Development of the Internal Market Information System and its extension to other areas of Union law

Although the present proposal consolidates the current rules governing the IMI within a single horizontal legally binding instrument, the Rapporteur believes any future decisions on possible extension of IMI to new areas of Union law shall be appropriately considered on this stage. The European Parliament has often highlighted the importance of having a comprehensive legal framework for the functioning of IMI and the Rapporteur is strongly supportive to the Commission's proposal. Nevertheless, the Rapporteur wishes to express his reservations about the modification of the scope through delegated acts.

The list of areas of Union acts currently supported by IMI is set out in Annex I. Areas of possible future expansion are listed in Annex II. The Rapporteur believes the modification of the scope is an essential element of the proposal and thus recommends that any extension of the scope of IMI in the future should be subject to a new regulation proposal. As a result, the Rapporteur proposes to delete the reference to delegated acts and, as a consequence, also Annex II.

Moreover, the Rapporteur wishes to emphasise that, as justly observed in the EDPS opinion on the Commission proposal, we cannot exclude that "the idea to use IMI in a specific policy area may arise later in the legislative process, and may be proposed by the Parliament or by the Council"². We have already witnessed such cases in the past, for example in case of the proposal on patients' rights in cross-border healthcare. In such cases the procedure to follow would have to be clarified since the Commission proposal foresees the expansion of the scope

¹ Opinion 01911/07/EN, WP 140.

² EDPS opinion, art. 2.2.1, point 22 - 24

only through delegated acts.

Last but not least, extending the IMI to new policy areas in the future may require additional changes in the existing functionalities of the system; those would be then appropriately taken into account while applying the ordinary legislative procedure.

(b) Data processing and security - Retention of personal data

The Rapporteur wishes to emphasise that Article 13 of the regulation proposal introduces the blocking procedure after the period of eighteen months from the closure of an administrative cooperation procedure for personal data processed in IMI and substantially extends the data retention period from 6 months, as it is provided for in the *Commission decision 2008/49 concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data*, to 5 years. The Rapporteur regrets that the modification is introduced to the proposal with no impact assessment nor sufficient justification for the necessity of such provision. The Commission has not provided any sufficient data to justify the extension of the already existing period of six months, and consequently no data is available to estimate if the new extension will be compatible with the existing national laws on data protection.

The Rapporteur also regrets that no detailed justification has been provided in terms of storage of blocked data on who and on which basis would be authorised to access the data during the storage period of five years. Moreover, as article 3 of the Proposal states the *"IMI shall be used for exchange of information between competent authorities in the Member States and the Commission necessary for the implementation of the internal market acts which provide for administrative cooperation, including the exchange of personal data"* thus, the IMI being determined as an IT tool for information exchange. Yet, introducing new functionalities in terms of retention of data and extending it to five years goes much beyond the initially prescribed scope. It seems that such provision may result in modifying the shape of the IMI from a tool to be used for exchange of information among Member States authorities into a database¹.

The Rapporteur shares the opinion of Data Protection Working Party and wishes to underline that the Data Protection Directive 95/46/EC states that personal data must be kept *"no longer than it is necessary for the purposes for which the data were collected or for which they are further processed"*².

Taking above mentioned concerns into account your Rapporteur proposes to keep the current period of retention of six months outlined in the Commission decision concerning the implementation of the IMI³ and following the Commission statement in the explanatory memorandum of the proposal that the present IMI proposal *"consolidates the current rules*

¹ These concerns were also expressed in the EDPS opinion (p. 6) and the letter to Commissioner Barnier submitted by the ARTICLE 29 Data Protection Working Party.

² 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; Article 6 e)

³ Commission Decision 2008/49/EC of 12 December 2007 concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data; Article 4.

*governing IMI within a single horizontal legally binding instrument*¹.

(c) Access rights of IMI actors and users - external actors

The Rapporteur welcomes the proposal of the Commission on the modalities of the functioning of the IMI within the administrations of the Member States but remains concerned about opening access to IMI, initially designed for the administrative authorities in Member States, to external actors. The Rapporteur regrets that no elements have been provided to assess the impact of such a modification and therefore remains concerned about how this intention could alter the practical side of functioning of the IMI and especially what would be the impact of such modification on the data protection and security, taking into account that the initial purpose of IMI was to allow the exchange of information among Member States authorities, and not between Member States authorities and individuals and various organisations.

Consequently, your Rapporteur believes that before opening the IMI to external actors, this issue should be further specified and explained.

III. Conclusion

The purpose of this report is to propose the amendments that the Rapporteur deems necessary for increasing the legal certainty of the proposal. While the Rapporteur reserves the right to table more amendments after having further examined the Commission's proposal and conducted further consultations, his intention at this stage is to generate a fruitful discussion in the Committee.

¹ Commission Proposal for a regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System COM (2011) 522 final; p.4, point 2 of the explanatory memorandum.