



## **EReg Topic Group XX**

# EReg optional guidelines on Privacy and data protection in International Data exchange between Vehicle and Driver Registration Authorities and other National Contact Points

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## 1. OVERVIEW OF DOCUMENT MANAGEMENT

Version	Date	Description	Author
0.1	27.09.2017	Draft outline of Code of Conduct	PwC in cooperation with TG Secretariat
0.2	5.10.2017	Definite outline of Code of Conduct. Based on comments of the first TG meeting, a new version of the outline was drafted	PwC in cooperation with TG Secretariat
0.3	13.11.2017	Collected input based on questionnaire	TG Secretariat and EReg Secretariat
0.4	8.12.2017	Draft Code of Conduct sent to Review Group (consisting of: Finland, Belgium, the Netherlands and EUCARIS) after 2nd meeting.	TG Secretariat and EReg Secretariat
0.5	7.02.2018	Draft Code of Conduct sent to TG participants in preparation of the 3rd Meeting. This included changes of the review group and a review of PwC	TG Secretariat and EReg Secretariat
0.6	12.03.2018	Based on discussions in 3rd meeting of TG and on input of PwC, a new version of Code of Conduct was drafted	TG Secretariat and EReg Secretariat
0.7	29.03.2018	Based on review of TG members	TG Secretariat and EReg Secretariat
0.8	30.08.2018	Based on review TG members and TG meeting in Riga on 19 June 2018	TG Secretariat and EReg Secretariat
0.9	30.10.2018	Based on review TG members and TG meeting in Brussels on 29 October 2018	TG Secretariat and EReg Secretariat
0.95	13.03.2019	Based on the outcomes of the discussion in the TG meeting in Brussels on 26 February 2019	TG Secretariat and EReg Secretariat
1.0	10.05.2019	Final version agreed by EReg GMAC2019	EReg Secretariat

## 2. EREG AND INTERNATIONAL PERSONAL DATA EXCHANGE

EReg, the Association of European Vehicle and Driver Registration Authorities, is a European Association for the registration and documentation of vehicles and drivers. EReg supports the registration authorities by contributing to better implementation of registration policies and enabling the improvement of the tasks and services performed by its members. EReg enables the development of better registration policies that are easier to implement.

The registration in Europe of vehicles, driving licences and accompanying personal data is organised nationally. Each EU Member State has formally assigned the registration of these data to one or more designated governmental organisations, the Registration Authority (RA). Each RA is responsible for managing activities related to driver and vehicle licensing in its own country and in accordance with national and European legislation. RAs are organisations that are formally charged with keeping the vehicle and driving licence registers.

The primary function of these registers is to register the permitted and approved vehicles, and to register who owns/holds which vehicles and who is licensed to drive a vehicle. Additional functions include the registration of tax, insurance and inspection obligations. These functions may vary and be organised at national level.

Internationally, RAs exchange vehicle and driving licence information and other transport related data, mainly via EUCARIS, the European CAR and driving licence Information System. The architecture of EUCARIS is based on the presence of a National Contact Point (NCP) in each EU and/or EEA Member State, which serves as an interface between its national authorities and other European countries. In most countries, the role of NCP is assigned to the RA. However, other authorities in the EU/EEA may have this role as well.

Cooperation between RAs and/or NCPs increases the quality and reliability of the national vehicle and driving licence registers enhancing cross-border cooperation in the fields of driving licences, vehicle registration and road safety and other vehicle-related personal data. Effective cooperation requires consistent international exchange of data, including personal data, between RAs and/or NCPs.

RAs consider it important that personal data is handled with due care. Managing the protection of personal data is important: such protection is mandatory under Regulation 2016/679, also known as the General Data Protection Regulation (GDPR), and because individuals should trust that their data is handled in accordance with their expectations.

Because the protection of personal data is also very important in international exchange of data, the signing Members of EReg first decided to draft a Code of Conduct for the processing of personal data in international data exchange (Code of Conduct) in accordance with the GDPR. Under Articles 40 and 41 of the GDPR, Codes of Conduct are explicitly recognized and encouraged as a way to demonstrate compliance with the privacy requirements. In the last meeting the Topic Group members decided to continue with this document not as a Code of Conduct, but as “EReg guidelines on Privacy and data protection in International Data exchange” (EReg guidelines). These EReg guidelines are the result of a consultation among the Members of EReg that participated in EReg Topic Group XX on the GDPR in international data exchange. At the EReg GMAC 2019 in Lisbon, the document was

adopted as “EReg Optional Guidelines on Privacy and data protection in International Data Exchange”.

### 3. PURPOSE AND SCOPE OF THE EREG GUIDELINES

#### 3.1 Purpose

The purpose of these EReg guidelines is to ensure an adequate level of protection of personal data in international data exchange. These EReg guidelines provide specific guidance on how the GDPR should be applied in international exchange of personal data in the transport sector.

These EReg guidelines help to overcome or address differences in interpretations and implementations of the GDPR by specifying the measures that RAs and/or NCPs have already taken or are committed to take in international data exchange.

The RAs and/or NCPs agree on a high level of transparency regarding data protection in international data exchange which contributes to the citizens’ trust that their personal data is processed adequately in international data exchange.

#### 3.2. Scope and applicability

The EReg guidelines apply to the international exchange of personal data between RAs and/or NCPs within the transport sector, specifically with regard to driving licences, vehicle registration and road safety.

These EReg guidelines seek to ensure the application of the GDPR. The GDPR states that the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, as defined in article 2.2(d) of the GDPR falls within the scope of Directive 2016/680 (EU) and is therefore not within the scope of the GDPR. We regard the first step of the international exchange of these personal data to be within the scope of the GDPR and therefore these EReg guidelines apply

These EReg guidelines do not address data protection requirements arising in the context of the registration and national exchange of data of vehicles, driving licences and accompanying personal data, organised in national law. Each RA and/or NCP remains responsible for compliance with their own obligations under their respective national legislation.

The parties involved in these EReg guidelines are the national vehicle registration or driver registration authority (RAs) or other public authorities that are responsible for the international exchange of transport related data in the EU/EEA/EFTA.

**This Code only applies to the RAs and NCPs that have signed and adopted the approved EReg guidelines, see Annex D.**

## 4. PRINCIPLES

The GDPR requires that organisations ensure a high level of data protection and implement appropriate technical and organisational measures to ensure that the data processing is in accordance with this Regulation and proportionate to the risks. Also in international data exchange, RAs and/or NCPs need to ensure that they act in accordance with the GDPR. Although the GDPR harmonises the data protection frameworks throughout the EU, differences in national interpretation of the requirements or national implementation remain. In the following chapters, the principles and practical measures that RAs and/or NCPs will respect and take into account in the international exchange of personal data are specified. It does not provide a summary of the GDPR requirements, since these should all be implemented on a national level.

### 4.1 Definition of Personal Data

In international data exchange, there are different national interpretations of how to define personal data. By adhering to these EReg guidelines, RAs and/or NCPs will act in accordance with the following:

1. When data can be directly related to a natural person (the data subject) at the moment the data are processed, these data are considered personal data;
2. Some data elements might be non-personal data. However, if these data elements are combined with other data during the processing, they might become related to a natural person in which case they are also considered to be personal data;
3. The RAs and NCPs apply different national interpretations to determine whether a data element regards personal data or not. For example, specific identifying data such as the Vehicle Identification Number (VIN) or the licence plate number can be valued differently in different Member States, depending on the context in which the data is processed;
4. Note that in some cases, there is specific national legislation regulating whether a data element is personal data or not. The introduction of the GDPR will not change this;
5. An actual overview of data elements is created and published. The classification of data elements commonly considered to be personal data is incorporated in this overview.

### 4.2. Lawfulness of processing

The international exchange of personal data between RAs and/or NCPs shall be lawful. Personal data shall only be processed by RAs and/or NCPs if one or more of the legitimate grounds of Article 6 of the GDPR apply. In this context, the following legitimate grounds apply:

1. The data processing is necessary in order to comply with a legal obligation to which the RA and/or NCP is subject (Article 6 1(c) GDPR). That is for instance the case if the processing is based on a legitimate ground and purpose in an EU Regulation or Directive in the transport domain or in the EUCARIS Treaty, see Annex B;
2. The data processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (Article 6 1(e) GDPR). This is laid out in bilateral and/or multilateral agreements;

When processing data, RAs and/or NCPs will act in accordance with the following:

3. RAs and/or NCPs take measures to ensure the legitimacy of requests made on behalf of their national competent authorities;
4. RAs and/or NCPs agree to explicitly refer to the legitimate ground in the international exchange of personal data, by defining specific services and specific authorizations for each legal base. This is already arranged in the information exchange systems, but for email this needs to be specified in the request.

#### **4.3. Data minimization**

The international exchange of personal data shall be adequate, relevant and limited to what is necessary. In this regard, RAs and/or NCPs will act in accordance with the following:

5. RAs and/or NCPs restrict the international exchange of personal data only to those data elements that are necessary under the applicable law and/or bilateral or multilateral agreements or contracts;
6. The processing of personal data is kept to a minimum. RAs and/or NCPs only exchange data through a secured electronic information system. These systems use data sets which have been predefined based on the relevant legislation and are dedicated for the purposes of this legislation. This limits the data elements as much as possible. At the moment, the following systems have these measures in place:
  - o EUCARIS;
  - o Systems based on a Central Hub architecture (EC-HUB) for ERRU (European Register for Road Transport Undertakings), RESPER (the European system for the exchange of Driving Licence Information under the 3rd Driving Licence Directive) and TACHOnet;
  - o In the future other standardized systems and standards may qualify for exchanging personal data.
7. Only if it is not possible to use one of these systems can email or another channel be used, provided appropriate technical and organisational safeguards are in place to protect the data being processed via these channels. In the case of exchange by email or paper, RAs and/or NCPs will include in their request the legitimate ground, purpose and the subsequent requested data elements.

#### **4.4. Quality of data**

It is the responsibility of the RAs and/or NCPs to keep personal data accurate, complete and up-to-date. To achieve this, RAs and/or NCPs will act in accordance with the following:

1. RAs and/or NCPs take all measures within the limits of their powers and responsibilities to keep the registers accurate and up to date.;
2. When a data subject has exercised their right to rectification, erasure or restriction, the RA and/or NCP concerned ensures the personal data selected is flagged in the system as being contested which enables RAs and/or NCPs to contact each other to further investigate;
3. RAs and/or NCPs do not re-use personal data but request the data again from the source register for any new processing. This is to guarantee the actuality of the data;
4. RAs and/or NCPs process any changes in personal data, the keeper of a vehicle, for instance, within a reasonable time, to guarantee the actuality and accuracy of the personal data.

#### **4.5. Data Retention**

RAs and/or NCPs shall ensure that personal data is accurate and, when necessary, kept up to date. In this regard, RAs and/or NCPs will act in accordance with the following:

1. Personal data is retrieved as much as possible from the source registry. Retention of data for future use should be avoided;
2. RAs and/or NCPs retain personal data only when this is needed for the period required to serve the legitimate purposes for which the personal data is exchanged or to the extent reasonably necessary to comply with an applicable legal obligation under International, European or national law. Re-use of data, even within the same legal scope, should be avoided, to guarantee the actuality of the data. RAs and/or NCPs will include a specific retention period in bilateral or multilateral agreements;
3. RAs and/or NCPs are aware that there may be differences in national laws and policies on retention. When differences between RAs and/or NCPs exist as regards the retention period, the national legal framework where the data will be stored applies;
4. The RAs and/or NCPs are transparent about their retention policies in their privacy information notices. These privacy notices will be published by the RAs and/or NCPs in English on their websites and made accessible for the public on the EReg website.

#### **4.6. Security and confidentiality**

To ensure a high level of data security, RAs and/or NCPs shall act in accordance with the following:

1. Personal data is exchanged wherever possible via the information systems listed in 4.3. The use of EUCARIS and other information systems described in 4.3. involves appropriate measures to guarantee the exclusiveness and integrity of the data exchange, authorisation of end-users to access only the data needed for their tasks, and logging of all exchanged information allowing for audits and track and trace on request of the data subject;
2. Exchange of personal data via email is avoided. Only when an exchange via an information system appears to be impossible, is email allowed. The exchange via email must be encrypted. These emails are archived in accordance with national law;
3. Storage of personal data is always in data centers under national or EU jurisdiction. Storage of personal data in data centers outside the EU is not allowed, unless an adequate level of protection is ensured in accordance with the GDPR. RAs and/or NCPs have control over where their data is stored and upon request are able to inform each other about where their data is stored;
4. Prior to a new international personal data exchange through EUCARIS that is likely to put the rights and freedom of a natural person at a high risk, a Data Protection Impact Assessment (DPIA) is carried out, if the EUCARIS General Assembly considers this to be necessary;
5. RAs and/or NCPs make sure that they can provide an overview of international personal data exchange for auditing purposes.
6. An appropriate level of information security is achieved and proven by an independent auditor, the outcome of the audit will be communicated and on request the resulting audit report made available to other EReg members.

#### **4.7. Personal data breaches**

When a personal data breach takes place, RAs and/or NCPs will act in accordance with the following:

1. The assessment of what constitutes a personal data breach is done by the RA and/or NCP where the processing of the personal data takes place;
2. Relevant RAs and/or NCPs are informed without undue delay, on a personal data breach and the subsequent impact and measures (to be) taken to mitigate its possible adverse effects;
3. In the event that a data subject in another Member State should be informed about a data breach, the RAs and/or NCPs involved in the exchange provide reasonable assistance to each other to communicate this to the relevant data subject(s).

### **5. INFORMATION REQUIREMENTS AND DATA SUBJECT RIGHTS**

RAs and/or NCPs shall be transparent towards natural persons (data subjects) regarding the fact that personal data concerning them may be or actually have been processed and exchanged internationally. In this regard, RAs and/or NCPs will act in accordance with the following:

1. Data subjects are informed through a privacy notice (for example on their website) about the processing of their personal data, the purposes of the data exchange, the categories of recipients to whom the personal data will be disclosed and the applicable data subject rights. The RAs and/or NCPs also publish their privacy notice in English. The link to these notices will be made available on the EReg website including a reference to a point of contact of the RAs and NCPs;
2. Facilities are available to track and trace any international exchange of personal data on a data subject to make relevant data available upon request of the data subject. The actual provisioning of the overview is decided by the RA and/or NCP responsible;
3. Reasonable mutual assistance is provided to ensure that requests of data subjects will be handled adequately and within time, when it concerns the international exchange of personal data.

### **6. TRANSFER OF PERSONAL DATA TO NON-EU (THIRD) COUNTRIES**

The RAs and/or NCPs shall only transfer personal data to RAs and/or NCPs in countries outside the EU (third countries) or EEA (such as Norway, Liechtenstein, Iceland) that ensure an adequate level of protection for the rights and freedoms of data subjects. In this regard, RAs and NCPs will act in accordance with the following:

- At this moment (November 2018) international exchange of personal data takes place with the following non-EU/EEA countries: Switzerland, Jersey, Guernsey, Gibraltar and the Isle of Man. These countries have been assessed as regards their data protection policies, which is in line with the EU standards and proven by an adequacy decision of the European Commission;
- For TACHOnet, exchanges take place via the Central Hub of the European Commission with several of the AETR countries, based on an agreement between AETR and the EU;

- In the future, exchange of personal data with third countries other than those listed here, can take place. The standard data protection clauses adopted by the European Commission or other safeguards meeting the requirements of the GDPR for transfers of personal data outside the EU and EEA are respected;

## 7. DATA SUBJECTS' COMPLAINTS

Each data subject shall have the right to lodge a complaint with its supervisory authority or to have an effective judicial remedy against a controller or processor if the data subject considers the processing of their personal data to be in non-compliance with the GDPR. When this is the result of international exchange of personal data, RAs and/or NCPs will act in accordance with the following:

- The RAs and/or NCPs concerned inform each other on these disputes and aid the data subject by referring them to the right organisations;

## 8. ACCOUNTABILITY

The RAs and/or NCPs shall comply with the requirements laid down in these EReg guidelines. The RAs and NCPs adhering to these EReg guidelines shall demonstrate compliance with the requirements of these EReg guidelines by being transparent about the measures taken and the incidents that have occurred and by providing guidance to each other wherever possible. In this regard, the RAs and/or NCPs will act in accordance with the following:

- RAs and/or NCPs provide an overview of their data protection activities and policies in international personal data exchange. This is done by filling out an annual questionnaire that will be shared among the EReg Members;
- In order to exchange knowledge and experiences regarding data protection in international data exchange, EReg facilitates an expert group to discuss these matters;
- Knowledge and experiences are shared through best-practice at either the EReg General Meeting & Annual Conference, Topic Group or other platform;
- Privacy notices are updated and published in English and the link to the notice will be provided on the EReg website;
- At the EReg General Meeting & Annual Conference the overview of the activities of the members is presented which will be published on the EReg website.

## 9. CONDITIONS OF ADHERENCE

At the EReg GMAC 2019 in Lisbon, the document was adopted as “EReg Optional Guidelines on Privacy and data protection in International Data Exchange”. The RAs and/or NCPs declare adherence to these EReg guidelines and commit themselves to comply with the requirements of the Code for the processing of personal data. The list of the RAs and NCPs adhering to these EReg guidelines can be found in the Annex D and will be published on the EReg website.

## ANNEX

### A. TERMINOLOGY

For the purpose of these EReg guidelines, the following terms are used:

- **EReg**: the Association of European Vehicle and Driver Registration Authorities;
- **EUCARIS**: the European CAR and driving licence Information System;
- **Registration Authority (RA)**: The central vehicle registration or driver registration authority or public administration authorities that are responsible for at least one task of central vehicle registration or driver registration in the EU/EEA/EFTA;
- **EUCARIS National Contact Point (NCP)**: The EUCARIS NCP acts as an interface between a country and other European countries in the exchange of transport related information; in many cases the role of NCP is performed by the RA
- **EReg guidelines**: the EReg guidelines for the processing of personal data by the Registration Authorities;
- **Personal data**: any information relating to an identified or identifiable natural person; the 'data subject'; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier, or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that natural person;
- **Special categories of personal data**: personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person and data concerning health or data concerning a natural person's sex life or sexual orientation;
- **Data subject**: an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier present in the data set that is processed;
- **Processing**: any operation or set of operations which is performed on personal data or on sets of Personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- **Controller**: the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;
- **Processor**: a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- **Personal Data breach**: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal data transmitted, stored or otherwise processed;

- **Supervisory authority** concerned: a supervisory authority which is concerned by the processing of personal data because:
  - the controller or processor is established on the territory of the Member State of that supervisory authority;
  - Data subjects residing in the Member State of that Supervisory authority are substantially affected or likely to be substantially affected by the processing; or
  - a complaint has been lodged with that supervisory authority;
- **International data exchange** means either:
  - Processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or
  - Processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.

## B. LEGITIMATE PURPOSES

### EU Regulation:

- **Directive 2014/45/EU of 3 April 2014** on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC Text with EEA relevance
- **Directive 2014/47/EU of 3 April 2014** on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC Text with EEA relevance
- **Council Directive 1999/37/EC of 29 April 1999** on the registration documents for vehicles
- **Directive 2007/46/EC of 5 September 2007** establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles
- **Council Decision 2008/615/JHA of 23 June 2008** on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime
- **Council Decision 2008/616/JHA of 23 June 2008** on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime. The EU Prüm Council Decisions regulate the exchange of vehicle and owner/holder information.
- **2009/750/EC: Commission Decision of 6 October 2009** on the definition of the European Electronic Toll Service and its technical elements
- **Council Directive 2010/24/EU of 16 March 2010** concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.
- **Directive 2000/53/EC of 18 September 2000** on end-of life vehicles
- **The 3rd Driving Licence Directive (2006/126)**, amendments and related documents
- **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
- **The regulations (EU) No 1071/2009, 1072/2009, 1073/2009 and 2016/480** concerning the European Register of Road Transport Undertakings (ERRU).
- **Delegated Regulation (EU) No 305/2013** on the interoperable EU-wide eCall
- **Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014** on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport
- **Commission Implementing Regulation (EU) 2016/68 of 21 January 2016** on common procedures and specifications necessary for the interconnection of electronic registers of driver cards

### EUCARIS Treaty and other multilateral agreements between the parties involved

### Bilateral agreements between the parties involved

### **Special Categories of Personal Data**

The RAs and other NCPs exchange the following categories of Special categories of Personal Data based on explicit legal grounds.

- Physical and mental health data are part of the exchange of driver licence information **(the 3rd Driving Licence Directive (2006/126))**
- Social security number or a different identifying personal number may be exchanged (optional data element) **(Council Decision 2008/615/JHA of 23 June 2008)**
- Biometric data could theoretically be exchanged as attachment to the exchange of driving licence information **(the 3rd Driving Licence Directive (2006/126))**

### C. Data overview of EUCARIS services

Service	Vehicle Licence number	VIN	Technical vehicle data	Registr data/ Vehicle signals	Mileage	name/ address/ date of birth	place of birth/ gender/ ID	Insurance data	Results technical inspection	Traffic violations	Sanctions / penalties	DL holder	DL sanctions	DL restr. (medical) + compet.	DL passport photo	T.U. manager/ T.U.	Transport manager fitness	T.U. Infring. + penalties	Tacho card holder + status
Non sensitive data	√		√																
VHInfo/ AVI	√	√	√	√	√				√										
NoR	√	√		√															
DLInfo												P	P	P					
Prüm	P	P	P	P		P	P	P	P										
VHOH	P	P		P		P	P			P									
Mileage	√	√			√														
ERRU	P															P	P	P	
TACHO												P	P						P
RESPER												P	P	P	P				
eCall	√	√	√	√															
eCoC (=IVI)		√	√																
CBE	P	P		P		P	P			P	P								
Salzburg	P	P				P	P			P	P								
VAT	P	P	P	P		P	P												
Tolls	P	P	P	P		P	P												
RSI/PTI	P	P	P	P	P	P			P			P				P			

**P=personal data; √=included**

**D. REGISTRATION AUTHORITIES AND NATIONAL CONTACT POINTS  
ADHERING TO THE EREG GUIDELINES**