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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the outcome of the Internal Market Information System (IMI) pilot project in the area of e-commerce

TABLE OF CONTENTS

1. INTRODUCTION 2
2. BACKGROUND INFORMATION ABOUT IMI 2
3. THE SCOPE OF THE PILOT PROJECT - LEGAL PROVISIONS SUPPORTED BY IMI 3
4. PREPARATION AND LAUNCH OF THE PILOT PROJECT 4
5. THE COMPETENT AUTHORITIES 5
6. THE USE OF IMI DURING THE PILOT PROJECT 5
7. MEMBER STATES' FEEDBACK 6
8. DATA PROTECTION 8
9. TRANSLATION FUNCTIONALITIES 9
10. CONCLUSION 10

1. INTRODUCTION

This report covers the outcome of the pilot project on the use of the Internal Market Information System (IMI) to support administrative cooperation pursuant to Article 3 of Directive 2000/31/EC of the European Parliament and of the Council (the e-Commerce Directive)[1]. The report is based on Article 4(2) of Regulation (EU) 1024/2012 of the European Parliament and of the Council (the IMI Regulation)[2]. According to this Article, the Commission must submit an evaluation of the outcome of the pilot project, including data-protection issues and effective translation functionalities, to the European Parliament and the Council. The aim of this report is therefore to assess the outcome of the pilot project on the use of IMI to technically implement the exchange of information between national authorities and the Commission. The report aims to make this assessment as part of the administrative cooperation mechanism laid down in Article 3 of the e-Commerce Directive. This report does not assess the overall functioning of the administrative cooperation system as laid down in that Article, which has been the subject of a specific assessment in the context of the Evaluation report on the E-commerce Directive[3]. Similarly, this report does not relate to the specific administrative cooperation mechanism applicable to intermediaries as proposed in the context of the Digital Services Act[4], which - once adopted - should specifically apply to the enforcement of these harmonised rules on the provision of intermediary services in the internal market.

2. BACKGROUND INFORMATION ABOUT IMI

IMI was created by the IMI Regulation and developed by the Commission in close cooperation with the Member States (the system is also used by EEA countries: Norway, Iceland and Liechtenstein). It is an IT tool that is secure, multilingual and flexible. It is also user friendly and complies with data-protection rules. IMI is also the default choice for many internal market initiatives requiring a system for administrative cooperation. IMI helps authorities to accomplish their cross-border administrative cooperation obligations in many single market policy areas, and it currently supports administrative cooperation procedures in 17 different policy areas. As of January 2021, there were more than 12 000 public authorities registered in the system that cooperate with each other. IMI can be adapted, with little or no development effort, to support other policy areas. It has succeeded in modernising cross-

[1] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, pp. 1-16).

[2] Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ L 316, 14.11.2012, p. 1).

[3] See SWD(2020) 348 final, Part 2, Annex 5 for the overall Evaluation Report of the E-Commerce Directive and Annex 8 with specific regard to the cross-border cooperation mechanism.

[4] See Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC COM/2020/825 final

border administrative cooperation and ensuring that the single market works on the ground. Although the end-users of the system are national public authorities, the beneficiaries of this improved cooperation are businesses and citizens.

IMI can be used in all EU languages: standardised content, questions, answers, messages, and form fields are all pre-translated. In addition, automated translation is made available for information provided in 'free-text' fields (where users can enter text directly rather than choose from a set number of options). The system is flexible and can accommodate any national administrative structure: centralised, fully decentralised, or anything in between. Exchange of information via IMI is fully secure and complies with all rules on data protection. Furthermore, all users can benefit from the existing network of national IMI coordinators for training and support. The use of the system generates no IT costs for the Member States and the EEA countries. All pilot projects in IMI, including the pilot for e-commerce, are subject to an evaluation.

3. THE SCOPE OF THE PILOT PROJECT - LEGAL PROVISIONS SUPPORTED BY IMI

As a general provision, according to Article 4(1) of the IMI Regulation, the Commission can carry out pilot projects to assess the effectiveness of IMI in implementing administrative-cooperation provisions in EU acts not listed in the annex to that Regulation.

The e-Commerce Directive is the legal framework for the provision of information society services in the internal market. The purpose of the Directive is to remove obstacles to the cross-border provision of thoseservices in the EU and provide legal certainty to businesses and citizens. The Directive lays down harmonised rules on issues such as: (i) transparency and information requirements for providers of information-society services; (ii) commercial communications; (iii) electronic contracts; and (iv) limitations of liability for intermediary service providers. It also improves administrative cooperation between the Member States and makes self-regulation easier.

On administrative cooperation, Article 3 of the e-Commerce Directive sets out a cooperation mechanism between national competent authorities when considering restrictions to the freedom to provide information-society services across borders. This cooperation mechanism exists alongside other tools applicable to national requirements and measures concerning information-society services (often involving different actors in Member States), such as TRIS (the Technical Regulation Information System) or the CPC (Consumer Protection Cooperation network), both of which were adopted and/or developed after the adoption of the e-Commerce Directive.

Article 3(4), (5) and (6) of the e-Commerce Directive are subject to the pilot project. These provisions regulate the procedure under which a Member State can take restrictive measures against a given information-society service that is not established in its territory. The adoption of such restrictive measures is subject to substantive and procedural requirements. The

substantive requirements are laid down in Article 3(4)(a) of the e-Commerce Directive. Regarding procedural conditions, which are laid down in Article 3(4)(b) of the e-Commerce Directive, before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State must ask the Member State of establishment to take measures against a given information-society service. If the measures taken are inadequate or if the Member State of establishment does not take measures, the Member State, which intends to adopt restrictive measures, must notify both the Commission and the Member State of establishment of its intention to take such measures. Article 3(5) lays down the conditions for the urgency procedure. The requests for measures and notifications provided for in Article 3 of the e-Commerce Directive are currently implemented in IMI: the system supports the administrative cooperation by technical means of a request and a notification module. The notification module also covers the notification of measures under the urgency procedure.

The launch of a pilot project in the area of the e-Commerce Directive had been agreed before the adoption of the IMI Regulation. For this reason, the pilot project was not launched through the adoption of an implementing act, as it is normally required by Article 4(1) of the IMI Regulation. Instead, exceptionally the pilot project is directly referred to in Article 29(1) of the regulation, according to which the Commission may launch a pilot project to assess whether the IMI system is an efficient, cost-effective and user-friendly tool to implement Article 3(4), (5) and (6) of the e-Commerce Directive.

This report is based on: (i) statistical information retrieved from IMI; (ii) feedback from the members of the expert group responsible for the area of e-commerce; and (iii) the replies to two questionnaire surveys on the use of the system addressed to Member States by the Commission in 2017 and 2019.

4. PREPARATION AND LAUNCH OF THE PILOT PROJECT

The pilot project on the use of IMI for administrative cooperation on e-commerce was launched at the end of November 2013.

The structured IMI forms for the content of exchanges in the system (i.e. the fields for information to be entered by the senders and recipients of requests and notifications) were prepared by the Commission. Two forms for exchanging information were designed: a request form for measures to be taken by the Member State of establishment, and another form for notification of measures (including in the urgency case) by the Member State of destination.

Member States were consulted on the forms proposed by the Commission. Based on the feedback received, the forms were finalised, translated to all official languages and implemented in the corresponding IMI modules.

Before launching the pilot project, the Commission organised a training session for experts involved in the e-commerce module in Member States on 14 October 2013. Since then, the Commission's IMI helpdesk has been providing technical support and assistance to users. The Commission has also regularly updated Member States on the state of play of the pilot project.

5. THE COMPETENT AUTHORITIES

Within the area of e-commerce, there are currently 80 competent authorities registered in IMI with access to the request module, including the national IMI coordinators[5] in several countries. In general, Member States register between 1 and 4 competent authorities within this area. However, some countries register more. For example, Croatia has registered 5 competent authorities for requests, while Cyprus has registered 11.

For the notification module, Member States registered 68 competent authorities, including 17 national IMI coordinators. Most countries registered between 1 and 4 competent authorities, but Germany registered 7 authorities and Cyprus registered 11.

Several competent authorities are registered for both modules (request and notification). This means that in total there are 85 different competent authorities registered for this policy area, including 27 national IMI coordinators.

6. THE USE OF IMI DURING THE PILOT PROJECT

Statistical data extracted from the system shows that the use of IMI during the pilot project was rather limited, which means that a low volume of exchanges was recorded.

Between 2013 and 2019, the total number of exchanges by Member States was 255, out of which 149 were requests and 106 were notifications. The annex to the current report includes detailed statistics on the number of exchanges sent until the end of 2019.

During the pilot project, 72% of the requests were submitted by the United Kingdom, while Spain submitted 19% of the requests. There were also three other Member States – Belgium, Germany and Ireland – that were relatively active senders. Each of these countries sent 3% of requests (i.e. a combined total of 9% of requests were sent by these three countries). The three Member States that received the most requests were Cyprus (33% of all requests), Germany (17%) and the Netherlands (17%).

[5] In the IMI system, each Member State has one national IMI coordinator, whose responsibilities are set out in Article 6 of the IMI Regulation. The national IMI coordinators are the main contact points for IMI actors in their Member State. Their role is to make sure IMI operates smoothly by, among other things: (i) registering the appropriate authorities; (ii) managing access to different modules; (iii) supporting users; and (iv) ensuring the efficient functioning of the IMI.

Within the notification module, it was Italy which notified the most (58% of sent notifications), followed by the United Kingdom with 35% of sent notifications. Belgium notified measures in 4% of the cases recorded in the system, while Ireland sent 2% of the notifications.

Statistics show that some Member States have not yet participated in any exchange through IMI. There are also countries who were not involved in e-commerce notifications sent via IMI.

On the status of the cases in the request module, 74% of the requests sent until 31 December 2019 (110) have been answered and formally closed. In addition, 9% of the requests have been refused, and 8% have been withdrawn.

Within the notification module, all exchanges have been formally closed. Concerning the notified measures, the duration of the measures was permanent in 94% of cases and temporary in 4% of cases.

Figures from 2020 do not show any significant increase in system usage. In 2020, 16 requests for measures and 18 new notifications were sent via IMI. Germany sent 6 requests for measures, the United Kingdom initiated 5 requests for measures, Italy did it three times, while the Netherlands requested measures twice. The Member States that received these requests are varied: Ireland, Italy, Cyprus and Luxembourg received 2 requests each, while France, Austria, Portugal, Germany, the Netherlands, the United Kingdom, Luxembourg and Belgium received 1 request each. Italy remained the most active sender of notifications by sending 15 out of the 18 notifications, while the Netherlands sent 2 notifications and 1 notification was sent by the United Kingdom. By the beginning of 2021, the status of 5 requests was closed, while 5 requests were accepted,5 request was withdrawn and 1 request was waiting acceptance. As for the status of the notifications, 12 were closed, 2 remained open for comments and 4 notifications got in the ‘inactive-personal data hidden’ status

7. MEMBER STATES’ FEEDBACK

Since the pilot project began in 2013, the Commission has carried out two user surveys on the use of IMI, one in 2017 and one in 2019. The goal of these surveys was to ensure that Member States’ feedback could be taken into consideration in the evaluation of the pilot project. In both cases, Member States were requested to submit a single response to the survey summarising the feedback of their authorities registered for the e-commerce modules in IMI.

In 2017, 18 Member States responded to the survey, and 12 of these 18 respondents said that they had used IMI to exchange information in the area of e-commerce. Of the responses, 55% evaluated the overall experience with information exchange through the system as positive or somewhat positive. However, 38% of responses stated that since 2014 they had also used means of communication other than IMI: (i) to ask the Member State of establishment to take

measures concerning the activity of an information-society-service provider; or (ii) when they notified a measure concerning the activity of an information-society-service provider.

According to the survey, 11% of the respondents have experienced difficulties deciding whether a notification should be sent: (i) in IMI based on Article 3 of the e-Commerce Directive; (ii) using the notification arrangements set out in the Consumer Protection Cooperation Regulation[6]; or (iii) using the notification arrangements set out in the Single Market Transparency Directive[7].

The survey showed that 77% of the Member States agreed or somewhat agreed that the pilot project had shown that IMI is an appropriate tool to support administrative cooperation under Article 3 (4), (5) and (6) of the e-Commerce Directive[8]. 83% were of the opinion that the IMI pilot project in the field of e-commerce should be continued, but with some improvements such as increased user support.

The Commission launched its second online survey in 2019, to which 25 Member States and Norway responded.

According to the replies to this second survey, 16 countries (61%) have used IMI for exchanging information required under the e-Commerce Directive. Those who had not used the system for this purpose indicated that the possible reason for this was that the authorities simply did not have any need to use IMI in this area.

Of the respondents to the second survey, 57% (15 countries) said they had received IMI requests to take measures against information-society-service providers, and 11 of these 15 countries evaluated the overall experience with the information exchange as positive or somewhat positive. Of the countries that responded to the second survey, 8 received notifications through IMI about measures taken in their country concerning the activity of an information-society-service provider, and 50% of these 8 (i.e. 4 countries) found the overall experience with IMI to be positive or somewhat positive. Of the respondents to the second survey, 53% (14 countries) agreed or strongly agreed that the IMI system offered a secure solution for exchanging information with other countries.

In the second survey, 6 countries (23% of respondents) said that they experienced difficulties deciding whether a notification should be sent: (i) in IMI; (ii) using the notification

[6] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, pp. 1-26).

[7] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, pp. 1-15).

[8] These numbers do not refer to the evaluation of the underlying rules but rather to the technical aspects of the IMI system.

arrangements set out in the Consumer Protection Cooperation Regulation; or (iii) using the notification arrangements set out in the Single Market Transparency Directive.

There were 18 countries (66% of those responding to the second survey) that agreed or somewhat agreed with the statement that the pilot project had shown that IMI is an appropriate tool to support administrative cooperation under Articles 3(4), (5) and (6) of the e-Commerce Directive. 14 of the countries responding to the second survey were of the opinion that the IMI pilot project in the field of e-commerce should be continued with increased user support and improvement.

On 8 October 2019, as part of the e-Commerce Expert Group meeting, the Commission asked Member States about their practical experience with IMI. The Commission asked Member States: (i) whether they perceived any limits in cooperation based on the given articles of the e-Commerce Directive; (ii) whether they had suggestions to improve the cooperation mechanism set out in the Directive; and (iii) what their ideas were for possible cooperation provisions as part of a potential new legal initiative.

Member State contributions to the discussions at the meeting highlighted the following points.

- Use of IMI within the e-commerce policy area was limited so far.
- The fact that some Member States never used the system could be due to their lack of awareness of it. However, some Member States pointed to the fact that there was no measure for them to be notified of, nor was there a need to request measures.
- There is a need to clarify when to use the different cooperation mechanisms (IMI/CPC/TRIS).
- Member States welcomed and strongly supported the expansion of IMI to the CPC network as of 2020. They expected this expansion to help clarify the difference between exchanges in the e-commerce module of IMI and similar types of cooperation within the CPC network.
- Many found the system to be helpful and easy to use. However, they said that it might not always be clear to users who the IMI contacts are in other Member States or who the national IMI coordinators are (these national IMI coordinators could provide support for the specific issues raised in the e-commerce field).
- Some Member States thought that the use of IMI might be burdensome, especially for local authorities since they do not know the system. However, these Member States thought that the good functioning of any tool could be assured by proper management e.g. by a ‘central authority’ responsible for the specific e-commerce module.
- Some Member States said that the effective and successful use of IMI is a question of internal organisation and management.

8. DATA PROTECTION

Personal data processing in IMI is in line with the provisions of Regulation (EU) 2016/679 (the General Data Protection Regulation, GDPR)[9] and Regulation (EU) 2018/1725 (the Internal Data Protection Regulation, IDPR)[10]. Secure personal data processing is ensured by Article 14 of the IMI Regulation, which sets out clear deadlines for personal data processing in the system. Exchanging information via IMI therefore guarantees the protection of personal data and is GDPR compliant, since the IMI Regulation itself guarantees the necessary compliance.

Chapter III of the IMI Regulation lays down the main provisions for the processing personal of data and security in IMI. According to these provisions, IMI actors (competent authorities, IMI coordinators, the Commission and the Union bodies, offices and agencies) must exchange and process personal data only for the purposes set out in the relevant provisions of Union acts dealing with the policy areas supported by the system. Data submitted to IMI by data subjects must only be used for the purposes for which the data were submitted.

Furthermore, personal data processed in IMI must be blocked (still in the system but unavailable to view) in the system as soon as they are no longer necessary for the purpose for which they were collected, depending on the specificities of each type of administrative cooperation. As a general rule, personal data processed in IMI must be blocked no later than 6 months after the formal closure of the administrative-cooperation procedure. The system automatically removes personal data from requests and notifications. This means that the blocked data is automatically deleted in IMI 3 years after the formal closure of the administrative-cooperation procedure.

Furthermore, in accordance with the GDPR, IMI actors are responsible for taking all procedural and organisational measures necessary to ensure the security of personal data processed by them in IMI.

During the pilot project, early removal of data has not been requested for any exchange in the area of e-commerce. The Commission has not been contacted to provide access to blocked data (as per the IMI Regulation), or to correct personal data stored in IMI.

The privacy statement for the system is published on the IMI homepage[11].

9. TRANSLATION FUNCTIONALITIES

[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 (OJ L 119, 4.5.2016, pp. 1-88).

[10] 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, pp. 39–98).

[11] https://ec.europa.eu/internal_market/imi-net/_docs/data_protection/privacy_statement_en.pdf

IMI is a multilingual tool. It facilitates information exchange by using pre-translated forms, field sets, questions, answers and messages. All exchanges in the system can be complemented with free-text information, for which the system offers machine translation.

In the area of e-commerce, free text within the pre-translated forms is mostly used for providing information on the detailed description of the measures or on the proportionality test.

The integrated functionality for translating free text has significantly improved since the launch of the pilot project, following the development of the previously connected mt@EC service to the current e-translation[12] service.

E-Translation was introduced in IMI in 2014. Since then, it has continuously improved the quality of translation results and the response time of the service. Machine translation is offered for all possible pairs of official EU languages.

In IMI, **several system improvements have been introduced to facilitate the use of the integrated machine-translation mechanism**:

- translations of free text are now displayed in their context (i.e. the original text is displayed on the screen);
- all free text contained in an information exchange can be translated to the preferred language of the IMI user with a single click/action;
- temporary storage of translations ensures and enables a prompt response to translation requests.

Further improvements are planned for the future, such as the inclusion of machine-translation outputs in reports (visually distinguished from pre-translated content), or the machine translation of attachments. However, these improvements and functionalities will not be specific for the e-commerce module of the system, but would be generic features across the system.

10. CONCLUSION

Since 2013, IMI has been the technical system supporting the cooperation mechanism laid down in Article 3 of the e-Commerce Directive. It has allowed the competent authorities from different Member States to: (i) communicate directly, quickly and easily via a secure online

[12] E-Translation is a Connecting Europe Facility (CEF) building block. Its main goal is to help European and national public administrations to exchange information across language barriers in the EU. By using it, public administrations, citizens and businesses in the EU will be able to use digital services in the language they choose. https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/eTranslation.

platform; and (ii) overcome language barriers by putting at their diposal pre-translated sets of standard questions and answers[13].

On the basis of the information provided in this report, the Commission can draw the following conclusions.

- **IMI has so far been a secure and multilingual tool** for: (i) handling and storing requests and notifications among national authorities involved in the administrative-cooperation mechanism provided for under Article 3 of the e-Commerce Directive; and (ii) tracing interactions among authorities in this context.
- **Within the current regulatory framework**, the IMI pilot for the e-Commerce Directive should continue.
- **Technical improvements should be implemented** to improve the user-friendliness of the procedures for requesting and notifying measures, in accordance with the overall cooperation system laid down in the e-Commerce Directive and taking into account the experience gained in the implementation of that Directive[14].
- The Commission should cooperate with Member States to carry out **awareness-raising activities** about the pilot project and **increase support provided to users of IMI** .

The implementation of the following **technical improvements** should be analysed and investigated based on generic features of the system:

- re-structuring of information on the interface;
- reminders for pending replies to (not accepted and/or not answered) requests;
- better indications of when the responder is expected to reply;
- improved search facility for requests;
- functionality for copying request data into notifications;
- potential connection to other exchanges in IMI.

On the last action point above, as of 2020 January IMI has been implemented as the new IT tool for the CPC network. The system also supports the notification obligation under the Services Directive since its implementation. These areas supported by the system indicate that there are synergies that should be explored and exploited during the second phase of the pilot

[13] It is to be noted, that the basic features of the cooperation mechanism are laid down in the e-Commerce Directive, which are not the subject matter of this report. See also *supra* footnote 3.

[14] In this respect, the evaluation report of the e-Commerce Directive showed the need to clarify certain aspects of the notification system. Future technical adjustments to IMI should therefore allow for the necessary clarifications as regards the functioning of this notification system.

project. Synergies with CPC can definitely bring more clarity on which procedure to use within the area of e-commerce.

Support to IMI users involved in the pilot project could be increased by:

- structured follow-up to exchanges;
- regular statistical reporting on requests and notifications;
- training and guidance to users.

Areas of concern

It might be challenging to increase the limited number of exchanges.

Open issues

Synergies with CPC need to be further developed; there is a need for increased user support.

Positive advancements

IMI continues to help improve operation of the e-Commerce Directive by providing a secure online platform for administrative exchanges and notifications. Member States' continued cooperation – as well as legal and technical support and fine-tuning – are essential to ensure that IMI continues to function properly for this area.

With this report, the Commission complies with the reporting requirement under Article 4(2) of Regulation (EU) 1024/2012.

The Commission invites the European Parliament and the Council to take note of this report.