Commission Implementing Decision (EU) 2020/1669 of 10 November 2020 on a pilot project to implement certain administrative cooperation provisions set out in Regulation (EU) 2018/1807 of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union by means of the Internal Market Information System (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2020/1669

of 10 November 2020

on a pilot project to implement certain administrative cooperation provisions set out in Regulation (EU) 2018/1807 of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union by means of the Internal Market Information System

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 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[(1)], and in particular Article 4(1) thereof,

Whereas:

(1) The Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 is an online software application developed by the Commission, in cooperation with the Member States, to help Member States comply with their duties of administrative cooperation, including information exchange requirements in Union acts. It does this by providing a centralised communication mechanism to facilitate the cross-border exchange of information and mutual assistance.

(2) Article 4(1) of Regulation (EU) No 1024/2012 enables the Commission to carry out pilot projects to assess whether IMI would be an effective tool to implement provisions on administrative cooperation laid down in Union acts not listed in the Annex to that Regulation.

(3) Regulation (EU) 2018/1807 of the European Parliament and of the Council[(2)] provides for free movement of data other than personal data within the Union. In addition, it lays down the conditions on access to data for competent authorities, on requesting assistance, and on cooperation between competent authorities of Member States with a view to providing access to data processed and stored in another Member State. Under Article 5(2) of Regulation (EU) 2018/1807, a competent authority may request assistance from a competent authority in another Member State, in accordance with the procedure set out in Article 7 of that Regulation, when the requesting competent authority does not obtain access to data and if no specific cooperation mechanism

exists under Union law or international agreements for the exchange of data between competent authorities in different Member States.

(4) Pursuant to the second subparagraph of Article 5(4) of Regulation (EU) 2018/1807, Member States may, in urgent circumstances and under certain conditions, impose interim measures to re-localise data. If such an interim measure imposes re-localisation of data for more than 180 days following re-localisation, it is to be communicated to the Commission. In addition, the Commission is to exchange information with Member States on relevant experience gained.

(5) IMI could be an effective tool for implementing the provisions on administrative cooperation laid down in Article 5(2) and (4) and Article 7(2) to (5) of Regulation (EU) 2018/1807. Those provisions should therefore be subject to a pilot project pursuant to Article 4 of Regulation (EU) No 1024/2012.

(6) Administrative cooperation under Regulation (EU) 2018/1807 may involve the single points of contact designated in accordance with Article 7(1) of that Regulation, the competent authorities referred to in Article 3(6) of that Regulation, and any entities responsible for communicating measures under Article 5(4) of that Regulation. In accordance with point (f) of the second paragraph of Article 5 of Regulation (EU) No 1024/2012, they should therefore be considered as competent authorities for the purposes of the pilot project.

(7) IMI should provide the technical functionality enabling the competent authorities, single points of contact, entities responsible for communicating measures under Article 5(4) of Regulation (EU) 2018/1807, and the Commission to fulfil their administrative cooperation and communication obligations under that Regulation.

(8) Under Article 7(4) of Regulation (EU) 2018/1807, a competent authority that receives a request for access to data is obliged either to communicate the data requested or to inform the requesting authority that it does not consider the conditions for requesting assistance to have been met. To operationalise the exchange of data, the Member State to which the request was addressed should provide the requesting Member State with the details necessary to access the requested data, or with details of how and when the data transfer will be effected. The Member State to which the request was addressed may also supply the requested data immediately in response to the request, if this is considered the most efficient way to proceed.

(9) A request for assistance, as well as the interim measures notified to the Commission via IMI, may include the exchange of data sets containing both personal and non-personal data. Under Article 2(2) of Regulation (EU) 2018/1807, Regulation (EU) 2016/679 of the European Parliament and of the Council[3] applies to the processing of personal data in a data set in which it is inextricably linked with non-personal data. This is ensured by Article 14 of Regulation (EU) No 1024/2012, which sets out rules on personal data processing in IMI.

(10) Pursuant to Article 4(2) of Regulation (EU) No 1024/2012, the Commission is to submit an evaluation of the outcome of the pilot project to the European Parliament and the Council. It is appropriate to specify the date by which the evaluation is to be submitted.

In the interests of consistency, the date specified should be the same as the date by which the report required under Article 8 of Regulation (EU) 2018/1807 is to be submitted.

(11) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 24 of Regulation (EU) No 1024/2012,

HAS ADOPTED THIS DECISION:

Article 1

The pilot project

A pilot project shall be carried out in order to assess whether the Internal Market Information System ('IMI') would be an effective tool to implement the provisions on administrative cooperation laid down in Article 5(2) and (4) and Article 7(2) to (5) of Regulation (EU) 2018/1807.

Article 2

Competent authorities

For the purposes of the pilot project, competent authorities referred to in Article 3(6) of Regulation (EU) 2018/1807, single points of contact referred to in Article 7(1) of that Regulation and entities responsible for communicating measures under Article 5(4) of that Regulation shall be considered as competent authorities within the meaning of point (f) of the second paragraph of Article 5 of Regulation (EU) No 1024/2012.

Article 3

Administrative cooperation

1 For the purposes of Article 5(2) and Article 7(2) to (5) of Regulation (EU) 2018/1807, IMI shall provide the technical functionality for, in particular, the following:

a submitting, pursuant to those Articles, a request for assistance, for which justification shall be provided, including any accompanying information and written explanation;

b transmitting the request to the relevant competent authority in the Member State to which the request is to be sent;

c providing a response communicating the data requested by providing one of the following:

(i) the details necessary to access and download the data;

(ii) the details of how and when the data transfer will be effected;

(iii) the data requested;

d informing the requesting authority that the conditions for requesting assistance have not been met.

2 For the purposes of the second subparagraph of Article 5(4) of Regulation (EU) 2018/1807, IMI shall provide the technical functionality for, in particular, the following:

a notifying an interim measure to the Commission;

b communicating the necessary measures taken by the Commission, where appropriate;