



Formal comments of the EDPS on the draft Commission Implementing Decisions specifying the technical procedure for the European search portal to query the EU information systems, Europol data and Interpol databases and the format of the European search portal's replies, pursuant to Article 9(7) of Regulation (EU) 2019/817 of the European Parliament and of the Council

1. Introduction and background

Regulation (EU) 2019/817¹, together with Regulation (EU) 2019/818² of the European Parliament and of the Council establish a framework to ensure interoperability between three existing³ and three future⁴ EU information systems in the areas of border checks, asylum and immigration, police cooperation and judicial cooperation in criminal matters.

Such interoperability is achieved through four components: The European Search Portal (ESP), the shared Biometric Matching Service (BMS), the Common Identity Repository (CIR) and the Multiple-Identity Detector (MID).

Each of these components has a specific purpose. In particular, the European Search Portal facilitates the access by Member State authorities and Union agencies to the EU information systems, to Europol data and to the International Criminal Police Organization (Interpol) databases, insofar as this is needed to perform their tasks and in accordance with their access rights.

Since the European Search Portal should be used to search data related to persons or their travel documents, in order to retrieve the information stored in the underlying systems, as well as the Europol and Interpol databases, it is necessary to specify the technical procedure for the European search portal to carry out such queries as well as the format of the European search portal's replies to the queries.

When a query is launched by the user of the European search portal, the underlying systems, the Common Identity Repository, the Multiple-Identity Detector, the Europol data and the Interpol databases should provide in reply not only the data that they hold, but also a

¹Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, OJ L 135, 22.5.2019, p. 27.

² Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, OJ L 135, 22.5.2019, p. 85.

³ The Schengen Information System (SIS), the Eurodac system and the Visa Information System (VIS).

⁴ The Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), the European Criminal Records Information System for third-country nationals (ECRIS-TCN).

reference to the EU information system and/or interoperability component which contains the corresponding data, in order to ensure that users can identify the source of data obtained. These replies should contain only the data to which the user has access under Union and national law.

Member States and Union agencies, having access to the European Search Portal, should log all data processing operations in the European Search Portal in order to ensure compliance with data processing obligations.

Pursuant to Article 9(7) of Regulation (EU) 2019/817 and Article 9(7) of Regulation (EU) 2019/818, the Commission has been empowered to specify the technical procedure for the ESP to query the EU information systems, Europol data and Interpol databases, and the format of the ESP replies, by implementing acts.

The Commission submitted two draft Implementing Decisions for consultation on 5 March 2021 specifying:

- i. the technical procedure for the European Search Portal to query the EU information systems, Europol data and Interpol databases and the format of the European Search Portal's replies, pursuant to Article 9(7) of Regulation (EU) 2019/817;
- ii. the technical procedure for the European Search Portal to query the EU information systems, Europol data and Interpol databases, and the format of the European Search Portal's replies, pursuant to Article 9(7) of Regulation (EU) 2019/818.

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission of 5 March 2021, pursuant to Article 42(1) of Regulation 2018/1725⁵. In this regard, the EDPS welcomes the reference to this consultation in Recital 13 of both draft Implementing Decisions.

These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts, pursuant to Regulation (EU) 2019/817 and Regulation (EU) 2019/818, or any another legal act establishing a large-scale IT system, included in the interoperability framework. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of Regulation (EU) 2018/1725.

⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018 p.39.

2. Comments

The comments below refer to both draft Implementing Decisions.

2.1. Central systems as users of the European search portal

Article 1 of the draft Implementing Decisions defines as “users” of the European search portal not only Member State authorities or Union agencies but also the Central systems of Entry/Exit System (EES), Visa Information System (VIS), European Travel Information and Authorisation System (ETIAS), European Asylum Dactyloscopy Database (Eurodac), the Schengen Information System (SIS), the European Criminal Records Information System for third-country nationals (ECRIS-TCN), and the interoperability components: Common Identity Repository and Multiple-Identity Detector.

In view of the EDPS, this definition appears inconsistent with Article 7 of Regulation (EU) 2019/817 and Article 7 of Regulation (EU) 2019/818, which describe the uses of the European search portal, and do not envisage the central systems as possible users.

The reasons for such an inconsistency with the basic act are not explained in the recitals of the draft Implementing Decisions. If the Commission considers it necessary to identify additional categories of users, for instance for IT architecture purposes, the EDPS considers that it should in principle be possible.

However, the rationale for any choices should be clearly set out in the recitals of the draft Implementing Decisions (e.g. verify the execution of the operation, the verification of its outcome and to follow any changes introduced as a result of an erroneous ESP user’s actions). It is also advisable to mention examples of use cases in which these “users” would be involved. Such an approach would contribute to the necessary legal certainty and would avoid potential confusion as to the legal responsibilities of the actors concerned.

2.2. Keeping of Logs

Article 5 of the draft Implementing Decisions foresees logging of all data processing operations in the European Search Portal on all levels, i.e. by eu-LISA, Member States authorities and Union agencies.

Article 10 of Regulation (EU) 2019/817 and Regulation (EU) 2019/818 lays down the content of logs for eu-LISA, while Article 10(2) provides that Member States keep logs of queries that authorities and their staff make, without containing a detailed catalogue of content. Article 10(3) limits the purposes for which the logs may be used, and prescribed they be adequately protected. It also imposes a limitation to storage of 1 year in principle.

The EDPS notes that the draft Implementing Decisions envisage an additional data category to be logged not included in Article 10(1) of Regulation (EU) 2019/817 and Regulation (EU) 2019/818, which is “the result of the query”.

The EDPS underlines that the principle of data minimization also applies to logging, and that content data should only be logged under special circumstances. However, during an informal meeting with Commission services on 11 May 2021, EDPS staff were assured that no content data would be logged. “The result of the query” means whether the query was complete or incomplete. While this mere technical information does not raise concerns with regard to the protection of personal data, the EDPS nevertheless invites the Commission to clarify the meaning of “result of the query”, for instance in the Recitals.

The EDPS welcomes the efforts by the Commission to harmonize logging at Member State level, having regard of the fact that Regulation (EU) 2019/817 and Regulation (EU) 2019/818 do not contain specific provisions in this regard. The EDPS believes that logs at Member States level must be sufficiently detailed in order to fulfill data protection purposes and enable effective checks. At the level of the Member States authorities or Union agencies, it is important to identify the individual end-user. It is also advisable to have each end-user choose a legitimate purpose for the query, as some Member States authorities will be awarded multiple user profiles in parallel. The purposes should then be logged for data protection inspections at Member States level, making it easier to match the query with cases or activities related to it. Logging of the search term used for the query would also be desirable for data protection purposes.

The Commission is invited to amend the draft Implementing Decisions according to these comments.

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(e-signed)