

EDPS Formal comments on the Commission Implementing Decision on the functionality for the centralised management of the lists of authorities accessing the Entry/Exit System and the Visa Information System

THE EUROPEAN DATA PROTECTION SUPERVISOR,

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

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 23 February 2023, the European Commission issued the draft 'Commission Implementing Decision on the functionality for the centralised management of the lists of authorities accessing the Entry/Exit System and the Visa Information System' ('the draft Proposal').
2. The objective of the draft Proposal is to lay down detailed rules to manage the functionality for the centralised management of the lists of authorities accessing the EES and the VIS.
3. The draft Proposal is adopted pursuant to Article 9(2) second paragraph of Regulation (EU) 2017/2226² and Article 6(5) of the Regulation (EC) No 767/2008³.
4. The EDPS previously issued formal comments on the draft Commission Implementing Decisions laying down the technical details of the profiles for the users

¹ OJ L 295, 21.11.2018, p. 39.

² Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

³ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60.

of the European Search Portal, pursuant to Article 8(2) of Regulation (EU) 2019/817 and Article 8(2) of Regulation (EU) 2019/818⁴.

5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 23 February 2023, pursuant to Article 42(1) of Regulation 2018/1725⁵ ('EUDPR'). In this regard, EDPS recommends adding in a Recital, as per standard practice, that 'the European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on ... [EDPS formal comments date]'
6. These formal comments do not preclude any additional comments by the EDPS in the future, 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 acts⁶.
7. 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 the EUDPR and are limited to the provisions of the draft Proposal that are relevant from a data protection perspective.

2. Comments

2.1. General comments

8. The EDPS recommends explaining in more detail the purposes for which the list provided by the functionality will be used (e.g. for contacts between competent authorities to acquire more information, etc.), and how it will relate to the consolidated list of national authorities that should be published in the Official Journal of the European Union pursuant to Article 65(2) of Regulation (EU) 2017/2226.

⁴ https://edps.europa.eu/system/files/2021-05/21-05-17_2021-0329_d1081comments_en.pdf

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, 21.11.2018, L.295, p. 39.

⁶ In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

9. The EDPS also recommends clarifying in the draft Proposal which (categories of) users will be able to: (1) access the information on that electronic list provided by the functionality (e.g. only the users of EES/VIS); and (2) edit the information (e.g. duly authorised officials of the competent national authorities). Furthermore, the EDPS understands that changes on this list will not be linked to any automatic change of the access rights of users on the EES or VIS and that a separate process linked also to the implementing act for ESP profiles⁷ definition would be followed in that case.
10. The EDPS notes that Article 1(3) of the draft Proposal provides for a non-exhaustive list (“*at least*”) of information that the table mentioning the authorities referred to in Article 9(2) of Regulation (EU) 2017/2226 and in Article 6(3) of the Regulation (EC) No 767/2008 must provide. While the proposed list currently does not seem to include personal data, it is not clear whether such data may nevertheless be added in the table (for instance with regard to the contact details of authorities). Therefore, to enhance legal certainty, the EDPS recommends explicitly clarifying in the draft Proposal that no personal data would be processed in the context of the functionality.

2.2. Logs

11. The Proposal specifies under Article 3(3) that all modifications made to the lists of authorities by the Member States must be logged. However, no further details are provided on what these logs entail in practice. Since any modification to the competent authorities’ access rights could have an impact on operational processes related to EES or VIS, such logs should contain adequate information to ensure accountability on any modifications made to the list of national authorities. Thus, the EDPS recommends including a specific provision, which would include details on the content and the retention period of the logs, as well as their access. In this context, the draft Proposal should in particular clarify whether the logged information would allow identifying individual users of the functionality.

2.3. Interoperability

12. Article 2.2 of the Proposal states that the functionality should be developed in such a way that “[...] *enables its further evolution for the purposes of ensuring interoperability of the large-scale IT systems in the area of freedom, security and justice.*” The purpose of the functionality is to manage centrally the lists of competent authorities rather than interoperability as such, which is a means to address the needs of competent authorities using the large-scale IT systems in the area of freedom, security and

⁷ https://edps.europa.eu/system/files/2021-05/21-05-17_2021-0329_d1081comments_en.pdf

justice. It is not clear what the additional purpose of ensuring interoperability of the large-scale IT systems in the area of freedom, security and justice would actually mean in terms of technical developments and, notably, whether it would entail processing of personal data. Therefore, the EDPS recommends specifying that the functionality should be developed in such a way to enable the centralised management of additional lists of competent authorities using other large-scale systems in the area of freedom, security and justice in line with applicable legislation, instead of generally referring to the purpose of ensuring interoperability.

Brussels, 24 March 2023

(e-signed)

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