

EDPS Formal comments on the draft Commission Implementing Decision laying down measures necessary for the technical implementation of the functionalities of the VIS Central System, in particular for entering the data and linking applications, for accessing the data, for rectification, erasure and advance erasure of data, for keeping and accessing the logs of data processing operations, for the consultation mechanism and its procedures, and for accessing the data for the purposes of reporting and statistics in the Visa Information System, repealing Commission Decision 2009/876/EC and Commission Implementing Decision C(2015) 5561

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 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 ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 11 April 2024, the European Commission consulted the EDPS on the draft Commission Implementing Decision laying down measures necessary for the technical implementation of the functionalities of the VIS Central System (VIS), in particular for entering the data and linking applications, for accessing the data, for rectification, erasure and advance erasure of data, for keeping and accessing the logs of data processing operations, for the consultation mechanism and its procedures, and for accessing the data for the purposes of reporting and statistics in the Visa Information System, repealing Commission Decision 2009/876/EC and Commission Implementing Decision C(2015) 5561 ('the draft Implementing Decision').
2. The objective of the draft Implementing Decision is to lay down measures necessary for the technical implementation of the VIS, in relation to the procedures for entering the data and linking applications, for accessing the data, for rectification, erasure and advance erasure of data, for keeping and accessing the logs, for the consultation

¹ OJ L 295, 21.11.2018, p. 39.

mechanism and its procedures, and for accessing the data for the purposes of reporting and statistics².

3. The draft Implementing Decision is adopted pursuant to Article 45(2) of Regulation (EC) No 767/2008 as amended by Regulation (EU) 2021/1134 and Regulation (EU) 2021/1152.
4. The EDPS previously issued Opinion 9/2018 on the Proposal for a new Regulation on the Visa Information System.³ The EDPS also issued formal comments on a number of relevant implementing and delegated acts, including EDPS Formal Comments on the draft Commission Implementing Decision on laying down the measures necessary for the development of the Visa Information System Central System.⁴
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 32 of the draft implementing decision.
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 acts⁵.
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 implementing decision that are relevant from a data protection perspective.

2. Comments

8. The EDPS notes that Annex I of the draft Implementing Decision refers to the “VIS technical specifications” in several instances⁶. It is not clear from the text to which relevant VIS technical specifications the draft Implementing Decision is referring - for instance to the technical specifications for the quality, resolution and use of fingerprints and of the facial image in VIS pursuant to Article 45(3) of Regulation (EC)

² Recital 12 of the draft Implementing Decision.

³ EDPS Opinion 9/2018 on the Proposal for a new Regulation on the Visa Information System, issued on 12 December 2018, paragraph 88, available at https://edps.europa.eu/sites/default/files/publication/18-12-13_opinion_vis_en.pdf.

⁴ https://www.edps.europa.eu/data-protection/our-work/publications/formal-comments/2023-12-21-edps-commission-measures-necessary-development-visa-information-system-central-system_en

⁵ 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.

⁶ Annex I accompanying the draft Implementing Decision, p.1 and p.2

No 767/2008⁷, or to another document. Therefore, the EDPS recommends clarifying this aspect in the draft Implementing Decision, e.g. by including a specific reference to the relevant technical specifications.

9. Furthermore, the EDPS notes that Annex II of the draft Implementing Decision states that the ETIAS National Units would be able to “use” the same alphanumerical data as those used for the automated verifications in order to consult the VIS, as set out in Article 18d of Regulation (EC) No 767/2008. In addition, the same provision states that ETIAS National Units “[...] will be able to access the VIS using the VIS application number obtained during the ETIAS automated process described in Article 20 of Regulation (EU) 2018/1240”⁸. The EDPS notes, however, that the VIS application number is not included among the alphanumerical data used for the automated verifications pursuant to Article 20 of Regulation (EU) 2018/1240. Moreover, it is not clear whether the draft Implementing Decision aims to grant the ETIAS National Units additional access rights, compared to what is explicitly laid down in Regulation (EC) No 767/2008. In the absence of complementary information, such a provision appears to contradict the temporary nature of the access to VIS by the ETIAS National Units, pursuant to paragraph 2 of Article 18d of Regulation (EC) 767/2008. Against this background, the EDPS recommends specifying the legal ground for the processing of the VIS application number by ETIAS National Units to access the VIS.
10. Finally, the EDPS considers that Recital 31 of the draft Implementing Decision, in addition to Article 3(2) of the 2003 Act of Accession, should also refer to Article 4(2) of the 2005 Act of Accession.

Brussels, 14 May 2024

(e-signed)

Wojciech Rafał Wiewiórowski

⁷ See Commission Implementing Decision (EU) 2023/6117 of 15 September 2023 laying down the technical specifications for the quality, resolution, and use of fingerprints and of the facial image for biometric verification and identification in the Visa Information System (VIS) and repealing Commission Decision 2006/648/EC and Commission Decision 2009/756/EC.

⁸ Annex II accompanying the draft Implementing Decision, p.12.