

Brussels, 13 January 2020

Dear Vice-President Schinas,

Dear Commissioner Johansson,

Dear Commissioner Reynders,

As representatives of the data protection authorities (“DPAs”) supervising the Schengen Information System of second generation (“SIS II”), the Visa Information System (“VIS”) and Eurodac within the Supervision Coordination Groups (“SCGs”)[[1]](#footnote-1), we would like to take the opportunity of your taking of office to recall our concerns and recommendations with regards to the new EU framework for interoperability between EU large-scale information systems[[2]](#footnote-2).

We had already pointed out in a previous letter[[3]](#footnote-3) to the European Parliament that the purpose of the new regulations, now adopted and being implemented, is the effective interconnection of the aforementioned information systems as well as several new systems that are not even operational now, namely the European Travel Information and Authorisation System (ETIAS), the Entry Exit System (EES) and the European Criminal Records Information System on Third Country Nationals (ECRIS-TCN). From a data protection perspective, the whole interoperability framework could have a serious impact on key principles such as purpose limitation and proportionality. The former Article 29 Working Party had already echoed such concerns in 2018[[4]](#footnote-4) and we supported its recommendations aiming at bringing the Commission’s proposal in line with the EU *acquis* in the field of data protection.

We regret that neither the European Commission, nor the co-legislators, took into account the issues raised by data protection authorities in the process of defining and adopting this new framework establishing interconnection through interoperability. While its implementation is still ongoing, we also note that the European Commission has presented in 2019 two new proposals related to the interoperability framework, the ETIAS Regulation as well as the legal bases for four other European information systems, namely SIS II, VIS, EES and ECRIS-TCN.

As already highlighted by the European Data Protection Board[[5]](#footnote-5), we would like to stress that such a regulatory approach – amending provisions for some databases that are not yet in place – does neither align with the principle of transparency nor with the principle that data processing has to be based on clear, precise and accessible rules. Furthermore, it constituted a real challenge for data protection authorities to provide the requested prior assessments.

The new architecture and functionalities of EU information systems being established by these successive proposals, negotiated with tremendous speed and with a continuous flow of complex and intertwined legislative proposals, poses enormous risks to the rights for privacy and data protection.

We consider that the EU framework for interoperability raises serious questions when it comes to compliance with the principle of purpose limitation, data subjects’ rights, and the fulfilment of the supervisory tasks of the data protection authorities. This latest consideration comes at a time when data protection authorities remain under significant pressure, due to the lack of financial and human resources attributed by Member States, while a coordinated supervision of the new information systems is being established. Such supervision is indeed essential in order to ensure compliance with data protection rules and the effective exercise of data subject rights.

We sincerely hope that the ongoing discussion on the latest proposals will be an opportunity for the European Commission and the co-legislators to duly consider its own enshrined principles of data protection by design and by default. We would also like to emphasize our willingness to cooperate and to contribute, with all our knowledge and expertise, in further discussions on these issues.

Yours sincerely,

On behalf of the SIS II Supervision Coordination Group,

On behalf of the Eurodac Supervision Coordination Group,

On behalf of the Visa Information System Supervision Coordination Group,

David Cauchi Elena Maragou Caroline Gloor Scheidegger

Cc:

Mr Juan Fernando López Aguilar, Chair, Committee on civil liberties, justice and home affairs, European Parliament.

HE Ms Irena Andrassy, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Croatia to the EU, Croatia’s Presidency of the Council of the EU.

Ms Andrea Jelinek, Chair, European Data Protection Board

1. Data protection supervision of the systems is carried out at national level by the national data protection authorities (“national DPAs”), while for the central (EU) level the European Data Protection Supervisor is competent. The coordination between these two levels is ensured by the Supervision Coordination Groups, which are composed by the representatives of the national DPAs and the EDPS. [↑](#footnote-ref-1)
2. Regulation (EU) 2019/817 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; Regulation (EU) 2019/818 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. [↑](#footnote-ref-2)
3. <https://edps.europa.eu/sites/edp/files/publication/18-06-22_letter_on_interoperability_scgs_ep_en.pdf> [↑](#footnote-ref-3)
4. WP266 Opinion on Commission proposals on establishing a framework for interoperability, available at <http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=624198> [↑](#footnote-ref-4)
5. <https://edpb.europa.eu/sites/edpb/files/files/file1/edpbletterlibeoneuinformationsystems_en.pdf> [↑](#footnote-ref-5)