



Formal comments of the EDPS on the draft Commission Delegated Regulations supplementing Regulation (EU) 2019/817 and Regulation (EU) 2019/818 of the European Parliament and of the Council with detailed rules on the operation of the central repository for reporting and statistics

1. Introduction and background

Regulation (EU) 2019/817¹, together with Regulation (EU) 2019/818² (hereinafter the Interoperability Regulations) 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.

The interoperability framework includes a number of components and tools supporting it, such as the European Search Portal (ESP), the shared Biometric Matching Service (BMS), the Common Identity Repository (CIR), the Multiple-Identity Detector (MID), as well as a central repository for reporting and statistics (CRRS).

The CRRS stores anonymised data extracted from the underlying EU information systems, the shared biometric matching service, the common identity repository, and the multi-identity detector in order to provide cross-system statistical reporting for policy, operational and data quality purposes.

The European Agency for the Operational Management of Large-scale IT Systems in the Area of Freedom, Security and Justice ('eu-LISA') is responsible for establishing, implementing and hosting the CRRS as well as its operational management.

In accordance with Article 39(5) of the Interoperability Regulations, the European Commission is empowered to adopt delegated acts laying down detailed rules on the operation of the CRRS, including specific safeguards for the processing of personal data and security rules applicable to the repository.

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission, pursuant to Article 42(1) of Regulation

¹ Regulation (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), Eurodac 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).

2018/1725⁵. In this regard, the EDPS welcomes the reference to this consultation in Recital 15 of both draft Commission Delegated Regulations.

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 other legal acts 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.

2. Comments

2.1. General remarks

In his Opinion 4/2018 on the Proposals for two Regulations establishing a framework for interoperability⁶, the EDPS has already strongly cautioned that the proposed establishment of CRRS would impose a heavy responsibility on eu-LISA, which would have to maintain and secure a second data repository. This position has been repeated in the EDPS Opinions on EES⁷, ETIAS⁸, SIS⁹, VIS¹⁰ and eu-LISA¹¹. In this context, the EDPS has made a number of recommendations regarding the CRRS, including on the need for a thorough information security risk assessment, adequate security measures, and privacy by design. These recommendations remain fully valid.

2.2. Data anonymisation

Pursuant to Article 5 of the draft Commission Delegated Regulations, the data extracted from the underlying EU information systems and interoperability components would be anonymised in an automated manner using a data anonymisation tool. The data anonymisation would be carried out by identifying and anonymising the critical identity data, which include, according to the definition in Article 1(5) of the drafts Delegated Regulations, names; number of travel document; address; telephone, IP address; e-mail addresses, and biometric data of the concerned individuals.

In this regard, the EDPS reminds that a proper anonymisation of a dataset requires much more than simply removing obvious identifiers such as names. The EDPS underlines that best practices should be followed and the anonymisation techniques should be regularly

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 (Regulation 2018/725).

⁶ https://edps.europa.eu/sites/default/files/publication/2018-04-16_interoperability_opinion_en.pdf

⁷ https://edps.europa.eu/sites/edp/files/publication/16-09-21_smart_borders_en.pdf

⁸ https://edps.europa.eu/sites/edp/files/publication/17-03-070_etias_opinion_en.pdf

⁹ https://edps.europa.eu/sites/edp/files/publication/17-05-02_sis_ii_opinion_en.pdf

¹⁰ https://edps.europa.eu/sites/default/files/publication/18-12-13_opinion_vis_en.pdf

¹¹ https://edps.europa.eu/sites/edp/files/publication/17-10-10_eu-lisa_opinion_en_0.pdf

evaluated to ensure the proper anonymisation and to exclude any possibility of re-identification. The Working Party 29 underlined in its 2014 Opinion on Anonymization

Techniques¹² that while the creation of a truly anonymous dataset is not a simple proposition in itself, even an anonymous dataset may be combined with other data in such a way that one or more individuals could be identified. This is even more relevant in the context of the ongoing trend for further disaggregation of the statistics on migration and international protection in the EU, which as a result increases a number of indirect identifiers, such as age, sex, citizenship, country of residence, type of asylum decision or residence permit, etc.¹³

In addition, to the extent the future technical solution for rendering the data anonymous would imply that the real data from the underlying EU information systems and interoperability components would be copied to and processed in a separate technical environment by eu-LISA, the EDPS would like to draw attention to the potential specific security and privacy risks which would have to be effectively defined and addressed. To this regard, it should be explicitly provided that the original data copied from the underlying EU information systems should be immediately deleted after the anonymisation.

2.3. eu-LISA as data processor

According to Article 7 of draft Commission Delegated Regulations, for the purpose of anonymisation of personal data, eu-LISA would be a data processor within the meaning of point (12) of Article 3 of Regulation (EU) 2018/1725.

The EDPS has already pointed out on several occasions that where an EU body independently defines purposes or means of the data processing (e.g. the technical solution for automatic anonymisation), it should be considered the controller for that particular processing operation. Furthermore, while Article 41 of the Interoperability Regulation explicitly lays down that eu-LISA shall be the data processor in relation to the processing of personal data in the shared BMS, the CIR and the MID, it remains silent regarding the processing in the context of CRRS.

Therefore, the EDPS invites the Commission to reconsider the role of the eu-LISA with regard to the processing of personal data in relation to the CRRS. Further practical guidance on this matter can be found in the 2019 EDPS Guidelines on the concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725¹⁴.

Brussels, 17 June 2021

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(e-signed)

¹²https://ec.europa.eu/justice/article29/documentation/opinion-recommendation/files/2014/wp216_en.pdf

¹³ See REGULATION (EU) 2020/851 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2020 amending Regulation (EC) No 862/2007 on Community statistics on migration and international protection.

¹⁴ https://edps.europa.eu/sites/default/files/publication/19-11-07_edps_guidelines_on_controller_processor_and_jc_reg_2018_1725_en.pdf