



Formal comments of the EDPS on a Proposal for a Commission Implementing Decision amending Implementing Decision (EU) 2017/253 as regards alerts triggered by serious cross-border threats to health and for the contact tracing of exposed persons identified in the context of the completion of Passenger Locator Forms

1. Introduction and background

- The following comments concern the draft Commission Implementing Decision amending Implementing Decision (EU) 2017/253 as regards alerts triggered by serious cross-border threats to health and for the contact tracing of passengers identified through Passenger Locator Forms together with its Annex ('the Proposal').
- These comments are provided in reply to the request by the Commission of 21 June 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')¹. We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
- 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. 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.
- As explained in the Proposal, Commission Implementing Decision (EU) 2021/858 of 27 May 2021² amended the Commission Implementing Decision (EU) 2017/253 of 13 February 2017³ by establishing a technical infrastructure meant to enable the secure, timely and effective exchange of personal data collected through a passenger locator form ('PLF') between the Early Warning and Response System ('EWRS') competent authorities of the Member States – called the 'PLF exchange platform'. The technical infrastructure allows the transmission of information from the Member States'

¹ 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.

² Commission Implementing Decision (EU) 2021/858 of 27 May 2021 amending Implementing Decision (EU) 2017/253 as regards alerts triggered by serious cross-border threats to health and for the contact tracing of passengers identified through Passenger Locator Forms (OJ L 188, 28.5.2021, p. 106).

³ Commission Implementing Decision (EU) 2017/253 of 13 February 2017 laying down procedures for the notification of alerts as part of the early warning and response system established in relation to serious cross-border threats to health and for the information exchange, consultation and coordination of responses to such threats pursuant to Decision No 1082/2013/EU of the European Parliament and of the Council (OJ L 37, 14.2.2017, p. 23).

existing national digital PLF systems to other EWRS competent authorities, in an interoperable and automatic manner⁴.

- The EDPS provided formal comments on the Commission Implementing Decision (EU) 2021/858 amending the Commission Implementing Decision (EU) 2017/253 on 6 May 2021⁵.

2. Comments

- The EDPS recalls once again that compliance with data protection rules does not constitute an obstacle for fighting the COVID-19 pandemic. At the same time, the general principles of effectiveness, necessity, and proportionality must guide any measure adopted by Member States or EU institutions that involve processing of personal data to fight COVID-19⁶.
- Recital (3) of the Proposal explains that the PLF exchange platform does not currently allow for the exchange of personal data of persons who have completed a PLF and have been in close contact to an infected passenger who has also completed a PLF, even though the exchange of such data is necessary for an effective contact tracing of a positive case of COVID-19.
- Recital (4) states that the exchange of data relating to persons that have been in close contact with an infected passenger is necessary where those persons stay for a limited time in a given destination and, as a result, the EWRS competent authorities of the Member State of destination are not able to contact and test those persons during their stay. Therefore, the Proposal provides that, in such situations, and provided that those persons have also completed PLFs, the Member State which identified an infected passenger and started the contact tracing measures should use the PLF exchange platform to send alerts to the Member States of initial departure or residence of those persons in close contact with the infected passenger.
- The EDPS notes that Article 1(a)(g) of the Commission Implementing Decision (EU) 2021/858 defines an ‘exposed person’ as “(...) *a passenger or another person who has been in close contact to an infected passenger.*” In this regard, as the criteria for when such ‘close contact’ is deemed to occur (e.g. proximity, time period, seating etc.) may differ at national level, the EDPS welcomes the reference made in the Proposal to the guidance of The European Centre for Disease Prevention and Control (‘ECDC’) on the definition of a close contact⁷. A common understanding on the criteria for ‘close

⁴ See recital (6) of Commission Implementing Decision (EU) 2021/858 of 27 May 2021.

⁵ https://edps.europa.eu/system/files/2021-05/201-0445_d0956_comments_en.pdf.

⁶ See [EDPB guidelines 20200420 contact tracing covid with annex en.pdf \(europa.eu\)](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_2020_processingpersonaldataandcovid-19_en.pdf) para. 4; see also https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_2020_processingpersonaldataandcovid-19_en.pdf.

⁷ Footnote 4 of the Proposal refers to the ECDC document on ‘*Contact tracing: public health management of persons, including healthcare workers, who have had contact with COVID-19 cases in the European Union – third update*’, dated 18 November 2020.

contacts' can help ensure that the exchange of personal data remains limited to what is necessary for an effective contact tracing.

- Lastly, recital (5) of the Proposal states that *“[i]n order to ensure that the personal data relating to infected passengers and the personal data relating to close contacts are clearly distinguished, the EWRS competent authorities should indicate whether the exchanged data refers to an infected passenger or to an exposed person.”* The EDPS welcomes such recital, as it clearly distinguishes among the specific categories of data subjects whose personal data will be processed through the PLF exchange platform and is in line with the EDPS' previous recommendations. Moreover, the EDPS welcomes that recital (6) of the Proposal **clearly provides that** *“[t]he exchange of personal data of persons in close contact with an infected passenger should therefore be subject to the same personal data protection requirements as the ones that apply to the exchange of personal data of the infected passengers.”*
- Therefore, the EDPS understands that all cross-border passengers' personal data will be processed through the national PLFs and that infected and exposed travellers' personal data will be processed and transmitted within the PLF exchange platform covered by the Proposal, only when this is necessary to perform effective contact tracing between Member States.

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(e-signed)