

EDPS Formal comments on the draft Commission Implementing Decision on the mechanism and the procedures for carrying out quality checks and appropriate requirements for data quality compliance, and the specification of quality standards pursuant to Articles 29 and 29a of Regulation (EC) No 767/2008 of the European Parliament and of the Council

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 June 2022 the European Commission issued draft Commission Implementing Decision on the mechanism and the procedures for carrying out quality checks and appropriate requirements for data quality compliance, and the specification of quality standards pursuant to Articles 29 and 29a of Regulation (EC) No 767/2008 of the European Parliament and of the Council ('the draft Proposal').
2. The objective of the draft Proposal is to lay down the data quality standards as well as the automated mechanism and procedures for carrying out quality checks and data quality compliance in the Visa Information System (VIS)².
3. The draft Proposal is adopted pursuant to Article 29(2a) and Article 29a(3) of Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS)³, as amended with Regulation (EC) 2021/1134 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System⁴ (herein referred as 'the revised VIS Regulation').

¹ OJ L 295, 21.11.2018, p. 39.

² See Article 1 of the Proposal.

³ OJ L 218, 13.8.2008, p. 60.

⁴ OJ L 248, 13.7.2021, p. 11–87.

4. The EDPS had previously issued Opinion 9/2018 on the Proposal for a new Regulation on the Visa Information System, where he welcomed and supported the provisions on data quality in the revised VIS Regulation, including the strengthened role of eu-LISA⁵.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 23 June 2022, pursuant to Article 42(1) of Regulation 2018/1725. In this regard, the EDPS welcomes the reference to this consultation in Recital 12 of the preamble of the Proposal.
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. Quality checks on pre-existing data in VIS

8. According to Article 29(2a) of the revised VIS Regulation, “eu-LISA shall develop and maintain a mechanism and procedures for carrying out quality checks on the data in the VIS”. The Commission is empowered to adopt implementing acts in order to “lay down and develop the mechanism and the procedures for carrying out quality checks and appropriate requirements for data quality compliance”. In this regard, the title and the preamble of the proposed Commission Implementing Decision refer explicitly to Article 29 of the revised VIS Regulation as one of legal bases for its adoption, together with Article 29a of the same Regulation.

⁵ 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

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. However, the EDPS notes that the Proposal lays down mechanisms and procedures for carrying out quality checks only when “creating or updating application files in the VIS”, in line with Article 29a(3) of the revised VIS Regulation, and not on data already stored in VIS, as envisaged in Article 29(2a). Regarding the latter, the Proposal actually deals only with the reporting obligation of eu-LISA⁷.
10. Given the significant potential negative impact of poor data quality on the affected data subjects, as well as the policy choice of the Commission to implement both legislative delegations (Article 29(2a) and Article 29a(3) of the revised VIS Regulation) within one Commission Implementing Decision, the EDPS recommends to the Commission to **further develop the Proposal by adding mechanism and procedures for carrying out quality checks on data already stored in VIS.**

2.2. Weighing coefficients of data quality indicators

11. According to Section 2 of the Annex to the Proposal, “the data-quality compliance mechanism shall take into account a weighing coefficient to calculate the relative weight of each indicator⁸ on the overall quality of the input data”.
12. However, the Annex defines only the units of measurement but not the minimum and the maximum thresholds for the weighing coefficients of the indicators. In this regard, the EDPS notes that the value given to a weighing coefficient could influence the relevance of the quality indicator on the overall input data profile, including by making certain data-quality indicators irrelevant or disproportionately important on the overall assessment, depending on the weighing coefficients they were given. Therefore, the EDPS recommends to the Commission to **define in the Proposal the maximum and minimum values that could be attributed to the weighing coefficients.**

Brussels, 11 July 2022

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁷ See Article 6 of the Proposal.

⁸ The data quality indicators according to the Proposal are: completeness, accuracy, consistency, timeliness and uniqueness.