

**EDPS Formal comments on the draft Commission Implementing Decision on 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**

**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')<sup>1</sup>, and in particular Article 42(1) thereof,

**HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

**1. Introduction and background**

1. On 27 September 2022 the European Commission issued the draft Commission Implementing Decision on 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 ('the draft Proposal').
2. On 7 July 2021, two Regulations were adopted<sup>2</sup> which amended Regulation (EC) No 767/2008<sup>3</sup> concerning the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas, long-stay visas and residence permits ('the revised VIS Regulation').

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> Regulation (EU) 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 System, OJ L 248, 13.7.2021, p. 11–87; Regulation (EU) 2021/1152 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861 and (EU) 2019/817 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the European Travel Information and Authorisation System, OJ L 249, 14.7.2021, p. 15–37.

<sup>3</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information system (VIS) and the exchange of information between Member States on short-stay visas, long-stay visas and residence permits (VIS Regulation).

3. The objective of the draft Proposal is to lay down the technical specifications for the quality, resolution and use of fingerprints and of the facial image for biometric verification and identification in the VIS.
4. The draft Proposal is adopted pursuant to Article 45(3)<sup>4</sup> of the revised VIS Regulation.
5. The EDPS previously issued Opinion 9/2019 on the Proposal for a new Regulation on the Visa Information System of 12 December 2018<sup>5</sup> where he welcomed and supported the provisions on data quality in the revised VIS Regulation..
6. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 27 September 2022, pursuant to Article 42(1) of Regulation 2018/1725<sup>6</sup> ('EUDPR'). In this regard, the EDPS welcomes the reference to this consultation in Recital 15 of the Proposal.
7. 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 acts<sup>7</sup>.
8. 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

9. The EDPS recalls that data quality correlates with accuracy which is one of the basic data protection principles laid down in Article 5(1)(d) of the GDPR and Article 4(1)(d)

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4 As introduced by Article 1(44) of Regulation (EU) 2021/1134.

5 [https://edps.europa.eu/data-protection/our-work/publications/opinions/upgrading-visa-information-system-vis\\_en](https://edps.europa.eu/data-protection/our-work/publications/opinions/upgrading-visa-information-system-vis_en).

6 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, 21.11.2018, L.295, p. 39.

7 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.

of the EUDPR. Therefore, the EDPS welcomes the fact that this is explicitly acknowledged in Recital 3 of the Proposal: “*quality and reliability of biometric data are essential to the success of the VIS*”, as well as “*the quality of the registered fingerprints and facial image will have impacts on the proper functioning of the VIS*”.

10. Furthermore, the EDPS welcomes the initiative to revisit and modernise the data quality requirements for the processing of biometric data as well as the commitment to closely monitor in the long run the environmental and operational factors of fingerprint and facial image quality registration<sup>8</sup>. In addition, the EDPS is of the opinion that such review process must take also into consideration the purposes for which the biometric data is processed, including possible new use cases under the current and future legislation.
11. This being said, the EDPS has no specific comments or recommendations on the proposed draft Commission Implementing Decisions on the technical specifications for the quality, resolution and use of fingerprints and of the facial image for biometric verification and identification in the VIS.

Brussels, 26 October 2022

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI

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<sup>8</sup> See Recital 3 of the Proposal.