

EDPS Formal Comments on the draft Commission Implementing Decisions setting out the technical requirements for the Communication Infrastructure of the Schengen Information System in the field of border checks, and repealing Commission Decision 2007/170/EC and on setting out the technical requirements for the Communication Infrastructure of the Schengen Information System in the field of police cooperation and judicial cooperation in criminal matters, and repealing Commission Decision 2007/171/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')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 29 June 2022 the European Commission issued two draft Commission Implementing Decisions on setting out the technical requirements for the Communication Infrastructure of the Schengen Information System (SIS) in the field of border checks and in the field of police cooperation and judicial cooperation in criminal matters, and repealing Commission Decision 2007/170/EC ('the Proposals', 'the draft Implementing Decisions').
2. Due to the fact that not all Member States participate in the SIS in both the fields of (i) border checks and return; and (ii) police cooperation and judicial cooperation in criminal matters, it is necessary to adopt parallel implementing acts based on the separate empowerments in the Regulations establishing the SIS in these different fields. Given the essential similarity of the substance of both draft Implementing Decisions, the EDPS has assessed the two Proposals together.
3. The objective of the draft Implementing Decisions is to revise and update the technical requirements for the SIS communication infrastructure, taking into account the advancements in the technology in the area of network communication. In addition, they lay down specifications regarding the availability, resiliency, business continuity, network transport services as well as monitoring and incidents response.

¹ OJ L 295, 21.11.2018, p. 39.

4. The Proposals are adopted pursuant to Article 15(7) of Regulation (EU) 2018/1861² and Article 15(7) of Regulation (EU) 2018/1862³ of the European Parliament and of the Council ('SIS Regulation').
5. The EDPS previously issued Opinion 7/2017 on the new legal basis of the Schengen Information System⁴, as well a number of formal comments on the various implementing and delegated acts envisaged in the SIS Regulations.
6. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 29 June 2022, pursuant to Article 42(1) of Regulation 2018/1725⁵ ('EUDPR'). In this regard, the EDPS welcomes the reference to this consultation in Recitals 15 and 16 of the Proposals.
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 acts⁶.
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 Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

³ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

⁴ [EDPS Opinion 7/2017 on the new legal basis of the Schengen Information System](#), issued on 2 May 2017.

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, 21.11.2018, L.295, p. 39.

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.

2. Comments

9. Processing of personal data of a very large number of people in SIS is liable to have a significant impact on the lives of the individuals concerned. For that reason, both the legal framework and the technical infrastructure applicable to SIS must ensure full compliance with the data protection legal framework.
10. The EDPS notes that the technical requirements for the SIS communication infrastructure play an important role for ensuring, in particular, the security of the personal data processed in the system. In this regard, the EDPS positively notes the special attention in the Proposals on the measures related to availability, resilience, security, monitoring and incident response of the SIS communication infrastructure.
11. In light of the above, the EDPS has no specific comments or recommendations on the proposed draft Commission Implementing Decisions on setting out the technical requirements for the Communication Infrastructure of the Schengen Information System in the field of border checks and in the field of police cooperation and judicial cooperation in criminal matters, and repealing Commission Decision 2007/170/EC.

Brussels, 25 July 2022

(e-signed)

Wojciech Rafał WIEWIÓROWSKI