

EDPS Formal comments on:

- the draft Commission Delegated Regulation amending Commission Delegated Regulation of 30.9.2021 supplementing Regulation (EU) 2019/817 of the European Parliament and of the Council with detailed rules on the operation of the central repository for reporting and statistics;
- the draft Commission Delegated Regulation amending Commission Delegated Regulation of 30.9.2021 supplementing 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.

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 22 February 2023 the European Commission issued:
 - the draft Commission Delegated Regulation amending Commission Delegated Regulation of 30.9.2021 supplementing Regulation (EU) 2019/817 of the European Parliament and of the Council with detailed rules on the operation of the central repository for reporting and statistics;
 - the draft Commission Delegated Regulation amending Commission Delegated Regulation of 30.9.2021 supplementing 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 ('the draft Proposals').

¹ OJ L 295, 21.11.2018, p. 39.

2. The objective of the draft Proposals is to amend Commission Delegated Regulation C(2021)4982 and Commission Delegated Regulation C(2021)4983 to introduce provisions stemming from Regulation (EU) 2021/1134².
3. The draft Proposals are adopted pursuant to Article 39(5) of 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/JHA³ and Article 39(5) of 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) 2019/816⁴.
4. The EDPS previously issued formal comments 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 statistics⁵.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 22 February 2023, pursuant to Article 42(1) of Regulation 2018/1725⁶ ('EUDPR'). In this regard, the EDPS welcomes the reference to this consultation in Recital 12 of both the draft Proposals.
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

² 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.

³ OJ L 135, 22.5.2019, p. 27.

⁴ OJ L 135, 22.5.2019, p. 85.

⁵ https://edps.europa.eu/data-protection/our-work/publications/formal-comments/draft-commission-delegated-regulations_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.

available, for example as a result of the adoption of other related implementing or delegated acts⁷.

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

8. The EDPS notes that the subject matter of the draft Delegated Regulations is limited to amending Commission Delegated Regulation C(2021)4982 and Commission Delegated Regulation C(2021)4983 to introduce provisions stemming from Regulation (EU) 2021/1134, in relation with the revised VIS Regulation.
9. At the same time, the EDPS regrets that the Commission did not seize the opportunity to take into account in the amendments the EDPS's recommendations made in the formal comments 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 statistics⁸.
10. The EDPS considers that the concerns raised in the above-mentioned formal comments remain relevant. In particular, the fact that the amended text refers now to "anonymisation tools" instead of one "tool" only, does not address the issue of anonymisation as such.
11. In particular, the EDPS recalls 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 evaluated to ensure the proper anonymisation and to exclude any possibility of reidentification. The Working Party 29 underlined in its 2014 Opinion on Anonymization Techniques⁹ 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

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.

⁸ https://edps.europa.eu/data-protection/our-work/publications/formal-comments/draft-commission-delegated-regulations_en

⁹ https://ec.europa.eu/justice/article29/documentation/opinion-recommendation/files/2014/wp216_en.pdf

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.

12. 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.

Brussels, 24 March 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI