

## **EDPS Formal comments on the draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) No 910/2014 of the European Parliament and of the Council as regards cross-border identity matching of natural persons by public sector bodies**

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

**HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

#### **1. Introduction and background**

1. On 10 December 2024, the European Commission consulted the EDPS on the draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) No 910/2014<sup>2</sup> of the European Parliament and of the Council as regards cross-border identity matching of natural persons by public sector bodies ('the draft implementing regulation').
2. The objective of the draft implementing regulation is to lay down rules for cross-border identity matching of natural persons by public sector bodies or by bodies acting on behalf of a public sector body, to be updated on a regular basis to keep in line with technology and standards developments and with the work carried out on the basis of Commission Recommendation (EU) 2021/946, and in particular the Architecture and Reference Framework<sup>3</sup>.
3. The draft implementing regulation is adopted pursuant to Article 11a(3) of Regulation (EU) No 910/2014.
4. The EDPS previously issued formal comments on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity<sup>4</sup>.

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

<sup>2</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, p. 73.

<sup>3</sup> Article 1 of the draft implementing regulation.

<sup>4</sup> [Formal comments of the EDPS on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation \(EU\) No 910/2014 as regards establishing a framework for a European Digital Identity, issued on 28 July 2021.](#)

5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 10 of the draft implementing regulation.
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 acts<sup>5</sup>.
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 implementing regulation that are relevant from a data protection perspective.

## 2. Comments

8. The EDPS welcomes recital 2 of the draft implementing regulation, confirming that Regulation (EU) 2016/679<sup>6</sup> ('GDPR') and, where relevant, Directive 2002/58/EC<sup>7</sup> apply to the data processing activities under the draft implementing regulation.
9. Pursuant to Article 2(1) of the draft implementing regulation, where a public sector body acts as a relying party in the context of an online cross-border service offered by or on behalf of that public sector body, Member States must ensure unequivocal identity matching of natural persons. Unequivocal identity matching of natural persons must be done by, or on behalf of, the relying party, by requesting, receiving, and validating the authenticity of attributes listed in paragraphs 3 or 4 of Article 2, as applicable.<sup>8</sup>
10. The attributes to be used as the starting point for unequivocal identity matching *when made available through a wallet* are the mandatory attributes in section 1 of the Annex

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<sup>5</sup> 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.

<sup>6</sup> Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

<sup>7</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>8</sup> Article 2(2) of the draft implementing regulation.

to the draft Commission Implementing Regulation (EU) 2024/XXX<sup>9</sup> and the optional attributes needed to ensure that the presented dataset is unique<sup>10</sup>.

11. The attributes which should be used as the starting point for unequivocal identity matching *when made available through a notified electronic identification scheme* must be the mandatory attributes in section 1 of the Annex to Commission Implementing Regulation (EU) 2015/1501<sup>11</sup> and include the place of birth and nationality from the additional list of attributes<sup>12</sup>.
12. The minimum sets of attributes to be used in identity matching as specified in Article 2(3) and Article 2(4) are very similar. Both of them include: family name, given name, birth date, birth place and nationality.
13. The EDPS observes that the attribute of nationality should in principle only be necessary to distinguish between two individuals born in the same date and place that would also have the same first and family names, an event that seems highly unlikely. The EDPS recommends to further justify, by way of a recital, why the inclusion this attribute would be necessary for identity matching purposes, or to remove the attribute.
14. Pursuant to Article 4 of the draft implementing regulation, where the initial identity matching process based on default attributes is not successful, the relying party or the party acting on its behalf must ensure users of the notified electronic identification means or of the wallets receive a message indicating any other options for identity matching available to the user or other methods for gaining access to the service that was initially requested by the user. Such options may include, among others, any other methods provided by the relying party or a party acting on their behalf for identity matching<sup>13</sup>. In this regard, the EDPS recalls that the use of the wallets must be voluntary<sup>14</sup> and that therefore information regarding other available identification and authentication means should in any event be provided (regardless of the outcome of the matching process)<sup>15</sup>. The EDPS recommends specifying this in a recital of the draft implementing regulation.

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<sup>9</sup> Commission Implementing Regulation (EU) 2024/XXX regards person identification data and electronic attestations of attributes issued to European Digital Identity Wallets. This regulation has been adopted as Commission Implementing Regulation (EU) 2024/2977 of 28 November 2024 laying down rules for the application of Regulation (EU) No 910/2014 of the European Parliament and of the Council as regards person identification data and electronic attestations of attributes issued to European Digital Identity Wallets.

<sup>10</sup> Article 2(3) of the draft implementing regulation.

<sup>11</sup> Commission Implementing Regulation (EU) 2015/1501 of 8 September 2015 on the interoperability framework pursuant to Article 12(8) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (Text with EEA relevance) (OJ L 235, 9.9.2015, p. 1–6).

<sup>12</sup> Article 2(4) of the draft implementing regulation.

<sup>13</sup> Article 4(2)(d) of the draft implementing regulation.

<sup>14</sup> Article 5a(15) of Regulation (EU) No 910/2014. The same provision adds that “*Access to public and private services, access to the labour market and freedom to conduct business shall not in any way be restricted or made disadvantageous to natural or legal persons that do not use wallets. It shall remain possible to access public and private services by other existing identification and authentication means*”.

<sup>15</sup> See also [EDPS Formal comments on the draft Commission Implementing Regulation \(EU\) laying down rules for the application of Regulation \(EU\) No 910/2014 of the European Parliament and of the Council, as regards the integrity and core functionalities of European Digital Identity Wallets](#), paragraph 28.

15. To enhance transparency and user control, the EDPS recommends that the draft implementing regulation explicitly provides that, if an identity match fails, data subjects must be given clear reasons why the process did not lead to a successful result and the potential next steps to rectify the situation. This could include describing the attributes used and any discrepancies found, providing clear explanations to the users.
16. Article 5(1) of the draft implementing regulation specifies the information that relying parties or parties acting on their behalf must keep whenever an identity matching process is completed. These information are: (a) the date and time of the identity matching process; (b) any relevant documentation necessary for dispute handling; (c) any identifiers or account numbers used by the relying party that relates to the natural person.
17. Recital 8 clarifies the objective of the obligation provided in Article 5 of the draft implementing regulation, namely, making appropriate recourse mechanisms available whenever identity matching is applied. The recital states that Member States acting as relying parties or the party acting on its behalf should keep appropriate logs in relation to the matching process, the attributes used for matching and any other supporting documentation provided by the natural person and the outcome of the identity matching process. In its current wording, Article 5(1)(c) requires relying parties or parties acting on their behalf to log any identifiers or account numbers. However, the attributes used for unequivocal identity matching might be not only identifiers or account numbers, but also other types of data (e.g. place of birth or nationality) that jointly allow to uniquely identify an individual<sup>16</sup>. Furthermore, the methodology used for identity matching and the logs should also take into account possible 'unsuccessful matching outcome' and the need to provide explanation in this regard to the user. Therefore, the EDPS recommends amending Article 5(1)(c), requiring the logging of the attributes used by the relying party for unequivocal identity matching.

Brussels, 30 January 2025

*(e-signed)*

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<sup>16</sup> Recital 6 of the draft implementing regulation.