



Formal comments of the EDPS on the draft Commission Implementing Decisions and their respective Annexes laying down the specifications of the cooperation procedure in the event of a security incident pursuant to article 43(5) of Regulation (EU) 2019/817 and article 43(5) of Regulation (EU) 2019/818 of the European Parliament and of the Council

1. Introduction and background

On 22 May 2019, the European Parliament and the Council adopted Regulation (EU) 2019/817¹ which establishes a framework for interoperability between EU information systems in the field of borders and visa and Regulation (EU) 2019/818² which establishes a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration.

In accordance with article 43(5) of Regulation (EU) 2019/817 and article 43(5) of Regulation (EU) 2019/818 the Commission shall adopt Implementing Acts laying down the specifications of the cooperation procedure in the event of a security incident.

The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 12 March 2021, pursuant to Article 42(1) of Regulation 2018/1725³. In this regard, the EDPS welcomes the reference to this consultation in Recitals 14 of the Decisions.

2. Comments

Regulation (EU) 2019/818 and Regulation (EU) 2019/817 of the European Parliament and of the Council establish a framework to ensure interoperability between the Entry/Exit System, the Visa Information System, the European Travel Information and Authorisation System, the European Asylum Dactyloscopy Database, the Schengen Information System, and the European Criminal Records Information System for third-country nationals.

¹ 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/JHA, OJ L 135, 22.5.2019, p. 27.

² 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) 2019/816, OJ L 135, 22.5.2019, p. 85.

³ 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 (Regulation 2018/1725).

That framework requires the Commission to establish a cooperation procedure between the Member State authorities and Union Agencies whose systems access the underlying EU information systems and interoperability components to address the incidents that have or may have an impact on the security of the interoperability components established by these two Regulations.

The Commission Implementing Decisions (with their respective Annexes) detail the framework for security incident cooperation and the associated processes, roles, responsibilities and steps therein. After careful analysis, the EDPS does not have any observations on the proposed draft decisions and their respective Annexes.

These formal comments do not preclude any future additional comments by the EDPS, 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, pursuant to Regulation (EU) 2019/818 and Regulation (EU) 2019/817. 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 Regulation (EU) 2018/1725.

Brussels, 6 May 2021

Wojciech Rafał WIEWIÓROWSKI
(e-signed)