

EDPS Formal comments on the draft Implementing Decision laying down rules for the application of Regulation (EU) 2024/1358 of the European Parliament and of the Council as regards the content of the monthly cross-system statistics using data from Eurodac, the Visa Information System, the European Travel Information and Authorisation System and the Entry/Exit System pursuant to Article 12(3) of that Regulation

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')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 2 July 2025, the European Commission consulted the EDPS on the draft Implementing Decision laying down rules for the application of Regulation (EU) 2024/1358² of the European Parliament and of the Council as regards the content of the monthly cross-system statistics using data from Eurodac, the Visa Information System, the European Travel Information and Authorisation System and the Entry/Exit System pursuant to Article 12(3) of that Regulation ('the draft Implementing Decision').
2. The objective of the draft Implementing Decision is to specify the content of the monthly cross-system statistics drawn up by eu-LISA³. These statistics aim at supporting evidence-based policy making in the implementation of the annual

¹ OJ L 295, 21.11.2018, p. 39.

² Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council, OJ L, 2024/1358, 22.5.2024.

³ Article 12(3) Regulation (EU) 2024/1358.

migration management cycle established in Regulation (EU) 2024/1351⁴ by providing complementary information on the migratory situation in the Union⁵. They indicate the number of persons referred to in Articles 15(1), 22(1), 23(1) and 24(1) of Regulation (EU) 2024/1358 on the establishment of ‘Eurodac’ for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes.

3. The draft Implementing Decision is adopted pursuant to Article 12(3) of that Regulation.
4. The EDPS previously issued two opinions concerning, inter alia, Regulation (EU) 2024/1358⁶.
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 12 of the draft Implementing Decision.
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 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 Implementing Decision that are relevant from a data protection perspective.

2. Comments

2.1. General comments

⁴ Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013, OJ L, 2024/1351, 22.5.2024.

⁵ Recital 3 of the draft Implementing Decision

⁶ - [EDPS Opinion 07/2016 on the First reform package on the Common European Asylum System \(Eurodac, EASO and Dublin Regulations\)](#), issued on 21 September 2016, and [EDPS Opinion 09/2020 on the New Pact on Migration and Asylum](#), issued on 30 November 2020.

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. The EDPS takes note that, pursuant to Article 12(3) of Regulation (EU) 2024/1358, the cross-system statistics “shall not allow for the identification of individuals” and that they “alone shall not be used to deny access to the territory of the Union”. However, these statistics are part of a broader legal scheme, whose purpose is to assess the migratory situation in the Union, including by assisting with the control of irregular migration to the Union. For instance, the risks related to security or illegal immigration or a high epidemic risk are defined in particular on the basis of statistics generated by the Entry/Exit System (EES) established by Regulation (EU) 2017/2226 of the European Parliament and of the Council⁸, and by the Visa Information System (VIS), established by Regulation (EC) No 767/2008 of the European Parliament and of the Council⁹. Therefore, even if these statistics contain data which are no more related to identifiable persons, they may nevertheless impact on the protection of individuals’ personal data and wider fundamental rights, notably in case of automated decision-making relying on such statistics.
9. Against this background, the EDPS considers that eu-LISA should take all appropriate technical measures, to avoid any possibility of re-identification of individuals, as well as ensuring that the data collected reflect as faithfully as possible the reality of the migration situational picture in the Union.
10. Furthermore, as stated in the Implementing Decision, the cross-system statistics covered by the draft Implementing Decision would, inter alia, support evidence-based policy making in the implementation of the annual migration management cycle, support preparedness and crisis management, including determining appropriate border control measures, and foresee new measures to improve counter the abuse of the EU migration and asylum system¹⁰. To do this, the Implementing Decision lays down provisions for the collection of statistics including the number of applicants for international protection who have arrived in a Member State with a valid or an expired visa, who have been granted or refused a residence permit, and who leave the territory of the Union during the examination of their application and subsequently return, which the draft ID notes may indicate lack of need of international protection.
11. Given the focus of those statistics - including trends of abuse of the asylum and migration system - the EDPS wonders why there is no reference to linking those statistics with the proportion of individuals subsequently granted international

⁸ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20)

⁹ 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 data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60)

¹⁰ Recitals 3, 4 and 10 of the draft Implementing Decision

protection (i.e. whose asylum claims were assessed to be valid). The EDPS considers that it would be important to provide for the collection of this data in order to avoid gaps in the statistical picture and ensure any policy decisions are based on the most relevant and complete information.

12. The need for information that is as comprehensive as possible is all the more necessary since, as indicated above, these statistics may also be used to define risks relating to security and illegal immigration. The EDPS recalls the assessment of the Court of Justice of the European Union that pre-determined criteria for the purposes of profiling “must be defined in such a way as to take into consideration both ‘incriminating’ as well as ‘exonerating’ circumstances”, since this may contribute to the reliability of those criteria and, in particular, ensure that they are proportionate¹¹.

2.2. Anonymisation of data

13. Since the cross-system statistics should not allow for the identification of individuals, the EDPS understands that the data extracted from the underlying EU information systems and interoperability components would be anonymised.
14. In this regard, the EDPS wishes to remind that a proper anonymisation of a dataset requires much more than simply removing obvious identifiers such as names¹². The Working Party 29 underlined in its 2014 Opinion on Anonymisation Techniques¹³ that while the creation of a truly anonymous dataset is not a simple proposition in itself, even an anonymous dataset may be combined with another data in such a way that one or more individuals could be identified. This is even more relevant in the context of the disaggregation of the statistics on migration and international protection in the EU, which as a result entails a number of indirect identifiers, such as age, sex, nationality, and type of asylum decision or residence permit. Accordingly, the EDPS draws attention to the need to evaluate regularly the anonymisation techniques used, to exclude any possibility of re-identification.

Brussels, 1 August 2025

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

¹¹ Case C-817/19. Judgment of the Court (Grand Chamber) of 21 June 2022. *Ligue des droits humains ASBL v Conseil des Ministres*, par. 200.

¹² [Formal comments of the EDPS 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 statistics](#), issued on 17 June 2017.

¹³ [Article 29 Data Protection Working Party Opinion 05/2014 on Anonymisation Techniques](#), adopted on 10 April 2014.