

**EDPS Formal comments on the draft Commission Implementing Decisions amending Commission Decisions C(2021) 6176 and C(2021) 6174 of 30.8.2021 laying down the technical rules for creating links between data from different EU information systems, pursuant to Article 28(7) of Regulation (EU) 2019/817 and Article 28(7) of Regulation 2019/818 of the European Parliament and of the Council**

**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 16 April 2025, the European Commission consulted the EDPS on two draft Commission Implementing Decisions ('the draft implementing decisions'):
  - draft Commission Implementing Decision amending Commission Decision C(2021) 6176 of 30.8.2021 laying down the technical rules for creating links between data from different EU information systems, pursuant to Article 28(7) of Regulation (EU) 2019/817 of the European Parliament and of the Council<sup>2</sup>, and
  - draft Commission Implementing Decision amending Commission Decision C(2021) 6174 of 30.8.2021 laying down the technical rules for creating links between data from different EU information systems, pursuant Article 28(7) of Regulation 2019/818 of the European Parliament and of the Council.
2. The objective of the draft implementing decisions is to ensure consistency with Regulation (EU) 2024/1358 of the European Parliament and of the Council (Eurodac

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

<sup>2</sup> 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.

recast Regulation)<sup>3</sup>. As a result, Implementing Decisions C(2021) 6176 and C(2021) 6174 should be amended to introduce provisions stemming from that Regulation<sup>4</sup>.

3. The draft implementing decisions are adopted pursuant to Article 28(7) of Regulation (EU) 2019/817 of the European Parliament and of the Council and Article 28(7) of Regulation (EU) 2019/818 of the European Parliament and of the Council.
4. The EDPS previously issued in 2021 formal comments<sup>5</sup> on the draft Commission Implementing Decisions laying down the technical rules for creating links between data from different EU information systems, which were adopted on 30 August 2021 as Decisions C(2021) 676 and C(201) 674. The EDPS also issued in 2023 formal comments<sup>6</sup> on the two draft Commission Implementing Decisions amending the latter, in order to ensure consistency with Regulation (EU) 2021/1134.
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 11 of the draft implementing decisions.
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>7</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 decisions that are relevant from a data protection perspective.

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<sup>3</sup> 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.

<sup>4</sup> See recital 4 of the draft implementing decisions.

<sup>5</sup> [EDPS formal comments EDPS Formal comments on the draft Commission Implementing Decisions amending Commission Decisions C\(2021\) 6176 and C\(2021\) 6174 of 30.8.2021 laying down the technical rules for creating links between data from different EU information systems, pursuant to Article 28\(7\) of Regulation \(EU\) 2019/817 and Article 28\(7\) of Regulation 2019/818 of the European Parliament and of the Council](#), issued on 17 May 2021.

<sup>6</sup> [EDPS Formal comments on the draft Commission Implementing Decision amending Commission Implementing Decision of 30.8.2021 laying down the technical rules for creating links between data from different EU information systems, pursuant to Article 28\(7\) of Regulation \(EU\) 2019/817 of the European Parliament and of the Council and on the draft Commission Implementing Decision amending Commission Implementing Decision of 30.8.2021 laying down the technical rules for creating links between data from different EU information systems, pursuant to Article 28\(7\) of Regulation \(EU\) 2019/818 of the European Parliament and of the Council](#), issued on 2 August 2023.

<sup>7</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.

## 2. Comments

8. The EDPS recalls that the interoperability framework, established with Regulation (EU) 2019/817 and Regulation (EU) 2019/818, includes a number of interoperability components, one of which is the multiple-identity detector (MID). The MID creates and stores links between data in the different EU information systems in order to detect multiple identities, with the dual purpose of facilitating identity checks for bona fide travellers and combating identity fraud. The creation and storage of such links therefore is critical to ensuring the correct identification of individuals whose data are stored in the different EU information systems.
9. The creation of such links provides for new and additional data processing. Consequently, Recital 39 of Regulation (EU) 2019/817 and Recital 39 of Regulation (EU) 2019/818 explain in this context that *"(...) the linked data should be strictly limited to the data necessary to verify that a person is recorded in a justified or unjustified manner under different identities in different systems, or to clarify that two persons having similar identity data may not be the same person. Data processing through the ESP (European search portal) and the shared BMS (biometric matching service) in order to link individual files across different systems should be kept to an absolute minimum and therefore limited to multiple-identity detection, to be conducted at the time new data are added in one of the systems which has data stored in the CIR or added in SIS."*
10. The EDPS notes that the Implementing Decisions C(2021) 6176 and C(2021) 6174, which should be amended by the draft implementing decisions, are not published and have not been provided by the Commission. Therefore, the EDPS regrets that he is not able to assess whether his previous formal comments issued on 2 August 2023 have been considered and addressed by the Commission.
11. In particular, the EDPS recalls that he has invited the Commission to make links marked with biometric false acceptance flags 'invisible' to the end-user. The same observation applies mutatis mutandis to flags showing biographical matching errors that resulted in the false creation of a link between two identities.
12. The EDPS notes that the draft implementing decisions aim at only modifying the table inserted in section 4.3 of the Annex of each of Commission Decisions C(2021) 6176 and C(2021) 6174. This section is dedicated to identity and travel-document data used for matching, and the amendments consist of the addition of a column in the table, concerning the data included in the Eurodac Information System. The EDPS does not have any specific comment on this addition in the tables.

Brussels, 6 June 2025

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI