

**EDPS Formal comments on the draft Commission Implementing Decision on laying down the measures necessary for the development of the Visa Information System Central System, the National Uniform Interface (NUI)s in each Member State and the communication infrastructure between the VIS Central System and the NUIs, repealing Commission Decision 2008/602/EC**

**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 28 November 2023, the European Commission consulted the EDPS on the draft Commission Implementing Decision on laying down the measures necessary for the development of the Visa Information System Central System, the National Uniform Interface (NUI)s in each Member State and the communication infrastructure between the VIS Central System and the NUIs, repealing Commission Decision 2008/602/EC ('the draft implementing decision').
2. The objective of the draft implementing decision is to lay down the necessary technical measures for the development of the VIS Central System, the National Uniform Interface of the VIS in each Member State and the communication infrastructure between the VIS Central System and the NUIs.
3. The draft implementing decision is adopted pursuant to Article 45(1) of 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 information between Member States on short-stay visas, long-stay visas and residence permits

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

(VIS Regulation)<sup>2</sup>, as amended with Regulation (EC) 2021/1134 of the European Parliament and of the Council of 7 July 2021<sup>3</sup>.

4. In particular, Article 45(1) of VIS Regulation empowers the Commission to adopt implementing rules regarding the following aspects of VIS:
  - a) the design of the physical architecture of the VIS Central System including its communication network;
  - b) technical aspects which have a bearing on the protection of personal data;
  - c) technical aspects which have serious financial implications for the budgets of the Member States or which have serious technical implications for the national systems;
  - d) the development of security requirements, including biometric aspects.
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 24 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 implementing acts<sup>4</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 decision that are relevant from a data protection perspective.

## 2. Comments

### 2.1. General comments

8. The EDPS welcomes the explicit reference in the draft implementing decision to the need to develop VIS “in full respect of the data protection *acquis* and of the principle

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<sup>2</sup> 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. 60–81.

<sup>3</sup> Regulation (EC) 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.

<sup>4</sup> In case of other implementing or implementing 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.

of data protection by design<sup>5</sup>, which is of key importance given the vast amount of data processed in the system.

9. In the same vein, the EDPS positively notes that the draft implementing decision highlights some of the specific data protection obligations and safeguards stemming from the EUDPR and the GDPR, such as the Data Protection Impact Assessment (DPIA), which should be conducted by eu-LISA<sup>6</sup>, the encryption of personal data<sup>7</sup>, as well as the use of synthetic data for diagnostics and testing of new technologies pursuant to Article 26(8a) of the VIS Regulation<sup>8</sup>.

## **2.2. Storage locations of VIS data**

10. The EDPS notes that Recital 12 of the draft implementing decision lays down the storage locations of VIS data:

- the data referred in points (1) to (3), (4)(d) to (n), (7) of Article 9, and in points (a) to (c), (h) and (i) of Article 22a(1) of the VIS Regulation - in the VIS Central System, and
- the data referred to in points (4)(a) to (ca), (5) and (6) of Article 9, and in points (d) to (g), (j) and (k) of Article 22a(1) of the VIS Regulation - in the Common Identity Repository (CIR).

11. However, the EDPS considers that the storage location of personal data in VIS is a substantial element, which needs to be defined in the enacting terms of the legal act and not only in the preamble. The EDPS therefore recommends amending accordingly the draft implementing decision in order to ensure the necessary legal certainty.

## **2.3. Central Repository for Reference Data**

12. The EDPS notes that Article 2(3) of the draft implementing decision lists the systems and interoperability components, to which the VIS Central System has to be connected. Among them, point (h) of Article 2(3) refers to “the Central Repository for Reference Data (CRRD)”.

13. However, the EDPS observes that the CRRD is not provided for in the VIS Regulation, nor in the Interoperability Regulations<sup>9</sup>. Moreover, the EDPS is not aware about any reference to it in the other implementing or delegated acts adopted pursuant to the VIS Regulation. Therefore, the EDPS recommends explicitly defining the ‘Central

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<sup>5</sup> Recital 6 of the draft implementing decision.

<sup>6</sup> Article 6(3) of the draft implementing decision.

<sup>7</sup> Article 6(2) of the draft implementing decision.

<sup>8</sup> Article 6(5) of the draft implementing decision.

<sup>9</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); and 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).

Repository for Reference Data' in the Commission implementing decision, including by explaining its role and functions with regard to the VIS.

Brussels, 21 December 2023

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI