

EDPS Formal comments on the draft Commission Implementing Regulation for the implementation of the Asylum and Migration Management Regulation laying down rules for the application of Regulation (EU) 2024/1351 of the European Parliament and the Council, as regards asylum and migration management repealing Commission Regulation (EC) No 1560/2003

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 8 July 2025, the European Commission consulted the EDPS on the draft Commission Implementing Regulation for the implementation of the Asylum and Migration Management Regulation laying down rules for the application of Regulation (EU) 2024/1351 of the European Parliament and the Council, as regards asylum and migration management repealing Commission Regulation (EC) No 1560/2003 ('the draft Implementing Regulation').
2. The objective of the draft Implementing Regulation is to provide the modalities of the exchange of information between the Member States, as well as the practical details for the effective implementation of the different procedures regulated under the Asylum and Migration Management Regulation², including take charge, take back, relocation, transfers and financial contributions³. In this regard, the draft Implementing Regulation is accompanied by 12 annexes.
3. The draft Implementing Regulation is adopted pursuant to Articles 23(7), Article 25(7), Article 34(4), Article 39(3), Article 40(4) and (8), Article 41(5), Article 46(1) and (4), Article 48(4), Article 50(1) and (5), Article 52(4), Article 64(3) and Article 67(14) of Regulation

¹ OJ L 295, 21.11.2018, p. 39.

² 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.

³ See recitals 1 and 2 of the draft Implementing Regulation.

(EU) 2024/1351, as well as Article 42(3) of Regulation (EU) 2024/1358 (Eurodac Regulation)⁴.

4. The EDPS issued in 2020 an Opinion on the European Commission proposal on the New Pact on Migration and Asylum, which included also the proposal for the current Asylum and Migration Management Regulation⁵.
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 invites the Commission to add a reference to this consultation in the recitals of the draft Implementing Regulation, in line with the established practice.
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 acts⁶.
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.

2. Comments

2.1. General comments

8. The EDPS notes that the new implementing rules aim to update and replace the existing rules and procedures under the current Commission Regulation (EC) No 1560/2003⁷ adopted pursuant to Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country

⁴ 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.

⁵ EDPS [Opinion 9/2020 on the New Pact on Migration and Asylum](#), adopted on 30 November 2020.

⁶ 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.

⁷ Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 222, 5.9.2003.

national or a stateless person (recast) ('the Dublin III Regulation')⁸. The secure electronic communication channels referred to in Article 52(4) of Regulation (EU) 2024/1351 will be based on the existing electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003, DubliNet⁹.

9. The EDPS notes the detailed nature of the draft Implementing Regulation and its annexes, which strive to circumscribe in a comprehensive manner the activities of the competent Member States authorities and in particular the information exchanged between them.
10. In this context, the EDPS positively notes that the draft Implementing Regulation contains specific provisions to limit the processing of special categories of data such as biometric data, in line with the principle of data minimisation under Article 5(1)(c) GDPR¹⁰.

2.2. Exchange of health data

11. According to Article 50 of Regulation (EU) 2024/1351, health data may be exchanged before a transfer is carried out for the sole purpose of the provision of medical care or treatment, in particular concerning vulnerable persons, including disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence. Moreover, the processing of personal health data must be carried out only by a health professional who is subject, under national law, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.
12. The practical implementation of the above provision is provided for in Article 29 of the draft Implementing Regulation and more specifically in Annex VIII (Common health certificate). In this regard, the EDPS notes that Article 50(2) of Regulation (EU) 2024/1351 refers to three alternative legal grounds for the processing of health data: (i) explicit consent, (ii) the vital interests of the person concerned or of another person where the person concerned is physically or legally incapable of giving his or her consent, or (iii) to protect public health or public security, which are consistent with the provision of Article 9(2) GDPR. However, the Common health certificate in Annex VIII includes only the first two legal grounds (explicit consent and vital interests) but not the third one. Therefore, the EDPS recommends adding in the Common health certificate the possibility for the sending authority to indicate when the transfer of health data is carried out with the aim to protect public health or public security.

⁸ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180, 29.6.2013, pp. 31–59 (*repealed with effect from 1 July 2026*).

⁹ See Article 1 of the draft Implementing Regulation.

¹⁰ See e.g. Article 7 (2) and (4), Article 12(5), Article 13 of the draft Implementing Regulation.

2.3. Information leaflet on the processing of data within Eurodac

13. The EDPS notes that Article 32 of the draft Implementing Regulation and the corresponding Annex XI lay down an information leaflet with several separate sections on the processing of data within Eurodac. In this context, Article 32 of the draft Implementing Regulation refers to Article 20(2) of Regulation (EU) 2024/1351 and Article 42(3) of Regulation (EU) 2024/1358 (Eurodac Regulation).
14. The former provision assigns to the Asylum Agency (i.e. the European Union Agency for Asylum - EUAA) the task to draw up common information material, as well as specific information for unaccompanied minors and vulnerable applicants, where necessary for applicants with specific reception or procedural needs. That common information material should also include information regarding the application of Regulation (EU) 2024/1358 and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The latter provision provides for the development of a common information leaflet on Eurodac and refers to the implementation powers of the Commission under Regulation (EU) No 182/2011¹¹ (comitology procedure).
15. The EDPS notes that the Information leaflet in Annex XI does not include all the information required. According to both Article 20(2) of Regulation (EU) 2024/1351 and Article 42(3) of Regulation (EU) 2024/1358, the common information material/leaflet should contain at least the information referred in Article 19 of Regulation (EU) 2024/1351. A number of information elements are missing, however, such as “the procedure and the obligation to submit [...] any relevant information that could help to establish the presence of family members, relatives or any other family relations in the Member States” (Article 19(1)(g) of Regulation (EU) 2024/1351); “the obligation for the applicant to disclose, as soon as possible in the procedure, any relevant information that could help to establish any prior residence documents, visas or educational diplomas” (Article 19(1)(h)); “the existence of the right to an effective remedy before a court or tribunal” (Article 19(1)(k)); “the fact that where the circumstantial evidence is not coherent, verifiable and sufficiently detailed to establish responsibility, the Member State may request a DNA or blood test to prove the existence of family links, or an assessment of the age of the applicant” (Article 19(1)(s)).
16. The EDPS also notes that the information material/leaflet in Annex XI mentions only the data subject’s rights of access and rectification but not the right to erasure in case the data is unlawfully processed, even if the latter right is explicitly recalled in Article 19(1)(q) of Regulation (EU) 2024/1351.
17. In addition, both Article 19(1)(q) of Regulation (EU) 2024/1351 and Article 42(3) of Regulation (EU) 2024/1358 explicitly require that the common information material/leaflet should provide not only the contact details of the controller but also of its data protection officer (DPO). However, section ‘Other useful information –

¹¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers, OJ L 55, 28.2.2011.

Customisable section by MS with national specific information' of Annex XI includes only "MS specific information on the contact details of the office of the data controller" without any specific reference to the DPO.

18. In view of the above, the EDPS considers that Article 32 of the draft Implementing Regulation and the corresponding Annex XI need to be reviewed and complemented with the missing information required pursuant to Article 19 of Regulation (EU) 2024/1351 and Article 42(3) of Regulation (EU) 2024/1358. In addition, while not explicitly provided in the respective basic acts, the EDPS invites the Commission to consider including in the leaflets also information about the possible processing of health data in accordance with Article 50 of Regulation (EU) 2024/1351.

Brussels, 2 September 2025

(e-signed)
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