

**EDPS Formal comments on the draft Commission Implementing Regulation laying down detailed rules for the application of Regulation (EC) No 767/2008 of the European Parliament and of the Council, as regards specifying the responsibilities and the relationships between Member States as joint controllers, as well as the relationship between the joint controllers and the processor, and the responsibilities of the processor, for the processing of personal data in the EU visa application platform**

**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 27 February 2026, the European Commission consulted the EDPS on the draft Commission Implementing Regulation laying down detailed rules for the application of Regulation (EC) No 767/2008 of the European Parliament and of the Council, as regards specifying the responsibilities and the relationships between Member States as joint controllers, as well as the relationship between the joint controllers and the processor, and the responsibilities of the processor, for the processing of personal data in the EU visa application platform ('the draft Implementing Regulation').
2. Regulation (EC) No 767/2008<sup>2</sup> ('VIS Regulation') lays down rules regarding the digitalisation of the visa procedure. It was amended by Regulation (EU) 2023/2667 of the European Parliament and of the Council<sup>3</sup> which introduced, *inter alia*, the EU visa application platform (EU VAP) to allow third-country nationals to apply for a visa online, regardless of the Member State of destination.

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

<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, OJ L 218, 13.8.2008, pp. 60.

<sup>3</sup> Regulation (EU) 2023/2667 of the European Parliament and of the Council of 22 November 2023 amending Regulations (EC) No 767/2008, (EC) No 810/2009 and (EU) 2017/2226 of the European Parliament and of the Council, Council Regulations (EC) No 693/2003 and (EC) No 694/2003 and Convention implementing the Schengen Agreement, as regards the digitalisation of the visa procedure, OJ L, 2023/2667, 7.12.2023.

3. The objective of the draft Implementing Regulation is to specify the data protection responsibilities of the joint controllers, the relationship between the joint controllers and eu-LISA and external service providers as processors, and the responsibilities of the processors with regard to the processing of the personal data in the EU VAP<sup>4</sup>.
4. The draft Implementing Regulation is adopted pursuant to Article 45(2), points (q) and (r) of the VIS Regulation.
5. The EDPS previously issued his Opinion 13/2022 on the Proposal for a Regulation on the digitalisation of the visa procedure<sup>5</sup>.
6. 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 33 of the draft Implementing Regulation.
7. 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>6</sup>.
8. 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 Delegated Regulation that are relevant from a data protection perspective.

## **2. Comments**

### **2.1. General Comments**

9. The EDPS positively notes the comprehensive approach followed by the Commission in the draft Implementing Regulation. In particular, he welcomes the detailed description of the categories of personal data processed, and of the processing operations to be carried out<sup>7</sup>, as well as the setting up of specific mechanism for the governance of the EU VAP in the form of a dedicated data protection working group, aimed at ensuring both a clear allocation of data protection responsibilities and a consistent application of data protection rules<sup>8</sup>.

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<sup>4</sup> See Article 1 of the draft Implementing Regulation.

<sup>5</sup> [EDPS Opinion 13/2022 on the Proposal for a Regulation on the digitalisation of the visa procedure, issued on 21 June 2022.](#)

<sup>6</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.

<sup>7</sup> See Article 3(1) of the draft Implementing Regulation

<sup>8</sup> See Article 5 of the draft Implementing Regulation.

## **2.2. Prior consultation with the supervisory authorities (Article 7(4))**

10. The EDPS welcomes that Article 7 of the draft Implementing Regulation provides for modalities to be followed, should a prior consultation be required pursuant to Article 36 of Regulation 2016/679 (GDPR) where a DPIA identifies processing operations that present high risks for data subjects after controllers have applied risk mitigation measures. The procedure laid down in the draft Implementing Regulation provides that each of the controllers must submit the DPIA for prior consultation to their respective Supervisory Authority (SA) and the written advice provided by each SA must be taken into account by the EU VAP data protection working group.
11. The GDPR currently does not provide for mechanism allowing SAs to cooperate and ultimately issue a single opinion pursuant to Article 36 GDPR in case of joint controllership. The EDPS therefore welcomes that the draft Implementing Regulation provides for the coordinated implementation of written advice within the EU VAP data protection working group.
12. At the same time, the EDPS notes that, in scenarios where conflicting advice is received from SAs, Article 7(4) of the draft Implementing Regulation provides that the EU VAP data protection working group should, by way of a decision in accordance with its Rules of Procedure, follow the advice it considers to be most appropriate.
13. The EDPS recalls that the GDPR does not provide for controllers to disregard written advice received from an SA in response to a prior consultation under Article 36 GDPR. Any controller that does so renders itself susceptible to the use, by the SA, of the powers referred to in Article 58 GDPR, including the corrective powers of the SA.
14. The EDPS therefore recommends that the Commission reconsider the instructions laid down in the third sub-paragraph of Article 7(4) of the draft Implementing Regulation. By way of alternative, the EDPS suggests that in scenarios of conflicting written advice received from SAs, the EU VAP data protection working party notifies the SAs concerned who can further assess the matter, possibly in the context of the EDPB, with a view ensuring a consistent application of the GDPR.

## **2.3. Notification of personal data breaches (Article 9(4))**

15. The EDPS notes Article 9(4) of the draft Implementing Regulation lays down that where a joint controller becomes aware of a personal data breach with regard to data processing operations in the EU VAP, it must without undue delay notify all other joint controllers, the Commission, eu-LISA, the EDPS and the supervisory authority of the Member State to which the controller belongs.

16. Furthermore, where eu-LISA notifies the joint controllers of a personal data breach in accordance with Article 11(5)(a) of the draft Implementing Regulation, Article 9(4) second sub-paragraph instructs the joint controllers to notify the EDPS while the third sub-paragraph only provides that national SAs be notified where the personal data breach affects personal data being processed in the EU VAP under a joint controllers' responsibility.
17. The EDPS recalls that under Article 33 GDPR, only the SA of the controller must be notified by the controller of a personal data breach. Thus, as currently drafted, the above-mentioned provision differs from the procedure laid down in data protection law.
18. The EDPS recognises the rationale for including a mechanism to ensure that the EDPS is made aware of any breach that may signify a security incident involving eu-LISA's systems. It is indeed appropriate that the EDPS is informed given its role in monitoring the processing by eu-LISA as processor (as noted in Recital 20 of the draft Implementing Regulation). The EDPS thus stresses the important role played by security incident reporting obligations, as provided for in the legislative frameworks governing other EU large-scale IT systems<sup>9</sup>.
19. However, Article 9 of the draft Implementing Regulation appears to conflate security incident reporting with personal data breach notifications. As currently drafted, the provision not only deviates from Article 33 GDPR, but creates ambiguity as to the follow-up expected of the EDPS after such a notification, as well as to the allocation of responsibility regarding the correct follow-up of data breaches in such cases.
20. In light of the above, the EDPS recommends replacing references to the obligation to 'notify' the EDPS of personal data breaches with an obligation to '*inform*'. Thus, the possible ambiguity as regards the notification obligations in case of personal data breach pursuant to Article 33 GDPR would be avoided.

Brussels, 24 April 2026

*(e-signed)*

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<sup>9</sup> E.g., under Article 45 of Regulation 2018/1861 and Article 60 of Regulation 2018/1862, Member States, Europol and the European Border and Coast Guard Agency shall notify the Commission, eu-LISA, the competent supervisory authority and the EDPS without delay of security incidents. eu-LISA shall notify the Commission and the EDPS without delay of any security incident concerning central SIS.