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NOTE

From: Chair of the SIS II Supervision Coordination Group
Chair of the VIS Supervision Coordination Group
Chair of the Eurodac Supervision Coordination Group

On: 22 June 2018

To: Delegations

No. prev. doc.: 15119/17 + COR 1, 15729/17 + COR 1

Subject: Opinion on the Proposals for two Regulations establishing a framework for interoperability between EU large-scale information systems

Delegations will find attached the Opinion of the SIS II, VIS and Eurodac Supervision Coordination Groups on the Proposals for two Regulations establishing a framework for interoperability between EU large-scale information systems.

E-MAIL / FAX

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President of the Council of the
European Union
General Secretariat
Council of the European Union
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Brussels, 22 June 2018

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Dear Mr President,

As representatives of the data protection authorities (“DPAs”) supervising the Schengen Information System of second generation (“SIS II”), the Visa Information System (“VIS”) and Eurodac within the supervision coordination groups (“SCGs”) ¹, we have noted that on 12 December 2017 the Commission published two legislative proposals (“the Proposals”) to establish a legal framework for interoperability between EU large-scale information systems. The Proposals consist of:

- a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226² and,

¹ Data protection supervision of the systems is carried out at national level by the national data protection authorities (“national DPAs”), while for the central (EU) level the European Data Protection Supervisor is competent. The coordination between these two levels is ensured by the Supervision Coordination Groups which are composed by the representatives of the national DPAs and the EDPS.

² COM (2017) 793 final.



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- a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police, and judicial cooperation, asylum and migration)³.

As a preliminary remark, we note that while the Proposals refer to the “interoperability” between the EU large scale information systems, this term is misleading⁴. The purpose of the proposed regulations is the effective interconnection of the aforementioned information systems, which, from a data protection perspective, could have a serious impact on key principles such as purpose limitation and proportionality.

This interconnection represents a major change in the information systems design and, consequently in the way personal data is processed at European and national levels. This would have required a cautious approach and a thorough prior assessment on the impact of those changes on fundamental rights. It is therefore unfortunate that the discussions on this complex process were rushed. This prevented an adequate follow-up of negotiations, as well as the effective involvement of the signatory SCGs in such a wide ranging initiative. We observe that the impact assessment which was conducted neither demonstrates the extent of the problem of identity fraud among third-country nationals, nor provides an analysis of less intrusive means and alternative solutions to achieve the intended objectives.

Moreover, the proposals on the interconnection of the systems are likely to impact the discussions on the respective legal frameworks that are currently under revision, and vice versa. This may well steer the future legal frameworks of such systems without regard for the principles of adequacy, necessity and proportionality, because systems will be adjusted to accommodate for the interconnection, instead of being considered based on their own real purpose.

³ COM (2017) 794 final.

⁴ Indeed, “interoperability” is a term that has precise legal effects, as of Art. 6 of directive 91/250/CE, replaced by directive 2009/24, to ensure free competition on the EU software market. It should not be confused with “compatibility”, the fact of making systems work together while keeping effective interconnection protocols and data formats private.



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The Proposals raise main data protection concerns which were already expressed by the Working Party Article 29 in an opinion adopted on 11 April 2018⁵, by the European Data Protection Supervisor in its Opinion adopted on 16 April 2018⁶, and by the European Union Agency for Fundamental Rights in an opinion adopted on 19 April 2018⁷.

We support the arguments developed in these opinions as regards data protection and would like to underline the following crucial issues, which we recommend be taken into account during the upcoming trilogues on the legislative package, in particular the need to:

- refine the purposes for police authorities to access the Common Identity Repository (“CIR”) for identity checks and introduce specific related conditions, procedures and criteria;
- introduce prior to any search in the CIR for law enforcement purposes conditions related to the existence of reasonable grounds, the carrying out of a prior search in national criminal databases and the launching of a query of the automated fingerprint identification system of the other Member States under Decision 2008/615/JHA;
- clarify the controllership of the new databases to ensure the application of the corresponding data protection regime;
- introduce the principles of data protection by design and by default,
- introduce specific safeguards for the data of children, elderly persons and persons with disabilities and,
- consider the necessity and the proportionality for the use of the data stored in the European Criminal Record Information System as regards third country nationals (“ECRIS-TCN”).

We recognize that the Proposals entrust the DPAs with additional supervision tasks⁸. In this respect, we want to draw the attention to the letter⁹ of the SIS II SCG on the lack of

⁵ WP266 Opinion on Commission proposals on establishing a framework for interoperability, available at http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=624198

⁶ Opinion 4/2018 on the Proposals for two Regulations establishing a framework for interoperability between EU large-scale information systems available at: https://edps.europa.eu/sites/edp/files/publication/2018-04-16_interoperability_opinion_en.pdf

⁷ Opinion on interoperability and fundamental rights implications available at: <http://fra.europa.eu/en/opinion/2018/interoperability>

⁸ See Article 49 of the Proposals.

⁹ SCG letter of 30 June 2017 available at:



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financial and human resources given to the DPAs to adequately perform their tasks in accordance with the already existing legal frameworks. Therefore, we urgently call once more upon EU institutions to provide the DPAs with the necessary financial and human resources to allow a consistent, effective and independent supervision.

We would like to take this opportunity to emphasize our willingness to cooperate and to contribute with our knowledge and expertise in the further work.

We have sent this letter to the President of the Council of the European Union and the President of the European Commission as well.

Yours sincerely,

On behalf of the SIS II Supervision Coordination Group,

On behalf of the Eurodac Supervision Coordination Group,

On behalf of the Visa Information System Supervision Coordination Group,

David Cauchi
Chair

Elisabeth Jilderyd
Chair

Caroline Gloor Scheidegger
Chair

Cc: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General
Mr Dimiter TZANTCHEV, Permanent Representative of Bulgaria
Mr Ralph KAESSNER, Secretariat General of the Council

https://edps.europa.eu/sites/edp/files/publication/17-06-13_ep_draft_letter_on_budget_en_1.pdf

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