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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 29.9.2021 supplementing Regulation (EU) 2019/817 of the European Parliament and of the Council as regards determining cases where identity data may be considered as same or similar for the purpose of the multiple identity detection

Delegations will find attached document C(2021) 5056 final.

Encl.: C(2021) 5056 final



Brussels, 29.9.2021
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COMMISSION DELEGATED REGULATION (EU) .../...

of 29.9.2021

supplementing Regulation (EU) 2019/817 of the European Parliament and of the Council as regards determining cases where identity data may be considered as same or similar for the purpose of the multiple identity detection

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

In May 2019, the European Parliament and the Council adopted Regulation (EU) 2019/817 of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa.

That Regulation requires the European Commission to adopt a delegated act laying down procedures to determine the cases in which identity data can be considered the same or similar for the purpose of multiple identity detection.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

All Member States were invited to nominate experts to participate in the Interoperability Subgroup of the Expert Group on Information Systems for Borders and Security, in accordance with Article 73(4) of Regulation (EU) 2019/817 and with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

This delegated act was based on the input from the Expert Group. The Expert Group was consulted between 18 November 2019 and 26 June 2020 after which the document was considered final by the experts and by the Commission. The experts were also given the opportunity to provide the Commission with oral and written comments throughout this period.

In addition, the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice advised the Commission on the technical needs and feasibility of the measure proposed.

The European Data Protection Supervisor was consulted before adoption to ensure respect for data protection provisions.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In accordance with Article 28(5) of Regulation (EU) 2019/817, the Commission shall establish the procedures to determine the cases in which identity data can be considered the same or similar for the purpose of multiple identity detection.

The Regulation conforms to the principle of proportionality, as it is limited to the minimum required to determine cases where identity data can be considered the same or similar in order to identify correctly the persons concerned.

COMMISSION DELEGATED REGULATION (EU) .../...

of 29.9.2021

supplementing Regulation (EU) 2019/817 of the European Parliament and of the Council as regards determining cases where identity data may be considered as same or similar for the purpose of the multiple identity detection

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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/JHA¹, and in particular Article 28(5) thereof,

Whereas:

- (1) Regulation (EU) 2019/817, together with Regulation (EU) 2019/818 of the European Parliament and of the Council² establishes a framework to ensure interoperability between the EU information systems in the field of borders, visa, police and judicial cooperation, asylum and migration.
- (2) That framework includes a number of interoperability components, including a multiple-identity detector. The multiple-identity detector 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 linking of data is essential for the multiple-identity detector to fulfil its objectives.
- (3) The multiple-identity detection process results in the creation of automated white and yellow links. A white link indicates that the identity data of the linked files are the same or similar whereas a yellow link indicates that the identity data of the linked files cannot be considered to be similar and that manual verification of the different identities should be carried out.
- (4) Considering the burden on both persons whose data is registered in the EU information systems, with the national authorities as well as with Union agencies, it is

¹ OJ L 135, 22.5.2019, p. 27.

² 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).

crucial to limit the number of cases in which yellow links are generated by the multiple-identity detector and therefore require manual verification.

- (5) Pursuant to Regulation (EU) 2019/817, the European Agency for the Operational Management of Large-Scale Information Systems in the area of Freedom, Security and Justice ('eu-LISA'), established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council³, should be responsible for the development and operational management of the interoperability components, including the multi-identity detector.
- (6) Prior to the development of the multi-identity detector, it is necessary to lay down the procedures to determine the cases in which identity data concerning a person stored across several systems can be considered the same or similar for the purpose of multiple-identity detection. In order for identity data to be considered as similar, eu-LISA should use an algorithm in order to calculate the similarity between identity data across different data fields from different EU information systems. That algorithm should be based on previously established thresholds of similarity.
- (7) Given that Regulation (EU) 2019/817 builds upon the Schengen *acquis*, in accordance with Article 4 of Protocol No 22 on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark notified the implementation of Regulation (EU) 2019/817 in its national law. It is therefore bound by this Regulation.
- (8) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part⁴. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (9) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁵, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC⁶.
- (10) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁷, which fall within the area referred to in Article 1, point A of

³ Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

⁴ This Regulation falls outside the scope of the measures provided for in Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁵ OJ L 176, 10.7.1999, p. 36.

⁶ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

⁷ OJ L 53, 27.2.2008, p. 52.

Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC⁸.

- (11) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁹ which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁰.
- (12) As regards Cyprus, Bulgaria and Romania and Croatia, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.
- (13) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹¹ and delivered an opinion on 27 April 2021,

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'identity data' means the following data:
 - (a) surname (family name); first name or names (given names); date of birth; nationality or nationalities; and sex; as referred to in Articles 16(1)(a), 17(1)

⁸ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁹ OJ L 160, 18.6.2011, p. 21.

¹⁰ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

¹¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons 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 (OJ L 295, 21.11.2018, p. 39).

and 18(1) of Regulation (EU) 2017/2226 of the European Parliament and of the Council¹²;

- (b) surname (family name), first name(s) (given name(s)), surname at birth; alias(es); date of birth, place of birth, sex and current nationality; as referred to in Article 17(2) of Regulation (EU) 2018/1240 of the European Parliament and of the Council¹³;
- (c) surnames, forenames, names at birth, previously used names and aliases, place of birth, date of birth, gender and any nationalities held, as referred to in Article 20(2) of Regulation (EU) 2018/1861 of the European Parliament and of the Council¹⁴;
- (d) surnames, forenames, names at birth, previously used names and aliases, place of birth, date of birth, gender and any nationalities held, as referred to in Article 4 of Regulation (EU) 2018/1860 of the European Parliament and of the Council¹⁵;
- (e) surnames, forenames, names at birth, previously used names and aliases, place of birth, date of birth, gender and any nationalities held as referred to in Article 20(3) of Regulation (EU) 2018/1862 of the European Parliament and of the Council¹⁶;
- (f) surname (family name), first names (given names), date of birth, place of birth (town and country), nationality or nationalities and gender, previous names, if applicable as referred to in Article 5(1)(a)(i) of Regulation (EU) 2019/816 of the European Parliament and of the Council¹⁷.

¹² Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

¹³ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

¹⁴ Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

¹⁵ Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1).

¹⁶ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

¹⁷ Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).

- (2) 'equal' means a 100% correspondence between data from two different EU information systems, including, where necessary, the use of a conversion-harmonisation functionality for harmonising the format of all data before comparison;
- (3) 'transliteration' means a type of conversion of a text from one script to another that involves swapping letters in previously identified ways.

Article 2
Same identity data

The cases where identity data may be considered as the same are set out in Annex I.

Article 3
Similar identity data

The cases where identity data may be considered as similar are set out in Annex II.

Article 4
Logs

1. The common identity repository shall keep the logs of the comparison of data containing, at least:
 - (a) the date and time of the comparison;
 - (b) the result of the comparison, including which identity data was considered as same or similar;
 - (c) the colour of the link following the automated comparison;
 - (d) the colour of the link following the manual processing subsequent to the creation of a yellow link;
 - (e) the amendments to the links, including where the identity data was considered as similar.
2. The logs shall be stored in the common identity repository. They shall be stored for no longer than one year following the comparison of data. After that period, they shall be automatically erased.
3. The logs shall be used by the common identity repository to produce automatic reports of activities and to support and monitor the accuracy of the comparison of data between EU information systems.

Article 5
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 29.9.2021

For the Commission
The President
Ursula VON DER LEYEN