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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the delegation of power to adopt delegated acts conferred on the Commission
pursuant to Regulations (EU) 2019/817 and 2019/818 of the European Parliament and of
the Council**

1. INTRODUCTION

Regulations (EU) 2019/817¹ and 2019/818² of the European Parliament and of the Council establish a framework to ensure interoperability between the EU information systems in the field of borders, visa, police and judicial cooperation, asylum and migration. Both Regulations were adopted on 20 May 2019 and entered into force on 11 June 2019.

According to Article 73(1) of Regulation (EU) 2019/817 and Article 69(1) of Regulation (EU) 2019/818, the Commission is empowered to adopt delegated acts. Articles 73(2) and 69(2) of both Regulations respectively foresee that the power to adopt delegated acts shall be conferred on the Commission for an initial period of five years starting from 11 June 2019. This initial period is set to expire on 11 June 2024.

2. LEGAL BASIS

Pursuant to Article 73(2) of Regulation (EU) 2019/817 and Article 69(2) of Regulation (EU) 2019/818, the power to adopt delegated acts is conferred on the Commission for an initial period of five years starting from 11 June 2019 and the Commission is required to prepare a report in respect of the delegation of power not later than nine months before the end of the five-year period. This report aims to fulfil that requirement. Articles 73(2) and 69(2) respectively also provide that the delegation of power is tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. EXERCISE OF THE DELEGATION

3.1 Consultation prior to adoption

In accordance with Article 73(4) of Regulation (EU) 2019/817 and Article 69(4) of Regulation (EU) 2019/818, the Commission consulted experts nominated by Member States, through an Expert Group and written consultations, during the preparation of the delegated acts necessary for the implementation of these Regulations. All Member States were invited to nominate experts to take part in these consultations and the European Parliament and the Council were also invited to participate.

The documents relevant to these consultations were transmitted simultaneously to the European Parliament and to the Council, as foreseen in Articles 73(5) and 69(5) of both Regulations respectively and in the Common Understanding on delegated acts. The observations presented in these consultations were taken into consideration when preparing the final versions of delegated acts. Furthermore, the Commission regularly informed Member States of the progress made with the draft delegated acts.

3.2 Delegated acts adopted

During the reporting period, the Commission exercised its delegated powers by adopting six delegated acts. The table below shows the delegated acts adopted under the relevant empowerments laid down in Regulations (EU) 2019/817 and 2019/818.

¹ OJ L 135, 22.5.2019, p. 27.

² OJ L 135, 22.5.2019, p. 85.

Delegated Act	Empowerments
Commission Delegated Regulation supplementing Regulation (EU) 2019/817 of the European Parliament and Council as regards determining cases where identity data are considered as same or similar for the purpose of the multiple-identity detection	Article 28(5) of Regulation (EU) 2019/817
Commission Delegated Regulation supplementing Regulation (EU) 2019/818 of the European Parliament and Council as regards determining cases where identity data are considered as same or similar for the purpose of the multiple-identity detection	Article 28(5) of Regulation (EU) 2019/818
Commission Delegated Regulation supplementing Regulation (EU) 2019/817 of the European Parliament and of the Council with detailed rules on the operation of the central repository for reporting and statistics	Article 39(5) of Regulation (EU) 2019/817
Commission Delegated Regulation supplementing Regulation (EU) 2019/818 of the European Parliament and of the Council with detailed rules on the operation of the central repository for reporting and statistics	Article 39(5) of Regulation (EU) 2019/818
Commission Delegated Regulation laying down detailed rules on the operation of the web portal, pursuant to Article 49(6) of Regulation (EU) 2019/817 of the European Parliament and of the Council	Article 49(6) of Regulation (EU) 2019/817
Commission Delegated Regulation laying down detailed rules on the operation of the web portal, pursuant to Article 49(6) of Regulation (EU) 2019/818 of the European Parliament and of the Council	Article 49(6) of Regulation (EU) 2019/818

3.3 Objection to delegated acts

According to Article 73(6) of Regulation (EU) 2019/817 and Article 69(6) of Regulation (EU) 2019/818, the European Parliament or the Council may object to a delegated act within a period of two months from the date of notification, extendable by another two months. If either the European Parliament or the Council objects to a delegated act within this period, the act does not enter into force.

On 29 September 2021, the Commission adopted two delegated regulations supplementing Regulations (EU) 2019/817 and 2019/818 as regards determining cases where identity data may be considered as same or similar for the purpose of the multiple-identity detection. On 29 November 2021 the European Parliament requested a two-month extension of the scrutiny period.

On 20 January 2022, the European Parliament objected to these two Commission delegated regulations. The Parliament considered that *‘these delegated acts did not lay down the procedures to determine the cases in which identity data can be considered to be similar, but sub-delegate that power to eu-LISA and to experts from the Commission, the Member States and the Union agencies using the EU information systems and interoperability components.’* The Council did not object to the delegated acts.

As a consequence, the delegated acts were revised taking into consideration the concerns of the European Parliament and presented for a discussion in the Interoperability Expert Group

on 24 January 2022. The members of the Expert Group, including the European Parliament, agreed with the revised text of the draft delegated acts.

On 11 July 2022, the Commission adopted the revised delegated regulations supplementing Regulations (EU) 2019/817 and 2019/818 as regards determining cases where identity data may be considered as same or similar for the purpose of the multiple-identity detection. The delegated acts were transmitted to the European Parliament and the Council for a scrutiny. Neither the European Parliament nor the Council objected to them.

3.4 Need for extending the power to adopt delegated acts

The majority of delegated acts have been adopted before the expiry of the initial period of five years for the exercise of the power to adopt delegated acts. However, the Commission requires an extension of the delegation of power because certain delegated acts can only be adopted when the transitional periods of the European Search Portal and the Multiple-Identity Detector start, namely:

- The Commission delegated acts to extend the duration of the transitional period of the European Search Portal when an assessment of the implementation of the European Search Portal has shown that such an extension is necessary, especially in view of the impact that bringing the ESP into operation would have on the organisation and length of border checks (Article 67(2) of Regulation (EU) 2019/817 and Article 63(2) of Regulation (EU) 2019/818);
- The Commission delegated acts to extend the duration of the transitional period of the Multiple-Identity Detector if multiple-identity detection cannot be completed before expiry of the initial period for reasons independent of the ETIAS Central Unit, and that no corrective measures can be applied (Article 69(8) of Regulation (EU) 2019/817 and Article 65(8) of Regulation (EU) 2019/818).

In addition, the empowerment to adopt or amend delegated acts will remain necessary to provide for the necessary flexibility in the implementation and operation of interoperability components and to adjust them to any relevant development. In particular, several legislative acts that impact the interoperability framework are being currently negotiated by the co-legislators. The Commission will need to amend the delegated acts to reflect the results of these negotiations.

4. CONCLUSION

The Commission considers that it has exercised its delegated powers within the remit conferred on it by Regulations (EU) 2019/817 and 2019/818.

Given the explanation provided in Section 3, the Commission considers that there is a clear need for a tacit extension of the delegation of power provided for in Article 73(1) of Regulation (EU) 2019/817 and Article 69(1) of Regulation (EU) 2019/818 for a period of five years.

The Commission invites the European Parliament and the Council to take note of this report.