



## **EDPS Formal comments on the draft Commission Implementing Decision laying down performance requirements of the European Travel Information and Authorisation System (ETIAS) pursuant to point (b) of the third subparagraph of Article 73(3) of Regulation (EU) 2018/1240 of the European Parliament and the Council**

### **1. Introduction and background**

The European Travel Information and Authorisation System (ETIAS) has been established by Regulation (EU) 2018/1240<sup>1</sup> as a system to issue or refuse a travel authorisation for all visa-exempt third country nationals who wish to travel to the Schengen area.

Regulation (EU) 2018/1240 requires the Commission to adopt measures necessary for the development and technical implementation of the ETIAS Information System. More specifically, point (b) (iv) of the third subparagraph of Article 73(3) of Regulation (EU) 2018/1240 refers to the adoption of performance requirements.

The present formal comments are issued in response to the legislative consultation submitted by the European Commission on 14 July 2020 pursuant to Article 42(1) of Regulation (EU) 2018/1725.<sup>2</sup> In this regard, the EDPS welcomes the reference to this consultation in Recital 9 of the draft Implementing Decision.

### **2. Comments**

The draft Implementing Decision laying down the performance requirements of the European Travel Information and Authorisation System (ETIAS), does not contain provisions which would raise significant concerns with regard to the right to the protection of personal data.

The EDPS welcomes the fact that performance requirements and high availability standards are set per operation type of ETIAS functionalities. The EDPS also notes that fulfilment of such requirements is computed on the basis of unplanned availability and recommends the introduction of a process to ensure timely communication of planned interruptions. This should include information to stakeholders and acceptable time intervals prior to planned interruption, to provide for planning any alternative way for delivering the service.

In addition, the requirement that the ETIAS unavailability time corresponding with the availability target over a reference period must not be consumed in its totality within one interruption of service should be further justified, taking into account the potential impact to the data subjects by the interruption of the service.

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<sup>1</sup> 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. 1–71.

<sup>2</sup> 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, 21.11.2018, L.295, p.39 (Regulation 2018/1725).

Finally, the EDPS would like to highlight that, from a legislative technique point of view, it would be more appropriate to refer to point (b) (iv) of the third subparagraph of Article 73(3) of Regulation (EU) No 2018/1240 instead of point (b) only.

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**[e-signed]**

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