



## **EDPS Formal comments on the draft Commission Implementing Decision on the rules on the operation of the public website and the app for mobile devices, pursuant to Article 16(10) of Regulation (EU) 2018/1240 of the European Parliament and of 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> and requires all visa-exempt third country nationals to apply online for travel authorisation prior to the date of their departure to the Schengen area.

Applicants shall submit a travel authorisation application via the dedicated ETIAS public website or app for mobile devices, which should also provide the general public with all relevant information in relation to applying for a travel authorisation.

Pursuant to Article 16(10) of Regulation (EU) 2018/1240 the European Commission has been empowered to adopt detailed rules on the operation of the public website and the app for mobile devices as well as detailed rules on data protection and security applicable to the public website and the app for mobile devices.

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission pursuant to Article 42 (1) of Regulation 2018/1725<sup>2</sup>. In this regard, the EDPS welcomes the reference to this consultation in Recital 10 of the draft Implementing Decision.

### **2. Comments**

#### **Stakeholders and Responsibilities**

The EDPS notes that the stakeholders and responsibilities for the website and mobile app are introduced in Article 1 of the draft Implementing Decision and proposes the explicit definition of controller and processor, in line with the roles described in Articles 57 and 58 of Regulation (EU) 2018/1240.

In addition, according to Article 1(6) of the draft Implementing Decision, the Commission shall be the owner of the data of the reports submitted by users for technical or content-related issues. At the same time, eu-LISA is tasked with the hosting and operation of the website and mobile app while the ETIAS Central Unit will act as the controller in relation to the processing of personal data in the ETIAS Central System. In this context, the Commission is invited to clarify what the ownership of the data of the reports as specified in Article 1(6) of the draft

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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).

Implementing Decision would entail, especially with regard to the processing of personal data. If any processing of personal data by the European Commission is provided for, it must be duly justified.

### **Security and confidentiality of electronic communications**

Article 6 of the draft Implementing Decision should clearly provide that any information transmitted to, stored in, related to, processed by and collected from the terminal equipment of users accessing the website and mobile app shall be protected, in accordance with Articles 36 and 37 of Regulation (EU) 2018/1725. Therefore, the EDPS recommends to add a reference to Articles 36 and 37 of Regulation (EU) 2018/1725 at the end of paragraph 3 of Article 6 of the draft Implementing Decision.

### **Logs**

The EDPS notes that the website and mobile app will log access by users for monitoring the usage of the website in order to prevent any misuse and for statistical purposes (with regard to the latter, only on a subset of the logs). The EDPS recommends clearly defining the roles and purposes for access to the logs of the website and the app by eu-LISA and the European Border and Coast Guard Agency, as relevant.

In addition, security safeguards for the logs availability and integrity should be explicitly laid down in Article 6 of the draft Implementing Decision.

### **Cookies and other tracking technology**

The EDPS notes that Article 7(4) of the draft Implementing Decision envisages the possibility to use “additional tracking technology” besides what is foreseen in Article 7, to ensure the consistency of a session during the utilisation of the public website or app for mobile devices. The EDPS would like to draw attention to the fact that such tracking technologies usually relate to identifiers of the user’s browser/device etc and thus can be considered as ‘personal data’, triggering the application of the EU data protection rules. Furthermore, information relating to the terminal equipment of users is additionally protected by Directive 2002/58/EC (ePrivacy Directive) and Articles 36 and 37 of Regulation (EU) 2018/1725. Consequently, the EDPS strongly suggests to either clearly define what exactly such “additional tracking technology” could consist of, or delete this reference.

The EDPS further suggests aligning the implementation of the website and the mobile app with the “Guidelines on the protection of personal data processed by mobile applications provided by European Union institutions”<sup>3</sup> and “Guidelines on the protection of personal data processed through web services provided by EU institutions”<sup>4</sup>.

In addition, the EDPS notes the commitment to implementing tracking technology that would not imply the processing of personal data. However, according to the draft Annex, cookies will be used. In addition, the precise details of the tracking technology are unknown at this stage.

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<sup>3</sup> [https://edps.europa.eu/sites/edp/files/publication/16-11-07\\_guidelines\\_mobile\\_apps\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/16-11-07_guidelines_mobile_apps_en.pdf)

<sup>4</sup> [https://edps.europa.eu/sites/edp/files/publication/16-11-07\\_guidelines\\_web\\_services\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/16-11-07_guidelines_web_services_en.pdf)

Therefore, the EDPS would like to insist on including references to the applicability of Regulation (EU) 2018/1725 as well as Regulation (EU) 2016/679 and Directive 2002/58/EC (ePrivacy Directive)..

Finally, the EDPS observes that the wording of the draft Implementing Decision is not in line with the draft Annex. In fact, points (m) to (p) of the said Annex refer to “cookies”, which are a specific example of tracking technology. Therefore, the EDPS invites the Commission to align the text of the Implementing Decision to that of the Annex, taking into account the above-mentioned remarks.

Brussels, 4 September 2020

**[e-signed]**  
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