



EDPS Formal comments on the specifications for technical solutions to connect central access points to the ETIAS Central System and for a technical solution to facilitate the collection of data by Member States and Europol for the purpose of generating statistics on the access to the data for law enforcement purposes pursuant to Articles 73(3)(b) and 92(8) of Regulation (EU) 2018/1240

1. Introduction and background

The European Travel Information and Authorisation System (ETIAS) has been established by Regulation (EU) 2018/1240¹. It requires all visa-exempt third country nationals to apply online for travel authorisation prior to the date of their departure to the Schengen area. Third country national applicants will then be pre-vetted by checking the data provided by them in a travel authorisation application against screening rules, a dedicated watchlist and a number of information systems, including the ETIAS Central System.

One of the objectives of ETIAS is to contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences.² In this context, Regulation (EU) 2018/1240 provides for the possibility for Member States' designated authorities and Europol to access data stored in the ETIAS Central System in order to prevent, detect and investigate terrorist offences or other serious criminal offences falling under their competence. Regulation (EU) 2018/1240 also lays down conditions and procedures governing such access.

Pursuant to Article 50 of Regulation (EU) 2018/1240, access to the data stored in the ETIAS Central System for law enforcement purposes should take place through central access points tasked with verifying the conditions to request access to the ETIAS Central System laid down in Article 52 are fulfilled. Furthermore, pursuant to Article 53 of the same Regulation, Europol may request to consult data stored in the ETIAS Central System and submit a reasoned electronic request to consult a specific set of data stored in the ETIAS Central System to the ETIAS Central Unit.

In addition, pursuant to Article 92(8) of Regulation (EU) 2018/1240, each Member State and Europol are to prepare annual reports on the effectiveness of access to data stored in the ETIAS Central System for law enforcement purposes which is to contain certain information and statistics set out in that provision. To this end, a technical solution is to be established and made available to Member States to facilitate the collection of such data and the Commission shall, by means of implementing acts, adopt the specifications of the technical solution.

Pursuant to Article 73(3)(b)(v) the Commission has been empowered to adopt measures laying down the specifications for technical solutions to connect the central access points of the Member States to the ETIAS Central System in accordance with Article 51 to 53 of regulation (EU) 2018/1240.

¹ 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, p. 1-71

² Article 4(g) of Regulation (EU) 2018/1240

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission of 1 February 2021, pursuant to Article 42(1) of Regulation 2018/1725³. In this regard, the EDPS welcomes the reference to this consultation in Recital 12 of the draft Implementing Decision.

2. Comments

2.1. Scope

The EDPS notes that the draft implementing decision lays down, *inter alia*, provisions concerning the connection of the central access points of the Member States to the ETIAS Central System as well as the connection of the ETIAS Central Unit to the ETIAS Central System to process request from Europol to access data (Article 1 and Article 2 respectively). For the purpose of alignment with the operational provisions of the draft Implementing Decision, the EDPS recommends including a recital indicating that pursuant to Article 53 of Regulation (EU) 2018/1240, Europol may request to consult data stored in the ETIAS Central System and submit a reasoned electronic request to consult a specific set of data stored in the ETIAS Central System to the ETIAS Central Unit.

The EDPS notes that general measures for the access to ETIAS data for law enforcement purposes (pursuant to Articles 52 and 53 of Regulation (EU) 2018/1240) have already been addressed in Chapter IV of the Commission Implementing Decision on measures for accessing, amending, erasing and advance erasing of data in the ETIAS Central System. The same implementing act also touches upon some aspects addressed by the current draft Implementing Decision. Therefore, the European Commission should consider merging the provisions of these two implementing acts in one single legal instrument, or at least make a clear and systematic reference to the respective provisions in each of the two implementing acts.

2.2. Connection of the central access point(s) of each Member State to the ETIAS Central System

Article 1(a) of the draft Implementing Decision establishes that the central access points referred to in Article 50 of Regulation (EU) 2018/1240 shall have access to the ETIAS Central System. At the same time, the Commission Implementing Decision on measures for accessing, amending, erasing and advance erasing of data in the ETIAS Central System makes reference to the fact that searches by central access points shall be performed directly via the ETIAS Central System **until the European Search Portal is operational for use** (*emphasis added*).

It is thus the EDPS' understanding that the possibility for central access points to directly search the ETIAS Central System is a temporary solution. As a consequence, the Commission is invited to make an explicit reference to the fact that the possibility for central access points to directly search the ETIAS Central System is temporary in nature and that it will be used as a solution only until the European Search Portal is operational for use by central access points.

2.3. Connection of the ETIAS Central Unit to the ETIAS Central System and modalities to transfer data to Europol

³ 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).

For the purpose of connecting the ETIAS Central Unit to the ETIAS Central System, Article 2(2) of the draft Implementing Decision provides for the development of a dedicated functionality “[...] in the software of Commission Implementing act referred to in Article 73(3) of Regulation (EU) 2018/1240”. It is the EDPS understanding that the relevant implementing act is the Commission Implementing Decision on measures for accessing, amending, erasing and advance erasing of data in the ETIAS Central System and, therefore, the Commission is invited to refer explicitly to it in order to provide clarity on the applicable legal framework.

2.4. Keeping of logs for requests to access ETIAS data for law enforcement purposes

The EDPS invites the Commission to make an explicit reference to Article 70 Regulation (EU) 2018/1240 concerning the keeping of logs by the Member States and Europol, to ensure that logging requirements are implemented by the Member States’ systems to be connected via the National Unit Interface for the purposes of Article 52 and 53 of Regulation (EU) 2018/1240.

2.5. Security requirements

The EDPS would like to recall that the Central Access Points and supporting Member States systems for the searches in the ETIAS Central System for law enforcement purposes should be subject to the same security requirements as the ETIAS national units (e.g. Articles 59 and 60 of Regulation (EU) 2018/1240) and therefore invites the Commission to lay it down in the text of the Implementing Decision.

2.6. Collection of data for the purpose of generating the statistics referred to in Article 92(8) of Regulation (EU) 2018/1240

Article 4(3) defines the data that shall be collected by the Member States systems for each request for access to data stored in the ETIAS Central System, in line with Article 92(8) of Regulation (EU) 2018/1240, should the Member States decide to apply the provided technical solution to support and facilitate statistics generation. The use of the provided technical solution for statistics is optional and needs to be deployed by each Member State at national level. Any data that will be accessed by the tool will be stored locally (at national level). For the effective application of the technical solution, integration of the format of the data with the data stored in national systems is necessary. It is also foreseen that Europol should use the technical solution for generating the statistics referred to in Article 92(8), although its application differs from the one of the Member States.

The EDPS notes that Article 4(3)(g) of the draft Implementing Decision refers to the **number** of cases informing that the consultation was carried out using the urgency procedures, referred to in Article 51(4) of Regulation (EU) 2018/1240 (*emphasis added*). According to Article 92(8)(e) of Regulation (EU) 2018/1240 each Members State and Europol shall prepare annual reports containing not only the number but also the **type** of cases in which the urgency procedure referred to in Article 51(4) was used. Therefore the EDPS invites the Commission to align the text of Article 4(3)(g) of the draft Implementing Decision with Article 92(8)(g) of Regulation (EU) 2018/1240 accordingly.

In addition, the EDPS invites the Commission to also collect the number of cases where the urgency procedure was used and accepted by the ex-post verification procedure. This could be useful for auditing purposes, to check against the overall number of cases involving urgency

procedures, and ex-post refusals, in order to ascertain whether the ex-post verifications are being systematically carried out in line with Art. 51(4) of the ETIAS Regulation.

Finally, the EDPS would like to recall that for the technical solution, developed for the purposes in Article 92(8) of Regulation (EU) 2018/1240, has to comply with the principles of data protection by design and by default, for example by making use of existing metadata or already anonymized data and not allowing for additional reporting that is not compatible with the statistical purpose. Furthermore, while Article 92(8) of Regulation (EU) 2018/1240 mentions only the effectiveness of access as an area of interest, the EDPS is convinced that statistical data could be also very useful for the data protection authorities when exercising their supervisory powers with regard to ETIAS.

Other comments

From the point of view of legislative technique, the EDPS considers that it would be more appropriate to refer to point (b) (v) of the third subparagraph of Article 73(3) of Regulation (EU) No 2018/1240 instead of point (b) only.

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Wojciech Rafał WIEWIÓROWSKI
(e-signed)