



EDPS Formal comments on the draft Commission Implementing Decision laying down requirements concerning the format of personal data to be inserted in the application form to be submitted pursuant to Article 17(1) of Regulation (EU) 2018/1240 of the European Parliament and the Council as well as the parameters and the verifications to be implemented in order to ensure completeness of the application and coherence of those data

1. Introduction and background

The European Travel Information and Authorisation System (ETIAS) has been established by Regulation (EU) 2018/1240¹ (the ETIAS Regulation) 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.

According to Article 17 of Regulation (EU) 2018/1240 applicants shall submit a completed application form for the purposes of obtaining a travel authorisation. Therefore, it is necessary to lay down the format of personal data to be inserted in the application form as well as the parameters and the verifications to be implemented in order to ensure the completeness of the application and coherence of those data

Pursuant to Article 17(9) of the ETIAS Regulation, the Commission has been empowered to adopt implementing acts to define the requirements concerning the format of the personal data referred to in paragraphs 2 and 4 of Article 17 to be inserted in the application form as well as parameters and verifications to be implemented for ensuring the completeness of the application and the coherence of those data..

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 2018/1725.² In this regard, the EDPS welcomes the reference to this consultation in Recital 15 of the draft Implementing Decision.

2. Comments

2.1. Declaration of Representation

With regard to the declaration of representation, the EDPS notes that Article 7(2) indicates that when the application form is filled by a person other than the applicant (third party), the third party should sign, through the ticking of a box, a declaration of representation

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, 19.9.2018, p. 1–71.

² 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).

Article 7(3) on the other hand states that the applicant and the third party are both encouraged to keep a copy of the signed declaration of representation and that “[...] **This form** shall not be recorded in the ETIAS Central System.” At the same time Article 19(3)(c) of Regulation (EU) 2018/1240 indicates that the ETIAS Central System shall record and store, *inter alia*, the personal data referred to in Article 17(2), which includes in point (m) the signed representation declaration. So, it is not clear whether the term “this form” in the last sentence of Article 7(3) refers to the template of the declaration of representation, to the physical version of the declaration of representation signed by the parties or the declaration of representation signed by the third party through the ticking of a box. Therefore the Commission is invited to clarify this aspect, taking into account what is prescribed in Article 19(3)(c) of Regulation (EU) 2018/1240.

2.2. Structure and legal technique

As a more general comment, the EDPS would like to draw the attention on the incoherent and unclear structure of the draft Implementing Decision. The document contains Articles with paragraphs, like ordinary legal acts, but also numbered paragraphs, which have no connections with the numbering of the legal provisions. There are further problems with the drafting technique as well. For example, in Article 4, paragraph 2, which sets out the first element of the two-factor authentication, the draft provision contains two points with the same number: “(a) application number” and “(a) travel document number”. It is not clear from the text whether they are alternative or should be entered together. Therefore, the EDPS recommends the draft Implementing Decision to be corrected in line with the EU Interinstitutional Style Guide³, thus ensuring the necessary legal clarity and certainty.

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³ <http://publications.europa.eu/code/en/en-000500.htm>