



EDPS Formal comments on draft Commission Implementing Decision laying down detailed rules on the information to be provided to the European Commission by the Member States regarding the stamping of travel documents in the exceptional situation where it is technically impossible to enter data in both the Entry/Exit Central System and in the National Uniform Interface and it is technically impossible to temporarily store the data locally in an electronic format

1. Introduction and background

The European Parliament and the Council adopted Regulation (EU) 2017/2226¹ establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States on 30 November 2017. The regulation entered into force on 29 December 2017.

The European Commission is required to adopt the relevant implementing acts necessary for the operation of the EES. Article 21(2) of the Regulation (EU) No 2017/2226 specifically provides for the exceptional situations where it is technically impossible to enter data in both the Entry/Exit Central System and in the National Uniform Interface and it is technically impossible to temporarily store the data locally in an electronic format. In those situations, the Member States should stamp passports manually and inform the Commission about the exceptional situation.

The draft Commission Implementing Decision lays down the rules for the reporting by the Member States described above.

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission of 17 December 2020, pursuant to Article 42(1) of Regulation 2018/1725². In this regard, the EDPS welcomes the reference to this consultation in Recital 12 of the draft Implementing Decision.

2. Comments

2.1. Notification on the procedure regarding the manually stored data

According to Article 4 of the draft Implementing Decision, after the technical impossibility to enter data in the EES Central System or the failure of the EES Central System has been

¹ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

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).

remedied, the Member State shall provide the Commission with the date and time when entering the manually stored data in the EES Central System has been completed. Having in mind that from the moment the manually stored data has been entered in the EES Central System and in the National Uniform Interface the exceptional situation referred to in Article 21(2) of Regulation (EU) 2017/2226 ends, the EDPS invites the Commission to clarify the procedure for handling the previously manually stored data (after the data is entered in the EES Central System and is basically redundant), as well as to indicate the way the Member States should notify the Commission that they have applied this procedure.

2.2. Aligning recital 1 with Article 1 of the draft Implementing Decision

Having in mind Article 1 of the draft Implementing Decision, which reflects Article 21(2) of Regulation (EU) 2017/2226, the EDPS also suggests aligning recital 1 of the draft Implementing Decision with the aforementioned articles by stating that it refers to **exceptional situations**, where it is not **technically** possible to enter data on the time and place of entry and exit of third-country nationals admitted for a short stay to the territory of the Member States in the EES Central System or in the National Uniform Interface, **nor it is possible to temporarily store the data locally in an electronic format** and it is consequently necessary to store those data manually and to stamp the travel documents, the Member States should inform the Commission **of the stamping of travel documents** without delay, so that it is possible to establish how many third country nationals are present in the territory of the Member States, including in the event where their entry and/or exit is not recorded in EES at the moment of border crossing.

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(*e-signed*)