



EDPS Formal comments on the draft Commission Implementing Decision defining the technical specification of the ETIAS watchlist and of the assessment tool

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. Moreover, the ETIAS enables the consideration by the competent authorities whether the presence of the visa exempt third-country nationals in the territory of the Member States would pose a security, illegal immigration or high epidemic risk.

According to Article 6(2)(a) and Article 34 of Regulation (EU) 2018/1240, the ETIAS Information System should include a watchlist with data related to persons who are suspected of having committed or taken part in a terrorist offence or other serious criminal offence or persons regarding whom there are factual indications or reasonable grounds, based on an overall assessment of the person, to believe that they will commit a terrorist offence or other serious criminal offence.

Pursuant to Article 35(7) of the ETIAS Regulation, the European Commission is empowered to establish by an implementing act the technical specifications of the ETIAS watchlist and of the assessment tool. Based on the Regulation and the legal measures, adopted by the Commission, the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) would technically develop and host the watchlist.

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 (EU) 2018/1725.² In this regard, the EDPS welcomes the reference to this consultation in Recital 18 of the draft Implementing Decision.

2. Comments

2.1. Data protection by design and by default

As a general comment, the EDPS would like to recall that the ETIAS would process a significant amount of personal data about a very large number of people. Moreover, the extensive use of automated processing of data, as well as the substantial impact on the concerned individuals, calls for heightened attention on the possible risk for the protection of personal data and the technical and organisational measures to mitigate it. In this regard, the EDPS recommends that the draft Implementing Decision explicitly recalls the principles of data protection by design and by default, set out in Article 27 of Regulation (EU) 2018/1725 and Article 25 of the GDPR, which should underpin the development of the ETIAS.

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).

2.2. Access by the competent national authorities

According to Article 2(5) of the draft Implementing Decision, “[e]ach competent national authority shall only have access to **their own watchlist**” (emphasis added). While the provision generally corresponds to the principle of data minimisation, it may also imply the possible existence of several ETIAS watchlists, including national ones. However, Articles 34 and 35 of Regulation (EU) 2018/1240 do not envisage such possibility. Therefore, the EDPS recommends that the Implementing Decision explicitly clarifies what data the competent national authorities, as well as Europol, would have access to.

2.3. Changes to existing watchlist entries

According to Article 3(6) of the draft Implementing Decision, “[a]ny changes to an existing watchlist entry shall be considered as the creation of a new watchlist entry which is subject to the requirements of this Article”. From this wording it is not entirely clear whether an entirely new watchlist entry will be created or the exiting one will just be adapted. If it is the first case, it is not clear from the text what will happen with the previous/existing entry. The EDPS invites the Commission to provide additional clarity about the procedure that has to be followed in such cases.

2.4. Assessment tool

Pursuant to Article 35(1)(b) of Regulation (EU) 2018/1240, one of the conditions for entering data in the ETIAS watchlist is the assessment of the potential impact on the proportion of applications manually processed. To this end, eu-LISA should create a specific software tool (Article 35(2) of the Regulation). In this context, the EDPS notes that the draft Implementing Decision uses different names for this tool: “assessment tool” but also “impact assessment tool”. The EDPS recommends a consistent use of a single name for the tool, preferable the one laid down in the ETIAS Regulation.

Furthermore, for the purpose of the assessment of the potential impact of the data on the proportion of applications manually processed, Article 6 of the draft Implementing Decision introduces two levels of impact: ‘low’ and ‘high’. According to Article 6(4)(a), the thresholds will be determined by “the ETIAS National Units for each competent authority within their respective ETIAS National Unit”. The EDPS invites the Commission to further clarify how many low/high impact thresholds there will be and how their consistency will be ensured.

2.5. Logs of the data processing operations in the watchlist

Article 9 of the draft Implementing Decision lays down the keeping of records of the levels of impact (high or low) reported by the (impact) assessment tool, as well as of the management operations, for the purpose of business monitoring. However, the draft makes no reference to the activity logs referred to in Article 69 of the Regulation (EU) 2018/1240. The EDPS recommends the inclusion of a reference regarding the creation of logs, which should be used for monitoring of the admissibility of data processing and for ensuring data security and integrity in the context of the ETIAS watchlist.

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Wojciech Rafał WIEWIÓROWSKI
(e-signed)