



Formal comments of the EDPS on the draft Commission Delegated Regulation on the payment methods and collection process for the travel authorisation fee pursuant to Article 18(4) 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) 2018/1240¹ 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.

In accordance with Article 18 of the ETIAS Regulation, applicants who are equal or above 18 years, and equal or under 70 years of age at the time of the application are required to pay a fee of EUR 7.

Pursuant to Article 18(4) of Regulation (EU) 2018/1240 the European Commission has been empowered to adopt detailed rules specifying the payment methods and collection process for the travel authorisation fee.

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission, in line with Article 42 (1) of Regulation 2018/1725². In this regard, the EDPS welcomes the reference to this consultation in Recital 14 of the draft Delegated Regulation.

The EDPS wishes to stress that these formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts, pursuant to Regulation (EU) 218/1240. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of Regulation (EU) 2018/1725.

2. Comments

2.1. Outsourcing of payment services

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 (EU) 2018/1725).

The collection process of the travel authorisation fee requires the processing of personal data by various stakeholders, including one or more payment service providers. It also relies on a number of systems to interact with applicants including a public website and mobile application, email service, secure account service and web service.

In such a complex setting, clear distribution of tasks and responsibilities between the different organisational entities involved in the processing of personal data is of paramount importance to ensure compliance with data protection principles and their effective implementation. In this respect, the EDPS recommends that the outsourcing contract with the payment service provider foresees a clause regarding the minimum security measures to be taken by the payment service provider to guarantee the safety of the payment information and its transmission to the ETIAS Central System.

Moreover, the EDPS recommends that, in the context of the public tender, the payment service provider is encouraged to take the principles of data protection by design and by default into account in the implementation of the service, in line with Recital 78 of Regulation (EU) 2016/679³ (the General Data Protection Regulation, “GDPR”).

For additional guidance on outsourcing and how to ensure that personal data are protected according to data protection rules, the EDPS advises to consult the “Guidelines on the protection of personal data in IT governance and IT management of EU institutions”⁴ and, in particular, Section 5.7 concerning procurement and outsourcing of tasks.

2.2. Use of the term “unique identifier”

The EDPS understands that the use of the term “*unique identifier*”, when related to the unique identifier of the payment of the ETIAS fee such as, for example, in Article 5(2) of the draft Delegated Regulation), corresponds to the definition of unique identifier provided for in Article 4(33) of Directive (EU) 2015/2366⁵. Furthermore, he understands that this terminology corresponds to the term “*unique reference number of the payment*” found in point (e) of Article 19(3) of Regulation (EU) 2018/1240.

2.3. Security and confidentiality of electronic communications

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

⁴ European Data Protection Supervisor, Guidelines on the protection of personal data in IT governance and IT management of EU institutions, 2018, link:

https://edps.europa.eu/sites/edp/files/publication/it_governance_management_en.pdf

⁵ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337, 23.12.2015, p. 35–127.

The draft Delegated Regulation provides in Recital 8 that “*The payment service provider should respect the data security of the applicants*”. While the general reference to data security is welcome, the EDPS recommends clarifying what “data security of the applicant” means and introducing a substantive provision on the obligation to put in place adequate security measures to ensure the protection of personal data of data subjects, according to the requirements set out in Article 33 of Regulation (EU) 2018/1725 and Article 32 of the GDPR.

In addition, the EDPS recommends stating 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 to Articles 36 and 37 of Regulation (EU) 2018/1725.

2.4. Transparency and information to individuals

Finally, the EDPS would like to recall the crucial importance of transparency as a means of ensuring the effective exercise by individuals of their data protection rights. For the processing to be lawful, fair and transparent in line with Article 4(1)(a) of Regulation (EU) 2018/1725, data subjects should know who processes what data for which purpose, for how long and how they can exercise their rights. The EDPS therefore would like to remind that the data protection notice should contain also information about the processing of personal data for the purpose of payment of the travel authorisation. This should include information about the fact that personal data of the applicants (i.e. the unique identifier of the application form) will be shared with third parties, i.e. the payment service provider.

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(*e-signed*)