



Formal comments of the EDPS on the draft Commission Implementing Regulation laying down the rules and conditions for verification queries by carriers, provisions for data protection and security for the carriers' authentication scheme as well as fall back procedures in case of technical impossibility

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.

Pursuant to Article 45(1) of Regulation (EU) 2018/1240, air carriers, sea carriers and international carriers transporting groups overland by coach are to send a query to ETIAS in order to verify whether or not travellers are in possession of a valid travel authorisation. Such a query is to be made by means of secure access to a carrier gateway.

In accordance with Article 45(2) and (3) and 46(4) of Regulation (EU) 2018/1240, the European Commission is authorised to lay down by means of implementing acts detailed rules concerning the conditions for the operation of the carrier gateway and the data protection and security rules applicable, the authentication scheme and the fall-back procedures in the case of a technical impossibility to access data by carriers.

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 22 of the draft Implementing Regulation.

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) 2018/1240. 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

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).

2.1. Web service answers

The EDPS notes that Article 6(1) of the draft Implementing Regulation states:” **Before** submitting a verification query, in the event that the passenger falls within one of the exceptions referred to in Article 2 of Regulation (EU) 2018/1240 or is in airport transit, the reply shall be “Not applicable”. In all other cases, the reply shall be “OK” or “Not OK”. From this paragraph, it is unclear how it would come to a reply before a query is submitted, so the EDPS suggests clarifying this aspect.

2.2. Registration and de-registration for the authentication scheme

In accordance with Article 11 of the draft Implementing Regulation, where the carrier informs eu-LISA that it no longer operates or transports passengers into the territory of the Member States, eu-LISA shall deregister the carrier. Having this in mind, the EDPS recommends to explicitly indicate the data retention period of the personal data processed following the deregistration of the carriers.

Furthermore, in paragraph 6 of the same article, it is stated that, to the extent appropriate, eu-LISA shall assist carriers that have received a notice of deregistration or disconnection to remedy the deficiencies that gave rise to the notice and, where possible, provide the opportunity for disconnected carriers to send verification queries **by other means** than those referred to in Article 4. While being aware that the goal of this measure (sending queries by other means) is to ensure the passengers are not affected by the disconnection, the EDPS would still like to point out that the usage of these “other means” should be limited in time and done under strict conditions, in order for it not to become an alternative channel. Moreover, the disconnected carriers should be motivated to resolve the disconnection issue as soon as possible.

2.3 Data quality

The EDPS notes that Recital 11 of the draft Regulation establishes that in order to ensure that the data accessed by carriers is accurate and consistent with the data stored in ETIAS, the read-only database shall be updated as necessary. Furthermore, according to Article 8(1) of the draft Implementing Regulation, to ensure that the data accessed by carriers is accurate and consistent, the data on issued, annulled and revoked travel authorisations shall be regularly and automatically extracted from ETIAS and transmitted to the read-only database. Since Article 45(4) of the Regulation (EU) 2018/1240 provides that the database shall be updated **on a daily basis**, the EDPS recommends to explicitly indicate this in the draft Regulation.

2.4 Obligations of carriers

The EDPS notes that Article 3(3) of the draft Implementing Regulation establishes that the carriers shall ensure that only duly authorised staff have access to the carrier interface by having a combination of physical and logical access control mechanisms, authentication and logging. In this regard, the EDPS recommends the Implementing Regulation also to foresee an obligation for regular review by the carriers of the access rights of their dedicated staff.



In addition, with regard to Article 10(2)(d) of the draft Implementing Regulation, the EDPS invites also the Commission to lay down the obligation for the carriers to notify eu-LISA of any personal data breach that may occur.

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(*e-signed*)