



## **EDPS Formal comments on the draft Commission Implementing Regulation concerning the detailed rules on the conditions for the operation of the web service and data protection and security rules applicable to the web service as well as measures for the development and technical implementation of the web service and repealing Commission Implementing Regulation C(2021) 4901**

### **1. Introduction and background**

The VIS Regulation<sup>1</sup> defined the purpose of, the functionalities of and the responsibilities for the Visa Information System (VIS), setting up the conditions and procedures for the exchange of data between Member States on applications for short-stay visas and on the decisions taken in relation thereto.

On 7 July 2021, the VIS Regulation was amended by two Regulations: Regulation (EU) 2021/1134 for the purpose of reforming the Visa Information System, and Regulation (EU) 2021/1152 as regards the establishment of conditions for assessing other EU information systems for the purposes of the European Travel Information and Authorisation System.

The amended VIS Regulation aims at strengthening the security of the short-stay visa procedure, including long-stay visas and residence permits in the VIS database, and ensuring interoperability between the VIS and other relevant EU systems and databases.

Article 45c(3) and (5) of the amended VIS Regulation specifically requires the establishment of detailed rules concerning the conditions for the operation of the carrier gateway, data protection, security rules and the authentication scheme for carriers. In addition, Article 45d of the amended Regulation requires laying down the details of the fall-back procedures in the case of technical impossibility to access data by carriers.

Through the interoperability framework, the amended VIS Regulation is closely related to Regulation (EU) 2017/2226 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 Entry/Exit System for law enforcement purposes.

On 29 April 2021, the EDPS adopted formal comments<sup>2</sup> on the draft Commission Implementing Regulation laying down rules and conditions for the operation of the web service and data protection and security rules applicable to the web service pursuant to Article 13 of Regulation (EU) 2017/2226 and repealing Commission Implementing Decision C (2019)1230.

---

<sup>1</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information system (VIS) and the exchange of information between Member States on short-stay visas, long-stay visas and residence permits- Article 1

<sup>2</sup> [https://edps.europa.eu/system/files/2021-04/21-04-29\\_2021-0257\\_d0966\\_comments\\_en.pdf](https://edps.europa.eu/system/files/2021-04/21-04-29_2021-0257_d0966_comments_en.pdf)

The Commission adopted on 27 July 2021 the Implementing Regulation C(2021)4901, laying down specifications and conditions for the operation of the web service provided for, including specific provisions for data protection and security. Those specifications and conditions also took into account visa-exempt travellers within the meaning of Article 45 of Regulation (EU) 2018/1240 of the European Parliament and of the Council.

Following the adoption on 7 July 2021 of the two Regulations mentioned above, the Commission has amended the Implementing Regulation C(2021)4901, in order to take into account third-country nationals that require a short-stay visa, a long-stay visa or a residence permit within the meaning of Article 45c of Regulation (EC) No 767/2008 of the European Parliament and of the Council.

The present formal comments of the EDPS concern the draft Implementing Regulation repealing Implementing Regulation C(2021)4901. They are issued in response to the legislative consultation by the European Commission, pursuant Article 42 (1) of Regulation (EU) 2018/1725. In this regard, the EDPS welcomes the reference to this consultation in Recital 26 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. 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 General Comments**

The amendments introduced in the Implementing Regulation C(2021)4901 provide for additional rules only in relation to the conditions for the operation of the carrier gateway pursuant to Regulation (EU) 2017/2226 and the revised VIS Regulation. They do not change the general structure of the Implementing Regulation, which was subject of the formal comments made by the EDPS on 29 April 2021.

Against this background, the EDPS welcomes the changes made by the Commission along the lines of his comments, as regards the web service replies referred to in Article 6<sup>3</sup>, the indication of the data retention period of personal data processed following the deregistration of the carriers in Article 11(8), the obligations on carriers to inform eu-LISA of any personal data breach that may occur included in Article 10(7)(d), and to put in place a regular review of the access rights of their dedicated staff mentioned in Article 3(3) (d).

---

<sup>3</sup>ibid. point 2.1

## 2.2. Specific comments

### 2.2.1 Deregistration from the authentication scheme

In his formal comments mentioned above, the EDPS noted that Article 11 paragraph 6 stated that eu-LISA should in particular, where possible, “*provide the opportunity for disconnected carriers to send verification queries by other means than those referred to in Article 4*”. The EDPS pointed 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.

In the draft Implementing Regulation, the Commission took into account the recommendation of the EDPS and added in paragraph 6 “*for a limited time and under strict conditions*”. The relevant paragraph reads as follows:

*“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, for a limited time and under strict conditions, provide the opportunity for disconnected carriers to send verification queries by other means than those referred to in Article 4.”*

While recognising the efforts of the Commission to meet his recommendations, the EDPS considers nevertheless that this addition does not sufficiently address the needs of carriers to be provided with clear rules: the reference to a “*limited time*” should be replaced with an explicit period of time, which may be subject to extension, and the term “*strict conditions*” should be defined as precisely as possible.

### 2.2.2 Data quality

In his comments mentioned above, the EDPS noted that Article 13(5) of Regulation (EU) 2017/2226 provides that the database shall be updated on a daily basis, and recommended to explicitly indicate this in the draft Implementing Regulation. The same observation goes for the amended VIS Regulation, which specifies in Article 45(c) 6 that the “*carrier gateway shall make use of a separate read-only database updated on a daily basis (...)*”.

Therefore, the EDPS recommends to include in Article 8 paragraph 1 of the draft Implementing Regulation a reference to an update on a “daily basis” in relation to the transmission to the read-only database of data on issued, annulled and revoked short stay visas and travel authorisations.

Brussels, 18 March 2022

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI