



**EDPS Formal comments on the draft Commission Delegated Regulation on changes to the amount of the travel authorisation fee and on the financial support to the Member States for expenses incurred to customise and automate border checks in order to implement ETIAS**

**THE EUROPEAN DATA PROTECTION SUPERVISOR,**

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ('EUDPR')<sup>1</sup>, and in particular Article 42(1) thereof,

**HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

**1. Introduction and background**

1. On 7 June 2022 the European Commission issued draft Commission Delegated Regulation on changes to the amount of the travel authorisation fee and on the financial support to the Member States for expenses incurred to customise and automate border checks in order to implement ETIAS ('the draft Proposal').
2. The objective of the draft Proposal is to set out the reporting obligations necessary to anticipate any potential future evolution of the costs of operation and maintenance of the European Travel Information and Authorisation System ('ETIAS'), including any potential sudden increases in those costs, in order to make an informed decision on the need to change the amount of the travel authorisation fee, as well as the reporting obligations of the Member States with regard to expenses incurred to customise and automate border checks<sup>2</sup>.
3. The draft Proposal is adopted pursuant to Articles 18(4) and 85(3) of Regulation (EU) 2018/1240 of the European Parliament and of the Council ('Regulation ETIAS')<sup>3</sup>.

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> See Article 1 of the Proposal.

<sup>3</sup> 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).



4. The EDPS previously issued Opinion 3/2017 on the Proposal for European Travel Information and Authorisation System<sup>4</sup>, as well a number of formal comments on the various implementing and delegated acts envisaged in Regulation ETIAS.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 7 June 2022, pursuant to Article 42(1) of Regulation 2018/1725<sup>5</sup> ('EUDPR'). In this regard, the EDPS regrets that no reference to this consultation is provided in the preamble of the Proposal.
6. These formal comments do not preclude any additional comments by the EDPS in the future, 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<sup>6</sup>.
7. 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 the EUDPR and are limited to the provisions of the draft Proposal that are relevant from a data protection perspective.

## 2. Comments

### 2.1. General comment

8. The EDPS notes that the subject matter of the draft Commission Delegated Regulation is limited to the financial aspects of the operation of ETIAS and therefore is unlikely to have any substantial impact on the protection of individuals' rights and freedoms with regard to the processing of personal data.

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<sup>4</sup> [EDPS Opinion 3/2017 on the Proposal for a European Travel Information and Authorisation System \(ETIAS\)](#), issued on 6 March 2022.

<sup>5</sup> 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.

<sup>6</sup> In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

## 2.2. Use of statistics

9. The EDPS notes that some categories of the collected statistics, while primarily designed to calculate costs, may also be valuable for the supervision of ETIAS. This applies in particular, but not exclusively, to the statistical information produced by eu-LISA<sup>7</sup> about:
  - the number of data subjects' requests according to Article 64 of Regulation (EU) 2018/1240;
  - the number of amendments of data and advance data erasures pursuant to Article 55 of Regulation (EU) 2018/1240;
  - the number of hits in accordance with Art. 20 of Regulation (EU) 2018/1240.
10. Consequently, the EDPS invites the Commission to ensure that the collected statistical information, which may be relevant for the supervision of ETIAS and the involved Union agencies, namely eu-LISA, Frontex and Europol, would be shared with the EDPS as well.

Brussels, 30 June 2022

*(e-signed)*

Wojciech Rafał Wiewiórowski

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<sup>7</sup> See the Annex to the draft Delegated Regulation.