



EDPS formal comments on the draft Commission Implementing Decision on the specifications and conditions for the website

1. Introduction and background

The Entry/Exit System (EES) has been established by Regulation (EU) 2017/2226 and will register entry and exit data and refusal of entry data of third country nationals who are admitted for a short stay into the Schengen area.

According to Article 50 of Regulation (EU) 2017/2226, third country nationals should be notified of the purpose of EES, how their personal data will be handled and how they can access them. To make third country nationals aware of their rights regarding their personal data, the Commission should set-up a website containing this information.

The public website should gather in a single place the information about the EES and provide access to the functionalities of the EES such as the web service to verify the remaining authorised stay and a functionality allowing the third country nationals to contact the appropriate authorities where they would like to make use of their rights related to data protection

Pursuant to Article 50(5) of Regulation (EU) 2017/2226, the Commission has been empowered to adopt implementing acts concerning the specifications and conditions for the website referred to in paragraph 3 of Article 50.

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 2018/1725.¹ In this regard, the EDPS welcomes the reference to this consultation in Recital 16 of the draft Implementing Decision.

2. Comments

The EDPS welcomes the fact that a number of comments addressed to the Commission on 1 October 2020 have been addressed. In particular, the EDPS notes the clarifications made with regard to the responsibilities of the Commission and eu-LISA. He also notes that the reference to the app for mobile devices in the context of the entry/exit website has been removed and that the provision on the logs has been updated.

The EDPS also welcomes the fact that the draft Implement Decision further defines and specifies the use of tracking technology in Article 6(4) and that it will be used for the sole purpose of optimising the use and performance of the website and to ensure the continuity of the session. At the same time, the EDPS would like to recall the recommendation already made concerning the alignment of the implementation of the website with the “Guidelines on the

¹ 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).

protection of personal data processed through web service provided by EU Institutions”². In particular, the Commission should ensure that, besides providing adequate means for expressing the users’ consent when necessary, users will be given explicit information on what is accessed or stored (in this case an exhaustive list of the retrieved technical information on the environment used for the request) and on the purposes of this action, by means of the website’s privacy notice.

Finally the EDPS notes that the fourth recital refers to a functionality allowing third country nationals to contact the appropriate authorities where they would like to make use of their rights related to data protection. However, it is not clear whether the text contains operational provisions in this respect and invites the Commission to clarify this aspect.

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(*e-signed*)

² https://edps.europa.eu/sites/edp/files/publication/16-11-07_guidelines_web_services_en.pdf