



EDPS Formal comments 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

1. Introduction and background

Regulation (EU) 2017/2226¹ established the Entry/Exit System as a system that registers electronically the time and place of entry and exit of third-country nationals admitted for a short stay to the territory of the Member States and which calculates the duration of their authorised stay.

Article 36(1) of the Regulation specifically requires for specifications and conditions for the web service of the Entry/Exit System, including specific provisions for the protection of the data where provided by or to carriers. In this respect, the Commission adopted on 25 February 2019 a Commission Implementing Decision C(2019)1230 which is a technical prerequisite for the development and proper functioning of the Entry/Exit System.

Following the adoption of 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)², the Commission Implementing Decision C(2019)1230 needed to be amended to take into account visa-exempt travellers. Moreover, prior to the start of operation of the Entry/Exit System, it is also necessary to adopt measures for the specifications and conditions for the carriers to fulfil their obligations. The obligations set out in the draft Regulation are applicable for carriers transporting passengers, through airplane, ship or coach, coming from outside the Schengen Area into the Schengen Area. As a result, the objectives set out in this draft Regulation could not be reached by the means of a Decision and the choice of instrument has been modified from a Decision to a Regulation. In light of the modifications needed and of the change in the instrument used, the Commission Implementing Decision C(2019)1230 on the Entry/Exit System web service should be repealed and replaced with the Implementing Regulation, subject of these formal comments.

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) 2018/1725.³ In this

¹ Regulation (EU) 2017/2226 of the European Parliament and of the Council 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, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

² OJ L 236, 19.9.2018, p. 1-71.

³ 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).

regard, the EDPS welcomes the reference to this consultation in Recital 22 of the draft Implementing Regulation.

2. Comments

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) 2017/2226 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. Although being fully aware that the intention 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.

Additionally, regarding Article 10(2)(d) of the draft Implementing Regulation, the EDPS invites also the Commission to add the provision that the carriers have to inform the eu-LISA of any personal data breach that may occur.

2.3 Data quality

The EDPS notes that Recital 12 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 the Entry/Exit System, the read only database shall be updated as necessary. In addition to that, according to Article 8(1) of the draft Regulation the data stored in the Entry/Exit System, data on issued, annulled and revoked single and double entry visas shall be regularly and automatically extracted from the Visa Information System and Entry/Exit System and transmitted to the read-only database. Since Article 13(5) of the Regulation (EU) 2017/2226 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 provide for regular reviews by the carriers of the access rights of their dedicated staff.

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 2017/2226. 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.

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(e-signed)