



Formal comments of the EDPS on the draft Commission Implementing Decision on the requirements for the means of audio and video communication for the interview pursuant to Article 27(5) Regulation (EU) 2018/1240 (ETIAS)

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.

In accordance with Article 27 of Regulation (EU) 2018/1240, the ETIAS National Unit of the Member State responsible may invite the applicant to an interview in his or her country of residence at its consulate located the nearest to the place of residence of the applicant when serious doubts remain regarding the information or documentation provided by the applicant. If this consulate is at a distance of more than 500 km, the applicant should be offered the possibility to conduct the interview by remote means of audio and video communication. If the distance is less than 500 km, the applicant and the ETIAS National Unit of the Member State responsible may jointly agree to use such means of audio and video communication as well.

Pursuant to Article 27 (5) of Regulation (EU) 2018/1240, the European Commission, by means of implementing acts, should define the requirements for the means of audio and video communication, including as regards data protection, security and confidentiality rules and adopt rules on testing and selecting suitable tools and on their operation.

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 12 of the draft Implementing Decision.

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.

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. Comments

The Annex to the draft Commission Implementing Decision lists 16 requirements for the means of audio and video communication, including on data protection, security and confidentiality rules, in line with the legislative delegation, provided for in Article 27 (5) of Regulation (EU) 2018/1240.

Regarding requirement 11 “*The tool shall be able to process personal data in compliance with Regulation (EU) 2016/679*”, the EDPS would like to highlight in particular the need for compliance with Chapter V of the GDPR on international transfers, given the fact that the communication in the context of interviews would as a rule include a cross border exchange of data. Therefore, this element should be specifically taken into account by eu-LISA when establishing the list of suitable tools to be used by the ETIAS National Units.

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(*e-signed*)