



EDPS Formal comments on the draft Commission Implementing Decision on information to third-country nationals about the processing of personal data in the Entry/Exit System

1. Introduction and background

- On 30 November 2017, the European Parliament and the Council adopted Regulation (EU) 2017/2226¹ establishing an Entry/Exit System (EES) to register electronically entry and exit data, especially 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 refusal of entry data of third-country nationals. The EES will also calculate the duration of their authorised stay. The regulation entered into force on 29 December 2017. The European Commission is required to adopt the relevant implementing acts necessary for the design and development of the EES.
- Individuals whose data are to be recorded in the EES should be informed about their rights and obligations regarding the processing of their data, pursuant to Article 50 (1) of Regulation (EU) 2017/2226, as well as Article 13 and 14 of Regulation (EU) 2016/679² ('the GDPR').
- A draft implementing decision has been prepared by the European Commission, in accordance with Article 50 of the Regulation (EU) 2017/2226, drawing up a template with information to be provided to third country nationals, in a manner to enable Member States to complete with additional specific information, including rights of the data subject and assistance by supervisory authorities. This template will be used by Member States to inform the travellers whose data are to be recorded in the EES about their rights and obligations in relation to the system. The template content will also be part of the information campaign that will accompany the start of operations of the EES and will be included on the EES public website, which is currently under development.
- Where necessary to comply with their national laws, Member States should complete the template with relevant national information. In view of providing awareness and

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 EES 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. 20–82.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

clarity towards the third-country nationals, Member States should add, in particular, information related to the consequences of being an overstayer, the rights of data subjects, the possibility of assistance by the supervisory authorities, contact details of the relevant data protection authorities and information about lodging of complaints.

- The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission of 13 January 2022 pursuant to Article 42(1) of Regulation (EU) 2018/1725.³ In this regard, the EDPS welcomes the reference to this consultation in Recital 11 of the draft Implementing Decision, and understands that the date of issuing of his present comments will be modified accordingly.
- 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) 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.

2. General Comments

- The Commission Implementing Decision deals with one of the foundations of the right of the individual to privacy and data protection, i.e. the right to be informed. Information is a prerequisite for data subjects to be able to exercise their other rights under the applicable legal acts. The EDPS considers that the template provided for in the Annex to the draft Commission Implementing Decision is appropriate to serve these objectives.
- The EDPS welcomes that the Commission has not limited itself to the wording of Article 50 of Regulation (EU) 2017/2226, but has also included the elements on the information of the data subject from the GDPR. The EDPS considers this fully in line with Regulation (EU) 2017/2226, which does not replace but complement and specify Articles 13 and 14 of the GDPR. The Commission's approach allowed for a comprehensive, clearly structured and understandable template.
- The EDPS positively notes the fact that for the most part the Commission has chosen a structure following Article 13 of the GDPR, thereby applying a well-recognized,

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 (Text with EEA relevance.), OJ L 295, 21.11.2018, p. 39–98.

tested logic. Where the Commission deviates from this model, it seems reasonable for the sake of clarity and avoidance of repetitions.

3. Specific Comments

- The EDPS notes that the information in the template, corresponding to Article 50(1)(g) of Regulation (EU) 2017/2226, i.e. regarding possible transfers of personal data stored in the EES to a third country or an international organisation, is not complete. It mentions only international transfers for the purpose of return and not for law enforcement purposes pursuant to Article 41(6) of Regulation (EU) 2017/2226. The EDPS considers it necessary to complement this part of the Annex to the draft Commission Implementing Decision accordingly and to provide explicitly information about the possibility to transfer data for certain law enforcement purposes.

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(e-signed)
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