



## **EDPS Formal comments on the draft Commission Implementing Decision on adopting measures for the application of Regulation (EU) 2018/1240 of the European Parliament and of the Council as regards accessing, amending, erasing and advance erasing of data in the ETIAS Central System and repealing Commission Implementing Decision (EU) 2021/1028**

### **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 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 ('EUDPR')<sup>1</sup>, and in particular Article 42(1) thereof,

### **HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

#### **1. Introduction and background**

1. The European Travel Information and Authorisation System (ETIAS) has been established by Regulation (EU) 2018/1240<sup>2</sup> (the ETIAS Regulation). Once operational, it will require all visa-exempt third country nationals to apply online for travel authorisation prior to the date of their departure to the Schengen area. Moreover, the ETIAS will enable the consideration by the competent authorities whether the presence of the visa exempt third-country nationals in the territory of the Member States will pose a security, illegal immigration or high epidemic risk.
2. The ETIAS Regulation empowers the European Commission to adopt a number of implementing and delegated acts in order to further define and specify various elements of the system.
3. In June 2021, the European Commission adopted Commission Implementing Decision C(2021) 3300 establishing measures for accessing, amending, erasing and advance

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

<sup>2</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, pp. 1.



erasing of data in the ETIAS Central System, on which the EDPS had issued formal comments<sup>3</sup>.

4. On 7 July 2021, the European Parliament and the Council adopted Regulations (EU) 2021/1150, (EU) 2021/1151 and (EU) 2021/1152, establishing the conditions for accessing other EU information systems for the purpose of the European Travel Information and Authorisation System. Following the adoption of those three Regulations, the Commission has drafted a new Implementing Decision repealing Commission Implementing Decision C(2021) 3300 and consulted the EDPS, which issued formal comments on 23 February 2022<sup>4</sup>. This Implementing Decision is now further refined by the draft Commission Implementing Decision on adopting measures for the application of Regulation (EU) 2018/1240 of the European Parliament and of the Council as regards accessing, amending, erasing and advance erasing of data in the ETIAS Central System and repealing Commission Implementing Decision (EU) 2021/1028 (“the draft Implementing Decision”).
5. On 17 February 2026, the European Commission consulted the EDPS on this new draft Implementing Decision.
6. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 24 of the draft Implementing Decision.
7. 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>5</sup>. 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 Implementing Decision that are relevant from a data protection perspective.

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<sup>3</sup> European Data Protection Supervisor (EDPS), Formal comments on measures for accessing, amending, erasing and advance erasing of data in the ETIAS Central System, 22 January 2021, available at [https://edps.europa.eu/data-protection/our-work/publications/comments/formal-comments-measures-accessing-amending-erasing\\_en](https://edps.europa.eu/data-protection/our-work/publications/comments/formal-comments-measures-accessing-amending-erasing_en)

<sup>4</sup> European Data Protection Supervisor (EDPS), Formal comments on the draft Commission Implementing Decision adopting measures for the application of Regulation (EU) 2018/1240 of the European Parliament and of the Council as regards accessing, amending, erasing and advance erasing of data in the ETIAS Central System and repealing Commission Implementing Decision C(2021) 3300, 23 February 2022, available at [https://www.edps.europa.eu/data-protection/our-work/publications/formal-comments/2022-02-23-measures-application-regulation-eu-20181240-european-parliament-and-council-regards-accessing-amending-erasing-and-advance-erasing\\_en](https://www.edps.europa.eu/data-protection/our-work/publications/formal-comments/2022-02-23-measures-application-regulation-eu-20181240-european-parliament-and-council-regards-accessing-amending-erasing-and-advance-erasing_en)

<sup>5</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. Comments

### 2.1. General comments

8. The EDPS welcomes the changes made to the previous draft Implementing Decision, which were the subject of EDPS formal comments issued on 23 February 2022. In particular, the EDPS welcomes the changes made in relation to

(i) the introduction of the automated deletion of the extracted data at the end of the assessment of the risks (Article 4(1)(h)); and

(ii) the procedure to follow in case of inability to access ETIAS Central System by border authorities through the Entry-Exit System.

Regarding point (ii), it is the understanding of the EDPS that the procedure described in Article 9(3)(a) and (b), which now refers to the European Search Portal (ESP) as a fall-back procedure when border authorities are unable to search ETIAS Central System through the Entry-Exit System, excludes any possibility for border authorities to access ETIAS Central System directly.

### 2.2. Specific comments

#### 2.2.1. Requests from data subjects in accordance with Article 64 of Regulation (EU) 2018/1240

9. Article 4 of Commission Implementing Decision (EU) 2021/1028 concerning ‘general software functionalities’ includes two provisions related to the implementation of Article 64 ‘*Right of access to, of rectification, of completion, of erasure of personal data and of restriction of processing*’ of the ETIAS Regulation:

- on the possibility to facilitate the retrieval of data when requested by data subjects, including templates for responding, overview of changes, justifications, etc. (Article 4 (j)), and
- on enabling users to notify a travel authorisation holder that an amended travel authorisation has been issued following a request under Article 64 Regulation (EU) 2018/1240 (Article 4(k)).

The EDPS notes that these two provisions remain unchanged in the draft Implementing Decision, save their numbering.

10. At the same time, as already noted in the EDPS formal comments from 23 February 2022, the initial Commission Implementing Decision C(2021) 3300, in the version reviewed by the EDPS, contained a dedicated provision (Article 6) further detailing the procedure to be followed by the ETIAS Central Unit or the ETIAS National Units in cases of requests from data subjects in accordance with Article 64 of the ETIAS

Regulation. However, this provision was omitted in Commission Implementing Decision (EU) 2021/1028.

11. The EDPS considers that more detailed specifications of the functionalities to facilitate the exercise data subjects requests would benefit both the data subject and the controllers. Consequently, in his formal comments of 23 February 2022, the EDPS recommended re-introducing Article 6 in the Implementing Decision (EU) 2021/1028 of 11 February 2022. This suggestion was, however, not followed.
12. The EDPS takes this opportunity to reiterate his previous comments and invites the Commission to provide for, in the amended Implementing Decision, more detailed specifications of the software functionalities related to requests from data subjects requests in accordance with Article 64 Regulation (EU) 2018/1240, similar to the provision of Article 6 of the initial Commission Implementing Decision C(2021) 3300.

### **2.2.2. Automatic deletion of files for extraction**

13. The EDPS welcomes that Article 4(1)(h) of the draft Implementing Decision provides for the software to automatically delete the file for extraction referred to in Article 5(1) point (g)(i), after a decision has been taken on whether to issue or refuse a travel authorisation following the assessment of risks.
14. The EDPS notes that the automatic deletion is limited to the file for extraction referred to in Article 5(1) point (g)(i). However, points (ii) to (iv) of Article 5(1)(g) also provide for functionalities making available files for extraction in order to support the assessment of risks. As those files for extraction would also, presumably, only be required for a limited period of time during the manual processing, it would seem appropriate to extend the automatic deletion also to the files for extraction described in points (ii) to (iv) of Article 5(1)(g). The EDPS therefore recommends extending the automatic deletion also to the files for extraction described in points (ii) to (iv) of Article 5(1)(g).

Brussels, 17 March 2026

*(e-signed)*  
Wojciech Rafał WIEWIÓROWSKI