



## **Formal comments of the EDPS on the draft Commission Delegated Decision specifying the content and format of the predetermined list of options to be used for the purpose of requesting additional information or documentation pursuant to Article 27(3) of Regulation (EU) 2018/1240 of the European Parliament and of the Council**

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

The European Travel Information and Authorisation System (ETIAS) has been established by Regulation (EU) 2018/1240<sup>1</sup> 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(1) of the ETIAS Regulation, where the ETIAS National Unit of the Member State responsible deems the information provided by the applicant in the application form to be insufficient to enable it to decide whether to issue or refuse a travel authorisation, it may request additional information or documentation from the applicant.

Pursuant to Article 27(3) of the ETIAS Regulation, for the purpose of requesting additional information or documentation as referred to in Article 27(1), the ETIAS National Unit of the Member State responsible shall use a predetermined list of options.

Pursuant to Article 27(3) of Regulation (EU) 2018/1240, the Commission is delegated the task of laying down the content and format of the predetermined list of options.

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission of 27 May April 2021, pursuant to Article 42(1) of Regulation 2018/1725<sup>2</sup>. In this regard, the EDPS welcomes the reference to this consultation in Recital 13 of the draft Delegated Decision.

The EDPS wishes to stress that 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.

### **2. Comments**

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<sup>1</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, p. 1–71.

<sup>2</sup> 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 (EU) 2018/1725).

## **2.1. Operative provisions on rules to protect the applicant's personal data and to safeguard access to those data by authorised authorities**

The EDPS positively notes that according to Recital 6, one of the objectives of the Commission Delegated Decision is to establish adequate rules to protect the applicant's personal data and to safeguard access to those data by authorised authorities. However, the draft Delegated Decision lacks provisions specifying such rules. The EDPS invites the Commission to introduce the corresponding operative provisions, which should not only address the processing of information and documents submitted electronically, but also those cases where, following a request for additional information, the applicant submits original paper documents.

## **2.2. Possibility to submit any information or documentation that the applicant deems necessary**

The EDPS notes that, according to point 1 of the Annex accompanying the draft Delegated Decision, “[t]he content of the predetermined list of options for requesting additional information or documentation referred to in Article 2 of this Decision **shall indicate to the applicant the possibility to submit any information or documentation that the applicant deems necessary to submit** in relation to his or her application following the reception of a request for additional information or documentation.” (emphasis added). While the EDPS welcomes the possibility granted to the applicant to submit additional information or documentation (besides the one indicated by the ETIAS National Unit on the basis of the predetermined list), he recommends clarifying how this requirement will be implemented in practice.

## **2.3. Content of the predetermined list of options**

Finally, with regard to the content of the predetermined list of options for requesting additional information, the EDPS notes that it may include among others, “proof of having visited family, including the name(s), surname(s) and residence of the family member(s)”<sup>3</sup> as well as “proof of having visited friend (s), including the name(s), surname(s) and residence of the friend(s)”<sup>4</sup>. It is not clear from the text what kind of proof is expected and, consequently, what information or documentation the applicant would have to provide. Therefore, in order to ensure sufficient legal certainty and transparency, the EDPS recommends clarifying this aspect as well.

Brussels, 18 June 2021

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(*e-signed*)

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<sup>3</sup> Cfr. point 2(w) of the Annex accompanying the draft Delegated Decision.

<sup>4</sup> Cfr. point 2(x) of the Annex accompanying the draft Delegated Decision.