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FRONT 68
VISA 31
IXIM 34
DATAPROTECT 40
DELECT 28
COMIX 79

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 February 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2022) 844 final
Subject:	COMMISSION DELEGATED DECISION (EU) .../... of 16.2.2022 specifying the content and format of the predetermined list of options to be used to request additional information or documentation pursuant to Article 27(3) of Regulation (EU) 2018/1240 of the European Parliament and of the Council

Delegations will find attached document C(2022) 844 final.

Encl.: C(2022) 844 final



Brussels, 16.2.2022
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COMMISSION DELEGATED DECISION (EU) .../...

of 16.2.2022

specifying the content and format of the predetermined list of options to be used to request additional information or documentation pursuant to Article 27(3) of Regulation (EU) 2018/1240 of the European Parliament and of the Council

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

In September 2018, the European Parliament and the Council adopted Regulation (EU) 2018/1240 (hereinafter ‘the Regulation’), establishing the European Travel Information and Authorisation System (ETIAS)¹.

Under Article 27(3) of the Regulation, the Commission is required to adopt delegated acts laying down the content and format of a list of options that the ETIAS National Unit of the Member State responsible for an application for travel authorisation will have to use to request additional information and documentation from applicants.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

An expert group was established to develop the above-mentioned delegated act. All Member States were given the opportunity to nominate experts for the Expert Group on Information Systems for Borders and Security, in accordance with Article 89(4) of Regulation (EU) 2018/1240 and the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. As a result, this Commission Decision was developed based on input given by experts of the Member States as part of the above-mentioned expert group. This group was consulted for the first time on 11 July 2019. The experts were also given the opportunity to provide the Commission with written comments. A final version of this Decision, based on the feedback received on multiple occasions, was presented to the Member States on 27 November 2020 and on 7 December 2020, with the draft considered final by the experts and by the Commission.

In addition, the European Border and Coast Guard Agency, within which the ETIAS Central Unit will be established, was consulted.

Furthermore, the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice advised the Commission on the technical needs and feasibility of the measure proposed.

The European Data Protection Supervisor was also consulted before adoption to ensure that data protection provisions were respected.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Under Article 27 of the Regulation, when ETIAS National Units manually process applications for travel authorisation, the ETIAS National Unit of the Member State responsible may request applicants to submit additional information or documentation where the information provided by them in the application form is deemed insufficient to decide on the travel authorisation.

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).

In accordance with Article 27(3) of the Regulation, when requesting additional information or documentation, the ETIAS National Unit of the Member State responsible should use a predetermined list of options. To this end, the Commission is to adopt a delegated act in order to lay down the content and format of that predetermined list of options.

The draft Decision conforms to the principle of proportionality. To request additional information and documentation, the ETIAS National Unit of the Member State responsible will only be able to request the additional information or documentation necessary as per the list of options established in this draft Decision, and only as far as it raises doubts about the information provided in the application form. In addition, this draft Decision establishes the possibility to submit any information or documentation that applicants themselves deem necessary in relation to their application following a request for additional information or documentation from an ETIAS National Unit. Moreover, the draft Decision establishes adequate rules to protect applicants' personal data and to safeguard access to data by authorised authorities.

COMMISSION DELEGATED DECISION (EU) .../...

of 16.2.2022

specifying the content and format of the predetermined list of options to be used to request additional information or documentation pursuant to Article 27(3) of Regulation (EU) 2018/1240 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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) 2017/2226², and in particular Article 27(3) thereof,

Whereas:

- (1) Regulation (EU) 2018/1240 establishes the European Travel Information and Authorisation System (ETIAS) for third-country nationals exempt from the requirement to be in the possession of a visa for the purposes of entering and staying in the territory of the Member States.
- (2) In order for the ETIAS National Unit of the Member State responsible to decide on applications that trigger hits, or for the ETIAS National Unit of the Member State to which the third country national intends to travel to decide on limited territorial validity applications, the information provided in application forms should be complete and accurate. If the information is deemed insufficient to enable the ETIAS National Unit to decide, it should be able to request more information or documentation necessary from applicants by using a list of options.
- (3) It is necessary to lay down the predetermined list of options available to the ETIAS National Units when requesting additional information or documentation from applicants according to Article 27(3) or Article 44(3) of Regulation (EU) 2018/1240. The list should be generic, listing the information and documentation that can be requested, while also allowing applicants to submit information or documentation that they themselves consider necessary.
- (4) Applicants should have clear indications of the information or documentation that they are being requested to provide. The technical implementation of the predetermined list of options should thus allow ETIAS National Units to include a description to the option(s) selected. The technical implementation of the predetermined list of options should also, by default, indicate to applicants the possibility for them to submit any information or documentation that they deem necessary in relation to their application.

² OJ L 236, 19.9.2018, p. 1.

- (5) The information or documentation submitted by applicants within the legal deadlines should enable the ETIAS National Unit of the Member State responsible to decide on the applications. However, not providing requested additional information or documentation should not lead to the travel applications being refused automatically.
- (6) It is also necessary to establish adequate rules to protect applicants' personal data and to safeguard access to such data by authorised authorities, pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council³.
- (7) This Decision is without prejudice to the application of Directive 2004/38/EC⁴.
- (8) Given that Regulation (EU) 2018/1240 builds upon the Schengen *acquis*, in accordance with Article 4 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark notified the implementation of Regulation (EU) 2018/1240 in its national law. Denmark is therefore bound by this Decision.
- (9) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part⁵; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (10) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁶, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC⁷.
- (11) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁸, which fall within the area referred to in Article 1, point A of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC⁹.

³ 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) (OJ L 119, 4.5.2016, p. 1).

⁴ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

⁵ This Decision falls outside the scope of the measures provided for in Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁶ OJ L 176, 10.7.1999, p. 36.

⁷ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

⁸ OJ L 53, 27.2.2008, p. 52.

⁹ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss

- (12) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹⁰ which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹¹.
- (13) This Decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.
- (14) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹² and delivered an opinion on 21 June 2021,

HAS ADOPTED THIS DECISION:

Article 1
Subject matter

This Decision establishes the content and format of the predetermined list of options to be used by the ETIAS National Units to request additional information or documentation pursuant to Article 27(3) and Article 44(3) of Regulation (EU) 2018/1240.

Article 2
Content of the predetermined list of options for requesting additional information or documentation

1. The content of the predetermined list of options to be used by the ETIAS National Units to request additional information or documentation is set out in the Annex.
2. eu-LISA shall, as part of the technical development of the ETIAS Information System, include the possibility for the ETIAS National Units to add a description to the option(s) selected pursuant to paragraph 1.

Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

¹⁰ OJ L 160, 18.6.2011, p. 21.

¹¹ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

¹² 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 L 295, 21.11.2018, p. 39).

3. The content of the predetermined list of options for requesting additional information or documentation shall indicate to applicants the possibility to submit any information or documentation that they deem necessary in relation to their application following a request for additional information or documentation.

Article 3

Format of the predetermined list of options for requesting additional information or documentation

The format of the predetermined list of options to be used by the ETIAS National Units to request additional information or documentation shall be a list allowing one or more entries to be selected.

Article 4

Data to be provided to applicants together with the request for additional information or documentation related to overstays reported in the Entry/Exit System

1. Where the ETIAS National Units request additional information from applicants to explain their past overstay(s) in the territory of Member State(s), they shall make the data referred to in Article 16(3), points (a) and (b) of Regulation (EU) 2017/2226 of the European Parliament and of the Council¹³ available to applicants via the secure account service established by Article 6(2), point (g), of Regulation (EU) 2018/1240.
2. For the purpose of paragraph 1, the duly authorised staff of the ETIAS National Units shall have direct access to and may consult the data referred to in that paragraph, in a read-only format in the Entry/Exit System. The consulted data shall not be recorded in the application file.
3. The data from the Entry/Exit System shall be available only during the period when applicants can submit additional information or documentation pursuant to Article 27(3) of Regulation (EU) 2018/1240.
4. After the ETIAS National Unit has taken the decision on the application, the data from the Entry/Exit System shall be deleted from the secure account service.

¹³ 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).

Article 5
Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 16.2.2022

For the Commission
The President
Ursula VON DER LEYEN