DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2022/1620

of 19 September 2022

laying down model contingency measures for cases of technical impossibility to access data at the external borders, including fall-back procedures to be followed by border authorities pursuant to Article 48(4) of Regulation (EU) 2018/1240 of the European Parliament and 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) 2017/2226 ([1]), and in particular Article 48(4) 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) Pursuant to Article 47(1) of Regulation (EU) 2018/1240, border authorities competent for carrying out border checks at external border crossing points in accordance with Regulation (EU) 2016/399 of the European Parliament and of the Council ([2]) have the obligation to consult the ETIAS Central System using the data contained in the machine-readable zone of the travel document. There may be circumstances on account of a technical failure occurring within any part of the ETIAS Information System or on account of a failure of the national border infrastructure in a Member State in which a border authority may not be able to proceed with the consultation referred to in Article 47(1) of the Regulation (EU) 2018/1240.

(3) The purpose of this Decision is to lay down model contingency measures, including fall-back procedures to be followed by border authorities at the external borders in circumstances where a border authority may not be able to proceed with such consultation of the ETIAS Central System.

(4) The model contingency measures are aimed to be used both as guidelines and as a basis, adjusted as necessary, for the development and adoption by Member States of their national contingency plans for the cases where a border authority would not be able to proceed with the consultation of the ETIAS Central System while carrying out border checks at external border crossing points in accordance with Regulation (EU) 2016/399.

([1]) OJ L 236, 19.9.2018, p. 1.

([2]) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 077 23.3.2016, p. 1).

(5) The border authorities should have the possibility to derogate temporarily, in case of a technical failure, from the obligation to consult the ETIAS Central System, and to verify the status of the travel authorisations via the verification tool referred to in Article 31 of Regulation (EU) 2018/1240. Moreover, it is necessary to lay down the content of the notifications by border authorities for the case of technical impossibility to proceed with the consultation of the ETIAS Central System on account of a failure of the national border infrastructure in a Member State.

(6) 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.

(7) This Decision falls outside the scope of the measures provided for in Council Decision 2002/192/EC ([3]). It constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(8) 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* ([4]), which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC ([5]).

(9) 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* ([6]), 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/EC ([7]).

(10) 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* ([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 2011/350/EU ([9]).

(11) As regards Cyprus, Bulgaria and Romania and Croatia, 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.

([3]) 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).

([4]) OJ L 176, 10.7.1999, p. 36.

([5]) 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).

([6]) OJ L 53, 27.2.2008, p. 52.

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

([8]) OJ L 160, 18.6.2011, p. 21.

([9]) 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) 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 Council [10] and delivered an opinion on 18 February 2022.

(13) The measures provided for in this Decision are in accordance with the opinion of the Smart Borders Committee (ETIAS),

HAS ADOPTED THIS DECISION:

Article 1

Model contingency measures including fall-back procedures for the cases of technical impossibility to access data at the external borders

1. Where it is technically impossible to proceed with the consultation or the search referred to in Article 48(1) and (2) of Regulation (EU) 2018/1240, border authorities may:

(a) request third-country nationals to provide the status of their travel authorisation (valid, refused, annulled or revoked) and the period of validity; to that end, border authorities may establish an internet connection or give access to equipment installed at border crossing points for third-country nationals to connect to the verification tool referred to in Commission Delegated Decision (EU) 2019/970 [11];

(b) store information related to entries locally, such as identity data or travel document data, for the purpose of enabling subsequent verification of the status of the travel authorisation of third-country nationals who entered during the period of technical impossibility; Border authorities may only store this information for the period of the technical impossibility and the subsequent verification; or

(c) be temporarily released of their obligation to consult the ETIAS Central System.

2. The notifications provided for in Article 48(1) and (2) of Regulation (EU) 2018/1240 shall take place without delay through communication channels shared by the border authorities, the ETIAS National Units and the ETIAS Central Unit.

3. The notifications provided for in Article 48(2) of Regulation (EU) 2018/1240, to be communicated by the border authorities to the ETIAS Central Unit and their respective ETIAS National Unit shall contain the following information:

(a) the border crossing point(s) affected by the failure and the authority unable to perform the consultation; and

(b) the date and time when the failure occurred;

(c) where possible, the description of the failure and the response time for resolution.

The ETIAS Central Unit shall, when informing eu-LISA and the Commission, in accordance with Article 48(2) of Regulation (EU) 2018/1240, provide the same information as received from the border authorities.

Article 2

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*.

[10] 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).

[11] Commission Delegated Decision (EU) 2019/970 of 22 February 2019 on the tool for applicants to check the status of their applications and to check the period of validity and status of their travel authorisations pursuant to article 31 of Regulation (EU) 2018/1240 of the European Parlaiment and the Council (OJL 156, 13.6.2019, p. 15).

Done at Brussels, 19 September 2022.

For the Commission
The President
Ursula VON DER LEYEN