COMMISSION DELEGATED DECISION (EU) 2022/1612

of 16 February 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) 2017/2226 ([1]), 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.

(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 Council ([2]).

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

([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) (OJ L 119, 4.5.2016, p. 1).

(7) This Decision is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council ([3]).

(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 part ([4]); 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* ([5]), which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC ([6]).

(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* ([7]), 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 ([8]).

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

(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.

([3]) 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).

([4]) 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).

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

([6]) 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).

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

([8]) 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).

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

([10]) 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).

(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 Council [11] 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.

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 Council [12] available to applicants via the secure account service established by Article 6(2), point (g), of Regulation (EU) 2018/1240.

[11] 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).

[12] 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).

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.

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 February 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

referred to in Article 2

The content of the predetermined list of options to request additional information or documentation from the applicants:

(1) applicant's travel document(s) (possibility to request the entire document or its biographical page; page(s) with issued, refused, revoked or annulled visa(s); pages with entry/exit stamps; possibility to request previous travel document and travel documents linked to another nationality);

(2) proof of loss or theft of the travel document;

(3) travel document of the applicant's legal guardian, if any (possibility to request the entire document or its biographical page);

(4) document(s) proving the applicant's identity, other than the travel document (e.g. driver's licence, birth certificate);

(5) applicant's permanent residence document(s) or document(s) attesting to citizenship;

(6) reason(s) for not providing a home address in the application form;

(7) documents attesting to the applicant's residence at declared address;

(8) documents attesting to the official registration of a firm or organisation (when application was submitted by a third party on behalf of an applicant);

(9) document(s) containing the postal address at which the applicant can be reached (e.g. identity card, resident card or driver's licence);

(10) document(s) concerning the validity of or cancellation of a Schengen Information System refusal of entry and stay issued to the applicant;

(11) proof of sufficient means of subsistence for the duration of the intended stay by the applicant;

(12) proof of accommodation for the duration of the intended stay and host contact information;

(13) judicial invitation(s), court order/judgment(s), police certificate(s);

(14) letters/emails exchanged with Member State or third country administration(s);

(15) documentation related to declared conviction(s);

(16) extract(s) from relevant national criminal register(s);

(17) documentation related to employers' or organisations' request(s) to travel to or be present in a given country or given conflict or war zone in the given period of time;

(18) documentation related to declared orders to leave the territory or to declared return decisions;

(19) proof of administrative error(s);

(20) hospital invoice(s) or other documents proving a hospital stay;

(21) return ticket(s) for the upcoming stay, including proof of payment;

(22) proof of family connections in the Member States;

(23) proof of having visited family, including the name(s), surname(s) and residence of the family member(s);

(24) proof of having visited friend(s), including the name(s), surname(s) and residence of the friend(s);

(25) tickets (events, exhibitions, concerts);

(26) work contract(s)/agreement(s) or comparable;

(27) boarding passes/ticket(s);

(28) health certificate(s);

(29) vaccination certificate(s);

(30) documents proving an applicant's current occupation (for applicants that indicated 'employed' on their application form as laid down in the Commission Delegated Regulation on the predetermined list of job groups used in the application form);

(31) documents with the applicant's employer and where applicable, contact information and references from the employer (for applicants that indicated 'employed' on their application form as laid down in the Commission Delegated Regulation on the predetermined list of job groups used in the application form);

(32) name of the educational establishment (for applicants that indicated 'student' on their application form as laid down in the Commission Delegated Regulation on the predetermined list of job groups used in the application form);

(33) attestation of registration with the educational establishment (for applicants that indicated 'student' on their application form as laid down in the Commission Delegated Regulation on the predetermined list of job groups used in the application form);

(34) diplomas/certificates (for applicants that indicated 'student' on their application form as laid down in the Commission Delegated Regulation on the predetermined list of job groups used in the application form);

(35) proof of payment of tuition fees (for applicants that indicated 'student' on their application form as laid down in the Commission Delegated Regulation on the predetermined list of job groups used in the application form);

(36) request for additional information to explain past overstay(s) in the territory of Member State(s), including the purpose of travel when the overstay occurred, reasons for the overstay, exact address(es) during the overstay(s) and phone number related to the address(es) stayed at during the overstay;

(37) request for additional information explaining past refusal(s) of visa;

(38) request for additional information explaining past refusal(s) of travel authorisation;

(39) request for additional information explaining past revocation(s) of visa;

(40) request for additional information explaining past revocation(s) of travel authorisation;

(41) request for additional information explaining past annulment(s) of visa;

(42) request for additional information explaining past annulment(s) of travel authorisation;

(43) request for additional information or documentation explaining the request for travel authorisation with limited territorial validity based on humanitarian grounds;

(44) request for additional information or documentation explaining the request for travel authorisation with limited territorial validity based on international obligations.