Brussels, 10 April 2017

Mr Dimitris Avramopoulos
Commissioner
Migration, Home Affairs and Citizenship
B-1049 Brussels

Subject: Letter on proposal for establishing a European Travel Information and Authorisation System (ETIAS)

Dear Mr Avramopoulos,

In November 2016 the Commission presented a proposal on establishing a European Travel Information and Authorisation System (ETIAS)[1]. The proposal is a follow-up to the Communication on Stronger and Smarter Borders[2] published in April 2016 and constitutes one more piece in a series of documents and measures aimed at the enhancement of both the external border management and the internal security in the European Union. It accompanies the prior proposal for the creation of an Entry/Exit system (EES)[3], in particular.

Having taken note of the ETIAS proposal, the European data protection authorities assembled in the Article 29 Working Party (hereafter "the WP29") would like to confirm once more their dedication to European values and principles and, in particular, to the necessity of ensuring an appropriate balance between public security requirements and the right to the protection of private life and of personal data.

As stated before by the WP29 in several opinions[4], any new legislative proposal must be compliant with fundamental rights in general and with the right to data protection and the right to privacy in particular, as enshrined in Article 7 and 8 of the Charter of Fundamental Rights of the European Union and in Article 8 of the European Convention on Human Rights.

The ETIAS proposal includes the recording and processing of the applicants data in a central system, automated checks against several other data bases during the authorization procedure,

[1] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU), COM(2016), 731 final.
[2] Communication on Stronger and Smarter Information Systems for Borders and Security, COM(2016) 205 final.
[3] Proposal for a regulation of the European Parliament and of the Council 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 of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011, COM(2016) 194 final.
[4] Inter alia opinion WP 145 on the use of Passenger Name Record (PNR) for law enforcement purposes, WP78 on the global approach to transfers of Passenger Name Record (PNR) data to third countries, WP 206 on Smart Borders, WP 211 on the application of necessity and proportionality concepts and data protection within the law enforcement sector

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental rights and rule of law) of the European Commission, Directorate General Justice and Consumers, B-1049 Brussels, Belgium, Office No MO59 05/35

Website: http://ec.europa.eu/justice/data-protection/index_en.htm

more automated checks during the retention period and access for law enforcement purposes. Such interferences with the fundamental rights to privacy and the protection of personal data have to be justified by legitimate goals of general interest within the EU and they have to be necessary and proportionate – as well in the context of other existing major data bases. In this regard, the WP 29 regrets, that the proposal is not accompanied by a data protection impact assessment, which would allow for a full and proper assessment of the necessity and the proportionality of the ETIAS. The feasibility study that was conducted does not consider the different options.

Notwithstanding the legitimate need for enhancing border management on the one hand and enhancing internal security on the other, the ETIAS proposal in general and in details raises serious doubts as to its necessity and proportionality. The WP 29 states its concerns in the appendix to this letter.

We remain at your disposal for any questions or clarifications you may require on these subjects.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN
Chairwoman

A letter in identical terms is being forwarded to Mr Moraes Chairman of the LIBE Committee of the European Parliament and to Ms Marlene Bonnici Ambassador Extraordinary and Plenipotentiary Permanent Representative of the Maltese Presidency of the Council of the EU.