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European Travel Information and Authorisation System (ETIAS)

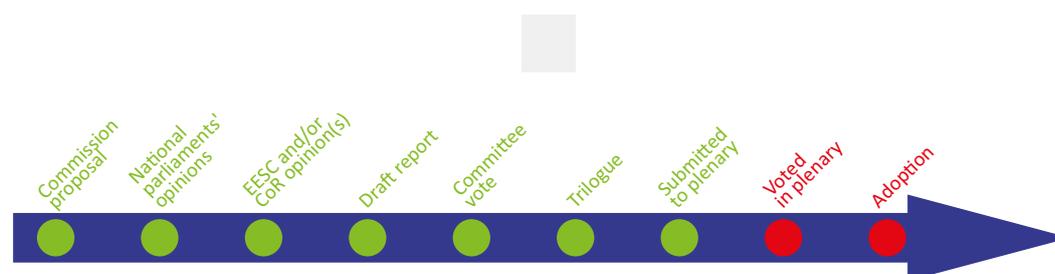
Strengthening the EU's external borders is key to ensuring internal security and to preserving freedom of movement in the Schengen area. While the existing border management information systems do address some of the information gaps concerning non-EU citizens coming into the EU, there is a lack of information related to visa-exempt third-country nationals arriving at the Schengen external borders.

The European Commission is therefore proposing to set up an automated system that would gather information on visa-exempt travellers prior to their arrival, in order to determine any irregular migration, security or public-health risks associated with them. The proposal follows similar models already existing in the USA, Canada and Australia, among others. With agreement reached in April 2018 in trilogue negotiations, this now needs to be formally adopted by Parliament and Council.

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) 2016/1624

COM(2016) 731, 16.11.2016, 2016/0357A(COD) and 2016/0357B(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

Committee responsible:	Civil Liberties, Justice and Home Affairs (LIBE)
Rapporteur:	Kinga Gál (EPP, Hungary)
Shadow rapporteurs:	Sylvie Guillaume (S&D, France) Helga Stevens (ECR, Belgium) Gérard Deprez (ALDE, Belgium) Marie-Christine Vergiat (GUE/NGL, France) Jan Philipp Albrecht (Greens/EFA, Germany) Lorenzo Fontana (ENF, Italy)
Next steps expected:	First-reading vote in plenary



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The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.



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Introduction

The effectiveness of external border management is a precondition for ensuring a high level of internal security and free movement of persons in the Schengen area. Achieving these goals has been a big challenge for the EU in recent years, due to the migration and refugee flows affecting Europe and the wave of terrorist attacks committed on European territory. As a first response to tackling this challenge, the European Commission adopted the [European agenda on migration](#) and the [European agenda on security](#), both directed towards further synergies and deeper cooperation among Member States, to secure borders and ensure better migration management.

Building on both agendas, in April 2016 the Commission adopted a [communication](#) on stronger and smarter information systems for borders and security, in order to address gaps in the existing information systems and thereby enhance both external border management and internal security. One such gap concerns the lack of information about a specific category of travellers arriving in the Schengen area: third-country nationals who are [exempt](#) from holding a visa. In this connection, the Commission committed itself to assessing whether a new system to address the issue is necessary, feasible and proportional.

In its September 2016 [communication](#) on enhancing security in a world of mobility, the Commission reiterated that visa liberalisation has proved an important tool in building partnerships with third countries, including in terms of return and readmission, and in increasing the EU's attractiveness for business and tourism. However, it also stated the need to strike the right balance between 'ensuring mobility and enhancing security, while facilitating legal entry into the Schengen area without the need for [a] visa'. In this context, in his [State of the Union](#) address of September 2016, European Commission President Jean-Claude Juncker announced that the Commission would propose an EU system for visa-exempt third-country nationals who cross the EU's external borders. The establishment of a European Travel Information and Authorisation System (ETIAS) constitutes one of the first priorities for action identified in the [Bratislava roadmap](#) agreed by the 27 Member States (without the United Kingdom) in September 2016, as well as in the Commission work programmes for the years 2017 and 2018.

Context

According to [Regulation \(EC\) No 539/2001](#), the exemption of third-country nationals from the visa requirement is done on the basis of a case-by-case assessment of various criteria. These relate, among others, to illegal immigration, public policy and security, economic benefit, especially in terms of tourism and foreign trade; and the EU's external relations with relevant third countries, including from the point of view of human rights, fundamental freedoms, regional coherence and reciprocity. Currently, nationals of around 60 countries worldwide do not need a visa to enter the EU. According to a 2014 Commission [study](#) on smart borders, the number of visa-exempt third-country nationals who travel to Schengen countries is expected to increase by more than 30 %, from 30 million in 2014 to 39 million in 2020, as more and more visa liberalisation dialogues between the EU and third countries commence.

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In 2016, around 388 000 non-EU citizens were refused entry at the external borders of the EU-28. The largest number of refusals were recorded at the external land borders (84 %), followed by refusals at air borders (13 %), while 3 % of non-EU citizens were refused entry at sea borders. Almost 75 % of refusals were due to a non-valid travel document or non-valid visa or residence permit. The number of refusals at the EU external borders increased in 2017 to almost 440 000.

Existing situation

Currently, visa-obliged and visa-exempt travellers are subject to border controls when entering the Schengen area. According to [Regulation \(EU\) 2016/399](#) (the 'Schengen Borders Code'), both categories of travellers need to comply with the conditions for short-term stay, which include not being a threat to public order and security, holding valid travel documents (including by checking against Interpol's stolen and lost documents database ([SLTD](#))), justifying the purpose and conditions of the intended stay, not being the subject of any alert in the Schengen Information System ([SIS](#)) for the purpose of refusing entry, and having sufficient means of subsistence. However, unlike the advance transfer of detailed information required for the visa application procedure of visa-obliged travellers, no such advance information is required about visa-exempt nationals arriving at the Schengen external borders. This means that border guards need to make a decision on allowing or refusing access to the Schengen area without prior knowledge regarding any security, migration or public-health risks associated with persons not requiring a visa.

This is particularly true for visa-exempt travellers arriving by land, as the only source of information about them is their travel document presented at the external border. As regards passengers arriving by air or sea, [Council Directive 2004/82/EC](#) obliges carriers to communicate all passenger data, known as 'advance passenger information' (API), ahead of inbound flights to the EU, including name, date of birth, passport number and nationality. Additionally, Directive (EU) 2016/681 on the use of passenger name record data (the '[PNR](#) Directive') obliges airlines to hand EU countries their passengers' data, which include different types of information, such as travel dates, travel itinerary, ticket information, contact details, baggage information and payment information.

For the purposes of combatting serious crime and terrorism, law enforcement authorities can obtain information on visa holders from the visa information system ([VIS](#)). For visa-exempt travellers, this is only possible if they arrive by air, as, according to the PNR Directive, data on such travellers are transferred to the Member States' law enforcement authorities to process for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime. However, for visa-exempt passengers arriving on foot or by car, bus or train, no such comparable information exists prior to their arrival.

Entry/exit system

On 6 April 2016, the Commission presented a proposal to establish a new system for registering the [entry and exit](#) of non-EU nationals (including from visa-exempt third countries) crossing the external borders of the Member States. Manual stamping of passports at border checks would be replaced by registration in a database, and travellers would have their data verified, their picture or fingerprint taken and a set of questions asked. The proposal was adopted by the co-legislators in autumn 2017 and the system is expected to become operational by 2020.

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Comparative elements

Similar systems, also valid for EU citizens, are in place in countries such as the USA, Canada and Australia. The US electronic system for travel authorisation ([ESTA](#)), launched in 2009, is used for determining the eligibility of visa-exempt non-US nationals to travel to the United States for business or tourism for stays of up to 90 days ([Visa Waiver Program](#)). ESTA applicants must provide extensive biographical information, including their name, date and place of birth, current residence, additional countries of citizenship, passport information, employment information, travel itinerary, and US point of contact, among others. An approved ESTA authorises a traveller to board a carrier but it does not guarantee his or her admission to the United States. The authorisation is valid for two years or until the passport expires, whichever comes first. Since ESTA's inception, more than [90 million](#) ESTA applications have been approved, and more than 5 900 rejected as a result of national security concerns. During that seven-year period, more than 165 000 ESTA applications were denied to individuals who applied for an ESTA using a passport that had been reported as lost or stolen.

Established in 1996, the Australian electronic travel authority ([ETA](#)) is an authorisation to travel to and enter Australia for short-term tourism or business trips not exceeding three months. ETA is a visa replacement, designated only for specified countries and regions, and is valid for 12 months or until the expiry date of the passport, whichever is earlier. All ETA holders must be free from tuberculosis and must not have any criminal convictions for which the sentence or sentences (whether served or not) total 12 months or more.

In 2016, Canada introduced a mandatory electronic travel authorisation ([eTA](#)) for visa-exempt foreign nationals (except for US citizens and travellers with a valid Canadian visa), who travel to or transit through Canada by air. The system allows to pre-screen passengers by asking them to provide information such as passport details, personal details, occupation, responses to background questions (to assess whether there are health, criminality or immigration-related concerns) and contact details. Applicants may be refused entry on [grounds](#) of security, human or international rights violations, serious crime and health, among others. The authorisation is valid for five years or until the applicant's passport expires.

Parliament's starting position

On 10 March 2009, the European Parliament adopted a [resolution](#) on the next steps in border management in the EU and on similar experiences in third countries. The resolution referred to a 2008 [communication](#) on the same topic (COM(2008) 69 final), in which the Commission stated its intention to 'examine the possibility of introducing an electronic system of travel authorisation at EU level' for the first time. The communication envisaged putting such a system in place for 'third-country nationals not subject to the visa requirement who would be requested to make an electronic application supplying, in advance of travelling, data identifying the traveller and specifying the passport and travel details'. In its resolution, the Parliament acknowledged that security measures must focus on all third-country nationals. However, it asked for a thorough explanation of the rationale for creating such a system and expressed its conviction that 'close cooperation between intelligence services in particular is the right way forward, rather than a massive collection of data in general'.

As regards the EU's external border management policy in general, in its [resolution](#) of 2013 Parliament stressed that new IT systems in the area of migration and border management should be analysed carefully,



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especially in the light of the principles of necessity and proportionality. In its [resolution](#) of 6 July 2016 on the strategic priorities for the Commission 2017 work programme, the Parliament called on the Commission to present proposals to improve and develop existing information systems, address information gaps and move towards interoperability.

Council & European Council starting position

A Slovak Presidency [discussion paper](#) of May 2016 states that several Member States have acknowledged the possible added value of ETIAS. At the same time, they have called for an assessment of such a system by taking into account existing developments on other systems and the experience of third countries already using a system similar to ETIAS.

In its [conclusions](#) of October 2016, the European Council invited the Commission to put forward the proposal for setting up ETIAS 'to allow for advance security checks on visa-exempt travellers and deny them entry where necessary'. After the Commission presented the proposal, the Justice and Home Affairs Council, at its November 2016 [meeting](#), considered the proposed system 'an appropriate tool for closing the information gap on visa exempt visitors' and expressed satisfaction that the EU 'can also draw on the positive experiences in the United States and Canada'.

In its [conclusions](#) of December 2016, the European Council called on the European Parliament and the Council of the EU to agree on ETIAS by the end of 2017 and thereby ensure that visa-exempt travellers will be screened systematically.



Proposal

Preparation of the proposal

Following the Commission's above-mentioned 2008 communication, in which it stated that it would examine the introduction of an electronic system for travel authorisation, it commissioned a [study](#) in this regard. The study assessed the feasibility of introducing the system at the EU level, based on an analysis of several options and concluded that, at that time, the conditions were not met for justifying such a system.

Five years later, the Commission published a new [feasibility study](#) on ETIAS, conducted between June and October 2016. The study takes into account certain technical, legal and political developments that had taken place at the EU level since the conclusion of the 2011 study, and forms the basis of the ETIAS proposal. It describes solutions that would address the lack of travel information for visa-exempt travellers and, at the same time, would minimise the negative impacts on travellers, carriers, border guards and Member States' administrations.

The Commission discussed further the main elements of this proposal in the framework of the [high-level expert group](#) on interoperability, established following the communication on stronger and smarter borders of April 2016. Experts commented on whether and why ETIAS was needed, what the implications of such a system would be and whether the system would increase effectiveness at the borders.

In preparing the proposal, the Commission also consulted representatives of the air, sea and rail carriers, as well as the [Fundamental Rights Agency](#).

The changes the proposal would bring

According to the Commission's [proposal](#), put forward on 16 November 2016, ETIAS will be an automated online system for identifying any irregular migration, security or public-health risk associated with visa-exempt third-country nationals travelling to the EU. The system will also apply to family members of EU citizens and of nationals of a third country enjoying the right to free movement, who do not hold a residence card.

ETIAS structure

ETIAS will consist of an information system, a central unit and national units. The **information system** will be designed for processing applications and will be interoperable with other security databases that ETIAS will consult. It will be managed by the European Agency for the operational management of large-scale information systems in the area of freedom, security and justice ([eu-LISA](#)). The **central unit** will be part of the [European Border and Coast Guard](#) (EBCG) and will ensure that the data stored in the application files and the data recorded in ETIAS are correct and up to date. Where necessary, it will also verify travel authorisation applications whenever there are doubts regarding the identity of an applicant in cases where the latter's data produced a match (a 'hit') against the stored data during automated processing. The **national units** will be responsible for making the risk assessment and deciding on travel authorisation for applications rejected by the automated application process. They will also issue opinions when consulted



by other national units, and act as a national access point for requests for access to the ETIAS data for law enforcement purposes related to terrorist and other serious criminal offences.

Online application

Prior to travelling to the Schengen area, applicants will have to fill in an online application by providing their biographical and passport data, contact details, information on intended travel, and answers to background questions relating to public health risks, criminal records, presence in war zones and previous refusals of entry or an order to leave the territory of a Member State. At the same time, an application fee of €5, which will go to the EU budget, will be mandatory for all applicants above the age of 18 before their application can be processed.

Processing of applications

The automated processing will be carried out by the central system, which will be in charge of checking data provided by applicants against security databases, such as the VIS, Europol data, the SIS, [Eurodac](#), the SLTD, European Criminal Records Information System ([ECRIS](#)) and the planned future [entry-exit system](#). Data will also be screened against the ETIAS watchlist (people suspected to have committed, or be likely to commit a criminal offence) and rules based on specific risk indicators (irregular migration, security or public-health risks) prepared in consultation with an ETIAS screening board. In the case of a hit from automatic processing, the application will be further assessed manually by operators in the ETIAS central unit and in the national units. In the case of a positive response, a valid travel authorisation will be valid for five years or until the expiry of the passport. In the case of a refusal, a justification will be given and applicants will have the right to appeal.

Schengen border checks

Prior to arriving in the Schengen area, carriers will verify if visa-exempt third-country nationals have a valid ETIAS travel authorisation, without which boarding will not be authorised. A valid ETIAS travel authorisation, obtained in advance of arrival at a Schengen border crossing point, will be a precondition for entering the Schengen area. However, border guards at the external Schengen borders will still take the final decision to grant or refuse entry according to the Schengen Borders Code.

Revocation or annulment

A valid travel authorisation will be revoked or annulled when the conditions for its issuance are no longer met, particularly when it is believed that it was fraudulently obtained or when a new alert for refusal of entry is created in the SIS.

The role of Europol

Europol will be involved in ETIAS in several ways. First, Europol's data related to criminal offences, convictions or potential threats will be compared to those provided by applicants for an ETIAS authorisation. Second, Europol will help define ETIAS screening rules by participating in the ETIAS screening board and managing the ETIAS watchlist. Third, Europol will be consulted by the ETIAS national units in case of a match with



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Europol data during the ETIAS automated processing. And finally, Europol will be able to ask to make data consultations in the ETIAS central system for the prevention, detection or investigation of terrorist offences or other serious criminal offences under its mandate.

Budgetary implications

According to the Commission, ETIAS will be financially self-sustaining. It is estimated that the costs for developing it will amount to €212.1 million, while the average annual operations costs, to be covered by the revenue from fees, will be €85 million.

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Views

Advisory committees

On 27 April 2017, the European Economic and Social Committee, as part of the mandatory consultation of other institutions by the Commission, adopted its [opinion](#) on the ETIAS proposal. The Committee considers the creation of ETIAS an important step to counter the threats caused by external and internal events. ETIAS should be based on the right balance between risks and safety, and at the same time avoid increased administrative burdens and barriers for people travelling to the EU. Furthermore, ETIAS should fully respect the fundamental rights of applicants and avoid any discrimination. All data gathered by the system must be protected, and access to it should be strictly limited. In addition, all applicants should be allowed to use the services of intermediaries to obtain their travel authorisation, if needed. However, EU delegations in third countries should monitor and evaluate the costs charged by these intermediaries for their services.

The Committee of the Regions has not issued an opinion on the proposal.

National parliaments

The [deadline](#) for a subsidiarity check by the national parliaments was 14 March 2017; several parliaments have scrutinised the proposal, but no reasoned opinions have been issued.

Stakeholders' views¹

The European Agency for Fundamental Rights (FRA) adopted an [opinion](#) upon the request of the European Parliament regarding the implications of the proposed ETIAS regulation on fundamental rights and personal data protection. The Agency suggests among other things to include checks in ETIAS regarding fundamental rights, only to collect data that are necessary, prevent discriminatory profiling, respect the right to asylum, review when law enforcement agencies can access ETIAS data, and allow for a complaints procedure.

The European Data Protection Supervisor (EDPS), in his [opinion](#) of 7 March 2017, supported initiatives, such as ETIAS, aimed at ensuring safe and secure EU borders, but stressed the need for those initiatives to respect the fundamental rights of the people concerned. As screening rules raise serious technical, legal and ethical questions, the EDPS called on the Commission to provide clear evidence on the need for their inclusion in the ETIAS system. The EDPS also stressed the need for a thorough assessment of the impact of the proposal on rights to privacy and data protection. He also warned that securing our borders must not come at the expense of protecting fundamental rights.

¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



Advisory committees

National parliaments

Stakeholders' views

The airline associations, A4E (Airlines for Europe), ERA (the European Regional Airlines Association), IACA (the International Air Carrier Association) and IATA (the International Air Transport Association), [expressed](#) their support for electronic travel systems, as they increase border and flight security and facilitate the identification of potentially inadmissible passengers before boarding. However, these systems must take into account the impact on passenger facilitation and avoid additional waiting times at airports. Moreover, they should be based on international standards and practices and be aligned with airlines' operational systems and processes.

According to the European Tourism Association ([ETOA](#)), the ETIAS proposal will need to be examined and implemented carefully in order to improve the arrival experience of passengers. Its costs must be minimal, the application process must be user-friendly and not lead to a drop in the volume of travellers. Additionally, the ETIAS system must be properly communicated and supported in the relevant third countries to whose nationals it is applicable.



Legislative process

The legislative proposal ([COM\(2016\) 731](#)) was presented on 16 November 2016. It falls under the ordinary legislative procedure (2016/357(COD)).

European Parliament

In the European Parliament, the proposal has been assigned to the Civil Liberties, Justice and Home Affairs Committee (LIBE) where Kinga Gál (EPP, Hungary) was appointed as rapporteur. The Committee on Foreign Affairs and the Committee on Budgets have adopted opinions on the proposal, while the Committee on Transport and Tourism decided not to give an opinion.

The rapporteur published her [draft report](#) on 8 June 2017 after extensive discussions with the Commission and various stakeholders and experts, such as eu-LISA, Europol, Frontex, Fundamental Rights Agency (FRA), the EDPS, US experts – which provided information on the US ESTA system – and representatives of air carriers. By the deadline of 11 July 2017, almost 1 000 amendments had been tabled to the draft report.

Following a decision by the Council to split the proposal into two distinct legal acts, with separate legal bases (see below), the LIBE committee adopted two distinct reports on 19 October 2017: one on [ETIAS](#) and another amending the [Europol Regulation](#). It also adopted a decision to enter into interinstitutional negotiations with the Council. The main points of the adopted reports include the following:

- > the Member State responsible for the assessment of an ETIAS and for a possible appeal (a need for more balanced distribution of responsibilities)
- > carriers (exclusion of carriers transporting travellers overland and a unique entry-point to enable carriers to connect to ETIAS, entry-exit system and similar systems)
- > more information for travellers about ETIAS (i.e. expiry period of ETIAS authorisation) and appeal procedures
- > set-up of specific central access points instead of ETIAS national units, to verify conditions for access by law enforcement
- > a need for border guards to have access to ETIAS when conducting second-line checks
- > establishment of an ETIAS ethics board to carry out regular audits on the processing of applications, and regularly assess the impact of certain provisions on fundamental rights
- > more clear alignment of provisions on data security and data protection with the legal bases of other large-scale information systems, and
- > a need for greater transparency and accountability of the system.



European Parliament

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Trilogues

The Parliament confirmed the mandates to enter into interinstitutional negotiations during the October II 2017 plenary session.

Council of the EU

On 9 June 2017, the Council agreed a [general approach](#) on the proposal for ETIAS, which constitutes its position for trilogue negotiations with the European Parliament. The general approach includes the following elements:

- > The system should apply to visa-exempt third-country nationals, as well as those who are exempt from the airport transit visa requirement.
- > The information submitted in each application will be automatically processed against other EU databases.
- > If there is a hit or an element requiring analysis, the application will be handled manually by the competent authorities.
- > Before boarding, air carriers, sea carriers and international carriers transporting groups overland by coach will need to check whether third-country nationals have a valid travel authorisation.
- > The travel authorisation will not provide an automatic right of entry or stay; it is the border guard who will take the final decision.
- > A travel authorisation will be valid for three years or until the end of validity of the travel document registered during application, whichever comes first.

In its general approach, the Council had [split the proposal](#) into two distinct legal acts, on the basis that the (Schengen) legal basis of the proposal cannot cover amendments to the Europol Regulation. In formal terms, the proposal has gone forward as a package, with two separate legal acts. Both will, however, be subject to the ordinary legislative procedure, and in Parliament the same rapporteur has continued to work on both.

Trilogues

After four trilogues, a [provisional political agreement](#) was reached between the two institutions on 12 December 2017 on the two proposals. The main political lines include:

- > data retention period (data will be deleted after the lapse of the period of authorised stay)
- > establishment of a fundamental rights guidance board (replacing the proposed ETIAS ethics board)
- > substantial limits to the collection of data regarding education, occupation and health
- > transit passengers will be removed from the scope of ETIAS



European Parliament

Council of the EU

Trilogues

- > the fee is increased to €7, while persons under 18 years and above 70 years will be exempted from the fee
- > eu-LISA will be responsible for development and hosting of ETIAS
- > a transition period of three years applies to carriers transporting people over land
- > a valid ETIAS authorisation will be a condition of entry and stay (immigration authorities will be allowed access to the system), and
- > only limited transfer of data to third countries will be possible.

Technical meetings following the provisional agreement resulted in a final agreement on the two legal acts. On 25 April 2018, the Committee of Permanent Representatives (Coreper) [endorsed](#) the agreed text. The European Parliament is now expected to vote on the proposals at first reading in July 2018, before the Council of the EU completes their final adoption.



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