



SOURCE Legal Card – The European Travel Information and Authorisation System (ETIAS)

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CONTEXT AND INSTITUTIONAL BACKGROUND

- The concept of **travel authorisations**, as easier and smoother procedures than visas, was developed in parallel of progress made on **electronic visas**, which application is entirely done online. It was **first put in place in Australia** in 1996 with the Electronic Travel Authorisation System and broadened to all EU citizens in 2008 through the eVisitor system. While Australia applies a universal visa regime, and the eVisitor form has the legal form of a visa, other countries started developing **travel authorisations as an alternative to pre-vet visa free visitors**.
- The **US ESTA** and the **Canadian eTA** aim at facilitating the travels of bona fide third-country nationals (TCN), as the procedure is less costly and cumbersome than the visa procedure, while pre-vetting their travels before they arrive to the territory. The information filled-in by the applicant is verified against national and international law enforcement information systems in order to pre-screen the TCNs for **security and migration risks** before they arrive at the country's external borders.
- At EU level, a **first feasibility study was carried out in 2011** which aim was to analyse the best suitable way to implement such system. The conclusions discarded the introduction on an "EU-ESTA". A **second feasibility study** was commissioned by the European Commission – Directorate General Migration and Home Affairs (DG HOME) in the summer of **2016**.
- The **European Commission**, without Impact Assessment, published a **proposal for a Regulation in November 2016** for a European Travel Information and Authorisation System, aiming at "strengthening the security of travel to the Schengen area under visa-free agreements". On 25 April 2018, the European Parliament's Civil Liberties, Justice and Home Affairs Committee (LIBE) and the Council of the European Union approved a **final political agreement**. The text will now be politically endorsed by the two legislators. The system is planned to be operational by 2021.

HOW WILL IT WORK?



- ETIAS aims at pre-vetting travellers who might pose a “security, irregular migration or public health risk”. It will apply to **visa-exempt TCNs** coming in the Schengen area for short stays (up to 90 days). They account for around 1 billion 300 million potential travellers. They will be required to obtain a travel authorisation before their trip, via an **online application** (10 minutes to fill-in). The form is composed of biographical, travel document and background questions: previous criminal records, presence in conflict zones, orders to leave the territory of a Member State or third countries, return decisions issued.
- The application fee has been set to **7 euros** and the travel authorisation is valid for **3 years** or until the end of validity of the travel document (e.g. passport), whichever comes first.
- Before boarding in the country of departure, **airlines and sea carriers** will have to verify whether the passengers subject to the travel authorisation requirement are in possession of a valid travel authorisation in order to allow them to board. The system is expected to avoid the cost of returning a traveller once arrived in the destination country. At **land borders**, the ETIAS application can be done at kiosks at the border-crossing points. After three years of implementation, the obligation will also apply at land borders to coach carriers.
- The travel authorisation does not automatically grant a **right to entry**, as the **border guards**, in accordance with the Schengen Borders Code will have the final decision.



PRE-VETTING PROCESS

- The information submitted by the applicant will be checked against **EU (SIS, VIS, EES, EURODAC, ECRIS, Europol data and ETIAS internal watch list and screening rules) and Interpol databases (SLTD, TDAWN)**. If no match is identified, the travel authorisation will be issued automatically, in matters of minutes. It is expected to be the case for the large majority of applications.
- If there is a match in any database, the application will be handled manually by the **European and national authorities**. The **ETIAS central unit (managed by the European Border and Coast Guard Agency – Frontex)** will first verify that the data in the application file corresponds to the data in the database. If the result is positive, or when there is doubt, the case will be processed manually by the **ETIAS national unit** of the responsible Member State (e.g. the MS issuing the alert in the database). The issuing or refusal of such applications has to be decided in **maximum 96 hours after the submission of the application by the TCN**. The ETIAS national unit can also request additional information by the applicant. The total time for the procedure shall not take more than **four weeks**.
- **Denied travel authorisations have to be justified**. The rejected applicant must receive information on the grounds for refusal and the national authority which processed and decided negatively upon the application. The right to appeal is also guaranteed.
- ETIAS will also have **internal revocation or annulment system**, which recheck the information when a new alert is issued. The process in case of a match is similar than for a firstly issued application: ETIAS central unit will first verify if the alert corresponds to data contained in an ETIAS application and circulate it to the relevant authority.

VISA RECIPROCITY

- The discussions on the feasibility and necessity of implementing a European Travel Authorisation System also coincide with **visa liberalisation negotiations** with Ukraine, Moldova and Georgia in 2017 and the longstanding discussions with Turkey.

NEW ROLES FOR THE EUROPEAN AGENCIES

- The **European Border and Coast Guard Agency (FRONTEX)** will be responsible for the creation and management of the ETIAS Central Unit, which aims at ensuring data quality and accuracy of ETIAS applications. The officers will be in charge of first processing the applications which triggered a match in any of the systems to avoid any ambiguity as to the identity of the applicant. The agency will also play an important role in the internal ETIAS screening rules, by defining, evaluating, testing and reviewing the **risk indicators**.
- **EUROPOL** will setup and maintain **the ETIAS watchlist** and will be consulted by the National Units when there is a match between an application and a data contained in Europol's database.

MAIN POINTS OF ATTENTION

- Different stakeholders expressed their concerns regarding the **necessity** of such system and its **impact on fundamental rights**:
 - Lack of evidence that processing **health data** is necessary for the objectives pursued;
 - Potential **discrimination** based on ETIAS **profiling** through **risk indicators** and need for further assessing this possibility. Similarly, ETIAS offers the possibility to refuse a travel authorisation on the basis of risk factors and not on evidence and previous actions;
 - **Barrier to asylum seekers**, as they could be refused to board on carriers in their home countries. It is especially relevant regarding the principle of *non-refoulement* and access to international protection;
 - Lack of clarity in the proposal as to effective administrative **complaint mechanism** and **right to an effective remedy**;
 - No full-fledged **data protection and fundamental rights assessment** (no Impact Assessment was carried out).



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