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

REGULATION (EU) 2018/1240 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 September 2018

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the Functioning of the European Union, and in particular points (b) and (d) of Article 77(2) and point (a) of Article 87(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The Communication of the Commission of 6 April 2016 entitled ‘Stronger and Smarter Information Systems for Borders and Security’ outlined the need for the Union to strengthen and improve its IT systems, data architecture and information exchange in the area of border management, law enforcement and counter-terrorism. It emphasises the need to improve the interoperability of information systems. Importantly, it sets out possible options for maximising the benefits of existing information systems and, if necessary, developing new and complementary ones to address still existing information gaps.

(2) Indeed, the Communication of 6 April 2016 identified a series of information gaps. Among them are the fact that border authorities at external Schengen borders have no information on travellers exempt from the requirement of being in possession of a visa when crossing the external borders (‘the visa requirement’). The Communication of 6 April 2016 announced that the Commission was to launch a study on the feasibility of establishing a European Travel Information and Authorisation System (ETIAS). The feasibility study was completed in November 2016. The system would determine the eligibility of visa-exempt third-country nationals prior to their travel to the Schengen Area, and whether such travel poses a security, illegal immigration or high epidemic risk.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2018/1240 of the European Parliament and of the Council. (See end of Document for details)*

(3) The Communication of 14 September 2016‘Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders’ confirms the priority of securing external borders and presents concrete initiatives to accelerate and broaden the Union’s response in continuing to strengthen the management of external borders.

(4) It is necessary to specify the objectives of ETIAS, to define its technical and organisational architecture, to lay down rules concerning the operation and the use of the data to be entered into the system by the applicant and rules on the issue or refusal of the travel authorisations, to lay down the purposes for which the data are to be processed, to identify the authorities authorised to access the data and to ensure the protection of personal data.

(5) ETIAS should apply to third-country nationals who are exempt from the visa requirement.

(6) It should also apply to third-country nationals who are exempt from the visa requirement who are family members of a Union citizen to whom Directive 2004/38/EC of the European Parliament and of the Council[(3)] applies or of a national of a third country enjoying the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other and who do not hold a residence card pursuant to Directive 2004/38/EC or a residence permit pursuant to Council Regulation (EC) No 1030/2002[(4)]. Article 21(1) of the Treaty on the Functioning of the European Union (TFEU) stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be found in Directive 2004/38/EC.

(7) As confirmed by the Court of Justice[(5)], such family members have the right to enter the territory of the Member States and to obtain an entry visa for that purpose. Consequently, family members exempted from the visa obligation should have the right to obtain a travel authorisation. Member States should grant such persons every facility to obtain the necessary travel authorisation, which should be issued free of charge.

(8) The right to obtain a travel authorisation is not unconditional as it can be denied to those family members who represent a risk to public policy, public security or public health pursuant to Directive 2004/38/EC. Against this background, family members can be required to provide their personal data related to their identification and their status only insofar as these are relevant for assessment of the security threat they could represent. Similarly, examination of their travel authorisation applications should be made exclusively against security concerns, and not those related to migration risks.

(9) ETIAS should provide a travel authorisation for third-country nationals exempt from the visa requirement enabling consideration of whether their presence on the territory of the Member States does not pose or will not pose a security, illegal immigration or a high epidemic risk. A travel authorisation should therefore constitute a decision indicating that there are no factual indications or reasonable grounds to consider that

the presence of a person on the territory of the Member States poses such risks. As such, a travel authorisation is by its nature distinct from a visa; it will not require more information or place a heavier burden on applicants than a visa does. Holding a valid travel authorisation should be a new entry condition for the territory of the Member States. Mere possession of a travel authorisation should not, however, confer an automatic right of entry.

(10) ETIAS should contribute to a high level of security, to the prevention of illegal immigration and to the protection of public health by providing an assessment of visitors prior to their arrival at the external border crossing points.

(11) ETIAS should contribute to the facilitation of border checks performed by border guards at the external border crossing points. It should also ensure a coordinated and harmonised assessment of third-country nationals subject to the travel authorisation requirement who intend to travel to Member States. Furthermore, it should enable applicants to be better informed of their eligibility to travel to Member States. In addition, ETIAS should contribute to the facilitation of border checks by reducing the number of refusals of entry at the external borders and by providing border guards with certain additional information related to flags.

(12) ETIAS should also support the objectives of the Schengen Information System (SIS) related to alerts on third-country nationals subject to a refusal of entry and stay, on persons wanted for arrest for surrender purposes or extradition purposes, on missing persons, on persons sought to assist with a judicial procedure and on persons for discreet checks or specific checks. For this purpose, ETIAS should compare relevant data from application files against relevant alerts in SIS. Where the comparison reveals a correspondence between personal data in the application file and alerts on third-country nationals subject to a refusal of entry and stay or on persons wanted for arrest for surrender purposes or extradition purposes, the application file should be processed manually by the ETIAS National Unit of the Member State responsible. The assessment performed by the ETIAS National Unit should lead to a decision whether to issue a travel authorisation or not. Where the comparison reveals a correspondence between personal data in the application file and alerts on missing persons, on persons sought to assist with a judicial procedure and on persons for discreet checks or specific checks, this information should be transferred to the SIRENE bureau and should be dealt with in accordance with the relevant legislation relating to SIS.

(13) The conditions for issuing a travel authorisation should be coherent with the specific objectives associated with the different types of alerts recorded in SIS. In particular, the fact that applicants would be subject to an alert on persons wanted for arrest for surrender purposes or extradition purposes or to an alert on persons for discreet checks or specific checks should not prevent them from being issued with a travel authorisation with a view to Member States taking appropriate action in accordance with Council Decision 2007/533/JHA[(6)].

(14) ETIAS should consist of a large-scale information system, the ETIAS Information System, the ETIAS Central Unit and the ETIAS National Units.

(15) The ETIAS Central Unit should be part of the European Border and Coast Guard Agency. The ETIAS Central Unit should be responsible for verifying, in cases where the automated application process has reported a hit, whether the applicant's personal data correspond to the personal data of the person having triggered that hit. Where a hit is confirmed or where doubts remain, the ETIAS Central Unit should initiate the manual processing of the application. It should ensure that the data it enters in the applications files are up to date and define, establish, assess *ex ante*, implement, evaluate *ex post*, revise and delete the specific risk indicators, ensuring that the verifications that are performed and their results are recorded in the application files. It should also carry out regular audits of the processing of applications and of the implementation of the ETIAS screening rules, including by regularly assessing their impact on fundamental rights, in particular with regard to privacy and personal data protection. It should furthermore be responsible for fulfilling a number of support tasks such as ensuring the necessary notifications are sent and providing information and support. It should be operational 24 hours a day, 7 days a week.

(16) Each Member State should establish an ETIAS National Unit responsible for examining applications and deciding whether to issue or refuse, annul or revoke travel authorisations. The ETIAS National Units should cooperate with each other and with the European Union Agency for Law Enforcement Cooperation (Europol) for the purpose of assessing applications. The ETIAS National Units should be provided with adequate resources to fulfil their tasks in accordance with the deadlines set out in this Regulation. In order to facilitate the decision-making process and the exchange of information between Member States and to reduce translation costs and response times, it is preferable that all ETIAS National Units communicate in a single language.

(17) To meet its objectives, ETIAS should provide an online application form that the applicant should fill in with declarations relating to his or her identity, travel document, residence information, contact details, level of education and job group, any status he or she holds of family member to Union citizens or third-country nationals enjoying the right of free movement and not holding a residence card pursuant to Directive 2004/38/EC or a residence permit pursuant to Regulation (EC) No 1030/2002, where the applicant is minor, details of the person responsible for him or her, and answers to a set of background questions.

(18) ETIAS should accept applications introduced on behalf of the applicant for travellers who are themselves not in a position to create an application, for whatever reason. In such cases, the application should be submitted by a third party authorised by the traveller or legally responsible for him or her, provided this person's identity is included in the application form. It should be possible for travellers to authorise commercial intermediaries to create and submit an application on their behalf. The ETIAS Central Unit should act upon any reports of abuses by commercial intermediaries appropriately.

(19) Parameters for ensuring the completeness of an application and the coherence of the data submitted should be established to verify the admissibility of applications for a travel authorisation. For instance, such verification should preclude the use of travel documents which will expire in less than three months, have expired or were

issued more than 10 years previously. The verification should be undertaken before the applicant is invited to pay the fee.

(20) In order to finalise the application, applicants should be required to pay a travel authorisation fee. The payment should be managed by a bank or a financial intermediary. The data required for securing the electronic payment should only be provided to the bank or financial intermediary operating the financial transaction and not form part of data stored in ETIAS.

(21) Most of the travel authorisations should be issued within minutes, though a reduced number could require longer, especially in exceptional cases. In such exceptional cases, it may be necessary to request additional information or documentation from the applicant, to process that additional information or documentation and, following examination of the information or documentation provided by the applicant, to invite him or her to an interview. Interviews should only be conducted in exceptional circumstances, as a last resort and when serious doubts remain regarding the information or documentation provided by the applicant. The exceptional nature of interviews should lead to less than 0,1 % of applicants being invited to an interview. The number of applicants invited to an interview should be subject to regular review by the Commission.

(22) The personal data provided by the applicant should be processed by ETIAS for the sole purposes of assessing whether the entry of the applicant into the Union could pose a security, illegal immigration or high epidemic risk in the Union.

(23) The assessment of such risks cannot be carried out without processing the personal data to be provided in a travel authorisation application. The personal data in the applications should be compared with the data present in a record, file or alert registered in an EU information system or database (the ETIAS Central System, SIS, the Visa Information System (VIS), the Entry/Exit System (EES) or Eurodac), in Europol data or in the Interpol databases (the Interpol Stolen and Lost Travel Document database (SLTD) or the Interpol Travel Documents Associated with Notices database (TDAWN)). The personal data in the applications should also be compared against the ETIAS watchlist and against specific risk indicators. The categories of personal data that should be used for comparison should be limited to the categories of data present in those EU information systems that are consulted, in Europol data, in Interpol databases, in the ETIAS watchlist or in the specific risk indicators.

(24) The comparison should take place by automated means. Whenever such comparison reveals that a correspondence (a ‘hit’) exists between any of the personal data or combination thereof in the application and the specific risk indicators or the personal data either in a record, file or alert in the above information systems or in the ETIAS watchlist, the application should be processed manually by the ETIAS National Unit of the Member State responsible. The assessment performed by the ETIAS National Unit should lead to the decision to issue the travel authorisation or not to do so.

(25) It is expected that the vast majority of applications will obtain a positive answer by automated means. No refusal, annulment or revocation of a travel authorisation should be based only on the automated processing of personal data in the applications. For this