



Council of the
European Union

**Brussels, 21 November 2023
(OR. en)**

15703/23

**IXIM 223
FRONT 366
JAI 1531
COMIX 529**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 November 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2023) 699 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the delegation of power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) 2018/1240 of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS)

Delegations will find attached document COM(2023) 699 final.

Encl.: COM(2023) 699 final



Brussels, 16.11.2023
COM(2023) 699 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the delegation of power to adopt delegated acts conferred on the Commission
pursuant to Regulation (EU) 2018/1240 of the European Parliament and of the Council
establishing a European Travel Information and Authorisation System (ETIAS)**

Report from the Commission to the European Parliament and the Council

on the delegation of power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) 2018/1240 of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS)

1. INTRODUCTION

Regulation (EU) 2018/1240¹ of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) was adopted on 12 September 2018.

Regulation (EU) 2018/1240 establishes ETIAS for third-country nationals exempt from the requirement to be in possession of a visa. ETIAS should provide a travel authorisation for these third-country nationals after assessing 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. By conducting an assessment of visitors prior to the arrival at the external border crossing points, ETIAS should contribute to a high level of security, to the prevention of illegal immigration, to the protection of public health and to the facilitation of border checks.

According to Article 89(1) of Regulation (EU) 2018/1240, the Commission is empowered to adopt delegated acts. Article 89(2) foresees that the power to adopt delegated acts shall be conferred on the Commission for an initial period of five years from 9 October 2018 and stipulates the conditions for its extension. The initial five-year period expired on 8 October 2023.

2. LEGAL BASIS

Pursuant to Article 89(2) of Regulation (EU) 2018/1240, the power to adopt delegated acts is conferred on the Commission for an initial period of five years from 9 October 2018 and the Commission is required to prepare a report in respect of the delegation of power no later than nine months before the end of the five-year period. This report aims to fulfil that requirement.

Article 89(2) of Regulation (EU) 2018/1240 also provides that the delegation of power is tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.

3. EXERCISE OF THE DELEGATION

3.1 Consultation prior to adoption

In accordance with Article 89(4) of Regulation (EU) 2018/1240, the Commission consulted experts nominated by Member States, through an Expert Group and written consultations, during

¹ 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, OJ L 236, 19.9.2018, p. 1–71.

the preparation of the delegated acts necessary for the implementation of that Regulation. All Member States were invited to nominate experts to take part in these consultations and the European Parliament was also invited to participate.

The documents relevant to these consultations were transmitted simultaneously to the European Parliament and to the Council, as foreseen in Article 89(5) of Regulation (EU) 2018/1240 and in the Common Understanding on delegated acts. The observations presented in these consultations were taken into consideration when preparing the final versions of delegated acts. Furthermore, the Commission regularly informed Member States of the progress made with the draft delegated acts.

3.2 Delegated acts adopted

During the reporting period, the Commission exercised its delegated powers by adopting the following delegated acts. The table below shows which acts contain the specific measures adopted under the relevant empowerments in Regulation (EU) 2018/1240.

Delegated Act	Empowerments
Commission Delegated Decision (EU) 2019/969 of 22 February 2019 on the tool enabling applicants to give or withdraw their consent for an additional retention period of their application file	Article 54(2) of Regulation (EU) 2018/1240
Commission Delegated Decision (EU) 2019/970 of 22 February 2019 on the tool for applicants to check the status of their applications and to check the period of validity and status of their travel authorisations	Article 31 of Regulation (EU) 2018/1240
Commission Delegated Decision (EU) 2019/971 of 26 February 2019 on the definition of the requirements of the secure account service enabling applicants to provide any additional information or documentation required	Article 6(4) of Regulation (EU) 2018/1240
Commission Delegated Regulation (EU) 2019/946 of 12 March 2019 supplementing Regulation (EU) No 515/2014 with regard to the allocation of funding from the general budget of the Union to cover the costs for the development of ETIAS	Article 15(2) of Regulation (EU) No 515/2014
Commission Delegated Decision of 10 December 2020 supplementing Regulation (EU) 2018/1240 as regards flagging	Articles 36(4) and 39(2) of Regulation (EU) 2018/1240
Commission Delegated Regulation (EU) 2021/916 of 12 March 2021 supplementing Regulation (EU) 2018/1240 as regards the predetermined list of job groups used in the application form	Article 17(3) of Regulation (EU) 2018/1240
Commission Delegated Decision of 23 November 2021 on further defining security, illegal immigration or high epidemic risks	Article 33(2) of Regulation (EU) 2018/1240
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	Article 27(3) of Regulation (EU) 2018/1240

Commission Delegated Decision of 27 March 2023 supplementing Regulation (EU) 2018/1240, as regards specifying the conditions for the correspondence between the data present in a record, alert or file of the other EU information systems consulted and an ETIAS application file	Article 11(9) of Regulation (EU) 2018/1240
Commission Delegated Decision specifying the content and format of the questions and laying down the additional set of predetermined questions	Articles 17(5) and (6) of Regulation (EU) 2018/1240

3.3 Objection to delegated acts

According to Article 89(6) of Regulation (EU) 2018/1240, the European Parliament or the Council may object to a delegated act within a period of two months from the date of notification, extendable by another two months. If either the European Parliament or the Council objects to a delegated act within this period, it does not enter into force. Neither the European Parliament nor the Council objected to any of the delegated acts mentioned above.

3.4 Need for extending the power to adopt delegated acts

While almost all the delegated acts have been adopted before the end of the initial period of five years for the exercise of the power to adopt delegated acts, four more delegated acts have not been adopted under that initial period.

Delegated Acts	Empowerments
Commission Delegated Regulation on the reporting of costs of operation and maintenance of the European Travel Information and Authorisation System (ETIAS) for the purpose of changing the amount of the travel authorisation fee and on the financial support to Member States for expenses incurred to customise and automate border checks in order to implement ETIAS	Articles 18(4) and 85(3) of Regulation (EU) 2018/1240
Commission Delegated Regulation on the payment methods and collection process for the travel authorisation fee	Article 18(4) of Regulation (EU) 2018/1240
Commission Delegated acts to extend the transitional and grace periods foreseen after the entry into operations of ETIAS	Article 83(1) and 3) of Regulation (EU) 2018/1240
Commission delegated acts for changing the amount of the ETIAS travel authorisation fee	Article 18(4) of Regulation (EU) 2018/1240

The adoption of two delegated acts is still pending. They are the Commission Delegated Regulation on the reporting of costs of operation and maintenance of ETIAS for the purpose of changing the amount of the travel authorisation fee and on the financial support to Member States for expenses incurred to customise and automate border checks in order to implement ETIAS (hereinafter the ‘Commission Delegated Regulation on the reporting of costs’) and the Commission Delegated Regulation on the payment methods and collection process for the travel authorisation fee.

The reason for the delay in the adoption of these acts is that priority was given to the amendment of certain delegated acts that had already been adopted, which required to be modified following the adoption of Regulation (EU) 2021/1134 for the purpose of reforming the Visa Information System and Regulation (EU) 2021/1152 as regards the establishment of the conditions for accessing other EU information systems for the purposes of ETIAS. The former introduced new rules on the use of ETIAS by visa authorities and authorities competent to decide on an application for a long-stay visa or residence permit, while the latter lays down rules on the implementation of the interoperability between ETIAS, on the one hand, and other EU information systems and Europol data, on the other hand, and the conditions for the consultation of data stored in other EU information systems and Europol data by ETIAS for the purpose of automatically identifying hits.

Furthermore, the adoption of the Commission Delegated Regulation on the reporting of costs was postponed because:

- a) it did not require technical implementation by Member States or by the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA); and
- b) its provisions would only be applicable after the entry into operations of ETIAS.

Another factor that has made it impossible to adopt all required delegated acts in time has been the delays in the launch of the Entry/Exit System (EES) due to a number of technical issues. Since the EES and ETIAS are interdependent systems, and ETIAS cannot enter into operation before the EES does, the changes in the timeline for the EES' go-live have inevitably delayed the implementation of ETIAS.

In addition, the Commission requires an extension of the delegation of power because certain additional delegated acts can only be adopted after the start of operations of ETIAS. They are:

- The Commission delegated acts to extend the transitional and grace periods foreseen after the entry into operations of ETIAS (Articles 83(1) and (3) of Regulation (EU) 2018/1240); and
- The Commission delegated act(s) for changing the amount of the ETIAS travel authorisation fee.

As ETIAS has not started operations, it is not possible to gather enough information to determine whether the transitional and grace periods will need to be extended beyond their initial duration of six months or whether the ETIAS travel authorisation fee will need to be modified.

Even beyond the adoption of all pending delegated acts, the empowerment to adopt or amend these acts will still remain necessary in order to enable the necessary flexibility in the implementation and operation of ETIAS and to adjust them to any relevant development.

4. CONCLUSION

The Commission considers that it has exercised its delegated powers within the remit conferred on it by Regulation (EU) 2018/1240.

Given the explanation provided in Section 3, the Commission considers there is a clear need for a tacit extension of the delegation of power provided for in Article 89(1) of Regulation (EU) 2018/1240 for a period of five years.

The Commission invites the European Parliament and the Council to take note of this report.