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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	27 March 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2023) 950 final
Subject:	COMMISSION DELEGATED DECISION of 27.3.2023 supplementing Regulation (EU) 2018/1240 of the European Parliament and of the Council, 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

Delegations will find attached document C(2023) 950 final.

Encl.: C(2023) 950 final



EUROPEAN
COMMISSION

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COMMISSION DELEGATED DECISION

of 27.3.2023

supplementing Regulation (EU) 2018/1240 of the European Parliament and of the Council, 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

(Only the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

In September 2018, the European Parliament and the Council adopted Regulation (EU) 2018/1240 establishing the European Travel Information and Authorisation System (ETIAS)¹.

It requires the European Commission to adopt delegated acts for the development and technical implementation of the European Travel Information and Authorisation System.

In particular, pursuant to Article 11(9) of Regulation (EU) 2018/1240, the Commission is delegated the task ‘to specify 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’.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

An ETIAS subgroup to the Expert Group on Information Systems for Borders and Security was established to help draft the delegated act. All Member States were given an opportunity to nominate experts, in accordance with Article 89(4) of Regulation (EU) 2018/1240 and the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

As a result, this Commission Decision was developed on the basis of the input given by experts of the Member States in the framework of the above-mentioned Expert subgroup.

In addition, the European Border and Coast Guard Agency (‘Frontex’), within which the ETIAS Central Unit will be established, and the European Union Agency for Law Enforcement Cooperation (‘Europol’) were consulted.

Furthermore, the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (‘eu-LISA’) advised the Commission regarding the technical needs and feasibility of the measure proposed.

Additionally, the European Data Protection Supervisor was consulted before adoption to ensure the respect of data protection provisions.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In accordance with Articles 19 and 20 of Regulation (EU) 2018/1240, where an application for a travel authorisation is submitted and deemed valid, the ETIAS Central System will create an application file. The Central System will compare the data in the application file with the data present in a record, alert or file of the other EU information systems in order to verify whether there is a correspondence between the data.

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).

In accordance with Article 11(9) of Regulation (EU) 2018/1240, the Commission should specify the conditions for the correspondence between the data present in a record, alert or file of the other EU information systems and an ETIAS application file.

This Decision conforms to the principle of proportionality, as it reduces the burden for the authorities and the public by providing a possibility to limit the number of hits which would need to be manually verified.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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) 2017/2226², and in particular Article 11(9) thereof,

Whereas:

- (1) Regulation (EU) 2018/1240 established the European Travel Information and Authorisation System ('ETIAS') applicable to visa-exempt third-country nationals seeking to enter the territory of the Member States.
- (2) Pursuant to that Regulation, where a third country national submits an application for a travel authorisation and the application is deemed valid, the ETIAS Central System is to create an application file. The Central System is then to query the other EU information systems, as defined in Article 3(1), point (28), of Regulation (EU) 2018/1240, to verify whether there is a correspondence between the data contained in the application file with the data present in a record, alert or file of the other EU information systems.
- (3) The use of application file data to query data in the other EU information systems consulted would trigger a great number of hits that require manual verification. To limit the burden that such situation represents for persons whose data is registered in the other EU information systems, the national authorities and Union agencies, it is necessary to specify rules that will help facilitate the querying of data through automatic processing in the other EU information systems consulted.

² OJ L 236, 19.9.2018, p. 1.

- (4) Given that Regulation (EU) 2018/1240 builds upon the Schengen *acquis*, in accordance with Article 4 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark notified the implementation of Regulation (EU) 2018/1240 in its national law. Denmark is therefore bound by this Decision.
- (5) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part; this Decision falls outside the scope of the measures provided for in Council Decision 2002/192/EC³. Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (6) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁴, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC⁵.
- (7) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁶, which fall within the area referred to in Article 1, point A of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC⁷.
- (8) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁸, which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁹.

³ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to apply some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁴ OJ L 176, 10.7.1999, p. 36.

⁵ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

⁶ OJ L 53, 27.2.2008, p. 52.

⁷ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁸ OJ L 160, 18.6.2011, p. 21.

⁹ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement

- (9) As regards Cyprus, Bulgaria and Romania, this Decision constitutes an act building on, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, and Article 4(1) of the 2005 Act of Accession.
- (10) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁰ and delivered an opinion on 22 September.

HAS ADOPTED THIS DECISION:

Article 1
Rules

The rules specifying the conditions for correspondence between data from the application file of the ETIAS Central System and data queried in the other EU information systems are set out in the Annex.

between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 2
Addressees

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden.

Done at Brussels, 27.3.2023

For the Commission
Ylva JOHANSSON
Member of the Commission

