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**LIMITE**

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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee/Mixed Committee
No. Cion doc.:	14082/16 FRONT 426 VISA 351 DAPIX 198 CODEC 1586 COMIX 729
Subject:	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

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**INTRODUCTION**

ETIAS is an automated system set up to identify security, illegal migration or public health risks associated with visa-exempt visitors travelling to the Schengen Area. It will gather information on those visitors prior to their travel, to allow for advance processing.

The proposal was presented by the Commission at the Justice and Home Affairs Council on 18 November 2016, two days after its adoption. After intensive discussions at working party level under the Maltese Presidency, Ministers agreed to a general approach on this file at the Justice and Home Affairs Council on 9 June 2017.

On the Parliament side, a vote in the LIBE Committee took place on 11 October 2017 (confirmed at plenary level on 24 October). Four trilogues took place so far (25 October, 16 November, 29 November and 12 December). At the last trilogue, most outstanding political issues, as listed hereafter, have been provisionally agreed, pending confirmation by the co-legislators.

## **OUTCOME OF THE FOURTH TRILOGUE**

On three points (screening rules, condition of entry and stay, and carriers), while an agreement on the general principles underlying these provisions could be reached, some further work is needed at technical level.

### **I. Requirement for travellers in airport transit to hold a valid travel authorisation**

The deletion of this requirement from the text was one of the red lines of the Parliament. The Presidency agreed to remove it. The overall text will need to be checked at technical level in order to remove any reference to this obligation.

### **II. Ethics Board (now renamed "ETIAS Fundamental Rights Guidance Board")**

Taking into account the Council misgivings as regards this new body, the Parliament could accept a watered-down version of its text, as proposed by the Commission.

### **III. Processing of data and non discrimination**

On the Parliament's request, the Presidency agreed to make a reference to the EU Charter of Fundamental Rights instead of Article 19 of the TFEU.

### **IV. Data collected**

This issue was probably the most difficult to agree on as both co-legislators attach great importance to it. The Presidency considers that the provisionally agreed text constitutes a balanced compromise:

- while the Parliament wanted to remove the collection of data regarding education, occupation and health, all three sets of data are kept (only the level of education, but not the field; only the job group of the current occupation; health risks are included in the screening rules);
- in line with the Commission proposal, the Parliament could accept that an indication of the Member State of first intended entry be collected, while the Council's general approach text also included the address and purpose of the first intended stay. The compromise that was reached keeps the indication of the Member State of first intended stay, and, on a voluntary basis, of the address of the first intended stay. The reference to the purpose of the first intended stay was deleted as part of this overall compromise;
- as regards the question on terrorist offences and other serious criminal offences, the Parliament could accept the Council's general approach text;
- regarding the question concerning the decision requiring the third country national to leave the territory, a compromise could be found through a reference to the third countries listed in annex II of Regulation N° 539/2001.

#### V. Fee and exemptions

The compromise reached on this point foresees that the fee is set at 7€ together with an exemption from paying that fee for third country nationals of less than 18 or more than 70 years of age. The Parliament's amendment provided a fee set at 10€ and much broader exemptions.

#### VI. Screening rules

The Presidency and the rapporteur could agree in principle on a three-step approach (three layers building on each other: Regulation, delegated act and implementing act). They ask the Commission to produce a text, which is listed in the annex. Some further drafting is needed on this text at technical level.

## VII. Hosting of the watchlist

The Council general approach text did not amend the Commission proposal and provides that the watchlist should be hosted by Europol. As part of the overall compromise, the Presidency agreed to follow the Parliament and for the watchlist to be hosted by eu-LISA.

## VIII. Carriers

The Parliament could agree to the Council text, while stressing that our text imposes a disproportionate burden on smaller coach carriers, as they would have the obligation to check that the third country nationals hold a valid travel authorisation. As part of a final compromise on this issue, the Presidency accepted the Commission compromise to include a transition period of three years applicable from the entry into operations of the Regulation. During this transition period, the verification of the travel authorisation would be optional for carriers transporting groups overland by coach. It was also agreed that the Commission would assess the compatibility and coherence of the provisions referred to in Article 26 of the Convention Implementing the Schengen Agreement with the ETIAS provisions for overland transport by coach.

## IX. Access to ETIAS data by immigration authorities

This issue was most problematic for the Parliament. As part of a global compromise, the Presidency and the rapporteur agreed to the Commission compromise text based on a cascade requirement (obligation to first consult the Entry-Exit System (EES), and only if the third country national is not registered in the EES, the immigration authorities may access some ETIAS data). It was also agreed that the definition of immigration authorities of the EES Regulation would be included in the ETIAS Regulation.

## X. Travel authorisation as a condition of entry and stay

The Parliament could accept the Council text that holding a travel authorisation be a condition of entry and stay.

## XI. Data retention period

The Council general approach text providing that the application file is stored in the ETIAS Central System for five years from the last entry-exit record of the applicant was unacceptable to the Parliament. The Commission tabled a compromise providing that data shall be stored for the period of validity of the travel authorisation, and that such period may be extended by three additional years if the applicant provides his/her explicit consent. This text was provisionally agreed by Presidency and the rapporteur.

## XII. Transfer of data to third countries

The Parliament's position was to oppose the transfer of data to third countries. The Presidency and the rapporteur agreed to allow it when necessary for the purpose of return (as in the Council general approach text), but only when a search in the EES indicates that this system does not contain data concerning the third country national to be returned (cascade requirement).

## XIII. Costs and revenues

The issue of the nature of the assigned revenues (internally vs. externally assigned) was particularly important to both co-legislators. The Commission tabled a compromise proposal according to which the revenues generated by the ETIAS would be internal assigned revenues used to cover the costs of operation and maintenance of the ETIAS (as in the general approach text), but the surplus would go to the Union general budget.

## **CONCLUSION**

The Permanent Representatives Committee is invited to confirm it agrees to the compromise texts set out in the annex, under the understanding that some slight redrafting may be needed at technical level.

**II. ETIAS FUNDAMENTAL RIGHTS GUIDANCE BOARD**

	<b>LIBE Amendment 84 - Article 9a</b>	<b>Text provisionally agreed at trilogue on 12 December</b>
<b>1.</b>	<b><i>The ETIAS Ethics Board</i></b>	<i>The ETIAS Fundamental Rights Guidance Board</i>
<b>2.</b>	<b><i>1. An independent ETIAS Ethics Board with an advisory and audit function is hereby established. It shall be composed of the Fundamental Rights Officer of the European Border and Coast Guard Agency, a representative of the consultative forum on fundamental rights of the European Border and Coast Guard Agency, a representative of the EDPS, a representative of the European Data Protection Board and a representative of the Fundamental Rights Agency.</i></b>	1. An independent ETIAS Fundamental Rights Guidance Board with an advisory and <del>assessment</del> <b>appraisal</b> function is hereby established. Without prejudice to their respective competences and independence, it shall be composed of the Fundamental Rights Officer of the European Border and Coast Guard Agency, a representative of the consultative forum on fundamental rights of the European Border and Coast Guard Agency, a representative of the EDPS, a representative of the European Data Protection Board and a representative of the Fundamental Rights Agency.
<b>3.</b>	<b><i>2. The ETIAS Ethics Board shall carry out regular audits on the processing of applications and on the implementation of the provisions of Article 28, including regularly assessing their impact on fundamental rights, in particular with regard to privacy, personal data protection and non-discrimination.</i></b>	2. The ETIAS Fundamental Rights Guidance Board shall <del>carry out</del> <b>perform</b> regular <del>assessments</del> <b>appraisals</b> and issue recommendations to the ETIAS Screening Board on the impact of the processing of applications and of the implementation of the provisions of Article 28, on fundamental rights, in particular with regard to privacy, personal data protection and non-discrimination. The ETIAS Fundamental Rights Guidance Board shall <b>also</b> support the ETIAS Screening Board for the execution of its tasks <b>when consulted by the latter</b> on specific issues related to fundamental rights, in particular with regard to privacy, personal data protection and non-discrimination. The ETIAS Fundamental Rights Guidance Board shall have access to the audits referred to in Article 7(2)(d).

4.	<p><b>3. The ETIAS Ethics Board shall meet whenever necessary, and at least twice a year. The costs and servicing of its meetings shall be borne by the European Border and Coast Guard Agency. The secretariat shall be provided by the European Border and Coast Guard Agency. The ETIAS Ethics Board shall adopt rules of procedure at its first meeting by a simple majority of its members.</b></p>	<p>3. The ETIAS Fundamental Rights Guidance Board shall meet whenever necessary, and at least twice a year. The costs and servicing of its meetings shall be borne by the European Border and Coast Guard Agency. Its meetings shall take place in premises of the European Border and Coast Guard Agency. The secretariat <b>of its meetings</b> shall be provided by the European Border and Coast Guard Agency. The ETIAS Fundamental Rights Guidance Board shall adopt rules of procedure at its first meeting by a simple majority of its members.</p>
5.	<p><b>4. The members of the ETIAS Ethics Board shall be invited to attend the meetings of the ETIAS Screening Board in an advisory function. They shall have access to all ETIAS-related information and premises.</b></p>	<p>4. One representative of the ETIAS Fundamental Rights Guidance Board shall be invited to attend the meetings of the ETIAS Screening Board in an advisory function. The members of the ETIAS Fundamental Rights Guidance Board shall have access to the information and files of the ETIAS Screening Board.</p>
6.	<p><b>5. The ETIAS Ethics Board shall publish an annual report, to be made publically available. It shall also report in writing and orally at least annually to the European Parliament. Classification shall not preclude information being made available to the European Parliament. Where necessary, the provisions of Article 50 of Regulation (EU) 2016/1624 shall apply.</b></p>	<p>5. The ETIAS Ethics Board shall publish an annual report, to be made publically available.</p>

247	<b>Commission proposal</b> <i>Article 7</i> <i>Set up of the ETIAS Central Unit</i>	<b>EP amendments</b> <i>Article 7</i> <i>Set up of the ETIAS Central Unit</i>	<b>Council general approach text</b> <i>Article 7</i> <i>Set up of the ETIAS Central Unit</i>	<b>Text provisionally agreed at trilogue on 12 December</b> <i>Article 7</i> <i>Set up of the ETIAS Central Unit</i>
...	...	...	...	...
272	(d) carrying out regular audits on the processing of applications and on the implementation of the provisions of Article 28 including regularly assessing their impact on fundamental rights, in particular with regard to privacy and personal data protection.	Deleted	(d) carrying out regular audits on the processing of applications and on the implementation of the provisions of Article 28 including regularly assessing their impact on fundamental rights, in particular with regard to privacy and personal data protection.	(d) carrying out regular audits on the processing of applications and on the implementation of the provisions of Article 28 including regularly assessing their impact on fundamental rights, in particular with regard to privacy and personal data protection.
307	<b>Commission proposal</b> <i>Article 9</i> <i>The ETIAS Screening Board.</i>	<b>EP amendments</b>	<b>Council general approach text</b>	<b>Text provisionally agreed at trilogue on 12 December</b> <i>Article 9</i> <i>The ETIAS Screening Board.</i>
312	3. For the purpose referred to in paragraph 1, the ETIAS Screening Board shall issue opinions, guidelines, recommendations and best practices.		3. For the purpose referred to in paragraph <u>2</u> †, the ETIAS Screening Board shall issue opinions, guidelines, recommendations and best practices. <b>When issuing recommendations, the ETIAS Screening Board shall take into consideration the recommendations issued by the</b>	3. For the purpose referred to in paragraph <u>2</u> †, the ETIAS Screening Board shall issue opinions, guidelines, recommendations and best practices. <b>When issuing recommendations, the ETIAS Screening Board shall take into consideration the recommendations issued by the ETIAS <u>Fundamental</u></b>



			<b>ETIAS <u>Fundamental Rights</u> Guidance Board.</b>	<b><u>Rights</u> Guidance Board.</b>
313bis			<b>4bis. The ETIAS Screening Board may consult the ETIAS <u>Fundamental Rights</u> Guidance Board on specific issues related to fundamental rights, in particular with regard to privacy, personal data protection and non-discrimination.</b>	<b>4bis. The ETIAS Screening Board may consult the ETIAS <u>Fundamental Rights</u> Guidance Board on specific issues related to fundamental rights, in particular with regard to privacy, personal data protection and non-discrimination.</b>

### III. NON DISCRIMINATION

	<b>Commission proposal</b> <i>Article 12</i> <i>Non-discrimination</i>	<b>EP amendments</b> <i>Article 12</i> <b><i>Fundamental Rights</i></b>	<b>Council general approach text</b> <i>Article 12</i> <i>Non-discrimination</i>	<b>Text provisionally agreed at</b> <b>trilogue on 12 December</b>
<b>1.</b>		<b>Amendment 91</b>  <b>Article 12(1)</b>		
<b>2.</b>	Processing of personal data within the ETIAS <i>Information System by any user</i> shall not result in discrimination against third country nationals on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. It shall fully respect human dignity and integrity. Particular attention shall be paid to children, the elderly and persons with a disability.	Processing of personal data within the ETIAS Information System by any user shall not result in discrimination against third country nationals on the grounds of sex, <b><i>race, colour, ethnic or social</i></b> origin, <b><i>genetic features, language,</i></b> religion or belief, <b><i>political or any other opinion, membership of a national minority, property, birth,</i></b> disability, age or sexual orientation. It shall fully respect human dignity and integrity <b><i>and fundamental rights, including the right to respect for one's private life and to the protection of personal data.</i></b> Particular attention shall be paid to children, the elderly and persons with a disability. <b><i>The best interests of the child shall be a primary consideration.</i></b>	Processing of personal data within the ETIAS <i>Information System by any user</i> shall not result in discrimination against third country nationals <u>notably</u> on the grounds of sex, <u>race,</u> <del>racial or</del> ethnic origin, religion or belief, disability, age or sexual orientation. It shall fully respect human dignity and integrity. <del>Particular attention shall be paid to children, the elderly and persons with a disability.</del>	Processing of personal data within the ETIAS Information System by any user shall not result in discrimination against third country nationals on the grounds of sex, <b><i>race, colour, ethnic or social</i></b> origin, <b><i>genetic features, language,</i></b> religion or belief, <b><i>political or any other opinion, membership of a national minority, property, birth,</i></b> disability, age or sexual orientation. It shall fully respect human dignity and integrity <b><i>and fundamental rights, including the right to respect for one's private life and to the protection of personal data.</i></b> Particular attention shall be paid to children, the elderly and persons with a disability. <b><i>The best interests of the child shall be a primary consideration.</i></b>

#### IV. DATA COLLECTED

The compromise texts concern the following elements: - education (Art. 15(2)(h)), occupation (Art.15(2)(i)), address of first intended stay (Art. 15(2)(j)), purpose of stay (Art. 15(3)), health (Art. 15(4)(a)), conviction of criminal or terrorist offence (Art. 15(4)(b)), decision to leave a country (Art. 15(4)(d))

	<b>Commission proposal</b> <i>Article 15</i> <i>Application form and personal data of the applicant</i>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 15</i> <i>Application form and personal data of the applicant</i>	<b>Text provisionally agreed at trilogue on 12 December</b>
<b>1.</b>	2. The applicant shall provide the following personal data in the application form:		2. The applicant shall provide the following personal data in the application form:	2. The applicant shall provide the following personal data in the application form:
<b>2.</b>				...
<b>3.</b>		<b>Amendment 103</b> <b>Article 15(2)(h)</b>		
<b>4.</b>	(h) education (level and field);	Deleted	(h) education (level and field);	(h) education (level <del>and field</del> );
<b>5.</b>		<b>Amendment 104</b> <b>Article 15(2)(i)</b>		
<b>6.</b>	(i) current occupation;	Deleted	(i) current occupation, <u>job title and employer; for students, name of educational establishment;</u>	(i) current occupation, <del>job title and employer; for students, name of educational establishment</del> ( <b>job group</b> ); <b>where the application is subject to the manual processing in accordance with the procedure laid down in Article 22, the Member State responsible may in accordance with Article 23 request the applicant to provide additional information concerning the exact job title and the employer</b>

				<b>or, for students, the name of the educational establishment;</b>
7.	(j) Member State of first intended entry;		(j) <u>address for the first intended stay or, in the case of transit if no stay is intended,</u> Member State of first intended <u>transit entry</u> ;	(j) Member State of first intended <del>entry</del> stay, <b>and optionally, the address of first intended stay;</b>
8.		<b>Amendment 107 Article 15(3)</b>		
9.	3. The applicant shall choose the level and field of education, the current occupation and the job title from a predetermined list. The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to lay down these predetermined lists	Deleted	3. The applicant shall choose the level and field of education, the current occupation and the job title <u>and the purpose of the first intended stay</u> from a predetermined list. The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to lay down these predetermined lists.	3. The applicant shall choose the level <del>and field</del> of education, the current occupation and the job title <b>group</b> <del>and the purpose of the first intended stay</del> from a predetermined <del>list</del> <b>lists</b> . The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to lay down these predetermined lists
10.	4. In addition, the applicant shall provide answers to the following questions:		4. In addition, the applicant shall provide answers to the following questions:	4. In addition, the applicant shall provide answers to the following questions:
11.		<b>Amendment 108 Article 15(4)(a)</b>		
12.	(a) whether the applicant is subject to any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation or other infectious or contagious parasitic diseases;	Deleted	(a) whether the applicant is subject to any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation or other infectious or contagious parasitic diseases <u>if such diseases are the subject of</u>	<b>Deleted</b>

			<u>protection provisions applying to nationals of the Member States;</u>	
<b>13.</b>		<b>Amendment 109 Article 15(4)(b)</b>		
<b>14.</b>	(b) whether he or she has ever been convicted of any criminal offence in any country;	(b) whether he or she has ever been convicted of any <i>serious</i> criminal offence <i>in Annex Ia within the last ten years;</i>	(b) whether he or she has <del>ever</del> been convicted of any criminal offence <u>listed in the Annex over the previous ten years and in the case of terrorist offences, over the previous twenty years, when and in which any country;</u>	(b) whether he or she has been convicted of any criminal offence listed in the Annex over the previous ten years and in the case of terrorist offences, over the previous twenty years, when and in which country;
<b>15.</b>	(c) regarding any stay in a specific war or conflict zone over the last ten years and the reasons for the stay;		(c) <u>whether he or she has stayed</u> <del>regarding any stay</del> in a specific war or conflict zone over the <del>last</del> <u>previous</u> ten years and the reasons for the stay;	...
<b>16.</b>		<b>Amendment 110 Article 15(4)(d)</b>		
<b>17.</b>	(d) regarding any decision requiring him or her to leave the territory of a Member State or of any other country or whether he or she was subject to any return decision issued over the last ten years.	(d) regarding any decision requiring him or her to leave the territory of a Member State or whether he or she was subject to any return decision issued over the last ten years.	(d) <u>whether he or she has been the subject of</u> <del>regarding</del> any decision requiring him or her to leave the territory of a Member State or of any other country or whether he or she was subject to any return decision issued over the <del>last</del> <u>previous</u> ten years.	(d) whether he or she has been the subject of any decision requiring him or her to leave the territory of a Member State or of any third countries listed in annex II of Regulation No 539/2001 or whether he or she was subject to any return decision issued over the previous ten years.

## V. FEE AND EXEMPTIONS

	Commission proposal	EP amendments Amendment 115 Article 16(1)	Council general approach text	Text provisionally agreed at trilogue on 12 December
1.	1. A travel authorisation fee of EUR 5 shall be paid by the applicant for each application.	1. A travel authorisation fee of EUR <b>10</b> shall be paid by the applicant for each application.	1. A travel authorisation fee of EUR 5 shall be paid by the applicant for each application.	1. A travel authorisation fee of EUR <del>5</del> <b>7</b> shall be paid by the applicant for each application.
2.		<b>Amendment 116</b> <b>Article 16(2)</b>		
3.	2. The travel authorisation fee shall be waived for children under eighteen years.	2. The travel authorisation fee shall be waived for <i>applicants belonging to one of the following categories:</i> <i>(a) applicants under eighteen years of age;</i>	2. The travel authorisation fee shall be waived for children under <u>12</u> <del>eighteen</del> years of age at the time of the application.	2. The travel authorisation fee shall be waived for <del>children</del> <b>applicants</b> under <del>eighteen</del> <b>twelve</b> years <b>or above seventy</b> years of age at the time of the application.
4.		<i>(b) applicants over sixty years of age;</i>		
5.		<i>(c) family members of Union citizens or of third-country nationals enjoying the right of free movement under Union law;</i>		
6.		<i>(d) students, postgraduate students and accompanying teachers travelling for study or educational purposes;</i>		

7.		<i>(e) researchers travelling for the purpose of carrying out scientific research;</i>		
8.		<i>(f) representatives of non-profit organisations aged 25 or less participating in seminars, conferences or sports, cultural or educational events organised by non-profit organisations.</i>		

## VI. SCREENING RULES

	<b>Commission proposal</b> <i>Article 28</i> <i>The ETIAS screening rules</i>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 28</i> <i>The ETIAS screening rules</i>	<b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b> <i>Article 28</i> <i>The ETIAS screening rules</i>
<b>1.</b>		<b>Amendment 168</b> <b>Article 28(1)</b>		
<b>2.</b>	1. The ETIAS screening rules shall be an algorithm enabling the comparison between the data recorded in an application file of the ETIAS Central System and specific risk indicators pointing to irregular migration, security or public health risks. The ETIAS screening rules shall be registered in the ETIAS Central System.	1. The ETIAS screening rules shall be an algorithm enabling <b><i>profiling as defined in Article 4(4) of Regulation (EU) 2016/679 through</i></b> the comparison between the data recorded in an application file of the ETIAS Central System and specific risk indicators pointing to irregular migration <b><i>risk, threat to</i></b> security or <b><i>high epidemic</i></b> risks. The ETIAS screening rules shall be registered in the ETIAS Central System.	<del>1. — The ETIAS screening rules shall be an algorithm enabling the comparison between the data recorded in an application file of the ETIAS Central System and specific risk indicators pointing to irregular migration, security or public health risks. The ETIAS screening rules shall be registered in the ETIAS Central System.</del>	<u>Provisionally agreed</u> 1. The ETIAS screening rules shall be an algorithm enabling <b><i>profiling as defined in Article 4(4) of Regulation (EU) 2016/679 through</i></b> the comparison between the data recorded in an application file of the ETIAS Central System and specific risk indicators pointing to security, illegal immigration or public health risks in accordance with Article 18. The Central Unit shall register the ETIAS screening rules in the ETIAS Central System.



3.		<b>Amendment 169 Article 28(2)</b>		
4.	2. The irregular migration, security or public health risks shall be determined on the basis of:	2. The irregular migration <i>risk, the threat to</i> security or <i>the high epidemic</i> risks shall be determined on the basis of:	2. <u>The Commission shall be empowered to adopt an implementing act in accordance with the examination procedure referred to in Article 79(2) to identify specific risks relating to</u> <del>the security, irregular illegal immigration, security</del> or public health risks shall be determined on the basis of:	<u>Suggested drafting</u> <b>2. The Commission shall be empowered to adopt a delegated act in accordance with Article 78 for identifying the risks related to illegal migration, security or public health on the basis of:</b>
5.	(a) [statistics generated by the EES indicating abnormal rates of overstayers and refusals of entry for a specific group of travellers;]		(a) [statistics generated by the EES indicating abnormal rates of overstayers and refusals of entry for a specific group of travellers; ]	<u>Agreed text</u> (a) <del>statistics</del> generated by the EES indicating abnormal rates of overstayers and refusals of entry for a specific group of travellers; <del>]</del>
6.		<b>Amendment 170 Article 28(2)(b)</b>		
7.	(b) statistics generated by the ETIAS in accordance with Article 73 indicating abnormal rates of refusals of travel authorisations due to an irregular migration, security or public health risk associated with a specific group of travellers;	(b) statistics generated by the ETIAS in accordance with Article 73 indicating abnormal rates of refusals of travel authorisations due to an irregular migration <i>risk, a threat to</i> security or <i>a high epidemic</i> risk associated with a specific group of travellers;	(b) statistics generated by the ETIAS in accordance with Article 73 indicating abnormal rates of refusals of travel authorisations due to <del>an</del> <u>security,</u> <del>irregular illegal immigration,</del> <del>security</del> or public health risk associated with a specific group of travellers;	(b) statistics generated by the ETIAS in accordance with Article 73 indicating abnormal rates of refusals of travel authorisations due to <del>an</del> <b>security,</b> <del>irregular illegal immigration,</del> <del>security</del> or public health risk associated with a specific group of travellers;

8.	(c) [statistics generated by the ETIAS in accordance with Article 73 and the EES indicating correlations between information collected through the application form and overstay or refusals of entry;]		(c) [statistics generated by the ETIAS in accordance with Article 73 and the EES indicating correlations between information collected through the application form and overstay or refusals of entry;]	<u>Agreed text</u> (c) {statistics generated by the ETIAS in accordance with Article 73 and the EES indicating correlations between information collected through the application form and overstay or refusals of entry;}
9.		<b>Amendment 171 Article 28(2)(d)</b>		
10.	(d) information provided by Member States concerning specific security risk indicators or threats identified by that Member State;	(d) information provided by Member States concerning specific security risk indicators or threats identified by that Member State <i>substantiated by objective and evidence-based elements</i> ;	(d) information provided by Member States concerning specific security risk indicators or threats identified by that Member State;	<u>Presidency compromise proposal</u> (d) information <b>substantiated by factual and evidence-based elements</b> provided by Member States concerning specific security risk indicators or threats identified by that Member State;
11.		<b>Amendment 172 Article 28(2)(e)</b>		
12.	(e) information provided by Member States concerning abnormal rates of overstayers and refusals of entry for a specific group of travellers for that Member State;	(e) information provided by Member States concerning abnormal rates of overstayers and refusals of entry for a specific group of travellers for that Member State <i>substantiated by objective and evidence-based elements</i> ;	(e) information provided by Member States concerning abnormal rates of overstayers and refusals of entry for a specific group of travellers for that Member State;	<u>Presidency compromise proposal</u> (e) information <b>substantiated by factual and evidence-based elements</b> provided by Member States concerning abnormal rates of overstayers and refusals of entry for a specific group of travellers for that Member State;

13.	(f) information concerning specific public health risks provided by Member States as well as epidemiological surveillance information and risk assessments provided by the European Centre for Disease Prevention and Control (ECDC).		(f) information concerning specific public health risks provided by Member States as well as epidemiological surveillance information and risk assessments provided by the European Centre for Disease Prevention and Control (ECDC).	<u>Provisionally agreed</u> (f) information concerning specific public health risks provided by Member States as well as epidemiological surveillance information and risk assessments provided by the European Centre for Disease Prevention and Control (ECDC) <b>and disease outbreaks reported by the World Health Organisation (WHO).</b>
14.			<b><u>The specific risks shall be reviewed at least every six months and, where necessary, a new implementing act shall be adopted by the Commission in accordance with the examination procedure referred to in Article 79(2).</u></b>	(moved to paragraph 3)
15.		<b>Amendment 173 Article 28(3)</b>		
16.	<b><u>3.</u></b> The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to further specify the irregular migration, security or public health risks referred to in paragraph 2.	3. The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to further specify the irregular migration <b><i>risk, the threat to security or the high epidemic</i></b> risks referred to in paragraph 2.	<del><b><u>3.</u></b> The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to further specify the irregular migration, security or public health risks referred to in paragraph 2.</del>	<u>Suggested drafting</u> <b>3. The Commission shall be empowered to adopt an implementing act in accordance with the examination procedure referred to in Article 79(2) to specify the risks to be considered for establishing the specific risks indicators as</b>

				<b>referred to in paragraph 4.</b>
<b>17.</b>				<b><u>The specific risks shall be reviewed at least every six months and, where necessary, a new implementing act shall be adopted by the Commission in accordance with the examination procedure referred to in Article 79(2).</u></b>
<b>18.</b>		<b>Amendment 174 Article 28(4)</b>		
<b>19.</b>	4. Based on the risks determined in accordance with paragraph 2, the ETIAS Central Unit shall establish the specific risk indicators consisting of a combination of data including one or several of the following:	4. Based on the risks determined in accordance with paragraph 2 <i>and delegated acts adopted under paragraph 3</i> , the ETIAS Central Unit shall establish the specific risk indicators consisting of a combination of data including one or several of the following:	4. Based on the risks determined in accordance with paragraph 2, the ETIAS Central Unit shall establish the specific risk indicators consisting of a combination of data including one or several of the following:	<u>Suggested drafting</u> 4. Based on the <b>specific</b> risks determined in accordance with paragraph 2 <b>3</b> , the ETIAS Central Unit shall establish the specific risk indicators consisting of a combination of data including one or several of the following:
<b>20.</b>	(a) age range, sex, current nationality;		(a) age range, sex, <del>current</del> nationality;	<u>Provisionally agreed</u> (a) age range, sex, nationality;
<b>21.</b>	(b) country and city of residence;		(b) country and city of residence;	<u>Agreed text</u> (b) country and city of residence;
<b>22.</b>		<b>Amendment 175 Article 28(4)(c)</b>		
<b>23.</b>	(c) education level;	Deleted	(c) education level;	
<b>24.</b>		<b>Amendment 176 Article 28(4)(d)</b>		
<b>25.</b>	(d) current occupation.	Deleted	(d) current occupation.	
<b>26.</b>	5. The specific risk indicators	sex, <i>race, colour</i> , ethnic <i>or</i>	5. The specific risk indicators	<u>Suggested drafting</u> (based on

	shall be targeted and proportionate. They shall in no circumstances be based on a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, sexual life or sexual orientation.	<i>social</i> origin, <i>genetic features</i> , <i>language</i> , religion or belief, <i>political or any other opinion</i> , <i>membership of a national minority</i> , <i>property</i> , <i>birth</i> , disability, age or sexual orientation	shall be targeted and proportionate. They shall in no circumstances be based on a person's <u>sex</u> , race, or ethnic origin, <del>political opinions</del> , religion <u>or</u> <del>or</del> philosophical beliefs, <del>trade union membership</del> , <del>sexual life</del> <u>disability</u> , <u>age</u> or sexual orientation.	Article 12 of EP amendment) 5. The specific risk indicators shall be targeted and proportionate. They shall in no circumstances be based on a person's <b>sex</b> , race, <b>colour</b> , or ethnic <b>or social</b> origin, <b>genetic features</b> , <b>language</b> , political <b>or any other</b> opinions, religion or philosophical beliefs, <del>trade union membership</del> <b>of a national minority</b> , <b>property</b> , <b>birth</b> , <b>disability</b> , <del>age</del> <del>sexual life</del> or sexual orientation.
27.	6. <u>The</u> specific risk indicators <b>shall be</b> defined, modified, added and deleted by the ETIAS Central Unit after consultation of the ETIAS Screening Board.		6. <u>The</u> specific risk indicators <b>shall be established</b> defined, modified, added and deleted by the ETIAS Central Unit after consultation of the ETIAS Screening Board.	<u>Provisionally agreed</u> 6. <u>The</u> specific risk indicators <b>shall be established</b> , modified, added and deleted by the ETIAS Central Unit after consultation of the ETIAS Screening Board.

28.			<p><u>7. The ETIAS screening rules shall be an algorithm enabling the comparison between the data recorded in an application file of the ETIAS Central System and specific risk indicators pointing to security, illegal immigration or public health risks in accordance with Article 18. The Central Unit shall register the ETIAS screening rules in the ETIAS Central System.</u></p>	(moved to paragraph 1)
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VII. WATCHLIST

	<b>Commission proposal</b> <i>Article 29</i> <i>The ETIAS watchlist</i>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 29</i> <i>The ETIAS watchlist</i>	<b>Text provisionally agreed at</b> <b>trilogue on 12 December</b>
1.			01. <u>The ETIAS watchlist shall be hosted by Europol. The technical specifications shall be established by means of an implementing measure adopted in accordance with the examination procedure referred to in Article 79(2).</u>	/
2.		<b>Amendment 177</b> <b>Article 29(1)</b>		
3.	1. The ETIAS watchlist shall consist of data related to persons who are suspected of having committed or taken part in a criminal offence or persons regarding whom there are factual indications or reasonable grounds to believe that they will commit criminal offences.	1. The ETIAS watchlist, <i>as part of the Central System</i> , shall consist of data related to persons who are suspected <i>by one or several Member States</i> of having committed or taken part in a <i>serious</i> criminal offence <i>or a terrorist offence</i> or persons regarding whom there are factual indications or reasonable grounds, <i>based on an overall assessment of a person, in particular on the basis of past offences</i> , to believe that they will commit <i>terrorist</i> offences.	1. The ETIAS watchlist shall consist of data related to persons who <u>have committed</u> or are suspected of having committed or taken part in a <u>serious</u> criminal offence or persons regarding whom there are factual indications or reasonable grounds to believe that they will commit <u>serious</u> criminal offences.	<u>Provisionally agreed</u> 1. The ETIAS watchlist, <b>as part of the ETIAS Central System</b> , shall consist of data related to persons who are suspected of having committed or taken part in a <b>serious</b> criminal offence <b>or a terrorist offence</b> or persons regarding whom there are factual indications or reasonable grounds, <b>based on an overall assessment of a person</b> , to believe that they will commit <b>serious</b> criminal offences <b>or terrorist offences</b> .

4.	2. The ETIAS watchlist shall be established on the basis of:		2. The ETIAS watchlist shall <u>contain information related to:</u> <del>be established on the basis of:</del>	<u>Provisionally agreed</u> 2. The ETIAS watchlist shall <b>be established on the basis of contain information related to:</b>
5.	(a) the United Nations list of war criminals;		(a) the United Nations list of war criminals	<u>Agreed text</u> (a) the United Nations list of war criminals
6.		<b>Amendment 178</b> <b>Article 29(2)(b)</b>		
7.	(b) information related to terrorist offences or other serious criminal offences provided by Member States;	(b) information related to terrorist offences or other serious criminal offences;	(b) <del>information related to</del> terrorist offences or other serious criminal offences provided by Member States;	<u>Provisionally agreed</u> (b) <b>information related to</b> terrorist offences or other serious criminal offences <del>provided by Member States;</del>
8.		<b>Amendment 179</b> <b>Article 29(2)(c)</b>		
9.	(c) information related to terrorist offences or other serious criminal offences obtained through international cooperation.	Deleted	(c) <del>information related to</del> terrorist offences or other serious criminal offences obtained by <u>Europol</u> through international cooperation.	<u>Provisionally agreed</u> Deleted
10.			<u>2a. The information referred to in paragraph 2(a) and (c) shall be entered into the watchlist by Europol, without prejudice to Regulation (EU) 2016/794 in relation to international cooperation. It shall be responsible for each data element it enters. The ETIAS watchlist shall indicate, for each data element, the date and time</u>	<u>Provisionally agreed</u> 2a. The information referred to in paragraph 2(a) <del>and (c)</del> shall be entered into the watchlist by Europol, without prejudice to Regulation (EU) 2016/794 in relation to international cooperation. It shall be responsible for each data element it enters. The ETIAS watchlist shall indicate, for each



			<u>of storing.</u>	data element, the date and time of storing.
<b>11.</b>			<u>2b. The information referred to in paragraph 2(b) shall be entered into the watchlist by Member States. They shall be responsible for each data element they enter. The ETIAS watchlist shall indicate, for each data element, the date and time of storing and the Member State that entered it.</u>	<u>Provisionally agreed</u> 2b. The information referred to in paragraph 2(b) shall be entered into the watchlist by <b>Europol without prejudice to Regulation (EU) 2016/794 or by</b> Member States. They shall be responsible for each data element they enter. The ETIAS watchlist shall indicate, for each data element, the date and time of storing and the Member State that entered it or Europol.
<b>12.</b>		<b>Amendment 180 Article 29(3)</b>		
<b>13.</b>	3. On the basis of the information referred to in paragraph 2 and relevant Europol data, Europol shall establish the ETIAS watchlist composed of items consisting of one or more of the following data elements:	3. On the basis of the information referred to in paragraph 2 and relevant Europol data, Europol shall <b>manage</b> the ETIAS watchlist composed of items consisting of one or more of the following:	3. On the basis of the information referred to in paragraph 2 <del>and relevant Europol data, Europol shall establish</del> the ETIAS watchlist <u>shall be</u> composed of items consisting of one or more of the following data elements:	<u>Provisionally agreed</u> 3. On the basis of the information referred to in paragraph 2 <del>and relevant Europol data, Europol shall establish</del> the ETIAS watchlist <b>shall be</b> composed of items consisting of one or more of the following data elements:
<b>14.</b>	(a) surname, first name(s), surname at birth; date of birth, place of birth, country of birth, sex, nationality;	(a) surname;	(a) surname, <u>and, if available,</u> first name(s), surname at birth, date of birth, place of birth, country of birth, sex, nationality;	(a) surname, <del>first name(s), surname at birth; date of birth, place of birth, country of birth,</del> sex, nationality;

15.		<i>(aa) surname at birth;</i>		<b>(aa) surname at birth;</b>
16.		<i>(ab) date of birth;</i>		<b>(ab) date of birth;</b>
17.	(b) other names (alias(es), artistic name(s), usual name(s));	(b) other names (alias(es), artistic name(s), usual name(s));	(b) other names (alias(es), artistic name(s), usual name(s));	(b) other names (alias(es), artistic name(s), usual name(s));
18.	(c) a travel document (type, number and country of issuance of the travel document);	(c) a travel document (type, number and country of issuance of the travel document);	(c) <del>a</del> travel document(s) (type, number and country of issuance of the travel document(s));	(c) <del>a</del> travel document(s) (type, number and country of issuance of the travel document(s));
19.	(d) home address;	(d) home address;	(d) <del>home</del> address;	(d) home address;
20.	(e) e-mail address, phone number;	(e) e-mail address;	(e) e-mail address;	(e) e-mail address, <del>phone number;</del>
21.		<i>(ea) phone number</i>	<u>(ea)</u> phone number;	<b>(ea) phone number</b>
22.	(f) the name, e-mail address, mailing address, phone number of a firm or organization;	(f) the name, e-mail address, mailing address, phone number of a firm or organization;	(f) the name, e-mail address, mailing address, phone number of a firm or organization;	(f) the name, e-mail address, mailing address, phone number of a firm or organization;
23.	(g) IP address.	(g) IP address.	(g) IP address.	(g) IP address.
24.		<i>If available, first name(s), place of birth, country of birth, sex and nationality shall be added.</i>		<b>If available, the following elements shall be added to the corresponding item constituted of at least one of the elements listed above: first name(s), place of birth, country of birth, sex and nationality.</b>
25.		<b>Amendment 181 Article 29a (new)</b>		<u>Provisionally agreed</u>
26.		<b>Article 29a Responsibilities and tasks regarding the ETIAS watchlist</b>		<b>Article 29a Responsibilities and tasks regarding the ETIAS watchlist</b>
27.		<b>1. Before inserting data into the ETIAS watchlist, Europol shall carry out a thorough assessment of the reasons for the insertion and verify it is</b>		<b>1. Before inserting data into the ETIAS watchlist, Europol shall have determined whether the information is adequate, accurate and important</b>

		<i>necessary and proportionate.</i>		enough to be included in the ETIAS watchlist. Before activating new data elements introduced in the ETIAS watchlist, Europol shall assess their potential impact on the proportion of applications manually processed. Eu-LISA shall for the purpose of this assessment implement a specific tool.
28.		<i>2. When the data are inserted on the basis of information provided by a Member State, that Member State shall have determined whether the information is adequate, accurate and important enough to be included in the ETIAS watchlist.</i>		<b>2. When the data are inserted by a Member State, that Member State shall have determined whether the information is adequate, accurate and important enough to be included in the ETIAS watchlist. Before activating new data elements introduced in the ETIAS watchlist, Member States shall assess their potential impact on the proportion of applications manually processed. Eu-LISA shall for the purpose of this assessment implement a specific tool.</b>

29.		3. <i>Member States and Europol shall be responsible for the accuracy of the data in the ETIAS watchlist and for keeping them up to date.</i>		3. <b>Member States and Europol shall be responsible for the accuracy of the data in the ETIAS watchlist and for keeping them up to date.</b>
30.		4. <i>Europol shall foresee a procedure to review and verify regularly the accuracy and up-to-dateness of the data elements present in the ETIAS watchlist. The Member States having provided information related to terrorist offences or other serious criminal offences shall be associated to the review procedure.</i>		4. <b>Europol shall implement a procedure to review and verify regularly the accuracy and up-to-datedness of the data elements it inserted in the ETIAS watchlist as well as to ensure that the accuracy and up-to-datedness of the data elements inserted by Member States in the ETIAS watchlist are regularly reviewed and verified by the Member State having inserted the data elements.</b>
31.		5. <i>Following a review, items of data shall be withdrawn from the ETIAS watchlist if it is proven that the reasons for which they were inserted no longer hold, or that the data elements are obsolete or not up-to-date.</i>		5. <b>Following a review, data elements shall be withdrawn from the ETIAS watchlist if it is proven that the reasons for which they were inserted no longer hold, or that the data elements are obsolete or not up-to-date.</b>
32.		6. <i>The Agency for the operational management of large-scale information systems in the area of freedom, security and justice ('eu-LISA') shall be</i>		6. <b>The ETIAS watchlist and the assessment tool referred to in paragraphs 1 and 2 shall be developed and technically hosted by eu-LISA. The</b>

		<i>responsible for the technical management of the ETIAS watchlist, as it is responsible for the development and the technical management of the ETIAS Information System.</i>		<b>technical specifications of the watchlist and of the assessment tool shall be established by means of an implementing measure adopted in accordance with the examination procedure referred to in Article 79(2).</b>
33.		<i>7. One year after ETIAS comes into operation, and every two years thereafter, the European Data Protection Supervisor shall carry out a data protection audit of the ETIAS watchlist and submit a report to the European Parliament, to the Council and to the Commission.</i>		

## VIII. CARRIERS

	<b>Commission proposal</b> <i>Article 39</i> <i>Access to data for verification by carriers</i>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 39</i> <i>Access to data for verification by carriers</i>	<b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b>  <i>Article 39</i> <i>Access to data for verification by carriers</i>
<b>1.</b>		<b>Amendment 225</b> <b>Article 39(1)</b>		
<b>2.</b>	1. In accordance with Article 26 of the Convention Implementing the Schengen Agreement carriers shall consult the ETIAS Central System in order to verify whether or not third country nationals subject to the travel authorisation requirement are in possession of a valid travel authorisation.	1. <b><i>Air and sea</i></b> carriers shall <b><i>send a query to</i></b> the ETIAS Central System <b><i>at the latest at the time of boarding</i></b> in order to verify whether or not third country nationals subject to the travel authorisation requirement are in possession of a valid travel authorisation.	1. <del>In accordance with Article 26 of the Convention Implementing the Schengen Agreement</del> <u>Air carriers, sea carriers and international carriers transporting groups overland by coach</u> shall <u>send a query to</u> <del>consult</del> the ETIAS Central System in order to verify whether or not third country nationals subject to the travel authorisation requirement are in possession of a valid travel authorisation.	1. In accordance with Article 26 of the Convention Implementing the Schengen Agreement, <b>Air carriers, sea carriers and international carriers transporting groups overland by coach</b> shall <b>send a query to</b> <del>consult</del> the ETIAS Central System in order to verify whether or not third country nationals subject to the travel authorisation requirement are in possession of a valid travel authorisation.

3.		<b>Amendment 226 Article 39(2)(1)</b>		
4.	2. A secure internet access to the carrier gateway, including the possibility to use mobile technical solutions, referred to in Article 6(2)(h) shall allow carriers to proceed with the consultation referred to in paragraph 1 prior to the boarding of a passenger. For this purpose, the carrier shall be permitted to consult the ETIAS Central System using the data contained in the machine readable zone of the travel document.	<i>Secure</i> access to the carrier gateway, including the possibility to use mobile technical solutions, referred to in Article 6(2)(h) shall allow carriers to proceed with the <b>query</b> referred to in paragraph 1 prior to the boarding of a passenger. For this purpose, the carrier shall <b>send a query to</b> the ETIAS Central System using the data contained in the machine readable zone of the travel document.	2. <del>A s</del> Secure internet access to the carrier gateway, including the possibility to use mobile technical solutions, referred to in Article 6(2)(h) shall allow carriers to proceed with the <u>query consultation</u> referred to in paragraph 1 prior to the boarding of a passenger. For this purpose, the carrier shall <u>send the query to be permitted to consult</u> the ETIAS Central System using the data contained in the machine readable zone of the travel document.	Provisionally agreed: 2. <b>Secure</b> access to the carrier gateway, including the possibility to use mobile technical solutions, referred to in Article 6(2)(h) shall allow carriers to proceed with the query referred to in paragraph 1 prior to the boarding of a passenger. For this purpose, the carrier shall send a query to the ETIAS Central System using the data contained in the machine readable zone of the travel document and <b>indicating the Member State of entry or indicating, where applicable, that the passenger will be in airport transit.</b>
5.		<b>Amendment 227 Article 39(2)(2)</b>		
6.	The ETIAS Central System shall respond by indicating whether or not the person has a valid travel authorisation. Carriers may store the information sent and the answer received.	The ETIAS Central System shall respond by indicating whether or not the person has a valid travel authorisation <b>and, where applicable, the territory or territories in which a travel authorisation with limited territorial validity is valid.</b> Carriers may store the	The ETIAS Central System shall respond by indicating whether or not the person has a valid travel authorisation, <b><u>providing the carriers with an OK/NOT OK answer. In case a travel authorisation has been issued with limited territorial validity in accordance with Article 38,</u></b>	<u>Suggested drafting</u> The ETIAS Central System shall <del>respond by</del> <b><u>provide the carriers with an OK/NOT OK answer</u></b> indicating whether or not the person has a valid travel authorisation. <b><u>In case a travel authorisation has been issued with limited territorial validity</u></b>

		information sent and the answer received.	<p><b><u>the ETIAS Central System shall respond by indicating that the person has a valid travel authorisation and the Member State(s) for which that authorisation is valid, providing the carriers with an OK answer and an indication of the Member State(s) concerned.</u></b> Carriers may store the information sent and the answer received <u>in accordance with the applicable law.</u></p>	<p><b><u>in accordance with Article 38, the response provided by the ETIAS Central System shall take into account the Member State(s) for which the autorisation is valid as well as the Member State of entry indicated by the carrier. The response provided by the ETIAS Central System shall also take into account the indication that the passenger will be in airport transit.</u></b></p> <p>Carriers may store the information sent and the answer received <b>in accordance with the applicable law. It shall not be possible to regard the OK/NOT OK answer as a decision to authorise or refuse entry in accordance with Regulation (EU) 2016/399.</b></p>
7.				<p><b>The Commission shall adopt implementing acts concerning the detailed rules on the conditions for the operation of the carrier gateway and the data protection and security rules applicable. Those implementing acts shall be adopted in accordance with the examination procedure</b></p>



				<b>referred to in Article 79(2).</b>
<b>8.</b>		<b>Amendment 228 Article 39(3)</b>		
<b>9.</b>	3. An authentication scheme, reserved exclusively for carriers, shall be set up in order to allow access to the carrier gateway for the purposes of paragraph 2 to the duly authorised members of the carriers' staff. The authentication scheme shall be adopted by the Commission by means of implementing acts in accordance with the examination procedure referred to in Article 79(2).	3. An authentication scheme, reserved exclusively for carriers, shall be set up in order to allow access to the carrier gateway for the purposes of paragraph 2 to the duly authorised members of the carriers' staff. The authentication scheme shall be adopted by the Commission by means of implementing acts in accordance with the examination procedure referred to in Article 79(2). <i>The authentication scheme shall be based on information security risk management and data protection by design and by default.</i>	3. An authentication scheme, reserved exclusively for carriers, shall be set up in order to allow access to the carrier gateway for the purposes of paragraph 2 to the duly authorised members of the carriers' staff. The authentication scheme shall be adopted by the Commission by means of implementing acts in accordance with the examination procedure referred to in Article 79(2).	<u>LIBE proposal:</u> 3. An authentication scheme, reserved exclusively for carriers, shall be set up in order to allow access to the carrier gateway for the purposes of paragraph 2 to the duly authorised members of the carriers' staff. The authentication scheme shall be adopted by the Commission by means of implementing acts in accordance with the examination procedure referred to in Article 79(2). <b>When setting up the authentication scheme, information security risk management and the principles of data protection by design and by default shall be taken into account.</b>
<b>10.</b>			4. <u>The carriers referred to in paragraph 1 shall be subject to the penalties provided for in accordance with Article 26(2) of the Convention Implementing the Schengen Agreement and Article 4 of Council Directive 2001/51/EC when they transport</u>	<b>4. The carriers referred to in paragraph 1 shall be subject to the penalties provided for in accordance with Article 26(2) of the Convention Implementing the Schengen Agreement and Article 4 of Council Directive 2001/51/EC</b>

			<u>third country nationals who, although subject to the travel authorisation requirement, are not in possession of a valid travel authorisation.</u>	<b>when they transport third country nationals who, although subject to the travel authorisation requirement, are not in possession of a valid travel authorisation.</b>
<b>11.</b>			<u>5. If third country nationals are refused entry, any carrier which brought them to the external borders by air, sea and land shall be obliged to immediately assume responsibility for them again. At the request of the authorities competent to carry out the border checks, the carriers shall be obliged to return the third country nationals to the third country from which they were transported or to the third country which issued the travel document on which they travelled or to any other third country to which they are certain to be admitted.</u>	<b>5. If third country nationals are refused entry, any carrier which brought them to the external borders by air, sea and land shall be obliged to immediately assume responsibility for them again. At the request of the authorities competent to carry out the border checks, the carriers shall be obliged to return the third country nationals to the third country from which they were transported or to the third country which issued the travel document on which they travelled or to any other third country to which they are certain to be admitted.</b>
<b>12.</b>				<u>Suggested drafting</u> <b>6. By way of derogation from paragraph 1, for a period of three years starting at the ETIAS entry in operation, the verification referred to in</b>

				<b>paragraph 1 shall be optional for carriers transporting groups overland by coach and the provisions referred to in paragraph 4 and 5 shall not apply to them.</b>
<b>13.</b>	<i>Article 40 Fall-back procedures in case of technical impossibility to access data by carriers</i>		<i>Article 40 Fall-back procedures in case of technical impossibility to access data by carriers</i>	<i>Article 40 Fall-back procedures in case of technical impossibility to access data by carriers</i>
<b>14.</b>	1. Where it is technically impossible to proceed with the consultation referred to in Article 39(1), because of a failure of the ETIAS Information System or for other reasons beyond the carriers' control, the carriers shall be exempted of the obligation to verify the possession of a valid travel authorisation. In case of a failure of the ETIAS Information System, the ETIAS Central Unit shall notify the carriers.		1. Where it is technically impossible to proceed with the <del>consultation query</del> referred to in Article 39(1), because of a failure of <u>any part of</u> the ETIAS Information System <del>or for other reasons beyond the carriers' control</del> , the carriers shall be exempted of the obligation to verify the possession of a valid travel authorisation. <u>Where such failure is detected by eu-LISA in case of a failure of the ETIAS Information System</u> , the ETIAS Central Unit shall notify the carriers. <u>It shall also notify the carriers when the failure is remedied. Where such failure is detected by the carriers, they may notify the ETIAS Central Unit.</u>	<u>LIBE proposal:</u> 1. Where it is technically impossible to proceed with the query referred to in Article 39(1), because of a failure of any part of the ETIAS Information System, the carriers shall be exempted of the obligation to verify the possession of a valid travel authorisation. Where such failure is detected by eu-LISA, the ETIAS Central Unit shall notify the carriers. It shall also notify the carriers when the failure is remedied. Where such failure is detected by the carriers, they may notify the ETIAS Central Unit. (last paragraph moved in new para 1b)

15.			1a. <u>Penalties referred to in Article 39(4) shall not be imposed on carriers in the cases referred to in paragraph 1.</u>	<b>1a. Penalties referred to in Article 39(4) shall not be imposed on carriers in the cases referred to in paragraph 1.</b>
16.				(paragraph moved from para 1) <b>1b. Where it is technically impossible for a prolonged period of time to proceed with the consultation query referred to in Article 39(1), for other reasons than a failure of any part of the ETIAS Information System the carriers shall inform the ETIAS Central Unit.</b>
17.		<b>Amendment 229 Article 40(2)</b>		

18.	2. The details of the fall-back procedures shall be laid down in an implementing act adopted in accordance with the examination procedure referred to in Article 79(2).	2. The details of the fall-back procedures shall be laid down in an implementing act adopted in accordance with the examination procedure referred to in Article 79(2). <b><i>Such procedures shall take into account information security risk management and data protection by design and by default.</i></b>	2. The details of the fall-back procedures shall be laid down in an implementing act adopted in accordance with the examination procedure referred to in Article 79(2).	<u>Provisionally agreed</u> 2. The details of the fall-back procedures shall be laid down in an implementing act adopted in accordance with the examination procedure referred to in Article 79(2).
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Suggested drafting for a new recital

Following the start of operations of the ETIAS, the compatibility and coherence of provisions referred to in article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders<sup>1</sup> ('the Convention implementing the Schengen Agreement') with the ETIAS provisions for overland transport by coaches should be assessed by the Commission. The evolution of overland transport by coaches during the last years should be taken into account. The need of amending provisions concerning the overland transport by coaches referred to in article 26 of the Convention implementing the Schengen Agreement should be considered.

<sup>1</sup> OJ L 239, 22.9.2000, p. 19.

## IX. ACCESS TO CERTAIN DATA BY IMMIGRATION AUTHORITIES

Articles 11(4), 49(2), 55(2a) and 59(4) should be amended accordingly.

	<b>Commission proposal</b>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 42a</i> <i>Access to data by immigration authorities</i>	<b>Text provisionally agreed at trilogue on 12 December</b>
1.			<u>1. For the purpose of checking or verifying if the conditions for entry or stay on the territory of the Member States are fulfilled and for the purpose of taking appropriate measures relating thereto, the immigration authorities of the Member States shall have access to search the ETIAS Central System using the data contained in the machine readable zone of the travel document.</u>	1. For the purpose of checking or verifying if the conditions for entry or stay on the territory of the Member States are fulfilled and for the purpose of taking appropriate measures relating thereto, the immigration authorities of the Member States shall have access to search the ETIAS Central System <del>using</del> <b>with the data referred to in points (a), (b), (c), (d) and (e) of Article 15(2) contained in the machine readable zone of the travel document.</b>
2.				<b>1a. Access to the ETIAS in accordance with paragraph 1 shall be allowed only where the following conditions are met:</b> <b>(a) a prior search has been conducted in the EES in accordance with Article 26 of [EES Regulation] and</b> <b>(b) this search indicates that the</b>

				<b>EES does not contain an entry record corresponding to the presence of the third country national on the territory of Member States.</b>
3.			<p><u>2. The ETIAS Central System shall respond by indicating whether or not the person has a valid travel authorisation and in the case of a travel authorisation with limited territorial validity as referred to in Article 38, the Member State(s) for which the authorisation is valid. The ETIAS Central System shall also indicate whether the travel authorisation will expire within the next 90 days and the remaining validity period. The Immigration Authorities shall also have access to the information referred to in Article 15(2)(f) and (g) and the relevant additional documentation or information. This shall not include information on whether or not the applicant may pose a public health risk as referred to in Article 15(4)(a).</u></p>	<p>2. The ETIAS Central System shall respond by indicating whether or not the person has a valid travel authorisation and in the case of a travel authorisation with limited territorial validity as referred to in Article 38, the Member State(s) for which the authorisation is valid. The ETIAS Central System shall also indicate whether the travel authorisation will expire within the next 90 days and the remaining validity period. <del>The Immigration Authorities shall also have access to the information referred to in Article 15(2)(f) and (g) and the relevant additional documentation or information. This shall not include information on whether or not the applicant may pose a public health risk as referred to in Article 15(4)(a).</del></p>

4.			<u>In the case of minors, the immigration authorities shall also have access to the information relating to the traveller's parental authority or legal guardian referred to in Article 15(2)(k).</u>	In the case of minors, the immigration authorities shall also have access to the information relating to the traveller's parental authority or legal guardian referred to in Article 15(2)(k).
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Article 3(1)(r): Definition of immigration authorities

	<b>Commission proposal</b>	<b>EP amendments</b>	<b>Council general approach text</b>	<b>Text provisionally agreed at trilogue on 12 December</b>
5.			(r) 'immigration authorities' mean the competent authorities assigned, in accordance with national law, to:	'immigration authority' means the competent authority responsible, in accordance with national law, for one or more of the following:
6.			(a) check within the territory of the Member States whether the conditions for entry to or of authorised stay in the territory of the Member States are fulfilled and/or;	(a) checking within the territory of the Member States whether the conditions for entry to, or stay on, the territory of the Member States are fulfilled;
7.			(b) examine the conditions and take decisions related to the residence of third country nationals on the territory of the Member States and where relevant provide advice in accordance with Regulation (EU) 377/2004 and/or;	(b) examining the conditions for, and taking decisions related to, the residence of third-country nationals on the territory of the Member States insofar as that authority does not constitute a 'determining authority' as defined in point (f) of Article 2 of Directive 2013/32/EU of the



				European Parliament and of the Council <sup>2</sup> , and, where relevant, providing advice in accordance with Council Regulation (EC) No 377/2004 <sup>3</sup> ;
8.			(c) facilitate the return of third country nationals to a third country of origin or transit.	(c) the return of third-country nationals to a third country of origin or transit;

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<sup>2</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

<sup>3</sup> Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1).

## X. HOLDING A VALID TRAVEL AUTHORISATION AS A CONDITION OF ENTRY AND STAY

Article 13 "Practical arrangements for lodging an application"

	<b>Commission proposal</b> <i>Article 13</i> <i>Practical arrangements for lodging an application</i>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 13</i> <i>Practical arrangements for lodging an application</i>	<b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b> <i>Article 13</i> <i>Practical arrangements for lodging an application</i>
<b>1.</b>			<p><u>1a. Holders of a valid travel authorisation may lodge an application for a new travel authorisation as from 91 days before the expiry date of the valid travel authorisation. 91 days before the expiry of the travel authorisation, the ETIAS Central System shall automatically inform the holder of that travel authorisation via the email service about the expiry date and the possibility to lodge an application for a new travel authorisation.</u></p>	<p><b>Suggested drafting</b> <b>1a. Holders of a valid travel authorisation may lodge an application for a new travel authorisation as from 120 days before the expiry date of the valid travel authorisation. 120 days before the expiry of the travel authorisation, the ETIAS Central System shall automatically inform the holder of that travel authorisation via the email service about the expiry date, the possibility to lodge an application for a new travel authorisation and the obligation to be in possession of a valid travel authorisation for the entire duration of a</b></p>

				short stay on the territory of Member States.
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Article 30 "Issuing of a travel authorisation"

1.	Commission proposal	EP amendments Amendment 186 Article 30(3)	Council general approach text	Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"
2.	3. A travel authorisation shall not confer an automatic right of entry.	3. <i>In accordance with Article 6(1)(b) of Regulation (EU) 2016/399 the possession of a valid travel authorisation constitutes one of the entry conditions. However, it does not confer an automatic right of entry.</i>	3. A travel authorisation shall not confer an automatic right of entry <u>or stay</u> .	<u>Suggested drafting</u> 3. A travel authorisation shall not confer an automatic right of entry or stay.

Article 32 "Notification on the issuing or refusal of a travel authorisation": addition of a new sub paragraph (bba)

1.	Commission proposal	EP amendments Amendment 194 Article 32(1)(bb) (new)	Council general approach text	Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"
2.		<i>(bb) a reminder about the entry conditions laid down in Article 6 of Regulation (EU) No 2016/319 and the need to carry relevant supporting documents at each entry;</i>		<u>Provisionally agreed</u> (covers rows 766 and 769): <b>(bb) a reminder about the entry conditions laid down in Article 6 of Regulation (EU) No 2016/399, including the need to carry relevant</b>

				<p><b>supporting documents at each entry and the duration of authorised short stay (90 days in any 180-day period);</b></p> <p><u>Suggested drafting:</u>  <b>(bba) a reminder about the fact that the possession of a valid travel authorisation is a condition for stay that has to be fulfilled during the entire duration of a short stay on the territory of Member States;</b></p> <p><b>(bc) a link to the web service referred to in Article 13 of Regulation EU [Entry/Exit] enabling third-country nationals to verify at any moment the remaining authorised stay;</b></p>
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Article 35 "Revocation of a travel authorisation"

	<b>Commission proposal</b>	<b>EP amendments</b>	<b>Council general approach text</b>	<b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b>
<b>1.</b>	6. A travel authorisation may be revoked at the request of the applicant.		6. A travel authorisation may be revoked at the request of the applicant. <u>No appeal shall be possible against such revocation of a travel authorisation at the</u>	<p><u>Suggested drafting</u></p> <p>6. A travel authorisation may be revoked at the request of the applicant. No appeal shall be possible against such revocation</p>

			<u>request of the applicant.</u>	of a travel authorisation at the request of the applicant. <b>If the applicant is present on the territory of a Member State when this request is introduced, the revocation shall become effective at the moment the applicant is exiting the territory and the corresponding entry/exit record is created in the EES in accordance with Article 16(3) and 17(2) of Regulation (EU) 2017/2226.</b>
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Article 36 " Notification on the annulment or revocation of a travel authorisation": addition of a new point (d)

	<b>Commission proposal</b> <i>Article 36</i> <i>Notification on the annulment or revocation of a travel authorisation</i>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 36</i> <i>Notification on the annulment or revocation of a travel authorisation</i>	<b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b> <i>Article 36</i> <i>Notification on the annulment or revocation of a travel authorisation</i>
<b>1.</b>	Where a travel authorisation has been annulled or revoked, the applicant shall immediately receive a notification via the e-mail service including:		Where a travel authorisation has been annulled or revoked, the applicant shall immediately receive a notification via the e-mail service including:	<u>Agreed text</u> Where a travel authorisation has been annulled or revoked, the applicant shall immediately receive a notification via the e-mail service including:

2.	(a) a clear indication that the travel authorisation has been annulled or revoked and the travel authorisation application number;		(a) a clear indication that the travel authorisation has been annulled or revoked and the travel authorisation application number;	<u>Agreed text</u> (a) a clear indication that the travel authorisation has been annulled or revoked and the travel authorisation application number;
3.				...
4.				<u>Suggested drafting</u> <b>(d) a clear indication that the possession of a valid travel authorisation is a condition for stay that has to be fulfilled during the entire duration of a short stay on the territory of Member States;</b>

Article 38(6): Issuing of a travel authorisation with limited territorial validity: new sub paragraph 6 (daa)

	<b>Commission proposal</b>	<b>EP amendments</b>	<b>Council general approach text</b>	<b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b>
1.			6. <u>Where a travel authorisation with limited territorial validity has been issued, the applicant shall receive a notification via the e-mail service, including:</u>	<u>Provisionally agreed:</u> 6. Where a travel authorisation with limited territorial validity has been issued, the applicant shall receive a notification via the e-mail service, including:

2.			<u>(a) a clear indication that a travel authorisation with limited territorial validity has been issued and the travel authorisation application number;</u>	Provisionally agreed: (a) a clear indication that a travel authorisation with limited territorial validity has been issued and the travel authorisation application number;
3.			<u>(b) the commencement and expiry dates of the validity period of the travel authorisation with limited territorial validity,</u>	Provisionally agreed: (b) the commencement and expiry dates of the validity period of the travel authorisation with limited territorial validity,
4.			<u>(c) a clear indication of the territory on which the holder of that authorisation is entitled to travel and that he or she can only travel within that territory; and</u>	Provisionally agreed: (c) a clear indication of the <del>territory on</del> <b>Member States to</b> which the holder of that authorisation is entitled to travel and that he or she can only travel within <b>the territory of those Member States</b> <del>that territory;</del> and
5.			<u>(d) the rights derived from an issued travel authorisation pursuant to Article 30(3), the entry conditions as set out in Article 6 of Regulation (EU) N°2016/399 and of the calculation of the duration of authorised short stay (90 days in any 180-day period).</u>	Suggested drafting <b>(daa) a reminder about the fact that the possession of a valid travel autorisation is a condition for stay that has to be fulfilled during the entire duration of a short stay on the territory of the Member State for which territory the travel authorisation with limited territorial validity has been</b>

				issued ;  (da) a link to the web service referred to in Article 13 of Regulation EU [Entry/Exit] enabling third-country nationals to verify at any moment the remaining authorised stay;
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Article 41 " Access to data for verification at the external borders"

	Commission proposal	EP amendments	Council general approach text	Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"
1.	2. The ETIAS Central System shall respond by indicating whether or not the person has a valid travel authorisation.	2. The ETIAS Central System shall respond by indicating whether or not the person has a valid travel authorisation <i>or a valid travel authorisation with limited territorial validity for the Member State the person wishes to enter.</i>	2. The ETIAS Central System shall respond by indicating	<u>Provisionally agreed</u> 2. The ETIAS Central System shall respond by indicating:
2.			(a) whether or not the person has a valid travel authorisation, <u>and in the case of a travel authorisation with limited territorial validity as referred to in Article 38, the Member State(s) for which it is valid;</u>	<u>Provisionally agreed</u> (a) whether or not the person has a valid travel authorisation, and in the case of a travel authorisation with limited territorial validity as referred to in Article 38, the Member



				State(s) for which it is valid;
3.			<u>(b) any flag referred to in Article 30(1a) attached to that application file;</u>	Suggested drafting <b>(b) any flag referred to in Article 30(1a) and 30(1b).</b>
4.			<u>(c) whether the travel authorisation will expire within the next 90 days and the remaining validity period;</u>	Suggested drafting <b>(c) whether the travel authorisation will expire within the next 90 days and the remaining validity period;</b>
5.				...
6.				Suggested drafting <b>2a. Where the travel authorisation will expire within the next 90 days, the border guard shall inform the holder of that travel authorisation of the remaining validity period, of the possibility to lodge an application for a new travel authorisation and of the obligation to be in possession of a valid travel authorisation for the entire duration of a short stay on the territory of Member States. The ETIAS Central System shall automatically provide the holder of that travel authorisation with the same information via the email</b>

				<b>service.</b>
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Article 61 "Public awareness"

	<b>Commission proposal</b>	<b>EP amendments</b>	<b>Council general approach text</b>	<b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b>
<b>7.</b>	(e) that mere possession of a travel authorisation does not confer an automatic right of entry and that the holders of a travel authorisation are requested to present proof that they fulfil the entry conditions at the external border, as provided for in Article 6 of Regulation (EU) 2016/399.		(e) that mere possession of a travel authorisation does not confer an automatic right of entry and that the holders of a travel authorisation <u>must fulfill the entry conditions as set out in Article 6 of Regulation (EU) N°2016/399</u> and are requested to present proof that they fulfil <del>the entry</del> <u>those</u> conditions at the external border, <del>as provided for in Article 6 of Regulation (EU) 2016/399.</del>	<u>Provisionally agreed</u> (e) that mere possession of a travel authorisation does not confer an automatic right of entry and that the holders of a travel authorisation must fulfill the entry conditions as set out in Article 6 of Regulation (EU) N°2016/399 and are requested to present proof that they fulfil those conditions at the external border
<b>8.</b>				<u>Suggested drafting</u> <b>(eaa) that the possession of a valid travel authorisation is a condition for entry and stay on the territory of the Member States</b>

Article 62 "Information campaign"

1.	<p><b>Commission proposal</b> <i>Article 62</i> <i>Information campaign</i></p>	<p><b>EP amendments</b></p>	<p><b>Council general approach text</b> <i>Article 62</i> <i>Information campaign</i></p>	<p><b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b> <i>Article 62</i> <i>Information campaign</i></p>
2.		<p><b>Amendment 303</b> <b>Article 62(1)</b></p>		
3.	<p>The Commission shall, in cooperation with the ETIAS Central Unit, and the Member States, accompany the start of the ETIAS operation with an information campaign, to inform third country nationals falling within the scope of this Regulation of their travel authorisation requirement to be in possession of a valid travel authorisation for crossing the external borders.</p>	<p>The Commission shall, in cooperation with the <i>European External Action Service, the ETIAS Central Unit, the supervisory authorities, the European Data Protection Supervisor</i> and the Member States, <i>including their embassies in the third countries concerned</i>, accompany the start of the ETIAS operation with an information campaign, to inform third country nationals falling within the scope of this Regulation of their requirement to be in possession of a valid travel authorisation for crossing the external borders.</p>	<p>The Commission shall, in cooperation with the ETIAS Central Unit, and the Member States, accompany the start of the ETIAS operation with an information campaign, to inform third country nationals falling within the scope of this Regulation of <del>their travel authorisation</del> <u>of the requirement for them</u> to be in possession of a valid travel authorisation for crossing the external borders.</p>	<p><u>Suggested drafting:</u> The Commission shall, in cooperation with <b>the European External Action Service</b>, the ETIAS Central Unit, and the Member States, <b>including their consulates in the third countries concerned</b>, accompany the start of the ETIAS operation with an information campaign, to inform third country nationals falling within the scope of this Regulation of of the requirement for them to be in possession of a valid travel authorisation for crossing the external borders <b>and for the entire duration of their short stay on the territory of Member States.</b></p>



Article 69: Amendments to Regulation (EU) 2016/399

1.	<b>Commission proposal</b> <i>Article 69</i> <i>Amendments to Regulation (EU)</i> <i>2016/399</i>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 69</i> <i>Amendments to Regulation (EU)</i> <i>2016/399</i>	<b>Commission compromise texts requested by the co-legislators at trilogue on 12 December marked as "suggested drafting"</b> <i>Article 69</i> <i>Amendments to Regulation (EU)</i> <i>2016/399</i>
2.	Regulation (EU) 2016/399 is amended as follows:		Regulation (EU) 2016/399 is amended as follows:	<u>Agreed text</u> Regulation (EU) 2016/399 is amended as follows:
3.	1. Article 6 is amended as follows:		1. Article 6 is amended as follows:	<u>Agreed text</u> 1. Article 6 is amended as follows:
4.	(a) in paragraph 1, point (b) is replaced by the following:		(a) in paragraph 1, point (b) is replaced by the following:	<u>Agreed text</u> (a) in paragraph 1, point (b) is replaced by the following:
5.		<b>Amendment 322</b> <b>Article 69(1)(1)(a)</b>		
6.	"(b) they are in a possession of a valid visa if required pursuant to Council Regulation (EC) No 539/2001 or of a valid travel authorisation if required pursuant to [Regulation establishing a European Travel Information and Authorisation system], except where they hold a valid residence permit or a valid long stay visa;"	"(b) they are in a possession of a valid visa if required pursuant to Council Regulation (EC) No 539/2001 or of a travel authorisation <i>valid at least until the day of entry into the territory of the Member States</i> if required pursuant to [Regulation establishing a European Travel Information and Authorisation system], except where they hold a valid residence permit or a valid long stay visa;"	"(b) they are in a possession of a valid visa if required pursuant to Council Regulation (EC) No 539/2001 or of a valid travel authorisation if required pursuant to [Regulation establishing a European Travel Information and Authorisation system], except where they hold a valid residence permit or a valid long stay visa;"	<u>Suggested drafting</u> "(b) they are in a possession of a valid visa if required pursuant to Council Regulation (EC) No 539/2001 or of a valid travel authorisation if required pursuant to [Regulation establishing a European Travel Information and Authorisation system], except where they hold a valid residence permit or a valid long stay visa;"

## XI. DATA RETENTION PERIOD

	<b>Commission proposal</b> <i>Article 47</i> <i>Data retention</i>	<b>EP amendment</b>	<b>Council general approach text</b> <i>Article 47</i> <i>Data retention</i>	<b>Text provisionally agreed at trilogue</b> <b>on 12 December</b>
<b>1.</b>	1. Each application file shall be stored in the ETIAS Central System for:		1. Each application file shall be stored in the ETIAS Central System for [five years from the last entry/exit record of the applicant stored in the EES; <del>or</del> ]	1. Each application file shall be stored in the ETIAS Central System for:
<b>2.</b>	(a) the period of validity of the travel authorisation;		<del>(a)</del> <u>Where the travel authorisation is not used, the application file shall be stored for the period of validity of the travel authorisation.</u>	(a) the period of validity of the travel authorisation;
<b>3.</b>		<b>Amendment 252</b> <b>Article 47(1)(b)</b>		
<b>4.</b>	(b) [five years from the last entry record of the applicant stored in the EES; or]	Deleted	<del>(b)</del>	<i>deleted</i>
<b>5.</b>		<b>Amendment 253</b> <b>Article 47(1)(c)</b>		
<b>6.</b>	(c) five years from the last decision to refuse, revoke or annul the travel authorisation in accordance with Articles 31, 34 and 35.	(c) <i>five</i> years from the last decision to refuse, revoke or annul the travel authorisation in accordance with Articles 31, 34 and 35 <b>or for a shorter period of time than five years if the alert giving rise to the decision is deleted earlier.</b>	<del>(c)</del> <u>Where the travel authorisation has been refused, revoked or annulled, the application file shall be stored for five years from the last decision to refuse, revoke or annul the travel authorisation in accordance with Articles 31, 34 and 35.</u>	<b>(b)</b> five years from the last decision to refuse, revoke or annul the travel authorisation in accordance with Articles 31, 34 and 35 <b>or for a shorter period of time than five years if the alert giving rise to the decision is deleted earlier.</b>

7.		<b>Amendment 254 Article 47(1a)(new)</b>		
8.		<i>1a. For the purpose of facilitating a new application after the expiry of the period of validity of an ETIAS travel authorisation, the application file may be stored in the ETIAS Central System for an additional period of no more than three years after the end of the period of validity of the travel authorisation only where, following a request for consent, the applicant freely and explicitly consents by means of an electronically signed declaration. Requests for consent shall be presented in a manner which is clearly distinguishable from other matters, in an intelligible and easily accessible form, using clear and plain language in accordance with Article 7 of Regulation (EU) 2016/679 of the European Parliament and of the Council.</i>		1a. For the purpose of facilitating a new application after the expiry of the period of validity of an ETIAS travel authorisation, the application file may be stored in the ETIAS Central System for an additional period of no more than three years after the end of the period of validity of the travel authorisation only where, following a request for consent, the applicant freely and explicitly consents by means of an electronically signed declaration. Requests for consent shall be presented in a manner which is clearly distinguishable from other matters, in an intelligible and easily accessible form, using clear and plain language in accordance with Article 7 of Regulation (EU) 2016/679 of the European Parliament and of the Council.
9.		<i>Consent shall be given following the automatic information provided for in Article 13(2c). The automatic information shall remind the applicant about the purpose of the data retention on the basis of the information</i>		Consent shall be given following the automatic information provided for in Article 13(2c). The automatic information shall remind the applicant about the purpose of the data retention on the basis of the information referred to in Article 61(ea) and the

		<i>referred to in Article 61(ea).</i>		possibility to withdraw at any time a consent given.
10				In accordance with Article 7(3) of Regulation (EU) 2016/679 the applicant may at any time withdraw his or her consent. <del>In this case, the applicant shall use the verification tool referred to in Article 26a and update his/her status. Following this update</del> <b>In case of withdrawing the of consent</b> the application file shall automatically be erased from the ETIAS Central System.
11				<b>The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to further define the tool to be used by the applicants to give and withdraw their consent.</b>
12	2. Upon expiry of its retention period the application file shall automatically be erased from the ETIAS Central System.		2. Upon expiry of its retention period the application file shall automatically be erased from the ETIAS Central System.	2. Upon expiry of its retention period the application file shall automatically be erased from the ETIAS Central System.



## XII. TRANSFER TO CERTAIN DATA TO THIRD COUNTRIES

	<b>Commission proposal</b> <i>Article 55</i> <i>Communication of personal data to third countries, international organisations and private parties</i>	<b>EP amendments</b>	<b>Council General approach text</b> <i>Article 55</i> <i>Communication of personal data to third countries, international organisations and private parties</i>	<b>Text provisionally agreed at trilogue on 12 December</b>
<b>1.</b>	1. Personal data stored in the ETIAS Central System shall not be transferred or made available to a third country, to an international organisation or any private party with the exception of transfers to Interpol for the purpose of carrying out the automated processing referred to in Article 18(2)(b) and (m). Transfers of personal data to Interpol are subject to the provisions of Article 9 of Regulation 45/2001.		1. Personal data stored in the ETIAS Central System shall not be transferred or made available to a third country, to an international organisation or any private party with the exception of transfers to Interpol for the purpose of carrying out the automated processing referred to in Article 18(2)(b) and (m). Transfers of personal data to Interpol are subject to the provisions of Article 9 of Regulation 45/2001.	1. Personal data stored in the ETIAS Central System shall not be transferred or made available to a third country, to an international organisation or any private party with the exception of transfers to Interpol for the purpose of carrying out the automated processing referred to in Article 18(2)(b) and (m). Transfers of personal data to Interpol are subject to the provisions of Article 9 of Regulation 45/2001.
<b>2.</b>		<b>Amendment 280</b> <b>Article 55(2)</b>		
<b>3.</b>	2. Personal data accessed from the ETIAS Central System by a Member State or by for the purposes referred to in Article 1(2) shall not be transferred or made available to any third country, international organisation or private entity established in or outside the	2. Personal data accessed from the ETIAS Central System by a Member State or <b><i>Europol</i></b> for the purposes referred to in Article 1(2) shall not be transferred or made available to any third country, international organisation or private entity established in or outside the	2. Personal data accessed from the ETIAS Central System by a Member State or by <u>Europol</u> for the purposes referred to in Article 1(2) shall not be transferred or made available to any third country, international organisation or private entity established in or outside the	2. Personal data accessed from the ETIAS Central System by a Member State or Europol for the purposes referred to in Article 1(2) shall not be transferred or made available to any third country, international organisation or private entity established in or outside the

	Union. The prohibition shall also apply if those data are further processed at national level or between Member States.	Union. The prohibition shall also apply if those data are further processed at national level or between Member States.	Union. The prohibition shall also apply if those data are further processed at national level or between Member States, <u>except insofar as necessary for the purpose of fair trial.</u>	Union. The prohibition shall also apply if those data are further processed at national level or between Member States.
4.			<u>2a. By way of derogation from paragraph 1, the data accessed from the ETIAS Central System by the immigration authorities pursuant to Article 42a(2) may be transferred to a third country in individual cases, if necessary for the purpose of return, only where the following conditions are satisfied:</u>	<b>2a. By way of derogation from paragraph 1, if necessary for the purpose of return, the immigration authorities may access the ETIAS Central System for retrieving data to be transferred to a third country in individual cases if the following conditions are met:</b> <b>(a) a prior search has been conducted in the EES in accordance with Article 26 of [EES Regulation] and</b> <b>(b) this search indicates that the EES does not contain data concerning the third country national to be returned.</b>
5.				<b>If these conditions are met, the immigration authorities shall have access to query the ETIAS Central System with the totality or some of the data referred to in points (a), (b), (c), (d) and (e) of Article 15(2). If an ETIAS application file corresponds to these data, the immigration</b>

				authorities will have access to the data referred to in points (a), (b), (c), (d), (e), (f), (g) and, in case of minors, (k) of Article 15(2).
6.				The data accessed from the ETIAS Central System by the immigration authorities may be transferred to a third country in individual cases, if necessary in order to prove the identity of third country nationals for the sole purpose of return, only where the following conditions are satisfied:
7.			<u>(a) the Commission has adopted a decision on the adequate protection of personal data in that third country in accordance with Article 45(3) of [Regulation 2016/679], or a readmission agreement or any other type of similar arrangement is in force between the European Union or a Member State and that third country, or Article 49(1)(d) of [Regulation 2016/679] applies;</u>	<b>(a) the Commission has adopted a decision on the adequate protection of personal data in that third country in accordance with Article 45(3) of Regulation (EU) 2016/679;</b>
8.			<u>(b) the Member State shall inform the third country of the obligation to use the data only for purposes for which it was provided;</u>	<b>(b) appropriate safeguards as referred to in Article 46 of Regulation (EU) 2016/679 have been provided, such as through a readmission agreement which</b>

				is in force between the Union or a Member State and the third country in question; or
9.			<u>(c) the data is transferred or made available in accordance with the relevant provisions of Union law, in particular readmission agreements and transfer of personal data, and the national law of the Member State which transferred or made the data available, including the legal provisions relevant to data security and data protection.</u>	(c) point (d) of Article 49(1) of Regulation (EU) 2016/679, applies.
10.				The data referred to in points (a), (b), (d), (e) and (f) of Article 15(2) of this Regulation may be transferred in accordance with paragraph 2 of this Article only where all of the following conditions are satisfied:
11.				(a) the transfer of the data is carried out in accordance with the relevant provisions of Union law, in particular provisions on data protection, including Chapter V of Regulation (EU) 2016/679, and readmission agreements, and the national law of the Member State transferring the data;

12.				(b) the third country has agreed to process the data only for the purposes for which they were provided; and
13.				(c) a return decision adopted pursuant to Directive 2008/115/EC has been issued in relation to the third country national concerned, provided that the enforcement of such a return decision is not suspended and provided that no appeal has been lodged which may lead to the suspension of its enforcement.
14.			<u>3. Transfers of personal data to third countries pursuant to paragraph 2a shall not prejudice the rights of applicants for and beneficiaries of international protection, in particular as regards non-refoulement.</u>	3. Transfers of personal data to third countries pursuant to paragraph 2a shall not prejudice the rights of applicants for and beneficiaries of international protection, in particular as regards non-refoulement.
15.			<u>4. By way of derogation from paragraph 2, the data from the ETIAS Central System accessed by the designated authorities for the purposes referred to in Article 1(2) may be transferred or made available by the designated authority to a third country upon a duly motivated request, only if the following cumulative conditions</u>	4. By way of derogation from paragraph 2, the data from the ETIAS Central System referred to in Article 45(4) accessed by the designated authorities for the purposes referred to in Article 1(2) may be transferred or made available by the designated authority to a third country upon a duly motivated request, only if the

			<u>are met:</u>	following cumulative conditions are met:
16.			<u>(a) in an exceptional case of urgency, where there is an immediate and serious threat of a terrorist offence or other serious criminal offences as defined respectively under Article 3(1)(l) and (m) of this Regulation,</u>	<b>(a) there is an exceptional case of urgency where there is:</b> <b>(i) an imminent danger associated with a terrorist offence; or</b> <b>(ii) an imminent danger to the life of a person and that danger is associated with a serious criminal offence;</b>
17.			<u>(b) the transfer is carried out in accordance with the applicable conditions set under Directive (EU) N0 2016/680,</u>	<b>(b) the transfer of data is necessary for the prevention, detection or investigation in the territory of the Member States or in the third country concerned of such a terrorist offence or serious criminal offence;</b>
18.			<u>(c) the reciprocal provision of any information held by the requesting third country, in the framework of systems for travel authorisation, to the Member States is ensured.</u>	<b>(c) the designated authority has access to such data in accordance with the procedure and the conditions set out in Articles 44 and 45;</b>
19.				<b>(d) the transfer is carried out in accordance with the applicable conditions set out in Directive (EU) 2016/680, in particular Chapter V thereof;</b>
20.				<b>(e) a duly motivated written or electronic request from the</b>

				third country has been submitted; and
21.				(f) the reciprocal provision of any information of systems for travel authorisation held by the requesting third country to the Member States operating the EES is ensured.
22.			<u>Where a transfer is based on this paragraph, such a transfer shall be documented and the documentation shall be made available to the supervisory authority on request, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.</u>	<b>Where a transfer is made pursuant to the first subparagraph of this paragraph, such a transfer shall be documented and the documentation shall, on request, be made available to the supervisory authority established in accordance with Article 41(1) of Directive (EU) 2016/680, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.</b>

### XIII. COSTS AND REVENUES

	<b>Commission proposal</b> <i>Article 74</i> <i>Costs</i>	<b>EP amendments</b>	<b>Council general approach text</b> <i>Article 74</i> <i>Costs</i>	<b>Text provisionally agreed at</b> <b>trilogue on 12 December</b>
<b>1.</b>		<b>Amendment 334</b> <b>Article 74(1)</b>		
<b>2.</b>	The costs incurred in connection with the development of the ETIAS Information System, the integration of the existing national border infrastructure and the connection to the National Uniform Interface as well as by hosting the National Uniform Interface, the set-up of the ETIAS Central and National Units and the operation of the ETIAS shall be borne by the general budget of the Union.	The costs incurred in connection with the development of the ETIAS Information System, the integration of the existing national border infrastructure and the connection to the National Uniform Interface as well as by hosting the National Uniform Interface, the set-up of the ETIAS Central and National Units, <i>the maintenance and operation of the ETIAS, including the costs of staff of the ETIAS National Units</i> , shall be borne by the general budget of the Union. <i>eu-LISA shall pay particular attention to the risk of costs increases and ensure sufficient control of contractors.</i>	The costs incurred in connection with the development of the ETIAS Information System, the integration of the existing national border infrastructure and the connection to the National Uniform Interface as well as <del>the</del> <u>by hosting of</u> the National Uniform Interface <u>and</u> , the set-up of the ETIAS Central and National Units <del>and the operation of the ETIAS</del> shall be borne by the general budget of the Union.	The costs incurred in connection with the development of the ETIAS Information System, the integration of the existing national border infrastructure and the connection to the National Uniform Interface as well as <del>the</del> <u>by hosting of</u> the National Uniform Interface <u>and</u> , the set-up of the ETIAS Central and National Units <del>and the operation of the ETIAS</del> shall be borne by the general budget of the Union. <b><u>Recital</u></b> <b>eu-LISA should pay particular attention to the risk of costs increases and ensure sufficient control of contractors.</b>
<b>3.</b>			<u>The costs of the operation of the ETIAS shall be borne by the general budget of the Union. This shall include the operation and maintenance costs of the</u>	<b>The costs of the operation of the ETIAS shall be borne by the general budget of the Union. This shall include the operation and maintenance</b>



			<u>ETIAS Information System, including of the National Uniform Interface; the operation costs of the ETIAS Central Unit and the costs of staff and ICT of the ETIAS National Units.</u>	<b>costs of the ETIAS Information System, including of the National Uniform Interface; the operation costs of the ETIAS Central Unit and the costs of staff and technical equipment (hardware and software) necessary for the fulfilment of the tasks of the ETIAS National Units.</b>
<b>4.</b>		<b>Amendment 335 Article 74(2)</b>		
<b>5.</b>	The following costs shall be excluded:	Deleted	The following costs shall be excluded:	The following costs shall be excluded:
<b>6.</b>	(a) Member States' project management office (meetings, missions, offices);		(a) Member States' project management office (meetings, missions, offices);	(a) Member States' project management office (meetings, missions, offices);
<b>7.</b>	(b) hosting of national systems (space, implementation, electricity, cooling);		(b) hosting of national systems (space, implementation, electricity, cooling);	(b) hosting of national <b>IT</b> systems (space, implementation, electricity, cooling);
<b>8.</b>	(c) operation of national systems (operators and support contracts);		(c) operation of national systems (operators and support contracts);	(c) operation of national <b>IT</b> systems (operators and support contracts);
<b>9.</b>	(d) customisation of existing border checks;		(d) customisation of existing border checks;	<del>(d) customisation of existing border checks;</del>
<b>10.</b>	(e) design, development, implementation, operation and maintenance of national communication networks;		(e) design, development, implementation, operation and maintenance of national communication networks.	(e) design, development, implementation, operation and maintenance of national communication networks.

11.		<b>Amendment 336 Article 74(1a)(new)</b>		
12.		<i>Member States shall receive financial support for expenses incurred by their additional responsibilities under Article 66. The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to define this financial support.</i>		<b>The costs of the operation of the ETIAS shall also include financial support to Member States for expenses incurred for the customisation and automation of border checks in relation with the implementation of ETIAS. The total amount of this financial support shall be limited to a maximum of 15 million euros for the first year of operation, to a maximum of 25 million euros for the second year of operation and to a maximum of 50 million euros per year for the subsequent years of operation. The Commission shall be empowered to adopt delegated acts in accordance with Article 78 to define this financial support.</b>
13.		<b>Amendment 337 Article 74(1b)(new)</b>		
14.		<i>The European Border and Coast Guard Agency, eu-LISA, Europol, the national supervisory authorities, the European Data Protection Officer and the bodies which</i>		<b>The European Border and Coast Guard Agency, eu-LISA and Europol shall receive the appropriate additional funding and staff necessary for the fulfilment of the tasks</b>

		<i>are part of the ETIAS Ethics Board shall receive the appropriate additional funding and staff necessary for the fulfillment of the tasks entrusted to them under this Regulation.</i>		<b>entrusted to them under this Regulation.</b>
15.	<i>Article 75 Revenues</i>		<i>Article 75 Revenues</i>	
16.		<b>Amendment 338 Article 75(1)</b>		
17.	The revenues generated by the ETIAS shall constitute external assigned revenue in accordance with Article 21(4) of Regulation (EU, EURATOM) No 966/2012.	The revenues generated by the ETIAS shall constitute external assigned revenue in accordance with Article 21(4) of Regulation (EU, EURATOM) No 966/2012. <b><i>Any revenue remaining after covering the cost of the development of the ETIAS and the recurring costs of its operation and maintenance shall be assigned to the Union budget.</i></b>	The revenues generated by the ETIAS shall constitute <u>internal</u> <del>external</del> assigned revenue in accordance with Article 21(4) of Regulation (EU, EURATOM) No 966/2012. <u>They shall be assigned to cover the costs of the operation and maintenance of the ETIAS .</u>	The revenues generated by the ETIAS shall constitute <b>internal</b> <del>external</del> assigned revenue in accordance with Article 21(4) of Regulation (EU, EURATOM) No 966/2012. <b>They shall be assigned to cover the costs of the operation and maintenance of the ETIAS. Any revenue remaining after covering these costs shall be assigned to the Union budget.</b>