

Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226

CHAPTER IV

EXAMINATION OF THE APPLICATION BY THE ETIAS NATIONAL UNITS

Article 25

Member State responsible

- 1 The Member State responsible for the manual processing of applications under Article 26 (the ‘Member State responsible’) shall be identified by the ETIAS Central System as follows:
- a where only one Member State is identified as having entered or supplied the data that triggered the hit pursuant to Article 20, that Member State shall be the Member State responsible;
 - b where several Member States are identified as having entered or supplied the data that triggered the hits pursuant to Article 20, the Member State responsible shall be:
 - (i) the Member State that has entered or supplied the most recent data on an alert referred to in point (d) of Article 20(2); or
 - (ii) if none of those data correspond to an alert referred to in point (d) of Article 20(2), the Member State that has entered or supplied the most recent data on an alert referred to in point (c) of Article 20(2); or
 - (iii) if none of those data correspond to an alert referred to in either point (c) or (d) of Article 20(2), the Member State that has entered or supplied the most recent data on an alert referred to in point (a) of Article 20(2);
 - c where several Member States are identified as having entered or supplied the data that triggered the hits pursuant to Article 20, but none of those data correspond to alerts referred to in point (a), (c) or (d) of Article 20(2), the Member State responsible shall be the one that entered or supplied the most recent data.

For the purposes of points (a) and (c) of the first subparagraph, hits triggered by data not entered or supplied by a Member State shall not be taken into account in order to identify the Member State responsible. Where the manual processing of an application is not triggered by data entered or supplied by a Member State, the Member State responsible shall be the Member State of first intended stay.

- 2 The ETIAS Central System shall indicate the Member State responsible in the application file. Where the ETIAS Central System is not able to identify the Member State responsible as referred to in paragraph 1, the ETIAS Central Unit shall identify it.

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

Article 26

Manual processing of applications by the ETIAS National Units

1 Where the automated processing laid down in Article 20(2) to (5) has reported one or several hits, the application shall be processed manually by the ETIAS National Unit of the Member State responsible. That ETIAS National Unit shall have access to the application file and any linked application files, as well as to any hits triggered during the automated processing laid down in Article 20(2) to (5). The ETIAS Central Unit shall inform the ETIAS National Unit of the Member State responsible whether one or several other Member States or Europol were identified as having entered or supplied the data that triggered the hit pursuant to Article 20(2) or (4). Where one or several Member States have been identified as having entered or supplied the data that triggered such a hit, the ETIAS Central Unit shall also specify the Member States concerned.

2 Following the manual processing of the application, the ETIAS National Unit of the Member State responsible shall:

- a issue a travel authorisation; or
- b refuse a travel authorisation.

3 Where the automated processing laid down in Article 20(2) has reported a hit, the ETIAS National Unit of the Member State responsible shall:

- a refuse a travel authorisation where the hit corresponds to one or several of the verifications referred to in points (a) and (c) of Article 20(2);
- b assess the security or illegal immigration risk and decide whether to issue or refuse a travel authorisation where the hit corresponds to any of the verifications referred to in points (b) and (d) to (m) of Article 20(2).

4 Where automated processing under Article 20(3) has reported that the applicant replied affirmatively to one of the questions referred to in Article 17(4), the ETIAS National Unit of the Member State responsible shall assess the security or illegal immigration risk and decide whether to issue or refuse a travel authorisation.

5 Where automated processing under Article 20(4) has reported a hit, the ETIAS National Unit of the Member State responsible shall assess the security risk and decide whether to issue or refuse a travel authorisation.

6 Where automated processing under Article 20(5) has reported a hit, the ETIAS National Unit of the Member State responsible shall assess the security, illegal immigration or high epidemic risk and decide whether to issue or refuse a travel authorisation. In no circumstances may the ETIAS National Unit of the Member State responsible take a decision automatically on the basis of a hit based on specific risk indicators. The ETIAS National Unit of the Member State responsible shall individually assess the security, illegal immigration and high epidemic risks in all cases.

7 The ETIAS Information System shall keep records of all data processing operations carried out for assessments under this Article by the ETIAS National Unit of the Member State responsible or by the ETIAS National Units of the Member States consulted in accordance with Article 28. Those records shall be created and entered automatically in the application file. They shall show the date and time of each operation, the data used for consultation of other EU information systems, the data linked to the hit received and the staff member having performed the risk assessment.

The results of the assessment of the security, illegal immigration or high epidemic risk and the justification behind the decision to issue or refuse a travel authorisation shall be recorded in the application file by the staff member having performed the risk assessment.

Article 27

Request for additional information or documentation from the applicant

1 Where the ETIAS National Unit of the Member State responsible deems the information provided by the applicant in the application form to be insufficient to enable it to decide whether to issue or refuse a travel authorisation, it may request additional information or documentation from the applicant. The ETIAS National Unit of the Member State responsible shall request additional information or documentation upon the request of a Member State consulted in accordance with Article 28.

2 The request for additional information or documentation shall be notified through the email service referred to in point (f) of Article 6(2) to the contact email address recorded in the application file. The request for additional information or documentation shall clearly indicate the information or documentation that the applicant is required to provide, as well as a list of the languages in which the information or documentation may be submitted. That list shall include at least English or French or German unless it includes an official language of the third country of which the applicant has declared to be a national. Where additional documentation is requested, an electronic copy of the original documentation shall also be requested. The applicant shall provide the additional information or documentation directly to the ETIAS National Unit of the Member State responsible through the secure account service referred to in point (g) of Article 6(2) within 10 days of the date of receipt of the request. The applicant shall provide such information or documentation in one of the languages notified in the request. The applicant shall not be required to provide an official translation. Only additional information or documentation necessary for the assessment of the ETIAS application may be requested.

3 For the purpose of requesting additional information or documentation as referred to in paragraph 1, the ETIAS National Unit of the Member State responsible shall use a predetermined list of options. The Commission shall adopt delegated acts in accordance with Article 89 to lay down the content and format of that predetermined list of options.

4 In exceptional circumstances and as a last resort after processing the additional information or documentation, when serious doubts remain regarding the information or documentation provided by the applicant, the ETIAS National Unit of the Member State responsible may invite the applicant to an interview in his or her country of residence at its consulate located the nearest to the place of residence of the applicant. Exceptionally and when in the interest of the applicant, the interview may take place in a consulate located in a different country than the country of residence of the applicant.

If the consulate located the nearest to the place of residence of the applicant is at a distance of more than 500 km, the applicant shall be offered the possibility to conduct the interview by remote means of audio and video communication. If the distance is less than 500 km, the applicant and the ETIAS National Unit of the Member State responsible may jointly agree to the use of such means of audio and video communication. Where such means of audio and video communication are used, the interview shall be conducted by the ETIAS National Unit of the Member State responsible or, exceptionally, by one of that Member State's consulates. The remote means of audio and video communication shall ensure an appropriate level of security and confidentiality.

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

The reason for requesting an interview shall be recorded in the application file.

5 The Commission shall, by means of implementing acts, define the requirements for the means of audio and video communication referred to in paragraph 4, including as regards data protection, security and confidentiality rules and adopt rules on testing and selecting suitable tools and on their operation.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 90(2).

6 The invitation to an interview shall be issued to the applicant by the ETIAS National Unit of the Member State responsible through the email service referred to in point (f) of Article 6(2) to the contact email address recorded in the application file. The invitation to the interview shall be issued within 72 hours of the applicant's submission of additional information or documentation pursuant to paragraph 2 of this Article. The invitation to the interview shall include information on the Member State issuing the invitation, on the options referred to in paragraph 4 of this Article and relevant contact details. The applicant shall contact the ETIAS National Unit of the Member State responsible or the consulate as soon as possible, but no later than five days after the invitation to the interview was issued, to agree on a mutually suitable time and date for the interview and on whether the interview shall take place remotely. The interview shall take place within 10 days of the date of the invitation.

The invitation to the interview shall be recorded in the application file by the ETIAS Central System.

7 Where the applicant fails to attend the interview in accordance with paragraph 6 of this Article following an invitation to the interview, the application shall be refused in accordance with point (g) of Article 37(1). The ETIAS National Unit of the Member State responsible shall inform the applicant without delay.

8 For the purpose of the interview referred to in paragraph 4, the ETIAS National Unit of the Member State responsible shall indicate the elements to be addressed by the interviewer. Those elements shall relate to the reasons for which the interview was requested.

The interview by remote means of audio and video communication shall be conducted in the language of the ETIAS National Unit of the Member State responsible requesting the interview or its chosen language for the submission of additional information or documentation.

The interview taking place in a consulate shall be conducted in an official language of the third country in which the consulate is located, or any other language agreed by the applicant and the consulate.

Following the interview, the interviewer shall issue an opinion which provides justifications for his or her recommendations.

The elements addressed and the opinion shall be included in a form to be recorded in the application file on the same day as the date of the interview.

9 Upon the applicant's submission of additional information or documentation in accordance with paragraph 2, the ETIAS Central System shall record and store that information or documentation in the application file. Additional information or documentation provided during an interview in accordance with paragraph 6 shall be added to the application file by the ETIAS National Unit of the Member State responsible.

The form used for the interview and the additional information or documentation recorded in the application file shall be consulted only for the purpose of assessing and

deciding on the application, for the purpose of managing an appeal procedure and for the purpose of processing a new application by the same applicant.

10 The ETIAS National Unit of the Member State responsible shall resume the examination of the application from the moment the applicant provides the additional information or documentation or, where applicable, from the date of the interview.

Article 28

Consultation of other Member States

1 Where one or several Member States are identified as having entered or supplied the data having triggered a hit in accordance with Article 20(7) following verification under Article 22, the ETIAS Central Unit shall notify the ETIAS National Unit of the Member State(s) involved, thereby launching a consultation process between them and the ETIAS National Unit of the Member State responsible.

2 The ETIAS National Units of the Member States consulted shall have access to the application file for the purpose of the consultation.

3 The ETIAS National Unit of the Member States consulted shall:

- a provide a reasoned positive opinion on the application; or
- b provide a reasoned negative opinion on the application.

The positive or negative opinion shall be recorded in the application file by the ETIAS National Unit of the Member State consulted.

4 The ETIAS National Unit of the Member State responsible may also consult the ETIAS National Units of one or several Member States following the reply of an applicant to a request for additional information. Where such additional information was requested on behalf of a Member State consulted pursuant to Article 27(1), the ETIAS National Unit of the Member State responsible shall consult the ETIAS National Unit of the consulted Member State following the reply of the applicant to that request for additional information. In such cases, the ETIAS National Units of the Member States consulted shall also have access to the relevant additional information or documentation provided by the applicant following a request from the ETIAS National Unit of the Member State responsible in relation to the matter for which they are being consulted. Where several Member States are consulted, the ETIAS National Unit of the Member State responsible shall ensure the coordination.

5 The ETIAS National Unit of the Member States consulted shall reply within 60 hours of the notification of the consultation. A failure to reply within the deadline shall be considered to be a positive opinion on the application.

6 During the consultation process, the consultation request and the replies thereto shall be transmitted through the software referred to in point (m) of Article 6(2) and shall be made available to the ETIAS National Unit of the Member State responsible.

7 Where the ETIAS National Unit of at least one Member State consulted provides a negative opinion on the application, the ETIAS National Unit of the Member State responsible shall refuse the travel authorisation pursuant to Article 37. This paragraph is without prejudice to Article 44.

8 Where necessary in cases of technical problems or unforeseen circumstances, the ETIAS Central Unit shall determine the Member State responsible and Member States to be consulted and shall facilitate the consultations between Member States referred to in this Article.

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Article 29

Consultation of Europol

1 Where Europol is identified as having supplied the data having triggered a hit in accordance with Article 20(8) of this Regulation, the ETIAS Central Unit shall notify it, thereby launching a consultation process between Europol and the ETIAS National Unit of the Member State responsible. Such consultation shall take place in accordance with Regulation (EU) 2016/794 and in particular its Chapter IV.

2 Where Europol is consulted, the ETIAS Central Unit shall transmit to Europol the relevant data of the application file and of the hits which are necessary for the purpose of the consultation.

3 In any case, Europol shall not have access to the personal data concerning the education of the applicant referred to in point (h) of Article 17(2).

4 Where consulted in accordance with paragraph 1, Europol shall provide a reasoned opinion on the application. Europol's opinion shall be made available to the ETIAS National Unit of the Member State responsible which shall record it in the application file.

5 The ETIAS National Unit of the Member State responsible may consult Europol following the reply of an applicant to a request for additional information. In such cases, the ETIAS National Unit shall transmit to Europol the relevant additional information or documentation provided by the applicant relating to the request for a travel authorisation on which Europol is being consulted.

6 Europol shall reply within 60 hours of the notification of the consultation. The failure by Europol to reply within the deadline shall be considered to be a positive opinion on the application.

7 During the consultation process, the consultation request and the replies thereto shall be transmitted through the software referred to in point (m) of Article 6(2) and shall be made available to the ETIAS National Unit of the Member State responsible.

8 Where Europol provides a negative opinion on the application and the ETIAS National Unit of the Member State responsible decides to issue the travel authorisation, it shall justify its decision and shall record the justification in the application file.

9 Where necessary in cases of technical problems or unforeseen circumstances, the ETIAS Central Unit shall determine the Member State responsible and facilitate the consultations between the Member State responsible and Europol referred to in this Article.

Article 30

Deadlines for notification to the applicant

Within 96 hours of the submission of an application which is admissible in accordance with Article 19, the applicant shall receive a notification indicating:

- (a) whether his or her travel authorisation has been issued or refused; or

- (b) that additional information or documentation is requested and that the applicant may be invited to an interview, indicating the maximum processing times applicable under Article 32(2).

Article 31

Verification tool

The Commission shall arrange for a verification tool for applicants to check the status of their applications and to check the period of validity and status of their travel authorisations (valid, refused, annulled or revoked). This tool shall be made accessible via the dedicated public website or via the app for mobile devices referred to in Article 16.

The Commission shall adopt delegated acts in accordance with Article 89 to further define the verification tool.

Article 32

Decision on the application

1 Applications shall be decided on no later than 96 hours after the submission of an application which is admissible in accordance with Article 19.

2 Exceptionally, when a request for additional information or documentation is notified, and when the applicant is invited to an interview, the period laid down in paragraph 1 of this Article shall be extended. Such applications shall be decided on no later than 96 hours after the submission of the additional information or documentation by the applicant. When the applicant is invited to an interview as referred to in Article 27(4), the application shall be decided on no later than 48 hours after the interview has taken place.

3 Before expiry of the deadlines referred to in paragraphs 1 and 2 of this Article, a decision shall be taken to:

- a issue a travel authorisation in accordance with Article 36; or
- b refuse a travel authorisation in accordance with Article 37.

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