Council of the European Union

Brussels, 12 July 2017
(OR. en)

11180/17
ADD 1

Interinstitutional File:
2016/0357 (COD)

FRONT 322
VISA 271
DAPIX 256
DATAPROTECT 130
CODEC 1232
ENFOPOL 354
COMIX 517

COVER NOTE

From:	European Agency for Fundamental Rights (FRA)
date of receipt:	3 July 2017
To:	Mr Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union
Subject:	Opinion of the European Union Agency for Fundamental Rights on the 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

Delegations will find attached a copy of the above-mentioned opinion (part 2).

5. The right to asylum

Article 18 of the Charter protects the right to asylum with due respect for the rules of the 1951 Geneva Convention and its 1967 Protocol. Effective access to international protection also forms the basis for the protection from *refoulement*, which is reflected in Article 19 of the Charter as well as in Article 78 of the Treaty on the Functioning of the European Union (TFEU). Persons seeking international protection are vulnerable,[60] both due to the reasons that made them leave their country of origin and the situation of uncertainty in which they find themselves in the host country.

5.1. Respecting the principle of non-*refoulement* and access to international protection

The ETIAS proposal does not refer to the right to asylum, or to the principle of *non-refoulement*, both of which are only mentioned in the Explanatory Memorandum.[61] However, asylum applicants from visa-free third countries continue to arrive in the EU, such as Venezuelans to Spain[62] or Ukrainians to Malta, Slovakia or Spain.[63]

ETIAS must be implemented in full respect of the right to asylum and of the prohibition of *refoulement* in case individuals falling under its personal scope present themselves at the EU external borders and are not in possession of a valid travel authorisation.

Under the current EU legislative framework, visa-exempt third-country nationals wishing to seek asylum can simply travel to the EU in possession of a valid travel document and fulfil the other requirements of Article 6 (1) of the Schengen Borders Code. The EU rules in force setting out obligations for carriers (1990 Convention implementing the Schengen Agreement[64] (CISA), Article 26) and on carriers' sanctions (Article 26 (2)-(3) of CISA and Directive 2001/51/EC[65]) do not impose on these travellers other obligations than to possess a valid (biometric) travel document, since they do no need a visa. The present legal regime applicable to carriers thus does not prevent these persons from entering the EU as (prospective) asylum applicants. Moreover, the CISA also sets forth non-affectation clauses by stipulating that the

[60] ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011, para. 251. See also Lourdes Peroni and Alexandra Timmer (2013), 'Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law', *International Journal of Constitutional Law*, Vol. 11, No. 4, pp. 1057 and 1064; Elspeth Guild et al., *New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International Protection*, Study commissioned by the Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs, European Parliament, LIBE Committee Report, October 2014, p. 11.

[61] European Commission (2016), *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*, COM(2016) 731 final, Brussels, 16 November 2016; Explanatory Memorandum, p. 19.

[62] In 2016, 3690 Venezuelan nationals applied for asylum in Spain. See Eurostat's webpage on asylum applicants.

[63] In 2016, 2550 Ukrainians sought asylum in Spain, 85 Ukrainian nationals in Malta and 15 in Slovakia. See Eurostat's webpage on asylum applicants.

[64] 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, OJ L 239, 22 September 2000, pp. 19-62.

[65] Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1995, OJ L 187, 10 July 2001, pp. 45-46.

obligations incumbent upon carriers, including the sanctions, must not affect Member States' "obligations resulting from [...] the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967" (Article 26 (1)-(2) of CISA). The fundamental right to have access to asylum procedures at the EU external borders for those in need of international protection is thereby ensured.

The envisaged rules in the ETIAS proposal tighten the transporters' obligations. Carriers would have to check that their passengers have valid ETIAS travel authorisation before allowing them to board their means of transportation bound to a Schengen country (proposed Article 39 (1)). If a traveller who does not have valid travel authorisation is authorised boarding and is subsequently refused entry, the carrier would not only be liable for taking the traveller back to the initial point of embarkation but would also incur a penalty (Article 26 (2)-(3) of the CISA). This would create an undue barrier for visa-exempt third-country nationals who are in need of international protection, as they would need to produce valid ETIAS authorisation. Without it, they may face the risk of not having access to asylum procedures, contrary to the requirements of Article 6 of the Asylum Procedures Directive (Directive 2013/32/EU).[66]

ETIAS does not include a reference to the right to asylum in the same way as the Schengen Borders Code does. The absence of a safeguard clause for persons in need of international protection may result in serious interferences with the Charter rights to asylum and non-*refoulement* (Articles 18 and 19).

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The EU legislator should underline that the implementation of ETIAS must not affect Member States' obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, as well as EU and international obligations relating to access to international protection.

5.2. Retaining the rules on issuing authorisation to enter with limited territorial validity

Article 38 of the ETIAS proposal envisages a special procedure allowing ETIAS National Units to issue a travel authorisation with limited territorial and temporal validity, when this is justified by humanitarian reasons, reasons of national interest or because of international obligations. The applicant is entitled to apply for such a geographically restricted travel authorisation to the Member State to which he or she intends to travel by indicating the humanitarian ground, the reasons of national interest or the relevant international obligations.

FRA has highlighted the need for legal entry options for persons in need of international protection, noting that it can constitute a viable alternative to risky irregular entry.[67]

Authorisation with limited territorial validity would allow Member States to facilitate the entry of visa-exempt third-country nationals who are in need of international protection and not able to fulfil all conditions to get authorisation to travel. It could also help avoid

[66] 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 (recast), OJ L 180, 29 June 2013, pp. 60-95.

[67] FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox – FRA focus*, March 2015.

the emergence of a new market for organised crime networks involved in smuggling visa-free third-country nationals in need of international protection.

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The EU legislator should ensure that Article 38 of the proposal continues to provide for travel authorisations with limited territorial validity to offer persons in need of international protection a legal channel at national level through which they can seek safety.

5.3. Preventing political opponents from leaving their countries of origin

Persons in need of international protection face a number of difficulties in seeking safety through legal channels. As described in Section 5.1, applying carriers' liability also in ETIAS will aggravate this situation. Visa-free third country nationals will no longer be able to reach EU Member States' territory to seek international protection as easily as they currently can.

According to Article 39 of the proposed ETIAS Regulation, carriers would be under an obligation to verify that the traveller holds a travel authorisation upon boarding. Otherwise, carriers may face fines. In these situations, there is a risk that persons in need of international protection will be prevented from finding safety in the EU. In *Zh. and O.* (C-554/13), the CJEU Advocate General underlined that many asylum applicants seek to hide their identity when fleeing their country of origin to protect themselves,[68] while others may be physically unable to obtain the documents necessary for legal entry (such as a passport and visa) when escaping from a conflict zone.[69]

Moreover, in the automated processing of an ETIAS application, information originating from third countries is consulted through the Interpol databases SLTD and TDAWN. Member States need to be aware that third countries wishing to limit the possibilities of persons in need of international protection, such as political opponents, may report their travel documents in such databases to prevent them from leaving. In case of a hit with Interpol databases, information originating from third countries should be subject to a strict verification procedure under Article 20 of the proposal.

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The European Commission's future evaluation of ETIAS, provided for under Article 81 (5) of the proposal, should especially examine how obligatory travel authorisation checks carried out by carriers pursuant to Article 39 affect the right to seek asylum. Based on the results of such an evaluation, the European Commission should propose the necessary legislative changes.

Interpol information on travel documents originating from third countries should be subject to the verification procedure within the automated processing (Article 20 of the proposal), given that oppressive regimes may include information about opponents to prevent them from leaving the country.

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[68] CJEU, C- 554/13, *Z. Zh. and O. v Staatssecretaris van Veiligheid en Justitie*, opinion of Advocate General Sharpston delivered on 12 February 2015, para. 63.

[69] In relation to the non-penalisation of the use of fraudulent documentation and the applicable UNHCR standards, see, for example, FRA (2015), *Opinion of the European Union Agency for Fundamental Rights concerning the exchange of information on third-country nationals under a possible future system complementing the European Criminal Records Information System*, FRA Opinion - 1/2015 [ECRIS], 4 December 2015, p. 11.

5.4. Managing data transfers to third countries without exposing people in need of international protection to risks

Personal information that can allow the country of origin to deduce directly or indirectly that a person has applied for asylum in another country is extremely sensitive as it can expose the person concerned and/or his or her family members – including children – remaining in the country of origin to retaliation measures. This was also confirmed by UNHCR, which stated that confidentiality of data is particularly important for refugees and other people in need of international protection, as there is a danger that agents of persecution may ultimately gain access to such information, potentially exposing a refugee to danger even in his/her country of asylum.[70] In some cases, the sharing of such information may also create a *sur place* refugee claim.[71]

The original ETIAS proposal does not include a provision allowing for transfers of data outside of the EU, except for sharing information with Interpol for the automated processing (Article 55 (1)). However, the EU Council compromise text of June 2017[72] suggests amending Article 55 of the proposal by making such transfers of data to third countries and other third parties possible for return-related purposes and to third countries for law enforcement purposes (in case of an immediate and serious threat of a terrorist offence or other serious criminal offences). Aware of possible risks, the Council also inserted a safeguard clause in Article 55 (3) modelled after the relevant provision of the EES.[73] It provides that any such transfers of personal data to third countries "cannot prejudice the rights of applicants for and beneficiaries of international protection, in particular as regards *non-refoulement*". This clause is a step in the right direction; however, the practical implementation of such a legal safeguard may be challenging. Moreover, if a transfer to third parties of ETIAS data were envisaged, this would have also to fulfil other conditions. For example, Article 37 (3) of the new Data Protection Directive[74] contains a provision that requires transfers of data (including the

[70] UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ("Dublin II") (COM(2008) 820, 3 December 2008) and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation] (COM(2008) 825, 3 December 2008)*, 18 March 2009.

[71] This concerns persons who leave their own country for non-refugee related reasons but acquire a well-founded fear of persecution once they are already in the host country. See UNHCR, *Refugee Protection and International Migration*, paras. 20-21.

[72] Council Document No. 10017/17, Brussels, 13 June 2017 (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 – General approach).

[73] European Commission (2016), *Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011*, COM(2016)194 final – 2016/0106 (COD), Brussels, 6 April 2016, Article 38 (2)-(3).

[74] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the

justification of the transfer) to be documented and made available to the supervisory authority upon request. In addition, safeguards would need to be in place to prevent rules on sharing of data with third countries, as specified in the respective legal instruments for the interoperable databases, from being circumvented.

The purpose of ETIAS is not to facilitate returns. Return-relevant data would already be available in other information systems such as in the extended SIS. Data that are only stored in ETIAS and in no other systems (such as education, occupation or health data) are not directly relevant for return purposes. Moreover, as noted in Section 3, ETIAS would rarely contain information additional to what is stored in the EES that would be necessary for law enforcement purposes.

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The EU legislator should not provide for the option of sharing personal data stored in ETIAS with third parties, in light of possible severe risks for applicants and their families and the fact that information on the individuals would already be available in other systems governed by strict sharing rules.

execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4 May 2016, pp. 89-131.

6. The right to an effective remedy

According to Article 47 of the Charter, everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal. This fundamental right of horizontal character empowers individuals to challenge a measure affecting any right conferred to them by EU law and not only in respect of the fundamental rights guaranteed in the Charter.[75] The right to an effective remedy also covers administrative decisions, including travel authorisation refusals under ETIAS. The CJEU underlined that Article 47 of the Charter constitutes a reaffirmation of the principle of effective judicial protection and that the characteristics of a remedy must be determined in a manner that is consistent with this principle.[76]

6.1. Appeals against a refusal, annulment, or revocation of authorisation to enter

Under the ETIAS proposal, applicants whose travel authorisation has been refused, annulled or revoked have the right to appeal in the Member State that took the negative decision on the travel authorisation application, in accordance with national law (Articles 31 (2), 34 (3) and 35 (5)). Although reference is made to remedies as set out in Member States' domestic legal systems, in light of Article 47 of the Charter, such domestic remedies must in all cases involve judicial review. Administrative appeal bodies or other non-judicial instances do not satisfy this fundamental requirement of Article 47. The European Commission also underlined this requirement with regard to appeals against a short-stay visa refusal decision.[77]

In addition, Member States are obliged to provide remedies that are sufficient to ensure 'effective' judicial protection, governed by the principles of effectiveness and equivalence. The principle of effectiveness requires that domestic law does not make it impossible or excessively difficult to enforce rights under EU law.[78] The principle of equivalence requires that the conditions relating to claims arising from EU law are not less favourable than those relating to similar actions of a domestic nature (e.g. the right to appeal against a refused application for a long-term national visa). The effectiveness of the judicial review also requires that enough information (reasoning) is provided in the negative decision to have a realistic chance of formulating an appeal.[79] The obligation of national authorities (the ETIAS National Units) to give reasons is a precondition of

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[75] EU Network of Independent Experts on Fundamental Rights, *Commentary on the Charter on Fundamental Rights of the European Union*, June 2006, p. 360. See also: FRA (2016), *Handbook on European law relating to access to justice*, Luxembourg, Publications Office, p. 92.

[76] CJEU, C-432/05, *Unibet (London) Ltd, Unibet (International) Ltd v. Justitiekanslern*, 13 March 2007, para. 37; CJEU, C-93/12, *ET Agrokonsulting-04-Velko Stoyanov v. Izpalnitelen direktor na Darzhaven fond 'Zemedelie' – Razplashtatelna agentsia*, 27 June 2013, para. 59; CJEU, C-562/13, *Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v. Moussa Abdida*, 18 December 2014, para. 45.

[77] At the end of 2014, the Commission urged five Member States to act to ensure that appeals against a decision to refuse, annul or revoke a visa provide for access to a judicial body. See European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, *2014 Report on the Application of the EU Charter of Fundamental Rights*, COM(2015)191 final, Brussels, 8 May 2015, pp. 7-8.

[78] CJEU, C-33/76, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland*, 16 December 1976; more recently: CJEU, C-415/11, *Mohamed Aziz v. Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)*, 14 March 2013, para. 50.

[79] CJEU, T-461/08, *Evropaiki Dynamiki*, 9 September 2010, paras. 118-124; CJEU, T-390/08, *Bank Melli Iran v. Council*, 16 November 2011, paras. 35-37.

effective legal protection by enabling the person concerned "to defend his rights under the best possible circumstances"[80] and courts to carefully review administrative decisions.[81]

Pursuant to the proposal, in case of refusal, annulment or revocation, the applicant will immediately receive an e-mail notification with the ground(s) for refusal of the travel authorisation and information on the appeal procedure (Articles 32 and 36). However, the grounds for refusal would only be telegraphically indicated, as enumerated in Article 31 (1) of the proposal. In the absence of more detailed reasoning, it would be very difficult to build upon a meaningful appeal by the person concerned.

The ECtHR has consistently held that remedies must be effective both in law and in practice.[82] The appeal scheme as currently framed in the ETIAS proposal raises serious issues from the perspective of effectiveness of the legal remedy by virtue of Article 47 of the Charter, as interpreted by the CJEU and ECtHR.

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The EU legislator should introduce, in Articles 32 and 36 of the proposal, minimum standards concerning the appeals procedure in the Member States. Amongst others, a judicial body should be responsible for supervision by virtue of Article 47 of the Charter; and sufficient information should be given about the reasons for refusal, annulment or revocation to allow affected individuals to formulate meaningful appeals. To this end, the EU legislator should also change the term "right to appeal" to "right to an effective remedy" throughout the proposal to better align it with the requirements flowing from Article 47 of the Charter.

6.2. Establishing administrative complaints mechanism

Even if a travel authorisation is issued after the automated processing by the ETIAS Central Unit or following the manual processing by ETIAS National Units at Member State level, excessive processing time – not keeping the deadlines – might occur. This could be due to technical problems, to overwhelmed officers responsible for manual processing not respecting the deadline, or other reasons. Other issues of administrative or procedural nature – such as timeliness for deciding on the application or the applicant being requested to provide additional information – might also arise even in cases ultimately resulting in positive decisions.

The proposal does not designate a competent body within Frontex or at Member State level with which applicants can lodge complaints in cases of delay or irregularities in the processing.

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The proposal should include a provision for a complaints mechanism, comparable to the one set up by Frontex in accordance with Article 72 of Regulation (EU) 2016/1624. However, the ETIAS Regulation would also need to impose on National ETIAS Units the

[80] CJEU, 222/86, *Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef) v. Georges Heylens and others*, 15 October 1987, paras. 15-17.

[81] See Jürgen Schwarze (2004), 'Judicial Review of European Administrative Procedure', *Law and Contemporary Problems*, Vol. 68, No. 1, p. 93.

[82] ECtHR, *Kudla v. Poland*, No. 30210/96, 26 October 2000, para. 157; ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011, para. 288.

duty to provide sufficiently reasoned replies to requests by the complaint mechanism within a short deadline.

6.3. Accuracy of data, right of access, correction and erasure

Both Member State authorities and EU entities have an obligation to keep personal data accurate and, where necessary, up to date. Every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy'). This is required by Article 5 of General Data Protection Regulation (EU) 2016/679 and by Article 4 (1) (d) of Regulation (EC) No. 45/2001 (as well as Article 4 (1) (d) of the proposed new Regulation COM(2017) 8 final).

The ETIAS Central and National Units are responsible for keeping the data correct and up to date (Articles 7 and 8 of the proposed ETIAS Regulation). Any factually incorrect or unlawful data must be deleted from the ETIAS Central System (Article 54 of the proposed ETIAS Regulation).

Under Article 18 of the General Data Protection Regulation and Article 15 of Regulation (EC) No. 45/2001 (as well as Article 20 of the proposed new Regulation COM (2017) 8 final), the data subject can demand that the processing of the disputed data is temporarily restricted. This means that the controller must refrain from using the data pending their verification, including further sharing of the data, to ensure that possible false assumptions can be rebutted before a decision is made. This is particularly important where the continued use of inaccurate or illegitimately held data could harm the person – for example, through a denial of the travel authorisation.

As FRA as well as the EU High-level expert group on interoperability noted,[83] SIS has serious data quality issues. The verification procedure undertaken by the ETIAS Central Unit as well as the Member States when undertaking the manual processing will have to deal with such quality problems, as they affect the decision taken and therefore the right to respect for private and family life, among others. Effective verification procedures are necessary while still meeting the strict deadlines for processing the applications. Where relevant, the SIRENE Bureaux, national authorities responsible for the exchange of supplementary information and for the coordination of "the verification of the quality of the information entered in the SIS II"[84] could be involved in the verification procedure, as the Council pointed out in its general approach on the proposal (proposed Article 20a). The possibility for the ETIAS National Units to request the applicant to provide additional information (Article 23) contributes to the accuracy of

[83] European Commission, Final report of the high-level expert group, 11 May 2017; FRA (2017), *Fundamental rights and the interoperability of EU information systems: borders and security*, Luxembourg, Publications Office [forthcoming on 7 July 2017].

[84] Article 7 (2), Regulation (EC) No. 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ 2006 L 381, 28 December 2016, pp. 4-23 (*SIS II Regulation*). See also: Article 7 (2) of *Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU COM(2016) 883 final*, COM(2016) 883 final; and of *Proposal of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information system (SIS) in the field of border checks, amending Regulation EU) No 515/2014 and repealing Regulation (EC) No 1987/2006*, COM(2016) 882 final.

the data. The authorities would need to be open to considering information presented by the traveller following such a request.

The person whose data are being processed has the right to request access to his or her data from the controller. The right of access is recognised as a fundamental right in Article 8 (2) of the Charter. It is also included in Article 15 of the General Data Protection Regulation, as well as in Article 8 of the Council of Europe Convention No. 108,[85] and in the legislative acts of the individual EU-wide information systems. If inaccuracies are detected, the person has the right to the rectification of the data without undue delay (Article 16 of the General Data Protection Regulation and Article 16 of Directive (EU) 2016/680). Under Article 15 of Directive (EU) 2016/680, the right of access can be restricted, subject to the principle of proportionality, for specifically listed reasons, such as combating crime or protecting public security.

The person concerned would need to receive clear and unambiguous information on where and how to seek correction.[86] In *Huber*, the CJEU clarified that the concept of necessity of data processing cannot have a meaning that varies among Member States, and that the level of protection of the rights and freedoms of individuals with regard to the processing of personal data must be equivalent in all Member States. In *Digital Rights Ireland*,[87] the CJEU further clarified that the EU legislature's discretion is strictly limited in relation to judicial review of cases concerning accuracy of data, considering the important role played by the protection of personal data in light of the respect for private life.

For applicants to be able to exercise their right of access, correction and erasure effectively, they would need to receive information in a clear and understandable manner – not only in relation to data stored in ETIAS, but also interoperable information systems, including on the common repository with EES. For transparency purposes, a list of authorities that can access ETIAS will be published in the Official Journal, according to Article 76 of the proposed regulation. Other existing or proposed legal instruments for the interoperable information systems also foresee publishing such lists in the Official Journal.[88] An additional hurdle to possibilities to exercise the right of access,

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[85] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CETS No. 108, 1981.

[86] General Data Protection Regulation, Article 16. See also: Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12 January 2001, pp. 1-22; European Commission (2017), *Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC*, COM(2017) 8 final, Brussels, 10 January 2017.

[87] CJEU, Joined cases C-293/12 and C-594/12, *Digital Rights Ireland Ltd v. Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform, The Commissioner of the Garda Síochána, Ireland and the Attorney General, and Kärntner Landesregierung, Michael Seitlinger, Christof Tschohl and Others*, 8 April 2014, paras. 47-48.

[88] See Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, Article 27; European Commission (2016), Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member

correction and erasure relate to the fact that the data subjects are third-country nationals outside the EU.

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Due to the planned interoperability between ETIAS and other large-scale EU information systems, including a common repository with EES, the EU legislator should add a provision informing applicants how to exercise their right of access, correction and erasure, including where the information originates from other systems.

Member States' embassies and consulates in visa-free third countries should support applicants in exercising effectively their right of access, correction and erasure of data. Their role could be reflected in the proposal.

As inaccurate data included in interoperable databases can cause false hits, due weight should be given to applicants' statements during the manual processing phase.

States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011, COM(2016) 194 final, Brussels, 6 April 2016, Article 8.

Publications Office
ISBN: 978-92-9491-733-1
doi: 10.2811/543161

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