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From:	Belgian delegation
To:	Working Party on Frontiers / Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)
Subject:	Non paper on EES-ETIAS decoupling: A high-level analysis

1 Introduction

Considering the difficulties encountered in the implementation of the EES-project and the necessity to review the general timeline of the Smart Borders Projects, it was decided to proceed with a high-level analysis of the feasibility of a potential decoupling of the EES- and ETIAS-project.

Indeed, at central level there are significant technical delays which had as a consequence that a new date of entry into operation for EES could not be established in March 2023. The validation of such new date is expected in June 2023 at the earliest. It seems improbable that the entry into operation is still possible in autumn 2023. If France's request is granted, EES would enter into operation after the summer of 2024. Consequentially, since a period of 6 months is currently foreseen between the entry into operation of EES and ETIAS, ETIAS will only enter into operation in 2025.

If EES is postponed until after the summer of 2024, then a potential decoupling of EES and ETIAS is an interesting option worth considering and which should at least be discussed. Therefore, in order to avoid that a delay in EES would have too large of an impact on the entry into operation of other Smart Border-projects and more specifically ETIAS, the current note analyses what the impact would be of a decoupling between EES and ETIAS, due to which ETIAS would enter into operation before EES. The scope of the decoupling is an entry into operation of ETIAS separate from any obligation linked to EES. At the border, the scope includes therefore only a consultation of the ETIAS-software by the border guards in order to verify if a passenger has a valid ETIAS. This note studies the advantages, disadvantages and possibilities of such a decoupling.

What is not being analysed in this note are the technical possibilities of a decoupling between EES and ETIAS by eu-LISA. This analysis should be done by eu-LISA.

2 Legal possibilities/limitations

According to our legal analysis, the ETIAS-Regulation¹ and the Interoperability-Regulation², do not prevent an entry into operation of ETIAS before EES. As regards the entry into operation of ETIAS and the interoperability hereof with EES, both regulations can be interpreted in such a way that a decoupling of both information systems is possible. It can be concluded that the decision to decouple is not a legal one, but a political one where the choice must be made to allow a “partial” entry into operation which entails that not all databases can be searched, but which does allow to speak of a successful entry into operation of a first project. Such “partial” entry into operation would be an “easy win” and would allow testing the practice without necessarily having much impact on this practice.

¹ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/1624 and (EU) 2017/2226.

² Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA.

3 Impact on budget

As regards the budgetary aspect, a decoupling of ETIAS could have a positive impact on the use of allocated budgets.

All member states have received European funds for the development and implementation of ETIAS. These funds are linked to deadlines within which they have to be used. Considering the ongoing delays in the EES-project and therefore also the ETIAS-project, it is becoming increasingly difficult to (i) properly allocate these funds to the appropriate ETIAS-related products/services and (ii) to do so within the deadlines set on a European level. In the current timeline and without decoupling, the ETIAS-project is “stuck” between using the available funds as efficiently as possible on the one hand and the delays at central level on the other. The budgetary rules oblige the member states to spend the European funds right now, even if the entire project is blocked.

Moreover, at national level, member states could encounter problems with their national budgets. Governments appear to be reluctant to allocate national budgets to the project due to the delays on a central level. This could put member states in a difficult position as they need national budgets in order to make progress on certain parts of the project (e.g. recruitment of staff).

If ETIAS can enter into operation earlier without having to take into account the delays for EES, these funds can be used more accurately and efficiently. As a consequence, there is a bigger chance that the funds will have been entirely spent before the end of the deadline.

4 Impact ETIAS National Unit

As regards the impact of a decoupling on the ETIAS National Unit, the following points need to be taken into account:

- From a logistical point of view, reference is made to what has been mentioned under title 3 ‘Impact on budget’. With an earlier deadline and without being linked to (the delays of) EES, allocated funds can be used more accurately and efficiently to purchase all required materials under the top-up without having to put these materials in storage for a number of years ;

- From a human resources point of view, the estimation is that if in June 2023 a decision is validated to decouple ETIAS and EES, it would be possible for ETIAS to enter into operation in **May 2024**. This gives all member states approximately 10 months to start and complete the required recruitment procedures;
- From an operational point of view, an entry into operation of ETIAS before EES is possible as well. It would have as a consequence that in their starting period the national units have less hits to treat manually. This is because fewer databases will have to be verified (e.g. no comparison with EES and ECRIS-TCN) and thus fewer hits will be generated. Consequently, the number of hits that must be processed manually in the starting period will be limited. This will also give staff of the national units the chance to learn how to deal with manual treatments. In a later stage, the amount of work will increase which means that the staff of the national unit can evolve together with this increase. It is important to note that as a consequence of the limited generation of hits, it is possible that certain passengers will receive a travel authorisation even though they present a certain risk. Hence the importance of control at the external borders.

5 Technical Impact

If the decision is taken to decouple ETIAS and EES, the member states will have to change their priorities with regard to the technical development of national software, environments and apps. The priority will have to shift to all developments related to ETIAS. An entry into operation in May 2024 allows for sufficient time for all member states to finalise all developments before this entry into operation.

An important condition from a technical point of view is the full delivery of all required environments by eu-LISA. The ETIAS-software will not allow to search in the ETIAS-database directly, this must take place through the European Search Portal (ESP). In order for ETIAS to go into production, multiple environments are required for ETIAS and ESP (ICD, CT, CSSIM, OCSIM). For these aspects there is a large dependency on eu-LISA.

6 Business/Organisational Impact

At the borders an earlier entry into operation of ETIAS would also have a limited impact. In practice the border guards, without availability of EES, for passengers who fall within the scope of ETIAS, would have to (i) check these passengers' passports and stamps in order to calculate and verify the permitted period of stay of 90 days and (ii) verify their ETIAS. The entry into operation of ETIAS will also not require the installation of the kiosks, camera's or fingerprint scanners. The additional workload for border guards will thus be very limited.

The main impact will be on the organization of training sessions on ETIAS, the ETIAS-legislation and the related software and environments. If in June 2023 the decision is made to have ETIAS enter into operation in May 2024, then this means that as from June 2023, the member states have approximately 6 months to (i) finalise the development of training sessions and (ii) organize these practically in the first quarter of 2024. This timeline is feasible.

7 IO-ETIAS

For the interoperability (IO) aspect, the starting date of the MID Transitional Period (MID TP) must be amended if ETIAS enters into operation before EES. Currently, this period starts on the moment of entry into operation of ETIAS since at that same moment ESP, EES and SIS will be operational. The current IO-model would have to be amended as follows: the MID TP will only start when the databases necessary for the MID TP have entered into operation. Therefore, a decoupling is also required between the entry into operation of ETIAS and the MID TP. This modification is also a decision that needs to be taken on a political level.

Based on the above, the following scenarios can be foreseen for the amendment of the timeline and the scope of the MID TP:

- 1) The current scope of the MID TP is kept at the start of the MID TP, i.e. the processing of historical biometric data. This would have a significant impact on the national unit when the MID TP has ended since at that moment a lot more data will be available in ETIAS than what has been foreseen in the current planning. As a consequence, potentially a lot more yellow links would be formed as soon as ETIAS is involved in the IO-process.

- 2) ETIAS is immediately involved in the process at the start of the MID TP. The national unit will at that moment have been operational since some time making it easier for the unit to add a new task to its core business. Immediately involving ETIAS would prevent a heavier workload since the longer the wait to include ETIAS, the more yellow links will be generated. The only risk in this scenario lies with the ETIAS central unit who will have an additional workload due to the MID TP. Yellow links will have to be processed for ETIAS while in the current scope of the MID TP, ETIAS is not foreseen.

8 Conclusion

In view of the analyses mentioned above, a decoupling would mean that ETIAS can realistically enter into operation in May 2024 if the decision to decouple both projects is validated in June 2023 and on the condition that all requirements set above have been fulfilled.