Council of the European Union

**Interinstitutional File:
2017/0351 (COD)**

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	10178/18
Subject:	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399, Regulation (EU) 2017/2226, Regulation (EU) 2018/XX [the ETIAS Regulation], Regulation (EU) 2018/XX [the Regulation on SIS in the field of border checks] and Regulation (EU) 2018/XX [the eu-LISA Regulation]

With a view to the JHA Counsellors meeting on interoperability of EU information systems on 9 July 2018, delegations will find hereafter the amendments to the proposal for the aforementioned Regulation, as revised by the Presidency.

Changes to the Commission proposal ST 10178/18 are marked in **bold underline** and ~~strikethrough underline~~.

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(…)[1]

CHAPTER IX

Amendments to other Union instruments

Article 55f

Amendments to Regulation (EU) 2018/XX [the ETIAS Regulation]

Regulation (EU) 2018/XXX (the ETIAS Regulation) is amended as follows:

1.   In Article 1, the following paragraph is inserted:

"1a. By storing identity and travel document data in the common identity repository (CIR) established by [Article 17**(1)** of Regulation 2018/XX on interoperability], the ETIAS contributes to facilitating and assisting in the correct identification of persons registered in the ETIAS under the conditions and for the ultimate objectives referred to in [Article 20] of that Regulation."

2.   In Article 3(1), the following points are added:

"~~(pa)~~ **(23)**   'CIR' means the common identity repository **established by** ~~as defined in~~ [~~point 35 of~~ Article **17(1)** ~~4~~ of Regulation 2018/XX on interoperability];

~~(pb)~~ **(24)**   'ETIAS Central System' means the Central System referred to in Article 6(2)(ab) together with the CIR to the extent that the CIR contains the data referred to in Article 6(2a);

~~(pc)~~ **(25)**   'identity data' means the data referred to in Article 17(2)(a);

~~(pd)~~ **(26)**   'travel document data' means the data referred to in **points (d) and (e) of** Article 17(2)~~(d) and (e)~~ and the three letter code of the country issuing the travel document as referred to in **point (c) of** Article 19(3)~~(c)~~;".

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[1]   Article 55f on "Business continuity", as approved by Coreper on 14 June 2018, will become Article 55i.

3. In Article 4, the following point is added:

"(g) contribute to the correct identification of persons;".

4. In Article 6(2), point (a) is replaced by the following:

"(a) the ~~common identity repository (~~CIR~~)~~ ~~as referred to in~~ **established by** [Article 17**(1)**~~(2)(a)~~ of Regulation 2018/XX on interoperability];".

5. In Article 6(2)**, the** ~~a~~ following point ~~(ab)~~ is inserted:

"(ab) **the ETIAS Central System** ~~a Central System~~, including the **ETIAS** watchlist**, referred to in Article 34**;".

6. In Article 6(2), point **(d)** ~~(n)~~ is replaced by the following:

"(**d**~~n~~) a secure communication infrastructure between the ETIAS Central System and the central infrastructures of the European search portal established by [Article 6 of Regulation 2018/XX on interoperability], the **CIR** ~~common identity repository~~ established by [Article 17**(1)** of Regulation 2018/XX on interoperability] and the multiple-identity detector established by [Article 25 of Regulation 2018/XX on interoperability];".

7. In Article 6, the following paragraph is inserted:

"2a. The CIR shall contain the identity and travel document data referred to in **points (a), (b), (c), (d) and (e) of** Article 17(2)~~(a) and (b) to (e)~~ as well as the three letter code of the country issuing the travel document as referred to in **point (c) of** Article 19(3)~~(c)~~, the remaining data shall be stored in the ETIAS Central System.".

8.   Article 13 is amended as follows:

   (a) **the following** paragraph ~~5~~ is **inserted** ~~replaced by the following~~:

"~~5~~**4a**. Access to consulting the ETIAS identity and travel document data stored in the CIR shall also be reserved exclusively for the duly authorised staff of the national authorities of each Member State and for the duly authorised staff of the EU bodies that are competent for the purposes laid down in [Article 20 and Article 21 of Regulation 2018/XX on interoperability]. That access shall be limited to the extent necessary for the performance of the tasks of those national authorities and Union bodies in accordance with those purposes and shall be proportionate to the objectives pursued.**";**

   (b) paragraph 5 is replaced by the following:

"5~~6~~. Each Member State shall designate the competent national authorities referred to in paragraphs 1, 2**,** 4 and **4a** ~~5~~ ~~of this Article~~ and shall communicate a list of these authorities to eu-LISA without delay, in accordance with Article 87(2). That list shall specify for which purpose the duly authorised staff of each authority shall have access to the data in ETIAS Information System in accordance with paragraphs 1, 2**,** 4 and **4a** ~~5~~ ~~of this Article~~ .".

9.   ~~In~~ Article 17(2) **is amended as follows,** ~~point (a) is replaced by the following~~:

   (a) point (a) is replaced by the following:

"(a)   surname (family name), first name(s) (given name(s)), surname at birth; date of birth, place of birth, sex, current nationality;";

   (b) the following point is inserted:

"(ab)   country of birth, first name(s) of the parents of the applicant;".

10.   In Article 19(4) the words "**point (a) of** Article 17(2)~~(a)~~" are replaced by the words "**points (a) and (ab) of** Article 17(2)~~(a) and (ab)~~".

11.	Article 20 is amended as follows:

(a) in paragraph 2, the first subparagraph is replaced by the following:

"2. The ETIAS Central System shall launch a query by using the European Search Portal ~~defined~~ ~~in~~ **established by** [Article 6(1) of the Interoperability Regulation] to compare the relevant data referred to in **points (a), (ab), (b), (c), (d), (f), (g), (j), (k) and (m) of** Article 17(2)~~(a), (ab), (b), (c), (d),(f),(g), (j), (k), (m)~~ and **in Article 17**(8) to the data present in a record, file or alert registered in an application file stored in the ETIAS Central System, SIS, the EES, VIS, Eurodac, Europol data and Interpol databases SLTD and TDAWN."

(b) In paragraph 4**,** the words "**points (a), (b), (c), (d), (f), (g), (j), (k) and (m) of** Article 17(2)~~(a), (b), (c), (d), (f), (g), (j), (k), (m)~~ and **Article 17**(8)" are replaced by the words "**points (a), (ab), (b), (c), (d), (f), (g), (j), (k), (m) of** Article 17(2)~~(a), (ab), (b), (c), (d), (f), (g), (j), (k), (m)~~ and **Article 17**(8)".

(c) In paragraph 5**,** the words "**points (a), (b), (c), (d), (f), (g), (j), (k), (m) of** Article 17(2)~~(a), (b), (c), (d), (f), (g), (j), (k), (m)~~ and **Article 17**(8)" are replaced by the words "**points (a), (ab), (b), (c), (d), (f), (g), (j), (k), (m) of** Article 17(2)~~(a), (ab), (b), (c), (d), (f), (g), (j), (k), (m)~~ and **Article 17**(8)".

12.	**In** Article 23~~(1)~~, **paragraph 1** is replaced by the following:

"1. The ETIAS Central System shall launch a query by using the European Search Portal ~~defined~~ ~~in~~ **established by** [Article 6(1) of the Interoperability Regulation] to compare the relevant data referred to in **points (a), (ab), (b) and (d) of** Article 17(2)~~(a), (ab), (b) and (d)~~ to the data present in SIS in order to determine whether the applicant is the subject of one of the following alerts:

(a)	an alert on missing persons;

(b)	an alert on persons sought to assist with a judicial procedure;

(c)	an alert on persons for discreet checks or specific checks.".

13. In Article 49**(1),** ~~paragraph 1~~ the words "**points (a), (b), (c), (d) and (e) of** Article 17(2)~~(a), (b), (c), (d) and (e~~ are replaced by the words "**points (a), (ab), (b), (c), (d) and (e) of** Article 17(2)~~(a), (ab), (b), (c), (d) and (e)~~".

14. In Article 52, the following paragraph is inserted:

"1a. In cases where the designated authorities launched a query to the CIR in accordance with [Article 22 of Regulation 2018/XX on interoperability], they may access the application files stored in the ETIAS Central System in accordance with this Article for consultation where the reply received as referred to in paragraph 3 of [Article 22 of Regulation 2018/XX on interoperability] reveals that data is stored in the application files stored in the ETIAS Central System.".

15. In Article 53, the following paragraph is inserted:

"1a. In cases where Europol launched a query to the CIR in accordance with [Article 22 of Regulation 2018/XX on interoperability], they may access the application files stored in the ETIAS Central System in accordance with this Article for consultation where the reply received as referred to in paragraph 3 of [Article 22 of Regulation 2018/XX on interoperability] reveals that data is stored in the application files stored in the ETIAS Central System.".

16. In **the fifth subparagraph of** Article 65(3) ~~fifth subparagraph~~, the words "**points (a), (b), (d), (e) and (f) of** Article 17(2)~~(a), (b), (d), (e) and (f)~~" are replaced by the words "**points (a), (ab), (b), (d), (e) and (f) of** Article 17(2)~~(a), (ab), (b), (d), (e) and (f)~~".

17. In Article 69(1), the following point is inserted:

"(ca)   where relevant, a reference to the use of the European search portal to query the ETIAS Central System as referred to in [Article 7(2) of the Regulation 2018/XX on interoperability],".

18.   In Article 73(2), the words "the central repository of data" are replaced by the words "the central repository for reporting and statistics referred to in [Article 39 of the Regulation 2018/XX on interoperability] to the extent that it contains data obtained from the ETIAS Central System in accordance with Article 84".

19.   In Article 74(1), the words "and the central repository of data, as referred to in Article 6" are deleted.

20.   In Article 84(2), the first subparagraph is replaced by the following:

"2. For the purpose of paragraph 1 ~~of this Article~~, eu-LISA shall store the data referred to in paragraph 1 in the central repository for reporting and statistics referred to in [Article 39 of the Regulation 2018/XX on interoperability]. In accordance with [Article 39(1) of the Regulation 2018/XX on interoperability], cross-system statistical data and analytical reporting **shall** ~~would~~ allow the authorities listed in paragraph 1 to obtain customisable reports and statistics, to support the implementation of the ETIAS screening rules referred to in Article 33, to improve the assessment of the security, illegal immigration and high epidemic risks, to enhance the efficiency of border checks and to help the ETIAS Central Unit and the ETIAS National Units process the travel authorisation applications.".

21.   In Article 84(4), a ~~new~~ **second** subparagraph is added:

"The daily statistics shall be stored in the central repository for reporting and statistics.".

Article 55g
Amendments to Regulation (EU) 2018/XX [the Regulation on SIS in the field of border checks]

[NB: Some text should be included to reflect recital 16a², as approved in the June Coreper mandate]

Regulation (EU) 2018/XX is amended as follows:

1.   In Article 3(1), the following points are added:

"(t) 'ESP' means the European search portal ~~as defined in~~ **established by** [Article 6**(1)** of Regulation 2018/XX on interoperability].

(u) 'shared BMS' means the shared biometric matching service ~~as defined in~~ **established by** [Article 12**(1)** of Regulation 2018/XX on interoperability].

(v) 'CIR' means the common identity repository ~~as referred to in~~ **established by** [Article 17**(1)** of Regulation 2018/XX on interoperability];

(w) 'MID' means the multiple-identity detector ~~as defined in~~ **established by** [Article 25**(1)** of Regulation 2018/XX on interoperability].

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²   Recital 16a: "To help fighting identity fraud when consulting national copies of SIS, new biographic identity data from CIR records could be added to an alert in SIS using the existing alias procedures of the Sirene Manual, in case of a red link between data in SIS and the CIR. After adding the new identity data as an alias in the SIS, a new multiple identity detection process should be launched in order to change the existing red link into a white link in an automated manner.".

2.   Article 4 is amended as follows:

(a) in paragraph **1** 3, the following point ~~(d)~~ is added:

"**(**d) a secure communication infrastructure between CS-SIS and the central infrastructures of the ESP, the shared BMS and the MID ".

(b) the following paragraphs are added:

"**6**5. Without prejudice to paragraphs (1) to (**5**) ~~(4)~~ ~~of this Article~~, SIS data may also be searched via the ESP.

 76. Without prejudice to paragraphs (1) to (**5**) ~~(4)~~ ~~of this Article~~, SIS data may also be transmitted via the secure communication infrastructure defined in **point (d) of** paragraph **(1)** ~~(3)(d) of this Article~~. These transmissions shall be limited to the extent that the data are required for the functionalities referred to in [Regulation 2018/XX on interoperability]."

3.   In Article 7**,** the following paragraph ~~2a~~ is **inserted** ~~added~~:

"2a. The SIRENE Bureaux shall also ensure the verification of different identities in accordance with [Article 29 Regulation 2018/XX on interoperability]. To the extent necessary to carry out this task, the SIRENE Bureaux shall have access to consulting the data stored in the CIR for the purposes laid down in [Article 21 of Regulation 2018/XX on interoperability].".

4.   ~~Iin Article 8 paragraph 4 is deleted.~~

45.   **I**~~i~~n Article 12**,** paragraph 1 is replaced by the following:

"1. Member States shall ensure that every access to and all exchanges of personal data within CS-SIS are logged in their N.SIS for the purposes of checking whether or not the search is lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of N.SIS, data integrity and security. This does not apply to the automatic processes referred to in **points (a), (b) and (c) of** Article 4(4) ~~(a), (b) and (c)~~. Member States shall ensure that every access to personal data via the ESP are also logged for the purposes of checking whether or not the search is lawful, monitoring the lawfulness of data processing, self-monitoring, data integrity and security."

56.   In Article 29(1), the following point (**fg**) is added:

"(**fg**) verifying different identities and combating identity fraud in accordance with [Chapter V of Regulation 2018/XX on interoperability]."

67.   **I**in Article 54**,** paragraph 6~~,~~ is replaced by the following:

"**6.** For the purpose of paragraphs 3, 4 and 5 ~~of this Article~~ and of Article 15(5), the Agency shall store data referred to in paragraph 3 ~~of this Article~~ and in Article 15(5) which shall not allow for the identification of individuals in the central repository for reporting and statistics referred to in [Article 39 of the Regulation 2018/XX on interoperability].

The Agency shall allow the Commission and the ~~agencies~~ **bodies** referred to in paragraph 5 to obtain bespoke reports and statistics. Upon request, the Agency shall give access to Member States, the Commission, Europol, and the European Border and Coast Guard Agency to the central repository in accordance with [Article 39 of the Regulation 2018/XX on interoperability]."

Article 55h
Amendments to Regulation (EU) 2018/XX [Regulation on eu-LISA]

Regulation (EU) 2018/XX (eu-LISA) is amended as follows:

1.   Article 8 is replaced by the following:

"Article 8
Data quality

1. eu-LISA shall establish for all systems under the Agency's operational responsibility automated data quality control mechanisms and procedures and common data quality indicators and the minimum quality standards to store data, in accordance with the relevant provisions of the systems' instruments and of [Article 37 of Regulation 2018/XX on interoperability].

2. eu-LISA shall establish a central repository for reporting and statistics in accordance with [Article 39 of Regulation 2018/XX on interoperability]."

2.   Article 9 is replaced by the following:

"Article 9
Interoperability

Where the interoperability of large-scale IT systems has been stipulated in a relevant legislative instrument the Agency shall develop the necessary actions conferred on it by those legislative instruments to enable that interoperability."

3.   Article 15**(1)** is amended as follows:

(a)   paragraph (1) is amended as follows:

(**a**i) the following point (eea) is inserted:

"(eea) **a**Adopt the reports on the state of play of the development of the interoperability components pursuant to [Article 68(2) of Regulation 2018/XX on interoperability]."**;**

(**b**ii) point (ff) is replaced by the following:

"(ff) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively [or Article 54(7) of Regulation 2018/XX 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 and Article 71(7) of Regulation 2018/XX 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], of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA, of EES pursuant to Article 72(4) of Regulation (EU) 2017/2226, of ETIAS pursuant to Article **92**81(4), of Regulation (EU) 2018/XX on the ECRIS-TCN system and the ECRIS reference implementation pursuant to Article 34(4) of Regulation (EU) 2018/XX] and of the interoperability components pursuant to [Article 68(4) of Regulation 2018/XX on interoperability];"

(**c**iii) point (hh) is replaced by the following:

"(hh) adopt formal comments on the European Data Protection Supervisor's reports on the audits pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008 and Article 31(2) of Regulation (EU) No 603/2013, Article 56(2) of Regulation (EU) 2017/2226, and [Article ~~57~~ **67** of Regulation (EU) 2018/XX (establishing the ETIAS)] and to [Article 27(2) of Regulation (EU) 2018/XX (establishing the ECRIS-TCN system)] and to [Article 50 of Regulation 2018/XX on interoperability] and ensure appropriate follow-up of those audits;".

4.   In Article 19**,** paragraph 4 is replaced by the following:

"4. Europol and Eurojust may attend the meetings of the Management Board as observers when a question concerning SIS II, in relation to the application of Decision 2007/533/JHA, is on the agenda. [The European Border and Coast Guard Agency may attend the meetings of the Management Board as observers when a question concerning SIS in relation to the application of Regulation (EU) 2016/1624 is on the agenda]. Europol may also attend the meetings of the Management Board as observer when a question concerning VIS, in relation to the application of Decision 2008/633/JHA, or a question concerning Eurodac, in relation to the application of Regulation (EU) No 603/2013, is on the agenda. Europol may also attend the meetings of the Management Board as an observer when a question concerning EES in relation to the application of Regulation (EU) 2017/2226 is on the agenda or when a question concerning ETIAS in relation to Regulation 2018/XX (establishing ETIAS) is on the agenda. [The European Border and Coast Guard Agency may also attend the meetings of the Management Board as observer when a question concerning ETIAS in relation with the application of Regulation 2018/XX (establishing ETIAS) is on the agenda.] [EASO may also attend the meetings of the Management Board as an observer when a question concerning the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) 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 (recast) COM(2016) 270 final-2016/0133(COD), is on the agenda.]

[Eurojust, Europol [the European Public Prosecutor's Office] may also attend the meetings of the Management Board as observers when a question concerning Regulation 2018/XX (establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS), and amending Regulation (EU) No 1077/2011 (ECRIS-TCN system) is on the agenda.] Europol, Eurojust and the European Border and Coast Guard Agency may also attend the meetings of the Management Board as observers when a question concerning [Regulation 2018/XX on interoperability] is on the agenda. The Management Board may invite any other person whose opinion may be of interest, to attend its meetings as an observer.".

5.   In Article 21(3), point (o) is replaced by the following:

"(o) without prejudice to Article 17 of the Staff Regulations, establishing confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008 Article 4(4) of Regulation (EU) No 603/2013; Article 37(4) of Regulation 2017/2226, [Article ~~74~~64(2) of Regulation 2018/XX (establishing the ETIAS)], [Article 11(16) of Regulation 2018/XX (establishing the ECRIS-TCN system)] and [Article 53(2) of Regulation 2018/XX on interoperability];".

6. Article 23 is amended as follows:

(a) Iin paragraph 1, the following point is inserted:

"(ea) Interoperability Advisory Group;";

(b) paragraph 3 is replaced by the following:

"3. Europol and Eurojust and the European Border and Coast Guard Agency may each appoint a representative to the SIS II Advisory Group. Europol may also appoint a representative to the VIS and Eurodac and EES[-ETIAS] Advisory Groups. The European Border and Coast Guard Agency may also appoint a representative to the EES[-ETIAS] Advisory Group.] [Eurojust, Europol, and the European Public Prosecutors Office] may also appoint a representative to the ECRIS-TCN system Advisory Group.] Europol, Eurojust and the European Border and Coast Guard Agency may each appoint a representative to the Interoperability Advisory Group.".

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