

What Cos. Can Expect From Electronic EU Border Controls

By **Maria Fernanda Gandarez and Elisabeth Meddin** (July 22, 2022)

Starting in spring 2023, U.S. companies that regularly send employees overseas to Europe will find themselves having to be much more cognizant of how often their employees travel and for how long they stay within the Schengen area.

While travel will not become significantly more difficult for U.S. citizens, new systems being introduced will mean that travelers who previously did not require any documentation other than their passport will need to apply for a visa waiver ahead of departure.

Due to the growing issues and existing gaps inherent in the European Union's current border and security management systems, the European Parliament has recognized a clear and present need to strengthen border security through improving current systems for migration management, in addition to implementing new ones, in order to continue to facilitate the tens of millions of travelers crossing the Schengen borders yearly as part of regular travel flows.

To that end, the European Commission recommended a number of initiatives with the aim of responding to these highlighted issues. Among these proposals are the commission's new electronic Entry/Exit System and the European Travel Information and Authorization System. Both the EES and ETIAS have been presented to and approved by the European Commission, the European Parliament and the Council of the European Union — they are expected to come into effect in early 2023.

The main impact these systems will have is to require a heightened awareness of the time a third-country national — i.e., a non-EU citizen — spends within the Schengen area borders. Third-country nationals are permitted to spend up to 90 days within any given 180-day period in the Schengen area.

For companies whose employees undertake a large amount of inter-EU travel — especially U.S. companies or multinational companies with U.S. citizen employees — these new tracking systems will mean that previously lax attention paid to travel plans can no longer be the norm without employees risking noncompliance with EU regulations and the consequences that would entail.

European Travel Information and Authorization System

After being approved in 2018, ETIAS was meant to go into effect last year, however it was delayed due to the COVID-19 pandemic and is now set to be fully operational by May 2023. This electronic visa waiver system will carry out prescreening for both security and migration risks for travelers who currently benefit from visa-free access to the Schengen area.

At the moment, there are 60 countries worldwide that enjoy visa-free travel throughout the Schengen area.[1] Once ETIAS comes into force, travelers from these countries will be required to present an ETIAS visa waiver in order to enter one of the ETIAS countries.[2]



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This visa waiver must be applied for prior to travel and, once granted, is valid for up to three consecutive years — or up to the expiration of the applicant's current passport.

ETIAS application requires travelers to hold a valid biometric passport and submit an application providing personal, family and nationality details, as well as answering questions relating to travel, criminal and employment history, along with other security information. Applicant information is checked against internal EU security databases such as Interpol, Europol and the Schengen Information System.

Approved applications are tied to an individual's passport, and while applicants should retain the approval for their personal records, travelers will not be required to present the approval upon arrival in a Schengen country.

The purpose of this system and its automatic processing is to allow border guards to access information that will aid them in their assessment of third-country visitors arriving for a short stay. Systems similar to ETIAS are already in effect — the Electronic System for Travel Authorization in the U.S. and the Electronic Travel Authorization in Canada.

If the implementation of ETIAS is anything close to that of the Electronic System for Travel Authorization and the Electronic Travel Authorization, then travelers can expect approximately 95% or more of all ETIAS applications will be approved, with that approval communicated to applicants shortly after submission of the application. The ETIAS visa waiver program will not require the collection of fingerprints or other biometric data as is required for a Schengen visitor visa.

ETIAS will cover the approximately 30 million yearly visitors to the EU from the 60 visa-free countries affected, allowing them to be screened in advance to ensure no one entering the Schengen area poses a health, security or migration risk. For many of the affected travelers, applying for an ETIAS visa waiver will seem routine as they are already required to apply for U.S. Electronic System for Travel Authorization waiver or Canadian Electronic Travel Authorization.

This, however, will be something new for U.S. citizens. It is important therefore that companies that send their employees abroad are careful in tracking when ETIAS is officially launched in order to avoid any employees being caught unaware by the new requirements.

In light of Brexit, it has been confirmed that British citizens will be eligible for the ETIAS visa waiver program and will be required to obtain an ETIAS waiver in order to enter any ETIAS countries. As with all other countries whose citizens must hold an ETIAS visa waiver, British citizens may only remain in the Schengen area for a maximum of three months with an ETIAS waiver. For longer stays, a tourist, study or business visa is required.

Overall, the ETIAS visa waiver will be a relatively simple extra step for travelers that will have a significant impact on the EU's ability to protect both its internal and external borders. The system will act to close a gap in information available to border control agents and aid in improving the detection of human trafficking. It will also help address the issue of cross-border criminal actions, and help to detect and identify individuals whose presence in the Schengen area could pose an internal security threat.

ETIAS was developed with the intent to be fully interoperable both with existing EU security systems and with those that will be operational in the near future — such as the electronic EES.

Electronic Entry/Exit System

As part of the EU's expansion of its policy to strengthen its borders and address the challenges that come with a more mobile and migratory world, the EES is an electronic monitoring system that registers border crossings for all third-country nationals visiting the Schengen area. The EES will track all those visiting for a short-stay — up to 90 days within any 180-day period — for both visa-required and visa-exempt travelers. It is expected to be fully operational by the end of May 2023.

By digitizing the recorded entries and exits of travelers, the EES will allow member states to systematically and easily identify third-country nationals who overstay their visas, while simultaneously improving both the quality and efficiency of the Schengen area border control by better regulating and reducing the problem of overstaying.

The EES will work in conjunction with the ETIAS visa waiver program as part of the EU's more digitized approach to border security. Together, they will provide a much clearer picture of the exact amount of time a third-country national remains within the Schengen area.

This type of tracking will be new to many third-country nationals, especially U.S. citizens, who in the past perhaps could get away with a more relaxed approach to counting the number of days they remained within the Schengen borders.

The EES will register the identities of all third-country nationals as they cross any external Schengen border by tracking alphanumeric data, fingerprints and facial images. The system will then link the registered identity, along with details of the individual's travel documents, with an electronic entry and exit record.

The EES will also record any time a third-country national is refused entry on any grounds. Unfortunately for those travelers who enjoyed collecting stamps in their passports, this practice will be discontinued once the EES is in place.

In conjunction with the ETIAS visa waiver program, the EES is intended to close a gap that currently exists in the EU's landscape of border and migration controls. As it exists now, the EU's information and security system is fragmented as pertains to data management, which, considering the open border policy within the Schengen area, can lead to systems that can be exploited or holes where no systems exist at all.

It is likely that in the future we will see further enhancements to the border security and management systems that govern the Schengen area as our world becomes more and more digitized, resulting in companies needing to become more aware of how they move their employees around or arrange for business travel.

With these new enhancements, those who previously may have taken a more laissez-faire attitude toward travel, due to a lifetime of traveling on a passport that rarely required any sort of visa or additional travel document, will now need to be much more cautious. The ETIAS and EES programs will make it much harder to overstay in the Schengen area, and much easier to be caught if one does remain longer than allowed.

For U.S. companies whose employees undertake frequent travel in Europe, it would be advisable for employees to start carefully tracking the amount of time spent in the Schengen area — or for the companies to do so themselves — to avoid situations where an employee is either prevented from entering a Schengen country due to having exceeded the

number of days permitted, or is asked to leave prematurely.

While a number of countries will be affected by these new systems, it may be the U.S. citizens who find it hardest to adjust to the new requirements. In the end these new systems really do not impose any sort of extraordinary burden on travelers, however it is for that reason that third-country nationals visiting the Schengen area should be so cognizant of them. They could be easy to overlook yet have serious consequences for future travel should they not be taken seriously.

Correction: A previous version of this article did not include one of its authors. The error has been corrected.

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[1] Albania, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Bosnia and Herzegovina, Brazil, Brunei, Canada, Chile, Colombia, Costa Rica, Dominica, El Salvador, Georgia, Grenada, Guatemala, Honduras, Hong Kong, Israel, Japan, Kiribati, Macao, North Macedonia, Malaysia, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Montenegro, New Zealand, Nicaragua, Palau, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent, Samoa, Serbia, Seychelles, Singapore, Solomon Islands, South Korea, Taiwan, Timor Leste, Tonga, Trinidad and Tobago, Tuvalu, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Vanuatu, Venezuela.

[2] Austria, Belgium, Luxembourg, Netherlands, Germany, France, Spain, Portugal, Sweden, Finland, Denmark, Lithuania, Latvia, San Marino, Estonia, Poland, Slovakia, Hungary, Slovenia, Italy, Greece, Czech Republic, Malta, Monaco, Liechtenstein, Iceland, Norway, Switzerland, Vatican City, Andorra.