

ETIAS Fundamental Rights Guidance Board

ANNUAL REPORT 2023

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1. Introduction

From mid-2025, individuals from more than 60 visa-free countries will be required to obtain a travel authorisation before coming to Europe for a short stay. The authorisation will be processed through **the European Travel Information and Authorisation System (ETIAS)**. The aim of ETIAS is to carry out a pre-travel screening of visa-free travellers to determine whether they pose a security, illegal immigration, or public health risk.

The ETIAS ecosystem is complex and includes the ETIAS Central Unit hosted by the European Border and Coast Guard Agency (Frontex), ETIAS National Units located in 30 European countries, and the ETIAS information system developed and maintained by eu-LISA. In addition, the ETIAS Screening Board with an advisory function is established, composed of the ETIAS National Units, Frontex and Europol.

The **ETIAS Fundamental Rights Guidance Board** (the Guidance Board) is established by Regulation (EU) 2018/1240 (ETIAS Regulation). It has an advisory and appraisal function. More specifically, the mandate of the Guidance Board is to:

- perform regular appraisals,
- issue recommendations to the ETIAS Screening Board,
- support the ETIAS Screening Board in the execution of its tasks, when consulted.

The focus of the consultations is the impact of the processing of applications on fundamental rights, and the Screening Board may seek the advice of the Guidance Board on specific issues related to fundamental rights, including on the ETIAS screening rules and risk indicators (Article 33 of the ETIAS Regulation), in particular with regard to privacy, personal data protection and non-discrimination, cf. Article 9(5) of the ETIAS Regulation.

In accordance with Article 10(5) of the ETIAS Regulation and the Rules of Procedure of the Guidance Board, the Guidance Board shall produce an Annual Report of its activities for each calendar year, which is made public. The Guidance Board hereby presents its first Annual Report covering the period from its establishment (14 November 2022) until the end of 2023. The Report should be presented to the ETIAS Screening Board.

2. Composition and Organisation

In accordance with Article 10(1) of the ETIAS Regulation and the Rules of Procedure of the Guidance Board, the Guidance Board is currently composed of the following members and their alternates (each member can have up to two alternate representatives):

Fundamental Rights Officer of Frontex

Member – Jonas Grimheden, Fundamental Rights Officer, head of the independent Fundamental Rights Office of Frontex

- Alternate representative – Anita Danka, Fundamental Rights Monitor (Advanced Level)
- Alternate representative – Luis Carnasa Berga, Fundamental Rights Monitor

Consultative Forum on Fundamental Rights of Frontex

Member – Lola Girard, Migration/Freedom of Movement Adviser, Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE ODIHR), representative of the Consultative Forum

European Data Protection Supervisor

Member – Fanny Coudert, Deputy Head of Supervision and Enforcement Unit

- Alternate representative – Konstantina Vemou, Technology and Security Officer, Technology and Privacy Unit
- Alternate representative – Joanna Parkin, Legal Officer, Area of Freedom, Security, and Justice Sector, Supervision and Enforcement Unit

European Data Protection Board

Member – Sebastian Hümmeler, The Federal Commissioner for Data Protection and Freedom of Information (Germany), representative of the European Data Protection Board

- Alternate representative of the European Data Protection Board – Marie-Louise Gächter, Data Protection Authority of the Principality of Liechtenstein

European Union Agency for Fundamental Rights

Member – Ann-Charlotte Nygård, Head of Sector Data and Digital; Justice, Digital and Migration Unit

- Alternate representative – Ludovica Banfi, Project Manager; Justice, Digital and Migration Unit

The Guidance Board approved its Rules of Procedure during its first session on 14 November 2022. In the same session, in accordance with these rules, the members of the Guidance Board elected Sebastian Hümmeler as Chairperson and Jonas Grimheden as Deputy Chairperson for the term of two years with possible re-election.

Previous members of the Guidance Board:

- Sofia Botzios, Migration and Freedom of Movement Advisor at OSCE ODIHR, representative of the Consultative Forum of Frontex for the period of 14 November 2022 – 6 July 2023
- Tiina Ahtonen, The Finnish Office of the Data Protection Ombudsman, alternate representative of the European Data Protection Board for the period of 14 November 2022 – 8 January 2024
- Sara Sighinolfi, Project Officer - Data and Digital Sector; Justice, Digital and Migration Unit, European Union Agency for Fundamental Rights, alternate representative for the period of 14 November 2022 – 5 February 2024
- Kaitlin Ball, Advisor on Human Rights and New Technologies, Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE ODIHR), representative of the Consultative Forum for the period of 7 July 2023 – 6 June 2024

3. Work Programme

The Guidance Board's first Work Programme covers the period of 2023 – 2024. Its focus is to closely follow and support the setting up and implementation of the ETIAS governance structure and mechanisms.

The Work Programme is publicly available on Frontex official website under the ETIAS section.

As was determined in the Work Programme, during the current period the Guidance Board is focusing on internal capacity building and support to the initial technical and organisational implementation of ETIAS, including the development of the screening rules, establishing the ETIAS watchlist, and procedures for the processing of applications. The Guidance Board also respond to specific consultations when required.

4. Areas of work

According to Article 10 of the ETIAS Regulation, the Guidance Board operates as an independent entity with advisory and appraisal functions.

From 14 November 2022 to 31 December 2023, the Guidance Board convened seven meetings, of which two meetings were organised in person in Warsaw. In addition, three ad hoc meetings were organized online to discuss draft documents or prepare positions of the Guidance Board on specific matters.

During its session on 20 March 2023, the Guidance Board embraced a comprehensive approach to its **mandate**.¹ To address potential resource limitations resulting from this broad approach, the Guidance Board acknowledged the necessity of prioritising specific areas as relevant for the establishment of ETIAS. Additionally, on 20 March 2023 the Guidance Board discussed **frameworks for fundamental rights assessment**, and started collecting information on existing tools for respective audits. Furthermore, **organisational matters** governing the Guidance Board were also deliberated upon.

During the past year, in addition to addressing organisational matters pertaining to the Guidance Board itself, the Guidance Board exercised its advisory and appraisal role supporting the set-up of the ETIAS structures, processes and methodologies. The Guidance Board participated in various working groups set up for the **establishment of ETIAS**, each with specific tasks. The Guidance Board offered guidance and feedback on various topics discussed. The ETIAS Central Unit was also invited to meetings of the Guidance Board to provide up-dates on recent developments; the Guidance Board issued a standing invitation and introduced a specific agenda item on exchange with the ETIAS Central Unit for its regular meetings.

During its meeting on 3 February 2023, the Guidance Board was up-dated on the discussions and outcomes of the **working group meetings** held on 22-23 November 2022, **establishing the ETIAS Screening Board** and the **working group on Risk Screening Operations**. The Guidance Board was invited to participate in these working group meetings and subsequent sessions. The progress of work carried out by these working groups as well as the outcomes achieved were as a rule presented and discussed during subsequent Guidance Board meetings.

During the meeting of the Guidance Board on 17 May 2023, **the Fundamental Rights Agency** presented its training activities related to ETIAS and fundamental rights. In accordance with the ETIAS Regulation, fundamental rights are to be incorporated into the trainings for the new system. The Fundamental Rights Agency delivers fundamental rights training during Frontex-organised training events for the ETIAS National Units. Additionally, the Guidance Board received an update on the **audit methodology development process by the ETIAS Central Unit**. The requirement for audits is outlined in Article 7(2)(e) of the ETIAS Regulation, which assigns this responsibility to the ETIAS Central Unit.

The Guidance Board was consulted on the **Rules of Procedure of the ETIAS Screening Board**. During the meeting on 12 June 2023, the Guidance Board discussed the draft of the Rules of Procedure of the ETIAS Screening Board. The most relevant discussions for the Guidance Board included:

- Article 4, which pertains to consulting the Guidance Board, specifically paragraph 2 regarding consultations with other institutions that, taking into consideration the given wording, could potentially undermine the opinions and recommendations issued by the Guidance Board.
- Article 10, addressing the possibility to have so-called closed sessions in particular by excluding the Guidance Board, including the necessity, rationale, legitimacy, and compliance with the ETIAS Regulation.

The Guidance Board deliberated on potential solutions to address the aforementioned concerns and proposed a course of action.

¹ The Guidance Board distinguished three main areas of activities vested by the ETIAS Regulation:

- Main focus of the Guidance Board shall be on the fundamental rights impacts of Art. 33 in addition to fundamental rights impacts that may arise from the processing of applications more generally, which could potentially be very wide.
- Additionally, activities related to the ETIAS Screening Board, Art. 10(2) of the ETIAS Regulation. The mandate of the ETIAS Screening Board is a key frame of reference for the scope of the work of the Guidance Board. Meaning the Guidance Board needs to be in the position to provide consultation to the ETIAS Screening Board (also perform regular appraisals, and support the ETIAS Screening Board in the execution of its tasks). In addition, not only appraising the fundamental rights impact of the Art. 33 risk indicators, but also implementation of the ETIAS Watchlists (Art. 9(2) and 9(3)).
- Work of the Guidance Board should also cover issues of processing of the applications, that could potentially be performed through assessment of the audits that the ETIAS Central Unit is required to carry out under Art. 7(2)(e).

During its meeting on 12 June 2023, the Guidance Board also addressed Article 7(e) of the ETIAS Regulation on the **obligation of the ETIAS Central Unit to carry out regular audits**. The ETIAS Central Unit posed questions regarding the audit methodology and scope. The scope of the audit, as outlined in Article 7(e), was examined from both data protection and fundamental rights perspectives. As one possible way to address this matter, the Guidance Board proposed that the ETIAS Central Unit make use of the ETIAS data protection impact assessment (DPIA) as a starting point to developing a framework for identifying risks, priority areas and mitigation measures.

In addition, the Data Protection Office of Frontex provided an **overview of its** activities related to ETIAS, presenting areas of collaboration with the ETIAS Central Unit and outlining general Data Protection Officer responsibilities. Additionally, concerns regarding certain data subjects' rights in relation to ETIAS were highlighted, providing examples where these rights may be compromised.

In addition, the Guidance Board approved the **key focus areas for the 2023/2024 work program**. These include internal capacity building, initial technical and organisational implementation of the ETIAS system (organisational support, screening rules, watchlist, and application processing), and specific consultations. Furthermore, efforts to promote synergies with projects and activities of Guidance Board members and other stakeholders were prioritised. Lastly, enhancing the visibility and transparency of the Guidance Board was established as an additional core aspect of the Work Programme.

During its session on 21 November 2023, the Guidance Board was debriefed on the **12th Meeting regarding the establishment of the ETIAS National Units and ETIAS Central Unit** held on 21 September in Warsaw. The primary concern discussed by the Guidance Board was communication with applicants, particularly regarding cases of refusal, annulment, or revocation of an ETIAS authorisation. An area of potential concern for the Guidance Board were potential deficiencies as regards the right to an effective remedy, and the extent of information and reasoning to be provided to the applicant to substantiate negative decisions, particularly where these involve security risks. Indeed, having a well-founded decision is crucial to ensure effective access to appeal.

Furthermore, the Guidance Board received a summary of the **5th Meeting of the Working Group on ETIAS Risk Screening**, which was convened in Warsaw on 12-13 October 2023, with the participation of most Member States. The primary objective of the meeting was to assist Member States in the establishment of ETIAS risk screening operations. This included a specific focus on aligning thresholds with risk profiles, developing guidelines for manually processing hits and enhancing the capabilities of national units in anticipation of the ETIAS launch. There was a strong emphasis on striving for a largely uniform approach among National Units whenever feasible.

In addition, the Fundamental Rights Agency introduced its forthcoming **project addressing the risk of discrimination within the ETIAS risk screening algorithm**. The ETIAS Central Unit and the Member States sought guidance and assistance from the Guidance Board to ensure adherence to fundamental rights.

Furthermore, the Risk Analysis Unit, focusing on building its capabilities by developing procedures and methodologies for analysing specific types of risks, sought support from the Guidance Board to ensure that the **analytical methodology** is crafted to enable the formulation of processes devoid of discriminatory elements.

The representatives of the Guidance Board participated in the following meetings:

- On 22 November 2022, the 2nd meeting of the Working Group on Setting up the ETIAS Screening Board in Warsaw;
- On 23 November 2022, the 2nd meeting of the Working Group on ETIAS Risk Screening Operations in Warsaw;
- On 8 and 15 March 2023, the 3rd meeting of the Working Group on Setting up the ETIAS Screening Board, online;
- On 23 March 2023, the 3rd meeting of the Working Group on ETIAS Risk Screening Operations in Amsterdam;
- On 27 March 2023, the 11th meeting on Setting up the ETIAS National Units and ETIAS Central Unit in Warsaw;
- On 30 May 2023, the 4th meeting of the Working Group on Setting up the ETIAS Screening Board in Gothenburg;
- On 21 September 2023, the 12th meeting on Setting up the ETIAS National Units and ETIAS Central Unit in Warsaw;

- On 10-11 October 2023, the 1st Dedicated workshop on risk analysis methodologies for the elaboration of security risk descriptions for the purpose of ETIAS in Warsaw;
- On 12-13 October 2023, the 5th meeting of the Working Group on ETIAS Risk Screening Operations in Warsaw;
- On 7 December 2023, the 13th meeting on Setting up the ETIAS National Units and ETIAS Central Unit in Warsaw.

5. Conclusion

The period covered by this Annual Report was characterised by the dynamics created by a constantly evolving environment during the prolonged phase of the setting-up of the ETIAS. The process of monitoring the technical and organisational implementation of the ETIAS has thus revealed new and evolving fundamental rights implications associated with the operation of the system. These circumstances led to a significant and persistent strain on the resources of the Guidance Board. Implementing a large scale IT-system comprising as many actors as ETIAS poses a major challenge not only to achieving the proper functioning of the system, but also to safeguarding fundamental rights. The Guidance Board has, during its initiation phase, begun the work of identifying and responding to the needs and challenges to be faced in the future implementation of the ETIAS, striving to contribute in a constructive and collaborative manner, and it will continue to do so.