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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	6928/13 FRONT 13 VISA 51 CODEC 450 COMIX 130
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union

Delegations will find attached a consolidated outcome of proceedings, which reflects the results of the first reading by the Working Party of the entire proposal, with the exception of the Preamble, which will be examined in due time.

Delegation's comments (including their written submissions) are set out in the footnotes.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union

HAVE ADOPTED THIS REGULATION¹²:

CHAPTER 1
General Provisions

Article 1
*Subject matter*³

A system referred to as the 'Entry/Exit System' (EES) is hereby established for the recording and storage of information on the time and place of entry and exit of third country nationals crossing⁴ the external borders and admitted for a short stay⁵ in the territory of the Member States, for the calculation of the duration of their stay, and for the generation of alerts to Member States when authorised periods for stay have expired.

¹ **SE** suggested the same approach as for the VIS Regulation, meaning that a technical group could be set up in advance to start working. **SE** asked **Cion** about the implementation of the RTP.

² **HU, BG** and **SI** asked **Cion** what should be understood by "external borders" in the context of EES and RTP. **Cion** replied that the EES would apply to all Schengen Member States, including those which do not apply in full the Schengen acquis, from the first day of operation. As for RTP, **Cion** replied that it would be applicable to those Member States which do not apply in full the Schengen acquis only from the date on which the controls at the internal borders would be lifted. **Cion** added that those Member States should be able to unilaterally recognise the RTP status granted.

³ **HU** entered a parliamentary reservation. **PL** entered a general scrutiny reservation and a linguistic reservation. **ES** entered a reservation on this Article. **EE** entered a substantial reservation on Articles 1, 3 and 4. **CY, FI, HU, EE, MT, IT, PT, ES, AT** and **PL** were in favour of allow access to the EES to law enforcement authorities for the purpose of combating cross-border crime and terrorism and therefore asked to include such a reference in Article 1. **PL** supported by **AT** also stressed the importance of ensuring interoperability between SIS II and EES. **CH** was in favour of the inclusion of biometrics from the start and suggested to include this in Article 1: "collection and storage of alphanumeric and biometric data". **FR** supported **CH** and expressed the view that without biometrics overstayers could not be identified. and supported other delegations to allow access to the EES to law enforcement authorities for the purpose of combating cross-border crime.

⁴ **EL** made the following drafting suggestion: "...crossing transit points on external borders of the Union...".

⁵ **AT, CY, ES, FR, IT, LV, NL** and **RO** were in favour of making a reference just to "stay" in order to cover holders of residence permits and holders of long-stay visas and to be able to check the periods outside the Schengen area.

Article 2¹
Set-up of the EES

1. The EES shall have the structure determined in Article 6.
2. The Agency for the operational management of large-scale information systems in the area of freedom, security and justice (hereinafter the Agency) is hereby entrusted with the tasks of development and operational management of the EES, including the functionalities for processing biometric data referred to in Article 12.

Article 3
Scope

1. This Regulation shall apply to any third country national admitted for a short stay² in the territory of the Member States subject to border checks in accordance with the Schengen Borders Code when crossing the external borders of the Member States.

¹ **DE** entered a scrutiny reservation and said that there was no need for this provision. **DE** added that if Article 2 is kept then a reference to Article 24 should be included. **EL, LV** and **NL** asked to make a reference to Member States in paragraph 2. **PL** asked to making the drafting clearer in relation to financial aspects.

² **ES** entered a scrutiny reservation on this paragraph. **ES**, supported by **LV**, requested the extension of the scope of the Entry Exit System to all third-country nationals crossing the external borders. **ES** underlined that the application of the Entry Exit System to holders of residence permits would allow Member States to check efficiently the periods of stay outside the host Member State. **FR** supported by **AT** suggested that each Member State carries out an impact assessment of the cost of excluding holders of residence permits as suggested by **ES**. In the same line, **NL** and **SI** asked to amend paragraph 1 in order to allow Member States to use the Entry Exit System to check the validity of all third-country nationals in the Schengen area.

2. This Regulation shall not apply to the crossing of external borders by¹:
- (a) members of the family of a Union citizen to whom Directive 2004/38/EC applies who hold a residence card referred to in that Directive;
 - (b) members of the family of nationals of third countries enjoying the right of free movement under Union law who hold a residence card referred to in Directive 2004/38/EC;

This Regulation shall not apply to family members mentioned in points (a) and (b) even if they are not accompanying or joining the Union citizen or a third-country national enjoying the right of free movement;

- (c) holders of residence permits referred to in Article 2 (15) of the Schengen Borders Code²;
- (d) nationals of Andorra, Monaco and San Marino.

¹ **FR, DE, IT, and CH** asked Cion to explain why the list of exemptions in paragraph 2 did not match the list of stamping exemptions in Article 10 paragraph 3 of the SBC. **SI** missed other exemptions in paragraph 2 such as for political delegations or air crew. **PL** asked to include in paragraph 2 holders of long-stay visas. **PL** and **BE** asked to include in this paragraph Heads of State and certain categories of holders of diplomatic passports. **BE** stressed the need to facilitate the work of border guards and to expand the scope of paragraph 2 for humanitarian, transit or other justified reasons. **SI** and **LV** raised the issue of holders of local border traffic permits. **RO** and **AT** inquired about the situation of third-country nationals subject to the Entry Exit System who benefits of bilateral agreements concluded by the host Member State authorising them to stay for a period longer than 180 days in its territory. **SE** asked Cion about the situation of persons under a protection regime who might be prejudiced if their personal data is recorded in the Entry Exit System. **RO** supported by **LV** said that border guards, firemen and policemen who cross the border for professional reasons should also be excluded from being recorded in the EES. **RO** pointed out that in paragraph 2 holders of residence permits issued by MS not applying fully the Schengen acquis should be included. **AT** indicated that in paragraph 2 a distinction should be made between different types of diplomatic and service passports as they were not harmonised. **Cion** explained that the general principle in Article 3 is to exclude persons enjoying freedom of movement in the Schengen area. **Cion** clarified that air crew, Heads of State and other categories of persons who are not subject to border checks in accordance with provisions in the SBC are excluded from being recorded in the EES on the basis of paragraph 1 and therefore it was not necessary to include them in paragraph 2 of this Article. As regards holders of Local Border Traffic permits, **Cion** indicated that it would be up for Member States to include them into the system. As per the bilateral agreements which allowed a longer period in the Schengen area, Cion did not know how to deal with this issue for the purposes of EES because it might be an alert but the person is legally present on the basis of a bilateral agreement. On the question by NL regarding the possibility of using the EES at the external border to identify a third-country national, Cion said that it would reflect on it and specified that if a MS carried out a random check in its territory, it could consult the EES to check the identity of the person concerned.

² **ES** entered a scrutiny reservation on this provision and asked for its deletion in line with the position expressed in paragraph 1.

Article 4
Purpose¹

The EES shall have the purpose of improving the management of the external borders and the fight against irregular immigration, the implementation of the integrated border management policy, the cooperation and consultation between border and immigration authorities by providing access by Member States to the information of the time and place of the entry and exit of third country nationals at the external borders and facilitating decisions relating thereto, in order:

to enhance checks at external border crossing points and combat irregular immigration;

to calculate and monitor the calculation of the duration of the authorised stay of third-country nationals admitted for a short stay;

to assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, or stay on the territory of the Member States;

to enable national authorities of the Member States to identify overstayers and take appropriate measures;

²to gather statistics on the entries and exits of third country nationals for the purpose of analysis.

¹ **CZ, FR, ES, EL, DK, PL, AT, PT, BG, CY, LV, SK, NL, FI, IT HU, LT, EE, CH** and **NO** were in favour of using the EES for law enforcement purposes. In particular, several delegations shared the view that the EES should also serve the purpose of combating serious crime, including terrorism. **SE** asked to mention the benefits for the travellers. **CY** pointed out situations at the external borders where third-country nationals are not in possession of travel documents. In that regard, **CY** considered that it might be useful that the entry into the Schengen area would be allowed under the condition of their effective recording in the EES. **NL** asked to mention in Article 4 that the EES should contribute to improve the functioning of Dublin II system. **NL** also underlined the potential contribution of the EES to visa policy with third countries. **SI** considered necessary to specify the mechanisms in order to identify overstayers. **HR** asked to include a new indent to allow Member States to check in the EES if other measures against overstayers have been taken by other Member States. **Cion** indicated that it was more accurate to talk about access for law enforcement purposes. In relation to this issue, **Cion** expressed doubts so as to the proportionality test between on one hand all the personal data to be collected and stored in the EES and on the other hand the usefulness of allowing the use of the EES for combating crime. In the opinion of **Cion**, it was very difficult to quantify the rate of success for EU MS in combating crime because of the use of the EES. In the context of future discussions, **Cion** believed it would be very useful that MS provide estimates for crime prosecution purposes and to take into account the experience gained with the VIS.

² **SE** suggested to amend this paragraph and to add a new one:

- *to facilitate the crossing of EU's external border for third-country nationals and to provide greater clarity for third-country nationals of their right to stay in the Member States;*
- *to gather statistics on the entries and exits of third country nationals for the purpose of analysis, especially in relation to EU's visa policy.*

Article 5
Definitions¹

For the purposes of this Regulation, the following definitions shall apply:

'external borders' means external borders as defined in Article 2(2) of the Schengen Borders Code;

'border authorities' means the competent authorities assigned, in accordance with national law, to carry out checks on persons at the external border crossing points in accordance with the Schengen Borders Code;

'immigration authorities' means the competent authorities assigned, in accordance with national law, to examine the conditions and take decisions related to the stay of third country nationals on the territory of the Member States²;

'visa authorities'³ means the authorities which are responsible in each Member State for examining and for taking decisions on visa applications or for decisions whether to annul, revoke or extend visas, including the central visa authorities and the authorities responsible for issuing visas at the border in accordance with the Visa Code⁴;

'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20 of the Treaty, with the exception of persons who under agreements between the Union or the Union and its Member States, on the one hand, and third countries, on the other, enjoy rights of free movement equivalent to those of Union citizens;

¹ **PL** noted that it would be probably necessary to include a definition of law enforcement authorities. **HU** indicated that there is one definition in Article 87 TFEU and suggested to take the definition of cross-border crime in the EUROSUR draft Regulation. **FI** agreed on the need of having a definition of the authorities who would have access to the system.

² **NL** questioned if the text should not make a difference between immigration and asylum authorities as in the VIS Regulation.

³ **DE** asked to insert the same definition as in Article 4 paragraph 3 of the VIS Regulation.

⁴ OJ L 243, 15.9.2009, p.1.

'travel document' means a passport or other equivalent document, entitling the holder to cross the external borders and to which a visa may be affixed¹;

'short stay' means stays in the territory of the Member States of a duration of no more than 90 days in any 180 days period^{2,3};

'Member State responsible' means the Member State which has entered the data in the EES;

'verification' means the process of comparison of sets of data to establish the validity of a claimed identity (one-to-one check);

'identification' means the process of determining a person's identity through a database search against multiple sets of data (one-to-many check);

'alphanumeric data' means data represented by letters, digits, special characters, space and punctuation marks;

'biometric data' means fingerprints⁴;

'overstayer' means a third country national who does not fulfil, or no longer fulfils the conditions relating to the duration of a short stay on the territory of the Member States⁵;

'Agency' means the agency established by Regulation (EU) No 1077/2011⁶⁷;

'Frontex' means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004⁸;

¹ **FR** and **NL** requested the insertion of a reference to Annex V in the Schengen Handbook or Visa Handbook in this definition.

² **ES** entered a reservation on this provision. In line with its position expressed in relation to Article 1, **ES** was in favour of deleting the definition of "short stay".

³ **SE** questioned whether a definition of "entry/exit record" should be included.

⁴ **DE**, **EL** and **NL** were in favour of including a facial image as in the VIS. **DE** entered a scrutiny reservation. **Cion** replied that as biometrics would be enrolled at the external border, if a picture of each third-country national is taken, that would entail longer waiting periods at the border.

⁵ **ES** entered a reservation on this provision. **ES** expressed the view that the reference to conditions on the short-stay was too narrow and should be replaced by a more general one covering other possible reasons of a stay becoming illegal.

⁶ OJ L 286, 1.11.2011, p.1.

⁷ **LV** asked to formulate this definition as done for Frontex in the definition below. **CH** and **SE** asked to ensure that the same wording is used in the RTP proposal and suggested to amend the definition as follows: 'Agency' means the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011;

⁸ OJ L 349, 25.11.2004, p.1.

'supervisory authority' means the supervisory authority established in accordance with Article 28 of Directive 95/46/EC;

'operational management' means all the tasks necessary to keep large-scale IT systems functioning, including responsibility for the communication infrastructure used by them¹;

'development' means all the tasks necessary to create a large-scale IT system, including the communication² infrastructure used by it³⁴.

Article 6
Technical architecture of the EES⁵

The EES shall be composed of⁶:

a Central System comprising a Central Unit and a Back-up Central Unit, capable of ensuring all the functionalities of the Central Unit in the event of the failure of the system;

a National System comprising the required hardware, software and national communication infrastructure to connect the end user devices of the competent authorities as defined in Article 7(2) with the Network Entry Points in each Member State;

¹ **PL** considered that it would be necessary to make a reference to central and national level. **DE** wondered if this definition was necessary and if it is then **DE** suggested to make a reference to the EES. **SE** suggested to amend the text as follows: 'operational management' means all the tasks necessary to keep *this* large-scale IT system functioning, including responsibility for the communication infrastructure used *for it*;

² **SE** suggested to add the words "*and secured*".

³ **SE** asked to refer to the security of infrastructure as well in this definition. **DE** wondered if this definition was necessary and if it is then **DE** suggested to make a reference to the EES.

⁴ **SE** suggested to add a definition on supervisory authorities: '*supervisory authorities*' means *the national authority designated in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.*"

⁵ **SE** proposed to delete the word "Technical" in the Title of Article 6.

⁶ Delegations which took the floor stressed that this Article should be more detailed. **NO**, **PL** and **SE** asked **Cion** to provide further information on the financing of the national system including staff costs. **CZ** and **PL** requested that this Article mention the locations for the Central Unit and Back-up Central Unit. A number of delegations sought further explanations from **Cion** regarding several aspects of the implementation at national level, such as whether or not it was possible to keep current national EES systems, the setting up of the uniform interface, the infrastructure to be used, and the common technical specifications or interoperability with SIS II and the VIS. **Cion** replied that the Agency would develop the common technical specifications and indicated that the national EESs did not have a place in the European System. **Cion** said that it might be possible for the pre-existing EES national systems to co-exist with the European EES but that this was a legal issue that should be solved in the future. As regards the infrastructure to be used at national level, **Cion** indicated that it should be EU TESTA and its successor.

a Uniform Interface in each Member State based on common technical specifications and identical for all Member States;

the Network Entry Points, which are part of the Uniform Interface and are the national points of access connecting the National System of each Member State to the Central System; and

the Communication Infrastructure between the Central System and the Network Entry Points.

Article 7¹²

Access for entering, amending, deleting and consulting data

1. In accordance with Article 4, access to the EES for entering, amending³, deleting and consulting⁴ the data referred to in Articles 11 and 12 in accordance with this Regulation shall be reserved exclusively to duly⁵ authorised staff⁶ of the authorities of each Member State which are competent for the purposes laid down in Articles 15 to 22, limited to the extent needed for the performance of the tasks in accordance with this purpose, and proportionate to the objectives pursued.
2. Each Member State shall designate the competent authorities, including border, visa and immigration authorities⁷, the duly authorised staff of which shall have access to enter, amend, delete or consult data in the EES. Each Member State shall without delay communicate to the Agency a list of these authorities. That list shall specify for which purpose each authority may have access to the data in the EES.

Within three months after the EES has become operational in accordance with Article 41, the Agency shall publish a consolidated list in *the Official Journal of the European Union*. Where there are amendments thereto, the Agency shall publish once a year an updated consolidated list.

¹ **AT, BE, DE** and **PL** entered a scrutiny reservation on this Article.

² **SI, IT, FR, ES, HU, MT, PT, BG, PL, DK, AT** and **CY** requested that this Article cover law enforcement authorities for the purposes of consultation in the fight against serious crime.

³ **RO** asked to replace "amending" with "updating" in paragraphs 1 and 2.

⁴ **DE** said that a clear distinction should be made in the text as to what is covered by "entering", "amending", "deleting" and "consulting".

⁵ **SE** proposed to delete the word "duly".

⁶ **NL** inquired if it would be up to each Member State to determine who is "duly authorised staff". **Cion** replied in the affirmative.

⁷ **EL** asked to include "sea coast guard authorities". **HU, NL, RO** and **SI** preferred a more general wording regarding competent authorities. **DE, FI** and **NO** stressed that access to the EES should be given to national authorities depending on the purpose. **SE** suggested to amend the first sentence as follows "...of which the authorised staff shall have access to enter...."

Article 8
General principles

1. Each competent authority authorised to access the EES in accordance with this Regulation shall ensure that the use of the EES is necessary, appropriate and proportionate to the performance of tasks of the competent authorities.
2. Each competent authority shall ensure that in using the EES, it does not discriminate against third country nationals on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and that it fully respects the human dignity and the integrity of the person¹.

¹ **RO** asked to include at the end of this paragraph the following words: "and provide for the full respect of personal data in accordance with the legislation in force".

Article 9
Automated calculator

The EES shall incorporate an automated mechanism¹ that indicates the maximum authorised duration of stay in accordance with Article 5(1) of the Schengen Borders Code for each third-country national registered in the EES.

The automated calculator shall:

- (a) inform the competent authorities and the third-country national² of the authorised length of stay on border entry;
- (b) identify third country nationals upon exit who³ have overstayed⁴.

¹ **CZ** and **SE** asked Cion if the calculator would also cover longer-stay periods authorised on the basis of bilateral agreements concluded with third countries. **AT** also questioned how the calculator would take into account bilateral agreements for the holders of diplomatic and service passports. **Cion** made clear that it did not yet have a solution for those cases and that Member States' suggestions in that regard were welcomed. **IT** asked if the calculator would deal with situations in which a residence permit is granted following the expiry of a visa, without the person concerned leaving the territory of the Member State. **PL** asked whether information on the extension of short-stay visas would be directly included in the EES.

² **ES, HR, LV, NL** and **PT** inquired how and by whom this information would be passed to the third-country national. **RO** suggested amending this sentence as the system would not directly inform third-country nationals. **FR** expressed concerns on the elimination of stamping as it would mean that there would be no record of entry into the Schengen area in the third-country national's passport. **FR** suggested printing a receipt at the border to be given to the third-country national as proof of his/her entry. In the same vein as **FR**, **HU** asked Cion if this provision meant that stamping would not be necessary anymore. **BE** expressed concerns about the abolition of stamps in the travel document because of the existing obligations on carriers. **Cion** said that it might be a good idea to have a more detailed text. Cion also pointed out the new Article 7(8) in the proposal amending the Schengen Borders Code (6831/13) because it stipulates: *Upon request, the border guard shall inform the third country national of the maximum number of days of authorised stay, having regard to the results of the consultation of the EES and the length of the stay authorised by the visa, as applicable. The third country national may also request a written record containing the date and place of entry or exit.*

³ **SE** proposed to insert the word "may".

⁴ **PT** suggested deleting letter (b) because it had no added value.

Article 10
Information mechanism

1. The EES shall include a mechanism that shall automatically identify which entry/exit records do not have exit data immediately following the date of expiry of the authorised length of stay and identify records for which the maximum stay allowance has been exceeded¹.
2. A list², generated by the system, containing the data referred to in Article 11 of all identified overstayers shall be available to the designated competent national authorities³⁴.

¹ **NL** and **PL** asked if this mechanism would be interoperable with the VIS. **NL** also asked if it would be possible to send a message to SIS II.

² **SI** entered a scrutiny reservation on this paragraph. **DE**, **PT** and **SI** expressed doubts about the added value of this list and **NL** asked for the objective of such a list to be clarified. **CH** commented that it would be enough to get a hit from the system. **FR** asked if it would be possible to use this mechanism when carrying out checks inside the territory. **FR** also stressed that the mechanism should be able to make a hit and send it to the competent authorities. **CY** was in favour of covering in this mechanism all illegally staying third-country nationals in the Schengen area. **SE** suggested to the following drafting for this paragraph: "*The system shall generate a list, containing the data referred to in Article 11 of all identified overstayers which shall be available to the designated competent national authorities to search in.*"

³ **PL** asked what was covered by "designated competent national authorities".

⁴ **LT**, **LV** and **SK** considered that this paragraph needed to contain a reference to third-country nationals exempted from a visa requirement. **LV** and **SI** said that it was necessary to clarify what would happen to the data of people who had not left the territory of the Member State. **Cion** commented that the list would be updated in real time.

Article 11¹
Personal data for visa holders

- 1². In the absence of a previous registration of a third country national in the EES where a decision to authorise the entry of a visa holder has been taken in accordance with the Schengen Borders Code, the border authority shall create the individual file of the person by entering the following data:
- (a) surname (family name), surname at birth (earlier family name(s))³, first name(s) (given names); date of birth, place of birth, country of birth, nationality or nationalities and sex;
 - (b) type and number of the travel document or documents, the authority which issued it or them and the date of issue;
 - (c) three letter code of the issuing country⁴, and the the date of expiry of the validity of the travel document(s);
 - (d) the visa sticker number, including the three letter code of the issuing Member State, and the date of expiry of the validity of the visa, if applicable;
 - (e) at the first entry on the basis of the visa, the number of entries and the authorised period of stay as indicated on the visa sticker;

¹ **DE, ES** and **LV** entered a scrutiny reservation on this Article.

² A large number of delegations stressed that paragraph 1 as proposed by Cion would result in long delays at the external borders. For that reason, **ES, NO, AT, PT, FI, NL, HU, RO, SE, SI, DK** and **PL** were in favour of introducing only data which can be registered automatically. Several delegations suggested referring to data in the Machine Readable Zone (MRZ). **DE** and **ES** also referred to data listed in Annex IX of ICAO. **BE, HU, NL, SI** and **LT** were interested in the possibility of making a link between the VIS and EES so that visa applicant information available in the VIS could be also registered in the EES. **PL** asked to include a derogation to this provision for cases where there are long queues at the border. **FR**, supported by **BE**, suggested including refusals of entry. **CZ** raised the issue of children travelling with their parents on a single travel document. **SE** and **SI** asked how to deal with third-country nationals with dual nationality. **Cion** was flexible on the idea of shortening the list in paragraph 1. As regards interoperability with the VIS, Cion said that border guards would have access to the VIS at the border but that the VIS and EES would not be linked because their searches are different and they are have a different legal basis. Concerning persons with dual nationality, Cion expressed the idea that border guards should check the biometrics in order to prevent a third-country national from circumventing the rules. Cion had doubts on the addition of the refusals of entry and it was not sure this fit into the system's purposes.

³ **SE** suggested to delete the surname at birth (earlier family name (s)) and the country of birth.

⁴ **SE** asked to replace this by "*issuing country, indicated by its ISO ALPHA-3 code*" and the same for letter d).

- (f) if applicable, information that the person has been granted access to the Registered Traveller Programme in accordance with Regulation COM(2013)97 final, the unique identifier number and status of participation.
2. On each entry of that person the following data shall be entered in an entry/exit record¹, which shall be linked to the individual file of that person using the individual reference number created by the EES upon creation of that file:
- (a) date and time of the entry;
 - (b) Member State of entry, the border crossing point and authority that authorised the entry;
 - (c) the calculation of the number of days of the authorised stay(s) and the date of the last day of authorised stay.
3. On exit the following data shall be entered in the entry/exit record linked to the individual file of that person²:
- (a) date and time of the exit;
 - (b) the Member State and the border crossing point of the exit.

Article 12³

Personal data for third country nationals exempt from the visa obligation

1. In the absence of a previous registration of a third country national in the EES where a decision has been taken to authorise the entry in accordance with the Schengen Borders Code of a national of a third country exempt from the visa obligation, the border authority shall create an individual file and enter ten fingerprints⁴ in the individual file of that person, in addition to the data referred to in Article 11⁵, with the exception of the information referred to in Article 11 paragraph 1(d) and(e).

¹ **SE** indicated that it might be useful to include a definition of "entry/exit record".

² **DE** wondered if it would be necessary to also enter the number of re-entries allowed.

³ **ES** entered a scrutiny reservation.

⁴ **NL** and **RO** were in favour of entering 10 fingerprints and asked to enter the same number of fingerprints in the RTP (Article 8). **BE, EL, FI, IT** and **PT** expressed concerns about the time that would be necessary to take ten fingerprints at the border and therefore asked to reduce the number of fingerprints to be taken. **FR** and **HU** considered that a long transitional period before the introduction of biometrics was not justified. In particular, **FR** suggested introducing flexibility in paragraph 5 and allowing **MS** to introduce biometrics on the basis of their preparations. **SE** asked to add the words "...or as many as practically possible..."

⁵ As for Article 11, **HU** and **ES** underlined that only data which can be registered automatically should be put into the system by border guards.

2. Children under the age of 12 shall be exempt from the requirement to give fingerprints for legal reasons¹.
3. Persons for whom fingerprinting is physically impossible shall be exempt from the requirement to give fingerprints for factual reasons².

However, should the impossibility be of a temporary nature³, the person shall be required to give the fingerprints at the following entry. The border authorities shall be entitled to request further clarification on the grounds for the temporary impossibility to provide fingerprints.

Member States shall ensure that appropriate procedures guaranteeing the dignity of the person are in place in the event of encountered difficulties with capturing fingerprints.

4. Where the person concerned is exempt from the requirement to give fingerprints for legal or factual reasons pursuant to paragraphs 2 or 3, the specific data field shall be marked as 'not applicable'. The system shall permit a distinction to be made between the cases where fingerprints are not required to be provided for legal reasons and the cases where they cannot be provided for factual reasons.
5. For a period of three years⁴ after the EES has started operation only the alphanumeric data referred to in paragraph 1 shall be recorded.

¹ **FR** and **DE** asked to delete the words "for legal reasons". **PT** also indicated that "for legal reasons" should be deleted or, if it was retained, that those legal reasons should be listed. **PT** underlined that it was possible and worthwhile to take fingerprints of children under 12 in case of abduction. **Cion** explained that the preliminary results of the study on biometrics from children were not so conclusive and therefore **Cion** decided not to change this age limit as provided for in Regulation 444/2009.

² **EL** and **NL** asked for a picture to be taken as a back-up procedure when it is not possible to take fingerprints. **Cion** was not in favour of taking a picture when fingerprints cannot be taken because the number of people affected would be relatively small and requiring a picture would mean that all border crossing points should be equipped accordingly, which might be disproportionate. **FR** asked to delete "for factual reasons" or to keep those words but list the reasons.

³ **RO** suggested starting this subparagraph as follows: "When taking the fingerprints becomes possible...".

⁴ **AT**, **CH**, **DE** and **PL** entered a scrutiny reservation on this paragraph because of the three-year period. **SI** supported the **Cion** proposal while **FI**, **HU**, **NL** and **NO** were in favour of deleting this paragraph and introducing biometrics in the EES from the start. **DE** suggested having a similar solution to the VIS and taking a gradual approach. **AT** and **FR** were in favour of leaving this up to Member States on the basis of individual assessments. **PT** and **PL** found **DE**'s suggestion interesting. **Cion** said that it would be possible to take a progressive approach during the first three years but it needed more time to think how it could work.

Article 13

Procedures for entering data at border crossing points where a previous file has been registered

If a previous file has been registered, the border authority shall, if necessary, update the file data¹, enter an entry/exit record for each entry and exit in accordance with Articles 11 and 12 and link that record to the individual file of the person concerned².

Article 14

Data to be added where an authorisation to stay is revoked or extended

1. Where a decision has been taken to revoke an authorisation to stay or to extend the duration of the authorised stay³, the competent authority that has taken the decision shall add the following data to the entry/exit record⁴:
 - (a) the status information indicating that the authorisation to stay has been revoked or that the duration of the authorised stay has been extended;
 - (b) the authority that revoked the authorisation to stay or extended the duration of the authorised stay;
 - (c) the place and date of the decision to revoke the authorisation to stay or to extend the duration of the authorised stay;
 - (d) the new expiry date of the authorisation to stay.

¹ **SE** and **SI** said that the update should be done automatically, **Cion** replied that it might be not be necessary to mention in this paragraph that the border guard should link that record to the individual file of the person concerned if the system would do it automatically. **Cion** suggested merging this paragraph with Articles 11 and 12.

² **SE** asked to delete the words ".. and link that record to the individual file of the person concerned" because it considered it as a technical question which should therefore be handled by the system automatically.

³ **Cion** made it clear that it did not intend to change the applicable legal framework concerning the extension or revocation of the authorisation to stay.

⁴ **HU**, **NL** and **PL** stressed that a link with the VIS was necessary to avoid duplication of work. **PL** asked in which language information on the revocation or extension should be introduced. **Cion** replied that it needed more time to reflect on possible links between the two systems. **FR** asked for revocations or extensions relating to refusals of entry to be included as well.

2. The entry/exit record shall indicate the ground(s)¹ for revocation of the authorisation to stay, which shall be:
 - (a) the grounds on which the person is being expelled;
 - (b) any other decision taken by the competent authorities of the Member State, in accordance with national legislation, resulting in the removal or departure of the third country national who does not fulfil or no longer fulfils the conditions for the entry to or stay in the territory of the Member States.
3. The entry/exit record shall indicate the grounds for extending the duration of an authorised stay.
4. When a person has departed or been removed from the territories of the Member States pursuant to a decision, as referred to in paragraph 2(b), the competent authority shall enter the data in accordance with Article 13 in the entry/exit record of that specific entry.

Article 15
Use of data for verification at the external borders

1. Border authorities shall have access to the EES for consulting the data to the extent the data is required for the performance of border control tasks².
2. For the purposes referred to in paragraph 1, the border authorities shall have access to search with the data referred to in Article 11(1)(a) in combination with some or all of the following data:
 - the data referred to in Article 11(1)(b);
 - the data referred to in Article 11(1)(c);
 - the visa sticker number referred to in Article 11(1)(d);
 - the data referred to in Article 11(2)(a);
 - the Member State and border crossing point of entry or exit;
 - the data referred to in Article 12.

¹ **DE, BE, PT, HU** and **MT** expressed doubts about the reasons justifying the indication of the grounds for the revocation or extension of the stay. **CH** questioned why paragraphs 2 and 3 could not be merged. **NO** and **SE** supported Cion's proposal for paragraphs 2 and 3. **NO** considered this information on the grounds useful because it could not be found on other systems. **SE** believed that information on the grounds could support operational activities but asked how the person would be informed about the grounds.

² **ES** asked to replace "border control tasks" by "border authorities".

CHAPTER III

Entry of data and use of the EES by other authorities¹

Article 16

Use of the EES for examining and deciding on visa applications

1. Visa authorities shall consult the EES for the purposes of the examination of visa applications and decisions relating to those applications, including decisions to annul, revoke or extend the period of validity of an issued visa in accordance with the relevant provisions of the Visa Code.
2. For the purposes referred to in paragraph 1, the visa authority shall be given access to search with one or several of the following data²³:
 - (a) the data referred to in Article 11(1)(a), (b) and (c);
 - (b) the visa sticker number, including the three letter code of the issuing Member State referred to in Article 11(1)(d)⁴;
 - (c) the data referred to in Article 12⁵.
3. If the search with the data listed in paragraph 2 indicates that data on the third country national are recorded in the EES, visa authorities shall be given access to consult the data of the individual file of that person and the entry/exit records linked to it solely for the purposes referred to in paragraph 1.

¹ **PL** and **BG** stressed that access for law enforcement purposes should be regulated in Chapter III. **AT** shared the same view and asked that this Chapter not be discussed until a decision had been taken on that issue. **BG** suggested deleting the word "Entry" in the title of Chapter III which Cion accepted in principle. **PL** indicated that the type of data to be introduced and accessed, and by what kind of authority, was not sufficiently clear in the Articles in Chapters II and III.

² **LV** asked for the text to be amended so as to allow the visa authorities to carry out automated searches with alphanumeric data.

³ **NL** expressed the view that it would be very useful for visa authorities to have access to the travel history; however, that would not be possible on the basis of the 181-day retention period. Therefore, **NL** asked whether the retention period could be extended. **Cion** replied that it did not consider that storing the travel history in the system for a period of more than 181 days was justified, bearing in mind that such data could be stored for a maximum of five years in cases of mala fide travellers.

⁴ **SE** asked for a reference to the ISO alpha three number.

⁵ **DE** said that the reference should be to biometric data and not to the whole of Article 12. **Cion** agreed with **DE**.

Article 17
Use of the EES for examining applications for access to the RTP

1. The competent authorities referred to in Article 4 of Regulation COM(2013)97 final shall consult the EES for the purposes of the examination of RTP applications and decisions relating to those applications, including decisions to refuse, revoke or extend the period of validity of access to the RTP in accordance with the relevant provisions of that Regulation¹.
2. For the purposes referred to in paragraph 1, the competent authority shall be given access to search with one or several of the data referred to in Article 11(1)(a), (b) and (c).
3. If the search with the data listed in paragraph 2 indicates that data on the third country national are recorded in the EES, the competent authority shall be given access to consult the data of the individual file of that person and the entry/exit records linked to it solely for the purposes referred to in paragraph 1.

¹ **ES** entered a reservation on this paragraph. **NL** made the same comment as for Article 16 (1) on the travel history. **SE** suggested clarifying the impact of this provision in the RTP draft Regulation itself.

Article 18
Access to data for verification within the territory of the Member States

1. For the purpose of verifying the identity of the third country national and/or whether the conditions for entry to or stay on the territory of the Member States are fulfilled, the competent authorities of the Member States, shall have access to search with the data referred to in Article 11(1)(a), (b) and (c), in combination with fingerprints referred to in Article 12¹.
2. If the search with the data listed in paragraph 1 indicates that data on the third country national is recorded in the EES, the competent authority shall be given access to consult the data of the individual file of that person and the entry/exit record(s) linked to it solely for the purposes referred to in paragraph 1.

¹ **SI** entered a scrutiny reservation on the reference to Article 12 in this paragraph. **HU** argued that this article should be the legal basis for authorising access for law enforcement purposes. **FR** reiterated that for the purpose of this provision, it would be very important to introduce biometrics in the EES from the beginning. **ES** indicated that there was a mistake in the title of this Article in the Spanish text. **ES** also asked Cion whether this provision could be the legal basis for checking the legality of the stay in the Schengen area. **NL** asked whether those checks should be carried out with mobile equipment. Several delegations asked Cion to clarify the distinction between Articles 18 and 19. **Cion** stated that checks under this provision should consist of a one-to-one verification, i.e. the authorities would check all the data and documents, including biometrics, while in Article 19 the authorities look to identify the person with the biometrics. Article 18 only applies to checks in the territory while Article 19 applies to checks both at the external borders (second line) and in the territory. As regards the introduction of biometrics in the EES, **Cion** repeated that the three-year period was envisaged to allow Member States to be equipped with the necessary infrastructure and to set up the appropriate procedures. In the meantime, Cion was open to discussing a progressive introduction of biometrics before the three-year period. In that regard, Cion suggested that, at some point in the discussion, the Presidency could prepare a questionnaire in order to check if Member States could adapt their border check process and necessary infrastructure quickly enough so as to reduce the transitional period foreseen in the text for biometrics. In reply to **ES**, Cion confirmed that Article 18 would be the legal basis for checking the legality of the stay of third-country nationals. As to the use of mobile equipment, Cion confirmed that Member States would be allowed to use mobile equipment similar to that currently used at the border checking points for the VIS.

Article 19
Access to data for identification¹

1. Solely for the purpose of the identification of any² person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States, the authorities competent for carrying out checks at external border crossing points in accordance with the Schengen Borders Code or within the territory of the Member States as to whether the conditions for entry to, stay or residence³ on the territory of the Member States are fulfilled, shall have access to search with the fingerprints of that person.
2. If the search with the data listed in paragraph 1 indicates that data on the person are recorded in the EES, the competent authority shall be given access to consult the data of the individual file and the linked entry/exit records), solely for the purposes referred to in paragraph 1⁴.

.....

¹ **ES** entered a reservation on this provision.

² **RO** suggested replacing "any" by "a".

³ **FR** made the same comment regarding biometrics as for the previous article and asked Cion what the technical difference between stay and residence was. Cion replied that it might be better to delete the word "residence" and only leave "stay".

⁴ **Cion** suggested amending this paragraph in order to make provision for what happens when a biometrics search fails. Cion would come up with a suggestion in that regard along the lines of Article 20 paragraph 1 of the VIS Regulation.

CHAPTER IV¹ Retention and amendment of the data

Article 20 *Retention period for data storage*

1. Each entry/exit record shall be stored for a maximum of 181 days².
2. Each individual file together with the linked entry/exit record(s) shall be stored in the EES for a maximum of 91 days after the last exit record, if there is no entry record within 90 days following that last exit record.
- 3³. By way of derogation from paragraph 1, if there is no exit record following the date of expiry of the authorised period of stay⁴, the data shall be stored for a maximum period of five years following the last day of the authorised stay.

¹ **AT** entered a scrutiny reservation on Chapter IV in its entirety.

² **BE, CH, CZ, EE, ES, FI, FR, MT, NL, PL** and **PT** entered a scrutiny reservation on this provision. Those delegations, supported by **BG, RO, HU, SK** and **FI**, called for a longer retention period. **AT, ES, PT, SK, BG, MT, HU** and **CZ** asked for a retention period of five years. **LV** asked for a retention period of between five and ten years and **RO** suggested that the retention period should be at least one year. In general, delegations considered that a longer retention period was needed even in the case of bona fide travellers and could be advantageous for them in the context of assessing RTP applications and visa applications. **FI** also pointed out that for border management reasons it would be preferable to have a longer retention period because it would be very difficult if 10 fingerprints had to be taken every six months, in particular at the external land borders. **NO** entered a scrutiny reservation. **NO** and **SE** supported the Commission proposal. The **Cion** underlined that a retention period of 181 days was enough for border management and migration purposes. No record in the EES means that the person is a bona fide traveller. The **Cion** said that the study could look into the impact of this provision on border checks and the taking of the ten fingerprints. The **Cion** also suggested checking whether it would be possible to retain some data anonymously for a longer period in order to avoid slowing down border checks. The **Cion** drew the attention of delegations to the need to check the technical consequences of expanding the retention period and suggested doing it in the study and the pilot project.

³ The **Cion** requested the insertion of a new paragraph along the following lines: "By way of derogation to paragraphs (1) and (2), the records should be kept for an equivalent period of access granted to the third-country national under RTP".

⁴ **NO** suggested amending this paragraph to extend the retention period as long as the stay remains illegal. **NO** suggested that the retention period should start when the person leaves or is forced to leave to ensure that no records concerning a third-country national meant he/she was a bona fide traveller. **NO** also suggested making a reference to records concerning cases where an authorisation to stay was revoked (Article 14). **AT, CH, FR, NL** and **SK** supported **NO**'s proposals. The **CLS** remarked that keeping the data for an unspecified period of time was against the principle of proportionality and that there should therefore be a time limit for the data retention. **RO** commented that the provision could set out different retention periods for different categories of data. **RO** asked how those personal data should be stored i.e. together or separately.

Article 21
Amendment of data

1. The competent authorities of the Member States¹ designated in accordance with Article 7 shall have the right to amend data which has been introduced into the EES, by correcting or deleting such data in accordance with this Regulation.
2. The information on persons referred to in Article 10(2)² shall be deleted without delay where the third-country national provides evidence in accordance with the national law of the Member State responsible, that he or she was forced to exceed the authorised duration of stay due to unforeseeable and serious event, that he or she has acquired a legal right to stay or in case of errors. The third-country national shall have access to an effective judicial remedy³ to ensure the data is amended.

¹ In reply to a question from **FR**, the **Cion** indicated that this provision should be read in conjunction with Article 34 in order to ascertain the Member State competent for the amendment of the data. The data should be amended in agreement with the Member State that had entered the data in the EES.

² **BG** said that it was unclear what data should be deleted because this provision referred to Article 10 (2) which made a cross-reference to data referred to in Article 11. The **Cion** replied that all information concerning the overstayer should be deleted. **BG** also inquired about the meaning of an "unforeseeable and serious event" and **NL** mentioned in this regard that the Member States should have a common understanding of those situations. The **Cion** answered that national practices concerning an "unforeseeable and serious event" might differ but agreed with **NL** that some examples of that kind of situation could be included in the Schengen Handbook. **LV** asked to align Article 20 with Article 11 of the Schengen Borders Code. **RO** wanted to add in this Article that the Member States should inform third-country nationals of this possibility as well as of the right to ask for an effective judicial remedy. The **Cion** replied to **RO** that Article 34 (6) contains this obligation.

³ **PL** asked if a "judicial remedy" could be limited to administrative law. The **CLS** explained that the right of an effective judicial remedy had to be effective and judicial in line with Article 47 of the EU Charter on Fundamental Rights. The administrative decision refusing to amend or deleted the data should therefore be subject to judicial control. However, as the **CLS** had stated, it was for each Member State to organise in its national law the procedures ensuring an effective judicial remedy.

Article 22
*Advance data deletion*¹

Where, before expiry of the period referred to in Article 20, a third country national has acquired the nationality of a Member State, or has fallen under the derogation of Article 3(2), the individual file and the records linked to it in accordance with Articles 11 and 12, shall be deleted without delay from the EES by the Member State the nationality of which he or she has acquired or the Member State that issued the residence card. The individual shall have access to an effective judicial remedy to ensure the data is deleted².

¹ **DK** asked for the heading to be more complete. **DE** wondered what should be done if the third-country national became a San Marino national. **LV** asked for a deadline to be set for the deletion of the data.

² **RO** asked that the last sentence include that, in addition to judicial proceedings, the individual could bring an administrative action. **RO** indicated that it would send its suggestions in writing.

CHAPTER V Development, Operation and Responsibilities

Article 23

Adoption of implementation measures by the Commission prior to development

The Commission shall adopt the following¹ measures necessary for the development and technical implementation of the Central System, the Uniform Interfaces, and the Communication Infrastructure including specifications with regard to:

the specifications² for the resolution and use of fingerprints for biometric verification in the EES;

the design³ of the physical architecture of the system including its communication infrastructure;

entering the data in accordance with Article 11 and 12;

accessing the data in accordance with Articles 15 to 19;

keeping, amending, deleting and advance deleting of data in accordance with Articles 21 and 22;

keeping and accessing the records in accordance with Article 30;

performance requirements.

Those implementing acts shall be adopted in accordance with the procedure referred to in Article 42.⁴

The technical specifications and their evolution as regards the Central Unit, the Back-up Central Unit, the Uniform Interfaces, and the Communication Infrastructure shall be defined by the Agency after receiving a favourable opinion of the Commission⁵.

¹ **RO** suggested deleting the word "following". Cion replied that that word was supposed to limit its mandate.

² **NO** suggested deleting the word "specifications" as it is already in the heading.

³ **NO** suggested deleting the word "design" or replacing it by "requirements".

⁴ **PL** entered a positive scrutiny reservation on this sentence and asked if a reference to specific provisions in Regulation 182/2011 should be made regarding situations where the act is not adopted.

⁵ **DE, NL** and **PL** stressed that Member States should be involved in the development of the technical specifications. Cion confirmed that Member State experts would indeed be involved in a similar way as for SIS II, both when Cion would prepare the functionalities and when LISA would proceed to prepare the technical specifications.

Article 24
Development and operational management

1. The Agency¹ shall be responsible for the development of the Central Unit, the Back-Up Central Unit, the Uniform Interfaces including the Network Entry Points and the Communication Infrastructure².

The Central Unit, the Back-up Central Unit, the Uniform Interfaces, and the Communication Infrastructure shall be developed and implemented by the Agency as soon as possible after entry into force of this Regulation and adoption by the Commission of the measures provided for in Article 23(1).

The development shall consist of the elaboration and implementation of the technical specifications, testing and overall project coordination³.

2. The Agency shall be responsible for the operational management of the Central Unit, the Back-Up Central Unit, and the Uniform Interfaces. It shall ensure, in cooperation with the Member States at all times the best available technology, subject to a cost-benefit analysis⁴.

The Agency shall also be responsible for the operational management of the Communication Infrastructure between the Central system and the Network Entry Points.

Operational management of the EES shall consist of all the tasks necessary to keep the EES functioning 24 hours a day, 7 days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality, in particular as regards the time required for interrogation of the central database by border crossing points, which should be as short as possible.

3. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, the Agency shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its entire staff required to work with EES data. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.

¹ **CH** asked to indicate in the text that the Agency should ensure that costs would be properly dealt with. Cion commented that the principle of cost-efficiency was an overarching general principle and that it was not necessary to refer to it in this provision.

² **NL** as in previous article, asked Cion to confirm that EU LISA would work with Member States experts. Cion confirmed this.

³ **CZ** requested to define "overall project coordination" and to indicate how Member States would take part. Cion replied that it would be better not to define this as it is an evolving concept and it would be done according to EU LISA own governance.

⁴ **RO** asked Cion who would carry out the cost-benefit analysis. Cion answered that EU LISA is expected to look for and to use the best available technology as a principle but "cost benefit analysis should not be read as meaning a methodology in this provision.

Article 25¹
National Responsibilities

1. Each Member State shall be responsible for:
 - (a) the development of the National System and the connection to the EES²;
 - (b) the organisation, management, operation and maintenance of its National System³; and
 - (c) the management and arrangements for access of duly authorised staff of the competent national authorities to the EES in accordance with this Regulation and to establish and regularly update a list of such staff and their profiles⁴.
2. Each Member State shall designate a national authority, which shall provide the access of the competent authorities referred to in Article 7 to the EES, and connect that national authority to the Network Entry Point.
3. Each Member State shall observe automated procedures for processing the data.
4. Before being authorised to process data stored in the EES, the staff of the authorities having a right to access the EES shall be given appropriate training about data security and data protection rules⁵.

¹ **PL** entered a general scrutiny reservation on the financial impact of this provision. **NL** and **SI** also entered a reservation on this Article. **CH** made a general comment on the wording of this Article which is different from the wording in the corresponding Article in the RTP proposal. According to **CH**, the wording should be the same in both draft Regulations.

² **EE** commented that the national system should be the same one for every Member State. **BG, CY, HU, MT, PT** and **RO** wanted an assurance that existing national entry exist systems could continue to operate as national systems in the framework of this Article. **COM** suggested the following approach: to carry out a pilot project with EU LISA to test what is possible from a technical point of view and to check what the benefits of possible synergies between NEES and the future EES may be. However, **COM** ruled out the inclusion in the EES of the facial image as is the case in most of the existing NEES.

³ **LV** asked **COM** if it would be possible under this provision to connect the national system with other national interfaces (VIS or fingerprint quick search). **COM** recognised that there were possible synergies between existing systems. **COM** indicated that there were recent developments in the EP which showed that there could be some place for technical discussions between CL/EP/COM. In addition, **COM** suggested dealing with this issue in the future pilot project.

⁴ **NL** commented that the responsibility of the Member State should be further specified. **COM** replied that the designation of the duly authorised staff should be made by the closest authority which was more familiar with the capabilities and training of the relevant staff.

⁵ **NL** pointed out that when reading this provision together with Article 45, it seems that the training by EU LISA would not be limited to technical matters. **NL** therefore suggested aligning this provision with the one in the RTP draft Regulation.

5. Costs incurred by the National System as well as by hosting the National Interface shall be borne by the Union budget¹².

Article 26
Responsibility for the use of data

- 1.³ Each Member State shall ensure that the data recorded in the EES is processed lawfully, and in particular that only duly⁴ authorised staff have access to the data for the performance of their tasks in accordance with Articles 15 to 19 of this Regulation. The Member State responsible shall ensure in particular that:
- (a) the data is collected lawfully;
 - (b) the data is registered lawfully into the EES;
 - (c) the data is accurate and up-to-date when it is transmitted to the EES.

¹ **AT, BE, CY, CZ, DE, DK, EL, HR, NL, PL, SE** and **SI** expressed concerns regarding the issue of costs. Delegations asked COM to further clarify the final costs of the EES and provide a breakdown of costs between the EU and national budgets. Regarding the EU budget, delegations asked COM for a breakdown of the costs that will be covered and the distribution of funds from the EU budget among Member States. **PL** asked that this paragraph be redrafted so as to make a link with the Member States' responsibilities listed in paragraph 1. **CZ** also asked if costs from the private sector would be eligible as well. **COM** indicated that many of the figures asked for by delegations are provided in the Impact Assessment accompanying this proposal. COM could not provide new figures. COM pointed out that paragraph 5 was drafted on the basis of the MFF as proposed by the Commission and that it might need to be revised to take stock of the changes in the EU financial framework. COM would come up with a non-paper for the purpose of clarifying the issue of costs. However, COM made it clear that it would not produce new estimates.

² **NL** commented that the responsibility of the Member State should be further specified. **COM** replied that the designation of the duly authorised staff should be made by the closest authority which was more familiar with the capabilities and training of the relevant staff.

³ **FR** asked why the word "lawfully" was used three times in this paragraph because it gave the wrong impression. **FR** therefore suggested redrafting the paragraph. **PL** inquired how this provision should be interpreted in light of the future General Data Protection Regulation. **DE** asked if this provision applies to data mentioned in Article 40. For COM, it would be safer to include data referred to in Article 40 because the extraction of the statistics involves a processing of personal data.

⁴ **SE** suggested to delete the word "duly".

2. The Agency shall ensure that the EES is operated in accordance with this Regulation and the implementing acts referred to in Article 23. In particular, the Agency shall:
 - (a) take the necessary measures to ensure the security of the Central System and the communication infrastructure between the Central System and the Network Entry Points, without prejudice to the responsibilities of each Member State;
 - (b) ensure that only duly authorised staff has access to data processed in the EES for the performance of the tasks of the Agency in accordance with this Regulation.
3. The Agency shall inform the European Parliament, the Council and the Commission of the measures it takes pursuant to paragraph 2 for the start of operations of the EES.

¹*Article 27*

Communication of data to third countries, international organisations and private parties

1. Data stored in the EES shall not be transferred or made available to a third country, to an international organisation or any private party².

¹ **SE** suggested to include a new Article 26a which will read as follows: *NEW ARTICLE 26A National Data Controller*
"In relation to the processing of personal data in the EES, each Member State shall designate the authority which is to be considered as controller in accordance with Article 2(d) of Directive 95/46/EC and which shall have central responsibility for the processing of data by this Member State. Each Member State shall communicate this authority to the Commission."

² **CH** highlighted that it would no longer be possible to transfer this data to airline companies and that they would need to change their national legislation. CH wanted further reflection on this provision.

- 2.¹ By way of derogation from paragraph 1, the data referred to in Article 11(1)(a), (b) and (c) and Article 12 (1) may be transferred or made available to a third country or to an international organisation listed in the Annex if necessary in individual cases for the purpose of proving the identity of third-country nationals, including for the purpose of return, only where the following conditions are satisfied:
- (a)² the Commission has adopted a decision on the adequate protection of personal data in that third country in accordance with Article 25(6) of Directive 95/46/EC³, or a readmission agreement is in force between the Community and that third country, or Article 26(1)(d) of Directive 95/46/EC applies;
 - (b) the third country or international organisation agrees to use the data only for the purpose for which they were provided;

¹ **ES** entered a scrutiny reservation. **ES** and **NL** expressed serious doubts regarding the drafting of this provision and questioned its workability. Both delegations asked if the conditions listed were cumulative. **ES** questioned why in letter (a) bilateral agreements concluded by Member States and in general third countries with which there are no agreements in place were excluded. **ES** also raised concerns about limiting the purpose of "proving the identity of third-country nationals". **NL** highlighted the added value that the **EES** should provide for a successful return policy and this provision was too prescriptive. **HU** also considered this provision as too prescriptive and wanted the inclusion the "reasonable protection of that person" as a purpose. **AT, BE, DE, DK, FR, IT** and **HU** asked, as did **ES**, that bilateral agreements concluded by Member States not be excluded. **COM** replied that the **VIS** Regulation did not go beyond what it is stipulated in letter (a) and that bilateral agreements were expressly excluded by Directive 95/46/EC. **AT** and **IT** entered a scrutiny reservation on letter (a). **LV** suggested amending this provision in order to transfer data to other organisations not listed in the Annex if that was necessary for carrying out their tasks. **CH** asked for clarification of the wording "including for the purpose of return". **CLS** suggested redefining the purposes for which the transfer of data would be allowed and that the return purpose be mentioned in Article 4. **CLS** also suggested mentioning the Return Directive here.

² **PL** entered a scrutiny reservation. For **PL** this provision would require **MS** to implement additional legal provisions on personal data protection in a third country. **PL** pointed out that bilateral readmission agreements between **MS** and a third country contained a clause concerning the protection of personal data and /or the data are protected on the basis of internal rules set out in the third country. A provision that prevents or substantially complicates the communication of personal data to third countries on the basis of these bilateral agreements may adversely affect their application. Furthermore, the introduction of the above-mentioned provision would also prevent the use of evidence in the form of a visa or a copy of the visa (issued by a **MS** for a third country national) indirectly providing for a citizenship and enabling verification of the identity of a person in a third country.

³ **CH** entered a scrutiny reservation on the reference to Directive 95/46/EC because it would soon be replaced.

- (c) the data are transferred or made available in accordance with the relevant provisions of Union law, in particular readmission agreements¹, and the national law of the Member State which transferred or made the data available, including the legal provisions relevant to data security and data protection; and
 - (d) the Member State which entered the data in the EES has given its consent².
3. Transfers of personal data to third countries or international organisations pursuant to paragraph 2 shall not prejudice the rights of refugees and ³persons requesting international protection⁴, in particular as regards non-refoulement.

Article 28
*Data security*⁵

1. The Member State responsible shall ensure the security of the data before and during the transmission to the Network Entry Point. Each Member State shall ensure the security of the data it receives from the EES.
2. Each Member State shall, in relation to its National System, adopt the necessary measures, including a security plan, in order to:
 - (a) physically protect data, including by making contingency plans for the protection of critical infrastructure;
 - (b) deny unauthorised persons access to national installations in which the Member State carries out operations in accordance with the purposes of the EES (checks at entrance to the installation);

¹ **NO** pointed out that the EU readmission agreements were not applicable to countries associated with Schengen. **NO** asked **COM** to avoid such a provision forbidding Schengen Associated Countries from transferring personal data to third countries.

² **NL** found that this condition was not justified because it is how the EES is itself designed. **COM** noted the point and would reflect further on it.

³ **SE** suggested to add the word "other" before persons.

⁴ **SE** expressed doubts about the fact that both categories of persons were put on an equal footing.

⁵ **CH** suggested adding a new paragraph to make it clear that the Member States concerned would need to work together on emergency cases. **COM** would check this and would come back.

- (c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
 - (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
 - (e) prevent the unauthorised processing of data in the EES and any unauthorised modification or deletion of data processed in the EES (control of data entry);
 - (f) ensure that persons authorised to access the EES have access only to the data covered by their access authorisation, by means of individual user identities and confidential access modes only (data access control);
 - (g)¹ ensure that all authorities with a right of access to the EES create profiles describing the functions and responsibilities of persons who are authorised to enter, amend, delete, consult and search the data and make their profiles available to the supervisory authorities without delay at their request (personnel profiles);
 - (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
 - (i) ensure that it is possible to verify and establish what data has been processed in the EES, when, by whom and for what purpose (control of data recording);
 - (j) prevent the unauthorised reading, copying, modification or deletion of personal data during the transmission of personal data to or from the EES or during the transport of data media, in particular by means of appropriate encryption techniques (transport control);
 - (k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Regulation (self-auditing).
3. The Agency shall take the necessary measures in order to achieve the objectives set out in paragraph 2 as regards the operation of the EES, including the adoption of a security plan².

¹ **CH** suggested making a reference to Article 37 (Supervision by the supervisory authority). **COM** welcomed this suggestion.

² **SI** asked if this obligation was only in relation to the Central System. **COM** confirmed this and suggested making it clear.

Article 29
Liability

1. Any person who, or Member State which, has suffered damage¹ as a result of an unlawful processing operation or any act incompatible with this Regulation shall be entitled to receive compensation from the Member State which is responsible for the damage suffered. That State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage².
2. If any failure of a Member State to comply with its obligations under this Regulation causes damage to the EES, that Member State shall be held liable for such damage, unless and insofar as the Agency or another Member State participating in EES failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.
3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the defendant Member State.

Article 30
*Keeping of records*³

1. Each Member State and the Agency shall keep records of all data processing operations within the EES. These records shall show the purpose of access referred to in Article 7, the date and time, the type of data transmitted as referred to in Article 11 to 14, the type of data used for interrogation as referred to in Articles 15 to 19 and the name of the authority entering or retrieving the data. In addition, each Member State shall keep records of the staff duly authorised to put in or retrieve the data.
2. Such records may be used only for the data protection monitoring of the admissibility of data processing as well as to ensure data security. The records shall be protected by appropriate measures against unauthorised access and deleted after a period of one year after the retention period⁴ referred to in Article 20 has been expired, if they are not required for monitoring procedures which have already begun.

¹ **NO** inquired if "damage" also included non- pecuniary loss. **COM** would check.

² **NL** wondered if the burden of proof should not be the other way round.

³ **SE** proposed to replace the title with the word "Logging" and to use this word in the first paragraph.

⁴ **COM** suggested including the word "relevant" before "the retention period. **DE** and **SE** expressed doubts regarding the purpose of this provision and **SI** raised concerns about a possible duplication of logs. **NO** proposed that Article 30 be re-entitled "Logging". **COM** explained that the objective was to allow supervisory authorities to control Member States operations for the purpose of completing an investigation. Regarding possible duplication of logs among the Agency and Member States, **COM** would consult its technical experts regarding what operations specifically concern the Agency on the one hand and Member States on the other.

Article 31
Self-monitoring

Member States shall ensure that each authority entitled to access EES data takes the measures necessary to comply with this Regulation and cooperates, where necessary, with the supervisory authority.

Article 32
Penalties

Member States shall take the necessary measures to ensure that any misuse of data¹ entered in the EES is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

¹ **NL** wished to reach a common interpretation of what is understood by "misuse of data" as well as on the penalties. For **NL**, it would be useful for Member States to agree on practical arrangements to implement when data had been misused. **IT** underlined that divergent approaches should be avoided among Member States. **NO** asked that this be left national law.

CHAPTER VI
Rights and supervision on data protection

Article 33
Right of information

1. Persons whose data are recorded in the EES shall be informed¹ of the following by the Member State responsible²:
- (a) the identity of the controller referred to in Article 37(4)³;
 - (b) the purposes for which the data will be processed within the EES⁴;
 - (c) the categories of recipients of the data;
 - (d) the data retention period;
 - (e) that the collection of the data is mandatory for the examination of entry conditions;⁵
 - (f) the existence of the right of access to data relating to them, the right to request that inaccurate data relating to them be corrected or that unlawfully processed data relating to them be deleted, including the right to receive information on the procedures for exercising those rights and contact details of the national supervisory authorities, or of the European Data Protection Supervisor if applicable, which shall hear claims concerning the protection of personal data.

The information referred to in paragraph 1 shall be provided in writing⁶.

¹ **LV** suggested moving paragraph 2 to paragraph 1 by adding the word "in writing" after "shall be informed".

² As previously indicated by **FR**, **FR** asked that a link with Article 9 be made here and that this paragraph include the obligation on Member States to provide the third-country national with a receipt at the border once the data have been recorded in the EES. **COM** replied that third-country nationals would have the right to ask for the information recorded concerning them so it did not regard it as necessary to introduce the idea of a receipt.

³ **AT**, **EE** and **SE** expressed doubts about this provision.

⁴ **RO** asked for it to be specified that data will be processed for calculating the authorised period of stay.

⁵ The **CLS** believed that letter (e) was already covered by letter (b). The **CLS** observed that (d) should be in plural as different periods will be most probably attached to different purposes.

⁶ **CH** asked the **Cion** when this information should be made available and if **Cion** could provide some guidance to implement the obligation to inform with an uniform sheet or in another way. **DK** inquired if this information should be provided individually or by a poster or leaflet. **AT** and **PT** stressed that this information could be made available on a website. The **Cion** agreed with this suggestion and also with placing posters in the BCPs. The **Cion** suggested inserting an article on an Information Campaign similar to the one in the RTP proposal.

Article 34
Right of access, correction and deletion

- 1¹. Without prejudice to the obligation to provide other information in accordance with Article 12(a) of Directive 95/46/EC, any person shall have the right to obtain communication of the data relating to him or her recorded in the EES and of the Member State which transmitted it to the EES. Such access to data may be granted only by a Member State. Each Member State shall record any requests for such access.
2. Any person may request that data relating to him or her which is inaccurate² be corrected and that data recorded unlawfully be deleted. The correction and deletion shall be carried out without delay by the Member State responsible, in accordance with its laws, regulations and procedures.
3. If the request as provided for in paragraph 2 is made to a Member State, other than the Member State responsible, the authorities of the Member State to which the request has been lodged shall contact³ the authorities of the Member State responsible within a time limit of 14 days. The Member State responsible shall check the accuracy of the data and the lawfulness of its processing in the EES within a time limit of one month⁴.

¹ **CH** entered a scrutiny reservation on this paragraph, in particular on the reference to Directive 95/46/EC. **DE** found that the structure should be made clearer because of Articles 21 and 22 on the one hand and Articles 34 and 36 on the other, which are interlinked and deal with the same issues.

² **NL** and **PT** asked if the term "inaccurate" could also cover a person who should have been included in the EES but who was not in the system. In that connection, **NL** also wondered if the person would have to provide robust evidence that data had been mistakenly uploaded. The **Cion** suggested looking at Article 21 (2) on the evidence to be provided. The **CLS** considered that an obligation should be added for competent authority to correct or delete data on its own motion as soon as it discovers that they are not correctly recorded.

³ The **Cion** clarified that "contact" meant "transmit". **SE** suggested to replace "contact" by "transfer the request to".

⁴ **FR** stressed that one month could turn out to be too short in some cases. The **Cion** replied that it was the same deadline as in the VIS Regulation.

4. In the event that data recorded in the EES are inaccurate or have been recorded unlawfully, the Member State responsible shall correct or delete the data in accordance with Article 21¹. The Member State responsible shall confirm in writing² to the person concerned without delay that it has taken action to correct or delete data relating to him.
5. If the Member State responsible does not agree that data recorded in the EES is inaccurate or has been recorded unlawfully, it shall explain in writing³ to the person concerned without delay why it is not prepared to correct or delete data relating to him.
6. The Member State responsible shall also provide the person concerned with information explaining⁴ the steps which he can take if he does not accept the explanation provided. This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and any assistance, including from the supervisory authorities that is available in accordance with the laws, regulations and procedures of that Member State.

Article 35

Cooperation to ensure the rights on data protection

1. The Member States shall cooperate actively to enforce the rights laid down in Article 34⁵.
2. In each Member State, the supervisory authority shall, upon request, assist⁶ and advise the person concerned in exercising his/her right to correct or delete data relating to him/her in accordance with Article 28(4) of Directive 95/46/EC.
3. The supervisory authority of the Member State responsible which transmitted¹ the data and the supervisory authorities of the Member States to which the request has been lodged shall cooperate to this end.

¹ **CH** wondered if this provision allowed a Member State which had found out that the data was inaccurate or was unlawfully recorded to correct it without a request by the data subject. The **Cion** confirmed that there was a positive obligation for Member States to correct the data and a corollary obligation to inform the traveller accordingly.

² **SE** found that the drafting of paragraphs 4, 5 and 6 was not sufficiently clear and asked why the text did not refer to a decision by the Member State which opened up the channel of a judicial remedy. Therefore **SE** suggested to use the words "...shall, in a written decision, confirm to the person concerned". In this regard, the **CLS** clarified that when there was a request by a data subject, an administrative procedure was initiated and the act of amending/deleting the data or of refusing to do it by the Member State constituted according to national laws an administrative decision. Consequently, the **CLS** did not consider it necessary to provide in the text for the specific nature of that act. In the opinion of the **CLS**, it was very possible that national laws required some formalisation of the deleting/amending data act.

³ **SE** reiterated the comment made regarding paragraph 4 and suggested the wording "it shall, in its written decision, explain...".

⁴ **SE** reiterated the comment made regarding paragraph 4.

⁵ **CH** asked to have a wording similar to the text in the RTP proposal.

⁶ **SE** asked to delete the word "assist".

Article 36
Remedies

1. In each Member State any person shall have the right to bring an action or a complaint before the competent authorities or courts of that Member State which refused the right of access to or the right of correction or deletion of data relating to him, provided for in Article 35².
2. The assistance³ of the supervisory authorities shall remain available throughout the proceedings.

Article 37
Supervision by the supervisory authority⁴

1. The supervisory authority shall monitor the lawfulness of the processing of personal data, referred to in Articles 11 to 14 by the Member State in question, including their transmission to and from the EES.
2. The supervisory authority shall ensure that an audit⁵ of the data processing operations in the National System is carried out in accordance with relevant international auditing standards at least every four years.
3. Member States shall ensure that their supervisory authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation.
4. In relation to the processing of personal data in the EES, each Member State shall designate the authority which is to be considered as controller in accordance with Article 2(d) of Directive 95/46/EC and which shall have central responsibility for the processing of data by this Member State. Each Member State shall communicate this authority to the Commission.⁶

¹ **LV** entered a linguistic reservation on the word "transmitted" which should be replaced by "handed over" in the Latvian version.

² **DE** pointed out that the reference should be made to Article 34 instead of Article 35. The **Cion** confirmed DE's opinion. **RO** said that Article 21 (2) should refer to this provision. The **Cion** replied in the affirmative.

³ The **Cion** specified that "assistance" should be understood within the meaning of Article 35 (2).

⁴ **CH** asked to add the word "national" before "supervisory authority".

⁵ **PL** asked how this audit should be carried out. **PL** also inquired what the "international auditing standards" were. **PL** suggested setting those standards at the legislative level to avoid different systems and procedures. The **Cion** answered that it would look into this question to provide clarity on what standards should be followed.

⁶ **SE** asked to delete this paragraph.

5. Each Member State shall supply any information requested¹ by the supervisory authorities and shall, in particular, provide them with information on the activities carried out in accordance with Article 28² and grant them access to their records as referred to in Article 30 and allow them access at all times to all their premises.³

Article 38
Supervision by the European Data Protection Supervisor

1. The European Data Protection Supervisor shall check that the personal data processing activities of the Agency are carried out in accordance with this Regulation. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly.
2. The European Data Protection Supervisor shall ensure that an audit of the Agency's personal data processing activities is carried out in accordance with relevant international auditing standards at least every four years. A report of such audit shall be sent to the European Parliament, the Council, the Agency, the Commission and the supervisory authorities. The Agency shall be given an opportunity to make comments before the report is adopted.
3. The Agency shall supply information requested by the European Data Protection Supervisor, give him/her access to all documents and to its records referred to in Article 30 and allow him/her access to all its premises, at any time.

¹ **FR** raised concerns on the words "any information requested" and asked for clarification that it could concern only information collected in the framework of the EES. For the **Cion**, it was not necessary to change the text because the limitation came from the reference to Article 28.

² **CH** requested replacing the reference to Article 28 by a reference to Articles 25 and 26 (1).

³ **FR** and **RO** asked the **Cion** to clarify what was covered by "all their premises". **RO** suggested redrafting it as follows: "access at all times to all relevant premises related to the EES".

Article 39¹
*Cooperation between supervisory authorities
and the European Data Protection Supervisor*

1. The supervisory authorities and the European Data Protection Supervisor, each acting within the scope of their respective competences, shall actively cooperate within the framework of their responsibilities and shall ensure coordinated supervision of the EES and the National Systems².
2. They shall, each acting within the scope of their respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties over the interpretation or application of this Regulation, study problems with the exercise of independent supervision or with the exercise of the rights of the data subject, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.
3. The supervisory authorities and the European Data Protection Supervisor shall meet for that purpose at least twice a year. The costs of these meetings shall be borne by the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary.
4. A joint report of activities shall be sent to the European Parliament, the Council, the Commission and the Agency every two years. This report shall include a chapter of each Member State prepared by the supervisory authority of that Member State.

¹ **RO** made a general comment regarding Articles 36 to 39. In the opinion of **RO**, those Articles should be reviewed in the light of the principles agreed in the context of negotiations regarding the horizontal Regulation on data protection, in particular Articles 33 and 34.

² **NL** inquired if there was scope for joint audits. The **Cion** replied in the negative but suggested that the cooperation could be strengthened in paragraph 2.

CHAPTER VII Final provisions

Article 40 *Use of data for reporting and statistics*¹

1. The duly² authorised staff of the competent authorities of Member States, of the Agency and of Frontex shall have access to consult the following data, solely for the purposes of reporting and statistics without allowing individual identification³⁴:
 - (a) status information⁵;
 - (b) nationality of the third country national⁶;
 - (c) Member State, date and border crossing point of the entry and Member State, date and border crossing point of the exit;
 - (d) the type of the travel document⁷;

¹ **FI** suggested a new title "*Use of data for reporting, statistics, risk analysis and situational awareness purposes*".

² As in other articles, **SE** asked to delete the word "duly".

³ **FI** suggested the following wording: "The duly authorised staff of the competent authorities of Member States, of the Agency and of Frontex shall have access to consult the following data, solely for the purposes of reporting, statistics, risk analysis and situational awareness purposes without allowing individual identification:". **DE** and **PT** supported **FI** and also asked to make clearer that those data would be used for risk analysis purposes. **Cion** admitted that those data could be used for risk analysis purposes and, therefore, agreed to examine Member States' proposals. **RO** asked to clarify what **Cion** understood by "without allowing individual identification" as some of the data below could lead indirectly to natural persons. **Cion** replied that it would reflect on preparing guidelines on this matter in the implementation phase.

⁴ **RO** requested the addition of a new letter to include data such as means of transportation in relation to the entry and exit, the type of transport, the registration number and the country of registration. **RO** explained that those data are collected by its NEES and they had proved very useful to detect criminal groups activities and movements. It also proposed to add these data to Article 11(2). **PT** asked to include gender and age group in order to be able to draw up migratory profiles.

⁵ **FI** suggested to add ".. and overall number of entries and exits by border crossing points";".

⁶ **FI** suggested to add "..and immigration status (visa-free or visa required) of the third country national".

⁷ **FI** suggested to add "..and the authority which issued it". **NL** and **PT** questioned the added value of this information.

- (e) number of overstayers referred to in Article 10¹;
- (f) the data entered in respect of any stay revoked or whose validity is extended²;
- (g) the authority that issued the visa, if applicable;³
- (h) the number of persons exempt from the requirement to give fingerprints pursuant to Article 12(2) and (3).

Article 41
Start of operations

1. The Commission⁴ shall determine the date from which the EES is to start operations, after the following conditions are met:
 - (a) the measures referred to in Article 23 have been adopted;
 - (b) the Agency has declared the successful completion of a comprehensive test of the EES, which shall be conducted by the Agency in cooperation with the Member States⁵, and;
 - (c) the Member States have validated the technical and legal arrangements to collect and transmit the data referred to in Articles 11 to 14 to the EES and have notified them to the Commission.
2. The Commission shall inform the European Parliament⁶ of the results of the test carried out pursuant to paragraph 1(b).
3. The Commission decision referred to in paragraph 1 shall be published in the Official Journal.

¹ **FI** suggested to add at the beginning "nationality, port of entry and...".

² **FI** noted that this information will not be stored in the system according to Article 11. Article 11 only referred to the country issuing the visa.

³ **BG** suggested replacing this text by "the 3 letter code of the issuing Member State ". **DE** and **FI** wanted the Member State which issued the visa since "the authority which issued the visa is not foreseen in Article 11". **Cion** agreed to fully align this provision to Article 11.

⁴ **DE, SE, NO, PT, NL, IT, FR, SI** and **ES** commented that it should be the Council the one to adopt the decision determining the date from which the EES should start its operations. **Cion** took note of this position and would reflect further after consulting their respective VIS colleagues as this provision was the same as in Article 48 of the VIS Regulation.

⁵ **NL** noted that Member States should also have a say for the part of the system under their responsibility.

⁶ **DE** requested to add the Council as well.

Article 42
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply¹.

Article 43
Notifications

1. Member States shall notify the Commission of:
 - (a) the authority which is to be considered as controller referred to in Article 37;
 - (b) the necessary technical and legal arrangements referred to in Article 41².
2. Member States shall notify the Agency of the competent authorities which have access to enter, amend, delete, consult or search data, referred to in Article 7³.
3. The Agency shall notify the Commission of the successful completion of the test referred to in Article 41 paragraph 1(b).

The Commission shall make the information notified pursuant to paragraph 1(a) available to the Member States and the public via a constantly updated electronic public register⁴.

¹ **RO** entered a scrutiny reservation as it needed to assess if this paragraph should not need to be completed. Along the same line, **ES** suggested to add the following sentence at the end of this paragraph: "Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) N° 182/2011 shall apply". Cion replied that this raised a horizontal issue on the application of Regulation 182/2011 which requires further analysis.

² **FR** entered a reservation as it considered this provision redundant in light of what is provided for in Article 41 (1) (c). **Cion** took note and would check it.

³ **DE** considered this provision redundant as this is already provided for in Article 7.2. **Cion** took note and would check it.

⁴ **FR** and **SE** asked Cion to provide more information on the electronic public register. **Cion** indicated that it would be a web site where information provided under (1) (a) would be made available to Member States and the public. **SE** suggested to replace the words "electronic public register" by "publication".

Article 44
Advisory group

An Advisory Group shall be established by the Agency¹ and provide it with the expertise related to the EES in particular in the context of the preparation of its annual work programme and its annual activity report.

Article 45
Training

The Agency shall perform tasks related to training referred to in Article 25 (4).

Article 46
Monitoring and evaluation

1. The Agency shall ensure that procedures are in place to monitor the functioning of the EES against objectives relating to the technical output, cost-effectiveness, security² and quality of service.
2. For the purposes of technical maintenance, the Agency shall have access to the necessary information relating to the data processing operations performed in the EES.
3. Two years after the start of operations of the EES and every two years thereafter, the Agency shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of EES, including the security thereof.
4. Two years after the EES is brought into operation and every four years thereafter, the Commission shall produce an overall evaluation of the EES. This overall evaluation shall include an examination of results achieved against objectives, an assessment of the continuing validity of the underlying rationale, the application of the Regulation, the security of the EES and any implications on future operations. The Commission shall transmit the evaluation report to the European Parliament and the Council.

¹ **CZ** and **DE** asked when and how this group would be established. **Cion** replied that this provision should be read in conjunction with Article 19 of Regulation No 1077/2011 establishing eu-LISA. **Cion** added that all the details that delegations asked for could be found in that Article.

² **NL** queried why Member States were not mentioned in this provision as there were issues about security for which they would be responsible. **Cion** replied that this provision should be read in conjunction with Article 28.

5. The first evaluation shall specifically examine the contribution the entry-exit system could make in the fight against terrorist offences and other serious criminal offences and will deal with the issue of access for law enforcement purposes to the information stored in the system, whether, and if so, under which conditions such access could be allowed, whether the data retention period shall be modified and whether access to authorities of third countries shall be granted, taking into account the operation of the EES and the results of the implementation of the VIS¹.
6. Member States shall provide the Agency and the Commission with the information² necessary to draft the reports referred to in paragraphs 3 and 4 according to the quantitative indicators predefined by the Commission and/or the Agency³.
7. The Agency shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraphs 4 and 5.

Article 47
Entry into force and applicability

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from the date referred to in the first paragraph of Article 41.
3. Articles 23 to 25, 28 and 41 to 45 shall apply as from the date referred to in paragraph 1.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹ **PL** entered a scrutiny reservation on this provision. **ES, FR, IT** and **RO** reminded the agreement reached in SCIFA/Mixed Committee on 24 September 2013 on granting access to the EES for law enforcement purposes and asked to amend this provision accordingly.

² **SE** stressed that that only information provided automatically should be required. **Cion** confirmed that the information referred to in this provision should be basically the one collected by the system. However, it might also include information on incidents, interruption of service.

³ **PL** entered a scrutiny reservation on this provision and requested that the indicators should be adopted in cooperation with Member States.

(1) Annex

List of international organisations referred to in Article 27 (2)

1. UN organisations (such as UNHCR);
 2. International Organization for Migration (IOM);
 3. The International Committee of the Red Cross.
-