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NOTE

From: Presidency

To: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

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 and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011

Delegations will find in the Annex to this Note compromise suggestions submitted by the Presidency on the operative part of the draft Regulation setting up the Entry/Exit System. The compromise suggestions reflect the discussions and the relevant contributions by delegations put forward during the first reading of the draft Regulation.

The new changes are highlighted in bold/underline and bold/strikethrough. The changes already included in the previous version of the text (doc. 9578/16) are highlighted in underline/strikethrough.

CHAPTER 1
General Provisions

Article 1

Subject matter

1. This Regulation establishes an 'Entry/Exit System' (EES) for the recording and storage of information on the date, time and place of entry and exit of third country nationals crossing the external borders 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 as well as for the recording of the date, time and place of refusal of entry of third country nationals whose entry for a short stay {or on the basis of a touring visa} has been refused as well as the authority of the Member State which refused the entry and the reasons for the refusal.
2. This Regulation also lays down in its Chapter IV the conditions under which Member States' designated ~~law enforcement~~ authorities and the European Police Office (Europol) may obtain access for consultation of the EES for the purposes of the prevention, detection and investigation of terrorist offences or of other serious criminal offences.

Article 2

Scope

1. This Regulation applies to third country nationals admitted for a short stay {or on the basis of a touring visa} in the territory of the Member States subject to border checks in accordance with Regulation (EU) 2016/399 when crossing the external borders of the Member States. When entering and exiting the territory of the Member States, it applies to third country nationals who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC.

2. This Regulation also applies to third country nationals whose entry for a short stay {or on the basis of a touring visa} to the territories of the Member States is refused in accordance with Article 14 of Regulation (EU) 2016/399.
3. This Regulation does not apply to:
- (a) ~~family members~~ **third country nationals who are members of the family** of a Union citizen to whom Directive 2004/38/EC applies **and** who hold a residence card pursuant to that Directive;
 - (b) ~~family members~~ **third country nationals who are members of the family of nationals of third country** enjoying the right of free movement under Union law **and** who hold a residence card pursuant to in Directive 2004/38/EC;
 - (c) holders of residence permits referred to in point 16 of Article 2 of Regulation (EU) 2016/399 other than those covered by points (a) and (b) of this paragraph;
 - (d) holders of long-stay visas;
 - (e) nationals of Andorra, Monaco ~~and~~ San Marino, **and holders of a passport issued by the Vatican City;**
 - (f) persons or categories of persons exempt from border checks or benefiting from facilitation of border crossing as referred to in Article 6a (3)(d) ~~(e), (f), and (g)~~ of Regulation (EU) 2016/399
 - (g) **persons or categories of persons as referred to in Article 6a (3) (e), (f), (g) and (h) of Regulation (EU) 2016/399.**

This Regulation does not apply to **third country nationals who are family members of the family** referred to in points (a) and (b) of the first subparagraph even if they are not accompanying or joining the Union citizen or a third country national enjoying the right of free movement.

4. The provisions of this Regulation regarding the calculation of the duration of stay and the generation of alerts to Member States when authorised periods for stay have expired do not apply to third country nationals who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC.

Article 3

Definitions

1. For the purposes of this Regulation, the following definitions apply:
- (1) 'external borders' means 'external borders' as defined in Article 2(2) of Regulation (ECU) 2016/399 ~~of the European Parliament and of the Council and~~ to which the provisions of Title II of Regulation (EU) 2016/399 apply;
 - (2) 'border authorities' mean the competent authorities assigned, in accordance with national law, to carry out checks on persons at the ~~external~~ border crossing points **at external borders** in accordance with Regulation (EU) 2016/399;
 - (3) 'immigration authorities' mean the competent authorities assigned, in accordance with national law, to examine the conditions, take decisions related to the stay of third country nationals on the territory of the Member States **and where relevant provide advice in accordance with Regulation (EU) 377/2004;**
 - (4) 'visa authorities' mean the competent authorities, including the central visa authorities and the authorities responsible for issuing visas at the external border, which are responsible in each Member State for examining visa applications, for taking decisions on visa applications and for taking decisions on whether to annul, revoke or extend visas,

- (5) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 20 (1) of the TFEU ~~reaty~~, with the exception of persons who enjoy rights of free movement equivalent to those of Union citizens under agreements between the Union, or the Union and its Member States on the one hand, and third countries on the other hand;
- (6) 'travel document' means a passport or other equivalent document, entitling the holder to cross the external borders and to which a visa may be affixed;
- (7) 'short stay' means stays in the territory of the Member States of a duration of no more than 90 days in any 180 day period;
- (8) ~~'short stay visa' means visa as defined in Article 2(2) of Regulation (EC) No 810/2009 means an authorisation issued by a Member State with a view to an intended stay on the territory of the Member States of a duration of no more than 90 days in any 180 day period;~~
- (9) [~~'touring visa' means an authorisation issued by a Member State with a view to an intended stay in the territory of two or more Member States for a duration of more than 90 days in any 180 day period, provided that the applicant does not intend to stay for more than 90 days in any 180 day period in the territory of the same Member State;~~]
- (9a) 'authorised stay' means stay which consist of short stay, stay on visa or [stay on touring visa]**
- (10) 'carriers' means ~~carriers any natural or legal person whose profession it is to provide transport of persons,~~ as defined in article 2(15) of Regulation (EU) 2016/399;
- (11) 'Member State responsible' means the Member State which has entered the data in the EES;

- (12) 'verification' means the process of comparing of sets of data to establish the validity of a claimed identity (one-to-one check);
- (13) 'identification' means the process of determining a person's identity through a database search against multiple sets of data (one-to-many check);
- (14) 'alphanumeric data' means data represented by letters, digits, special characters, space and punctuation marks;
- (15) 'fingerprint data' means the data relating to four fingerprints of the index, middle finger, ring finger and little finger from the right hand, where present, and otherwise from the left hand, ~~or a latent fingerprint~~;
- (16) 'facial image' means digital images of the face with sufficient image resolution and quality to be used in automated biometric matching;
- (17) 'biometric data' means fingerprint data and facial image;
- (18) 'overstayer' means a third country national who does not fulfil, or no longer fulfils the conditions relating to the duration of a ~~short~~ **authorised** stay on the territory of the Member States;
- (19) 'eu-LISA' means the European Agency for the operational management of large-scale information systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011;
- (20) '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 2007/2004;
- (21) 'supervisory authority' means the supervisory authorities established in accordance with Article 28 of Directive 95/46/EC;

(22) 'national supervisory authority' as regards law enforcement purposes means the supervisory authorities established in accordance with Article 25 of Council Framework Decision 2008/977/JHA;

~~(23) 'national supervisory body' means the supervisory bodies established in accordance with Article 33 of Decision 2009/371/JHA;~~

(24) 'EES data' means all data stored in the Central System in accordance with Articles 13, 14, 15, 16, 17 and 18;

(25) 'law enforcement' means the prevention, detection or investigation of terrorist offences or other serious criminal offences;

(26) 'terrorist offences' mean the offences under national law which correspond or are equivalent to those referred to in Articles 1 to 4 of Framework Decision 2002/475/JHA;

(26a) designated authorities' means authorities which are responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences and designated by Member States pursuant to Article 26.

(27) 'serious criminal offences' means the offences which correspond or are equivalent to those referred to in Article 2(2) of Framework Decision 2002/584/JHA, if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years;

~~(28) 'Self Service System' means an automated system which performs all or some of the border checks that are applicable to a person; as defined in Article 2(23) of Regulation (ECU) No 399/2016/399~~

~~(29) 'e-gate' means an infrastructure operated by electronic means as defined in Article 2(24) of Regulation (ECU) 2016/399 where the effective crossing of external borders takes place, as defined in Article 2(24) of Regulation (EU) 2016/399;~~

2. The terms defined in Article 2 of Directive 95/46/EC shall have the same meaning in this Regulation in so far as personal data are processed by the authorities of Member States for the purpose laid down in Article 5 of this Regulation.
3. The terms defined in Article 2 of Framework Decision 2008/977/JHA shall have the same meaning in this Regulation in so far as personal data are processed by the authorities of the Member States for law enforcement purposes.

Article 4

Set-up of the EES

~~The Agency for the operational management of large-scale information systems in the area of freedom, security and justice (eu-LISA)~~ shall, in cooperation with Member States and in accordance with Article 34, develop the EES and ensure its operational management, including the functionalities for processing biometric data referred to in Article 14(1)(f) and Article 15.

Article 5

Purpose of the EES

By recording, storing and providing access to Member States to the date, time and place of the entry and exit and refusals of entry of third country nationals at external borders, the EES shall:

- (a) enhance the efficiency of border checks by calculating and monitoring the duration of the authorised stay at entry and exit of third country nationals admitted for a short stay {or on the basis of a touring visa};
- (b) assist in the identification of any person who does not, or does no longer fulfil the conditions for entry to or stay on the territory of the Member States;
- (c) allow to identify and detect overstayers (~~also within the territory of the Member States~~) and enable competent national authorities of the Member States to take appropriate measures including to increase the possibilities for return;
- (d) allow to electronically check refusals of entry in the EES;

- (e) ~~enable free-up~~ **automation of** border ~~control~~ resources from performing checks **automation that can be automated and enable better focus on the assessment of third country nationals during border control;**
- (f) enable ~~consulates~~ visa authorities to have access to information on the lawful use of previous visas;
- (g) inform third country nationals of the duration of their authorised stay;
- (h) gather statistics on the entries and exits, refusals of entry and overstays of third country nationals to improve the assessment of the risk of overstays and to support evidence-based Union migration policy making;
- (h1) where relevant, support Member States in operating their national facilitation programmes, including the examination and decision on applications;
- (i) combat identity fraud and the misuse of travel documents;
- (j) contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences;
- ~~(k) enable identifying and apprehending terrorist, criminal suspects as well as of victims crossing the external borders;~~
- (l) enable generating information of ~~terrorist, criminal suspects as well as of victims~~ for investigations related to terrorism or **other** serious **criminal offences** ~~crime~~, including identification of **perpetrators**, suspects and victims of **criminal or terrorist these offences**.

Article 6

Technical architecture of the EES

1. The EES shall be composed of:
 - (a) a Central System;
 - (b) a National Uniform Interface (NUI) in each Member State based on common technical specifications and identical for all Member States enabling the connection of the Central System to the national ~~border~~ infrastructures in Member States **necessary for border control.**
 - (c) a Secure Communication Channel between the EES Central System and the VIS Central System;
 - (d) a Communication Infrastructure between the Central System and the National Uniform Interfaces.
2. The EES Central System shall be hosted by eu-LISA in its ~~two~~ technical sites. It shall provide the functionalities laid down in this Regulation in accordance with the conditions of availability, quality and speed pursuant to Article 34(3).
3. Without prejudice to Commission Decision 2008/602/EC¹, some hardware and software components of the Communication Infrastructure of the EES shall be shared with the communication infrastructure of the VIS referred to in Article 1(2) of Decision 2004/512/EC. ~~A separate virtual private network dedicated to the EES shall be established in addition to the existing private virtual network of the VIS to ensure the logical separation of VIS and EES data~~ **shall be ensured.**

¹ Commission Decision 2008/602/EC of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the Central VIS and the national interfaces for the development phase (OJ L 194, 23.7.2008, p. 3).

Article 7

Interoperability with the VIS

1. eu-LISA shall establish a Secure Communication Channel between the EES Central System and the VIS Central System to enable interoperability between the EES and the VIS. Direct consultation between the systems shall only be possible if both this Regulation and Regulation (EC) No 767/2008² provide for it.
2. The interoperability requirement shall enable the border authorities using the EES to consult the VIS from the EES in order to:
 - (a) retrieve and import automatically the visa related data directly from the VIS in order to create or update the entry/exit record individual file of a visa holder in the EES in accordance with Article 13, 14 and 16 of this Regulation and Article 18a of Regulation (EC) No 767/2008;
 - (b) retrieve and import automatically the visa related data directly from the VIS in order to update the EES in the event that a visa is annulled, revoked or extended in accordance with Article 17 of this Regulation and Articles 13, 14 and 18a of Regulation (EC) No 767/2008;
 - (c) verify **pursuant to Article 21 of this Regulation and Article 18(2) of Regulation (EC) No 767/2008** the authenticity and validity of the visa or whether the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are fulfilled ~~pursuant to Article 21 of this Regulation and Article 18(2) of Regulation (EC) No 767/2008;~~
 - (d) verify at the external borders whether a visa exempt third country national has been previously registered in the VIS in accordance with Article 21 of this Regulation and Article 19a of Regulation (EC) No 767/2008;

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- (e) where the identity of a visa holder cannot be verified against the EES, verify at the external borders the identity of a visa holder with fingerprints against the VIS in accordance with Article 21 of this Regulation and Article 18(6) of Regulation (EC) No 767/2008.
3. The interoperability requirement shall enable the visa authorities using the VIS to consult the EES from the VIS in order to:
- (a) examine visa applications and adopt decisions relating to those applications in accordance with Article 22 of this Regulation and Article 15(4) of Regulation (EC) No 767/2008;
 - (b) update the visa related data in the entry/exit record ~~the EES~~ in the event that a visa is annulled, revoked or extended in accordance with Article 17 of this Regulation and Articles 13 and 14 of Regulation (EC) No 767/2008.

Article 8

Access to the EES for entering, amending, deleting and consulting data

1. Access to the EES for entering, amending, deleting and consulting the data referred to in Articles 13, 14, 15, 16, 17 and 18 shall be reserved exclusively to duly authorised staff of the authorities of each Member State which are competent for the purposes laid down in Articles 21 to 32. That access shall be 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 national authorities, including border, visa and immigration authorities. The duly authorised staff shall have access to the EES to enter, amend, delete or consult data. Each Member State shall communicate a list of these authorities to eu-LISA without delay. That list shall specify for which purpose each authority shall have access to the data in the EES.

Within three months after the EES has started operations in accordance with Article 60, a consolidated list of those authorities shall be published in *the Official Journal of the European Union*. Where there are amendments thereto, eu-LISA shall publish an updated consolidated list once a year.

Article 9

General principles

1. Each competent authority authorised to access the EES shall ensure that the use of the EES is necessary, appropriate and proportionate.
2. Each competent authority shall ensure that in using the EES, it does not discriminate against third country nationals on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and that it fully respects human dignity and the integrity of the person. Particular attention shall be paid to the specific situation of children, the elderly and, persons with a disability. ~~In particular, when retaining a child's data, the best interest of the child shall be a primary consideration.~~

Article 10

Automated calculator and obligation to inform third country nationals on the remaining authorised stay

1. The EES shall include an automated calculator that indicates the maximum ~~authorised~~ duration of authorised stay, ~~accordance with Article 6(1) of Regulation (EU) 2016/399 for third country nationals registered in the EES admitted for a short stay (or on the basis of a touring visa).~~

The calculator shall not apply to third country nationals who are ~~family~~-members **of the family** of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC.

2. The automated calculator shall:

(a) inform the competent authorities **of the maximum authorised length duration of authorised** stay on entry and whether the number of authorised entries of visa issued for the single or double entry visas have been previously used **or during checks carried out within the territory of the Member States**;

(b) ~~identify~~ **inform the competent authorities during the checks carried out within the territory of the Member States or upon exit of the identity of** third country nationals ~~upon exit~~ who have overstayed.

3. The border authorities shall inform upon request **during the border checks** the third country national of the maximum number of days of authorised stay which shall take into account the number of entries and the length of stay authorised by the visa {or the touring visa}, ~~in accordance with Article 8(9) of Regulation (EU) 2016/399.~~

4. Stays in Member States which **do not apply the provisions of Title III of Regulation (EU) 2016/399** ~~are not yet fully applying the Schengen acquis in accordance with their respective Acts of Accession~~ shall not be taken into account in the calculation of the duration of the authorised stay **in the territory of the Member States which apply the provisions of Title III of Regulation (EU) 2016/399** ~~the Schengen acquis in full schengen area~~. Those Member States shall register the stays of third country nationals **on their respective territory** in the EES. The automated calculator in the system shall not however compute stays in Member States which **do not apply the provisions of Title III of Regulation (EU) 2016/399** ~~are not yet fully applying the Schengen acquis~~ as part of the **authorised** length of stay.

4a The automated calculator will also separately indicate the duration of authorised stay for third country nationals registered in the EES admitted for a **short authorised** stay in a Member States which **does not apply the provisions of Title III of Regulation (EU) 2016/399**. ~~are not yet fully applying the Schengen *acquis* in accordance with their respective Act of Accession.~~

Article 11

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 duration length of authorised** stay and identify records for which the maximum stay allowance has been exceeded.
2. A list generated by the system containing the data referred to in Article 14 and 15 of all identified overstayers shall be available to the designated competent national authorities.

Article 12

Web service

1. In order to enable third country nationals to verify at any moment the remaining **authorised duration length of authorised** stay, a secure internet access to a web service hosted by eu-LISA in its ~~two~~ technical sites shall allow those third country nationals to provide the data required pursuant to Article 14(1)(b) together with the anticipated entry and exit dates **or for third country nationals who are within the territory of the Member States, the intended exit date**. On that basis, the web service shall provide them with an OK/NOT OK answer, including information on the maximum number of days of authorised stay. The web service shall use a separate read-only database updated on a daily basis via a one-way extraction of the minimum necessary subset of EES data.

2. Carriers ~~may~~ shall use the secure internet access to the web service referred to in paragraph 1 to verify whether or not third country nationals holding a visa issued for single or double entry ~~visa~~ have already used the visa . The carrier shall provide the data listed in Article 14(~~12~~)(d). The web service shall on that basis provide the carriers with an OK/NOT OK answer. Carriers may store the information sent and the answer received. The OK/NOT OK answer can not be regarded as a decision to grant or refuse entry **in accordance with as meant in** Regulation (EU) 2016/399.
3. Detailed rules on the conditions for operation of the web service and the data protection and security rules applicable to the web service shall be adopted in accordance with the examination procedure referred to in Article 61(2).

CHAPTER II

Entry and use of data by competent ~~border~~ authorities

Article 13

Procedures for entering data in the EES

1. Border authorities shall verify, in accordance with Article 21, whether a previous individual file has been created in the EES for the third country national as well as their identity. Where a third country national uses a self-service system for pre-enrolment of data or for the performance of border checks [~~should this self service system not be defined or explained?~~], a verification may be carried out through the self service system.

2. Where a previous individual file has been created, the border authority shall, if necessary, update the individual file data, referred to in Articles 14, 15 and 16 as applicable, enter an entry/exit record for each entry and exit in accordance with Articles 14 and 15 or, where applicable, a refusal of entry record in accordance with Article 16. That record shall be linked to the individual file of the third country national concerned. Where applicable, the data referred to in Article 17(1), ~~shall be added to the individual file and the data referred to in Article~~ 17(3) and (4) shall be added to the entry/exit record of the third country national concerned. The different travel documents and identities used legitimately by a third country national shall be added to the third country national's individual file. Where a previous file has been registered and the third country national presents a travel document which differs from the one which was previously registered, the data referred under Article 14(1)(f) shall also be updated ~~if the facial image recorded in the chip of the new travel document can be extracted electronically~~.
3. Where it is necessary to create or update the ~~individual file~~ entry/exit records data of a visa holder, the border authorities may retrieve and import the data provided for in Article 14(12) (d), (e) and [(g)] directly from the VIS in accordance with Article 7 of this Regulation and Article 18a of Regulation (EC) No 767/2008.
4. In the absence of a previous registration of a third country national in the EES, the border authority shall create the individual file of the person by entering the data referred to in Articles 14, 15 and 16 as applicable.
5. Where a third country national uses a self-service system for pre-enrolment of data, Article 8c of Regulation (EU) 2016/399 shall apply. In that case, the third country national may pre-enrol the individual file data or, if applicable, the data in the entry/exit record that needs to be updated. The data shall be confirmed by the border guard when the decision to authorise or to refuse entry has been taken in accordance with Regulation (EU) 2016/399. The verification referred to in paragraph 1 of this Article shall be carried out through the self service system. The data listed in Article 14(12) (d), (e) and [(g)] may be retrieved and imported automatically directly from the VIS.

6. Where a third country national uses a self-service system for the performance of the border checks, Article 8d of Regulation (EU) 2016/399 shall apply. In that case, the verification referred to in paragraph 1 of this Article shall be carried out through the self service system.
7. Where a third country national uses an e-gate for crossing the external border, Article 8d of Regulation (EU) 2016/399 shall apply. In that case, the corresponding registration of the entry/exit record and the linking of that record to the concerned individual file shall be carried out through the e-gate.
8. Where it is necessary to create an individual file or to update the facial image referred to in Article 14(1)(f), ~~and where~~ the facial image can only be extracted electronically from the electronic Machine Readable Travel Documents (eMRTD) and inserted into the individual file **after verification** ~~where it has been~~ **must be verified** that the facial image recorded in the chip of the eMRTD corresponds to the live facial image of the concerned third country national.

Article 14

Personal data for ~~visa holders~~ third country national subject to a visa requirement to cross the external borders

1. The border authority shall create the individual file of the ~~visa holding~~ third country national subject to a visa requirement to cross the external borders by entering the following data:
 - (a) surname (family name); first name(s) (given names); date of birth; nationality or nationalities; sex;
 - (b) type, number and three letter code of the issuing country of the travel document or documents;
 - (c) the date of expiry of the validity of the travel document(s);

- (d) ~~the short stay visa sticker number, including the three letter code of the issuing Member State, the type of visa, the date of end of maximum duration of the stay as authorised by the visa which needs to be updated at each entry and the date of expiry of the validity of the visa, if applicable;~~
- (e) ~~at the first entry on the basis of the short stay visa, the number of entries and the authorised period of stay as indicated on the visa sticker;~~
- (f) the facial image, where possible taken live extracted electronically from the eMRTD, and where this is not possible, ~~taken live extracted electronically from the eMRTD~~;
- (g) ~~[the visa sticker number of the touring visa, the type of visa and the date of expiry of the validity of the visa, if applicable.]~~

2. On each entry of the ~~visa holding~~ third country national subject to a visa requirement to cross the external borders, the following data shall be entered in an entry/exit record. That record shall be linked to the individual file of that third country national using the individual reference number created by the EES upon creation of that file:

- (a) date and time of the entry;
- (b) the border crossing point and authority that authorised the entry;
- (c) if applicable, the status of the person indicating that it is a **third country national who is member of family of a Union citizen** ~~family member of a Union citizen~~ to whom Directive 2004/38/EC applies or a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC.
- (d) the ~~short stay~~ visa sticker number, including the three letter code of the issuing Member State, the type of visa, the date of end of maximum duration of the stay as authorised by the visa which needs to be updated at each entry 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;

(g) [the visa sticker number of the touring visa, the type of visa and the date of expiry of the validity of the visa, if applicable.]

2a. Member States which are not subject to the application of Regulation (EC) No 767/2008 shall only register the data referred to in paragraph 2(a), (b) and (c).

3. On each exit, the following data shall be entered in the entry/exit record linked to the individual file of that ~~visa holding~~ third country national subject to a visa requirement to cross the external borders:

(a) date and time of the exit;

(b) the border crossing point of the exit.

(c) Where a third country national subject to a visa requirement to cross the external borders uses a different visa than the visa recorded in the last entry record, the data of the entry/exit record listed in paragraph 2(d), (e) and [(g)] should be updated accordingly. Member States which are not subject to the application of Regulation (EC) No 767/2008 shall only register the data referred to in points (a) and (b).

4. Where there is no exit data immediately following the date of expiry of the **authorised duration length** of **authorised** stay, the entry/exit record shall be identified with a mark or flag by the system and the data of the ~~visa holding~~ third country national subject to a visa requirement to cross the external borders identified as an overstayer shall be entered into the list referred to in Article 11.

5. In order to create **or update** the ~~individual file~~ entry/exit record of a ~~visa holding~~ third country national subject to a visa requirement to cross the external borders the data provided for in paragraph 4 ~~2~~ (d), (e) and [(g)] may be retrieved and imported **automatically** directly from the VIS by the border authority in accordance with Article 18a of Regulation (EC) No 767/2008.
6. ~~Where relevant, Member States shall insert a notification in the individual file if the third country national benefits from their national facilitation programme in accordance with article 8e of Regulation (EU) 2016/399 specifying the Member State's national facilitation programme concerned. **The notification shall only be available to the Member State implementing such a programmes and to those Member States having concluded an agreement with the Member State which granted the access as referred to under Article 8e(4) of Regulation (EU) 2016/399.**~~

Article 15

Personal data for third country nationals exempt from the visa obligation

1. ~~For third country nationals exempt from the visa obligation,~~ The border authority shall ~~enter into their individual file~~ **create the individual file of third country nationals exempt from visa obligation by entering** the data provided for in Article 14(1) **and where relevant data provided for in Article 14(6)** (a), (b), (e) and (f). In addition it shall enter into that individual file the ~~four~~ fingerprint data ~~of the index, middle finger, ring finger and little finger from the right hand, and where this is not possible the same fingers from the left hand,~~ in accordance with the specifications for the resolution and use of fingerprints adopted by the Commission in accordance with Article 61(2) ~~For third country nationals exempt from the visa obligation, Articles 14(2) to 14(4) shall apply.~~
- ~~1a. For third country nationals exempt from the visa obligation,~~ Articles 14(2)(a), (b) and (c), 14(3) (a) and (b) and 14(4) and 14(6) shall apply.

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

However, where the physical impossibility is of a temporary nature, this fact shall be recorded in the system and the person shall be required to give the fingerprints at the subsequent entry. The border authorities shall be entitled to request further clarification on the grounds for the temporary impossibility to provide fingerprints. **This information shall be deleted from the system once the fingerprints have been given.**

Member States shall ensure that appropriate procedures guaranteeing the dignity of the person are in place in the event of difficulties encountered in 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 allow 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.~~

Article 16

Personal data for third country nationals who have been refused entry

1. Where a decision has been taken by the border authority, in accordance with Article 14 of Regulation (EU) 2016/399 and Annex V thereto, to refuse the entry of a third country national referred to in Article 2(2) of this Regulation to the territories of the Member States, and where no previous file has been registered in the EES for that third country national the border authority shall create an individual file in which it shall enter:

(a) the data required pursuant to Article 14(1) and, where relevant, the data referred to under Article 14(6) in the case of visa holding third country nationals subject to a visa requirement to cross the external borders and

(b) the data required pursuant to Article 15(1) in the case of visa exempt third country nationals **and in the case of a third country national subject to a visa requirement to cross the external borders if the border authority has verified that the third country national is not registered in the VIS.**

If a third country national refuse to provide biometric data, border authority shall create individual file without biometric data.

2. In order to create **or update** the ~~individual file~~ **refusal of entry record** ~~entry/exit record~~ of ~~visa holder~~ third country nationals subject to a visa requirement to cross the external borders, the data provided for in Article 14 (~~4~~2) (d), (e) and and [(g)] may be retrieved and imported directly from the VIS into the EES by the competent border authority in accordance with Article 18a of Regulation (EC) No 767/2008.
3. For both third country nationals subject to a visa requirement to cross the external borders ~~visa holding~~ and visa exempt third country nationals the following data shall be entered in a separate refusal of entry record:
 - (a) the date and time of refusal of entry,
 - (b) the border crossing point,
 - (c) the authority that refused the entry,
 - (d) the letter(s) corresponding to the reason(s) for refusing entry, in accordance with Annex V, Part B of Regulation (EU) 2016/399.
4. Where a previous **individual** file already exists in the EES the data provided for in paragraph ~~2~~ **3** shall be added to ~~the existing this~~ **this** file.

Article 17

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

1. Where a decision has been taken to revoke or annul an authorisation to **short** stay or a visa or to extend the duration of the **authorised short** stay or visa, the competent authority that has taken the decision shall add the following data to the latest relevant entry/exit record individual file:
 - (a) the status information indicating that the authorisation to **short** stay or the visa has been revoked or annulled or that the duration of the **authorised short** stay or the visa has been extended;
 - (b) the identity of the authority that revoked or annulled the authorisation to **short** stay or the visa or extended the duration of the **authorised short** stay or visa;
 - (c) the place and date of the decision to revoke or annul the authorisation to stay or the visa or to extend the duration of the **authorised short** stay or the visa;
 - (d) **where applicable** the new visa sticker number including the three letter code of the issuing country;
 - (e) the period of the extension of the ~~authorised~~ duration of **short** stay;
 - (f) **if possible** the new expiry date of the authorisation to **short** stay or the visa.
2. Where a decision has been taken to annul, revoke or extend a visa, the visa authority which has taken the decision shall immediately retrieve and import **automatically** the data provided for in paragraph 1 of this Article from the VIS directly into the EES in accordance with Articles 13 and 14 of Regulation (EC) No 767/2008.
3. The entry/exit record shall indicate the ground(s) for revocation or annulment of the ~~authorisation to~~ **authorised** stay, which shall be:

- (a) ~~the grounds on which the person is being expelled returned~~ **a return decision adopted pursuant to accordance with Directive 2008/115/EC³**;
- (b) any other decision taken by the competent authorities of the Member State, in accordance with national legislation, resulting in the ~~return~~ **or removal** ~~removal~~ or departure of the third country national who does not fulfil or no longer fulfils the conditions for the entry into or for the **authorised** stay in the territory of the Member States.
4. The entry/exit record shall indicate the grounds for extending the duration of an authorised stay.
5. When a person has departed or has been removed from the territories of the Member States pursuant to a decision as referred to in paragraph 3, the competent authority shall enter the data in accordance with Article 13(2) in the entry/exit record of that specific entry.

Article 18

Data to be added in case of rebuttal of the presumption that the third country national does not fulfil the conditions of duration of stay in accordance with Article 12 of Regulation (EU) 2016/399

Without prejudice to Article 20, where a third country national present on the territory of a Member State is not registered in the EES or the entry/exit record does not contain an **entry exit** date ~~following the date of expiry of the authorised length of stay~~, the competent authorities may presume that the third country national does not fulfil or no longer fulfils the conditions relating to duration of **authorised** stay **within** ~~in~~ the territory of the Member States. **This shall apply at the entry at the territory of Member States when previous entry/exit record of a third country national does not contain an exit date. In this case the competent authorities may presume that a third contry national has not fulfilled the condition of previous short stay or stay on visa [or stay on touring visa].**

³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

In that case Article 12 of Regulation (EU) 2016/399 shall apply and if that presumption is rebutted by proof that the third country national concerned has respected the conditions relating to the condition of short stay, the competent authorities shall create an individual file for that third country national in the EES if necessary, or update the latest entry/exit record by entering the missing data in accordance with Articles 14 and 15 or delete an existing file where Article 32 applies.

Article 19

Fall-back procedures in case of technical impossibility to enter data or failure of the EES

In the event of technical impossibility in entering data in the Central System or in the event of a failure of the Central System, the data referred to in Articles 14, 15, 16, 17 and 18 shall be temporarily stored in the National Uniform Interface as provided for in Article 6. If this is not possible, the data shall be temporarily stored locally. In ~~both~~ all cases, the data shall be entered into the Central System of the EES as soon as the technical impossibility or failure has been remedied. The Member States shall take the appropriate measures and deploy the required infrastructure, equipment and resources to ensure that such temporary local storage can be carried out at any time and for any of their border crossing points.

In the exceptional situation where there will be no technical possibility to register in the Central System, in the National Uniform Interface and local electronic temporary storage is technically impossible, Member States shall store manually the data referred to in articles 14, 15, 16, 17 and 18 with the exemption of the facial image and the fingerprint data. These data shall be entered in the system as soon as possible.

In such event of a technical impossibility in entering data, Member States may in addition place an entry or exit stamp in the travel document of a third country national.

Article 20

Transitional period and transitional measures

1. For a period of six months after the EES has started operations, in order to verify at entry that the third country national has not exceeded the number of entries authorised by the visa issued for single or double entry visa and to verify at entry and at exit that third country nationals entering for a short stay have not exceeded the **duration length** of the maximum authorised stay, the competent border authorities shall take into account the stays in the territories of the Member States during the 180 days preceding the entry or the exit by checking the stamps in the travel documents in addition to the entry/exit data recorded in the EES.
2. Where a third country national has entered the territory of the Member States and has not yet exited it before the EES has started operations, an individual file shall be created and the date of that entry as stamped in the passport shall be entered in the entry/exit record in accordance with Article 14(2) when the third country national exits. This rule shall not be limited to the six months after the EES has started operations as referred to in paragraph 1. In case of discrepancy between the entry stamp and the data recorded in the EES, the stamp shall prevail.

Article 21

Use of data for verification at the external borders

1. Border authorities shall have access to the EES for verifying the identity and previous registration of the third country national, for updating the data registered into the EES where necessary and for consulting the data to the extent required for the performance of border control tasks.
2. Pursuant to paragraph 1, the border authorities shall have access to search with the data referred to in Article 14(1)(a), (b) and (c).

In addition, for third country nationals who are subject to a visa requirement to cross the external borders, the border authorities ~~may~~ shall where necessary launch a search in the VIS directly from the EES using the same alphanumeric data for the purposes of carrying out the consultation of the VIS for verification at external borders in accordance with Article 18 of Regulation (EC) No 767/2008.

If the search in the EES with those data indicates that data on the third country national are recorded in the EES, the border authorities shall compare the live facial image of the third country national with the facial image referred to in Article 14(1)(f). ~~Where the technology is not available at the border crossing for the use of live facial image, or~~ the border authorities shall, in the case of visa exempt third country nationals, proceed to a verification of fingerprints against the EES and in the case of ~~visa holding~~ third country nationals subject to a visa requirement to cross the external borders, proceed to a verification of fingerprints directly against the VIS in accordance with Article 18 of Regulation (EU) No 767/2008. For the verification of fingerprints against the VIS for visa holders, the border authorities may launch the search in the VIS directly from the EES as provided in Article 18(6) of Regulation (EC) No 767/2008.

If the verification of the facial image fails, the verification shall be carried out using fingerprints and vice versa.

3. If the search with the data set out in paragraph 2 indicates that data on the third country national are recorded in the EES, the competent border authority shall be given access to consult the data of the individual file of that third country national and the entry/exit record(s) linked to it.
4. Where the search with the alphanumeric data set out in paragraph 2 indicates that data on the third country national are not recorded in the EES, where a verification of the third country national pursuant to paragraph 2 of this Article fails or where there are doubts as to the identity of the third country national, the border authorities shall have access to data for identification in accordance with Article 25.

In addition, the following provisions shall apply:

- (a) for third country nationals who are subject to a visa requirement to cross the external borders, if the search in the VIS with the data referred to in Article 18(1) of Regulation (EC) No 767/2008 indicates that that third country national is recorded in the VIS, a verification of fingerprints against the VIS shall be carried out in accordance with Article 18 (5) of Regulation (EC) No 767/2008. For this purpose, the competent border authority may launch a search from the EES to the VIS as provided for in Article 18(6) of Regulation (EC) No 767/2008. In circumstances where a verification of the person pursuant to paragraph 2 of this Article failed, the border authorities shall access the VIS data for identification in accordance with Article 20 of Regulation (EC) No 767/2008.
 - (b) for third country nationals who are not subject to a visa requirement to cross the external borders and who are not found in the EES further to the identification run in accordance with Article 25, the VIS shall be consulted in accordance with Article 19a of Regulation (EC) No 767/2008. The competent border authority may launch a search from the EES to the VIS as provided for in Article 19a of Regulation (EC) No 767/2008."
5. For third country nationals whose data are already recorded in the EES but who had their individual file created in the EES by a Member State which is not subject to the application of Regulation (EC) No 767/2008 in accordance with its Act of Accession, the border authorities shall consult the VIS in accordance with point(a) or (b) of paragraph 4 of this Article when, for the first time after the creation of the individual file, the third country national intends to cross the external borders of a Member State which is subject to the application of Regulation (EC) No 767/2008.

CHAPTER III

Entry of data and use of the EES by other authorities

Article 22

Use of the EES for examining and deciding on visa applications

1. Visa authorities shall consult the EES for examining visa applications and adopting 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 Regulation (EU) No 810/2009 of the European Parliament and of the Council.⁴
2. The visa authority shall be given access to search the EES directly from the VIS with one or several of the following data:
 - (a) the data referred to in Article 14(1)(a), (b) and (c);
 - (b) the visa sticker number, including the three letter code of the issuing Member State referred to in Article 14(1)(d);
 - (c) the biometric data as referred to in Articles 14(1)(f) and 15(1).
 - (d) [the visa sticker number of the touring visa referred to in Article 14(2)(g)];
3. If the search with the data set out 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 third country national and the entry/exit records and also refusals of entry record linked to it. **Visa authorities shall be given access to consult the automated calculator in order to check the maximum remaining duration of a stay covered by an issued visa. They shall also be able to consult the EES so as to automatically check the maximum duration of stay that they could grant on the basis of a new requested visa [or a new requested touring visa].**

⁴ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1)

Article 23

Use of the EES for examining applications for access to national facilitation programmes

1. The competent authorities referred to in Article 8e of Regulation (EU) 2016/399 shall consult the EES for the purposes of the examination of applications for access to national facilitation programmes referred to in that Article as regards the use of the Entry/Exit System and the adoption of decisions relating to those applications, including decisions to refuse, revoke or extend the period of validity of access to the national facilitation programmes in accordance with that Article.
2. The competent authority shall be given access to search with one or several of the data referred to in Article 14(1)(a), (b), (c), ~~and (f)~~ and 15 (1).
3. If the search with the data set out 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 third country national and the entry/exit records and also refusals of entry records linked to it.

Article 24

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

1. ~~For the purpose of~~ When verifying the identity of the third country national ~~and/or whether with a view to checking if the conditions for entry to or~~ **authorised** stay on the territory of the Member States are fulfilled, the authorities of the Member States competent to carry out checks within the territory of the Member States as to whether the conditions for entry to, **authorised** stay or residence on the territory of the Member States are fulfilled, shall have access to search with the data referred to in Article 14(1)(a), (b) ~~and~~ (c).

If the search indicates that data on the third country national are recorded in the EES, the competent authorities shall compare the live facial image of the third country national with the facial image referred to in Article 14(1)(f). ~~Where the technology is not available for the use of live facial imaging, or~~ the competent authorities shall ~~proceed with the~~ **verification of the** fingerprints of visa exempt third country nationals in the EES and of ~~visa holding~~ third country nationals subject to a visa requirement to cross the external borders in the VIS in accordance with Article 19 of Regulation (EC) No 767/2008.

2. If the search with the data set out 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), **including automated calculator** and also refusals of entry **record(s)** linked to it.
3. Where the search with the data set out in paragraph 2 1 indicates that data on the third country national are not recorded in the EES, where verification of the third country national fails or where there are doubts as to the identity of the third country national, the ~~border~~ competent authorities shall have access to data for identification in accordance with Article 25.

Article 25

Access to data for identification

1. The authorities competent for carrying out checks at external border crossing points at external borders in accordance with Regulation (EU) 2016/399 or within the territory of the Member States as to whether the conditions for entry, for authorised stay or residence on the territory of the Member States are fulfilled shall have access to search with the biometric data of third country nationals referred to in Articles 14(1)(f) and 15(1), ~~For the sole purpose of identifying any third country national who may have been registered previously in the EES under a different identity or who does not or no longer fulfils the conditions for entry, for authorised stay or for residence on the territory of the Member States, the competent authorities for carrying out checks at external border crossing points in accordance with Regulation (EU) 2016/399 or within the territory of the Member States as to whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled shall have access to search with the biometric data of that third country national referred to in Articles 14(1)(f) and 15(1).~~

Where the search with the data referred to in Articles 14(1)(f) and 15(1) indicates that data on that third country national are not recorded in the EES, access to data for identification shall be carried out in the VIS in accordance with Article 20 of Regulation (EC) No 767/2008. At external borders, prior to any identification against the VIS, the competent authorities shall first access the VIS in accordance with Articles 18 or 19a of Regulation (EC) No 767/2008.

Where the fingerprints of that third country national cannot be used or the search with the fingerprints and the facial image has failed, the search shall be carried out with the data referred to in Article 14(1)(a) or (b) or (c) or in ~~both~~ all.

2. If the search with the data set out in paragraph 1 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, ~~and~~ the linked entry/exit records and refusal of entry records.

Article 25a

Access to data for determining the responsibility for asylum applications

- 1. For the sole purpose of determining the Member State responsible for examining an asylum application according to Articles ... of Regulation (EC) 604/2013, the competent asylum authorities shall have access to search the EES with the data referred to in Article 14(1)(a), (b), (c), and 15 (1).**

- 2. If the search with the data listed in paragraph 1 indicates that the data of the third country national is recorded in the EES, the competent asylum authority shall be given access to consult the individual file, the entry/exit records and the refusal of entry records for the sole purpose referred to in paragraph 1.**

- 3. The consultation of the EES pursuant to paragraphs 1 and 2 of this Article shall be carried out only by the designated national authorities referred to in Article 35 of Regulation (EC) No 604/2013.**

Article 25b

Access to data for examining the application for asylum

- 1. For the sole purpose of examining an application for asylum, the competent asylum authorities in accordance with Article ... of Regulation (EC) No 604/2013 shall have access to search the EES with the data referred to in Article 14(1)(a), (b), (c), and 15 (1).**

- 1b. For the purpose of verifying the identity of the third country national or identifying him or her and for the purpose of consulting the data of the individual file of that person and the entry/exit records linked to it while examining an application for asylum, the competent immigration authorities shall have access to search the EES with the data referred to in Article 14(1)(a), (b), (c), and 15 (1) in accordance with the conditions for verification and identification stated in articles 24 and 25 of this Regulation.**
- 2. If the search with the data listed in paragraph 1 and 1b indicates that the data of the third country national is recorded in the EES, the competent immigration authority shall be given access to consult the individual file, entry/exit records and refusal of entry records for the sole purpose referred to in paragraph 1 and 1b.**
- 3. The consultation of the EES pursuant to paragraphs 1 and 2 of this Article shall be carried out only by the designated national authorities referred to in Article 35 of Regulation (EC) No 604/2013.**

CHAPTER IV:

Procedure and conditions for access to the EES for law enforcement purposes

Article 26

Member States' designated ~~law enforcement~~ authorities

1. Member States shall designate the ~~law enforcement~~ authorities referred to under **Article 3(1)(27)** which are entitled to consult the data stored in the EES in order to prevent, detect and investigate terrorist offences or other serious criminal offences.
2. Each Member State shall keep a list of the designated authorities. Each Member State shall notify ~~in a declaration~~ to eu-LISA and the Commission of its designated authorities and may at any time amend or replace its ~~notification declaration with another declaration~~. ~~The declarations shall be published in the Official Journal of the European Union.~~
3. Each Member State shall designate a central access point which shall have access to the EES. The central access point shall be an authority of the Member State which is responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences. The central access point shall ~~verify~~ ensure that the conditions to request access to the EES laid down in Article 29 of this Regulation are fulfilled.

The designated authority and the central access point may be part of the same organisation if permitted under national law, ~~but~~ The central access point shall act independently of the designated authorities when performing its tasks under this Regulation. The central access point shall be separate from the designated authorities and shall not receive instructions from them as regards the outcome of the verification.

Member States may designate more than one central access point to reflect their organisational and administrative structure in the fulfilment of their constitutional or legal requirements.

4. Each Member State shall notify ~~in a declaration~~ to eu-LISA and the Commission **of** their central access point(s) and may at any time amend or replace its **notification declaration with another declaration**. ~~The declarations shall be published in the *Official Journal of the European Union*.~~
5. At national level, each Member State shall keep a list of the operating units within the designated authorities that are authorised to request access to data stored in the EES through the central access point(s).
6. Only duly empowered staff of the central access point(s) shall be authorised to access the EES in accordance with Articles 28 and 29.

Article 27

Europol

1. Europol shall designate an authority which is authorised to request access to the EES through its designated central access point in order to prevent, detect and investigate terrorist offences or other serious criminal offences. The designated authority shall be an operating unit of Europol.
2. Europol shall designate a specialised unit with duly empowered Europol officials as the central access point. The central access point shall verify that the conditions to request access to the EES laid down in Article 30 are fulfilled.

The central access point shall act independently when performing its tasks under this Regulation and shall not receive instructions from the designated authority referred to in paragraph 1 as regards the outcome of the verification.

Article 28

Procedure for access to the EES for law enforcement purposes

1. The operating units referred to in Article 26(5) shall submit a reasoned electronic or written request to the central access points referred to in Article 26(3) for access to data stored in the EES. Upon receipt of a request for access, the central access point(s) shall verify whether the conditions for access referred to in Article 29 are fulfilled. If the conditions for access are fulfilled, the duly authorised staff of the central access point(s) shall process the requests. The EES data accessed shall be transmitted to the operating units referred to in in Article 26(5) in such a way as to not compromise the security of the data.
2. In an exceptional case of urgency, where there is a need to prevent an imminent danger associated with a terrorist offence or another serious criminal offence, the central access point(s) shall process the request immediately and shall only verify ex post whether all the conditions of Article 29 are fulfilled, including whether an exceptional case of urgency actually existed. The ex post verification shall take place without undue delay after the processing of the request.
3. Where an ex post verification determines that the access to EES data was not justified, all the authorities that accessed such data shall erase the information accessed from the EES and shall inform the central access points of the erasure.

Article 29

Conditions for access to EES data by designated authorities of Member States

1. Designated authorities may access the EES for consultation if all of the following conditions are met:
 - (a) access for consultation is necessary for the purpose of the prevention, detection or investigation of a terrorist offences or another serious criminal offence, thus making a search of the database proportionate if there is an overriding public security concern;

- (b) access for consultation is necessary in a specific case;
- (c) reasonable grounds exist to consider that the consultation of the EES data may substantially contribute to the prevention, detection or investigation of any of the criminal offences in question, in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls under a category covered by this Regulation;

2. The access to the EES as a criminal identification tool for the purpose of identifying an unknown suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence shall be allowed when the conditions listed in paragraph 1 are met and the following additional conditions are met:

- (a) a prior search has been conducted in national databases without success;
- (b) in the case of searches with fingerprints, a prior search has been conducted without success in the automated fingerprint verification system of the other Member States under Decision 2008/615/JHA where comparisons of fingerprints are technically available.

However, that prior search does not have to be conducted where there are reasonable grounds to believe that a comparison with the systems of the other Member States would not lead to the verification of the identity of the data subject. Those reasonable grounds shall be included in the electronic or written request for comparison with EES data sent by the designated authority to the central access point(s).

Since fingerprint data of ~~visa holding~~ third country nationals subject to a visa requirement to cross the external borders are only stored in the VIS, a request for consultation of the VIS on the same data subject may be submitted in parallel to a request for consultation of the EES in accordance with the conditions laid down in Decision 2008/633/JHA provided the searches carried out in accordance with points(a) and (b) of the first subparagraph did not lead to the verification of the identity of the data subject.

3. The access to the EES as a criminal intelligence tool to consult the travel history or the periods of authorised stay on the territory of the Member States in the Schengen area of a known suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence shall be allowed when the conditions listed in paragraph 1 are met. ~~and where there is a duly justified need to consult the entry/exit records of the person concerned.~~

4. Consultation of the EES for identification shall be limited to searching in the ~~application~~ individual file with any of the following EES data:

(a) Fingerprints (~~including latents~~) of visa exempt third country nationals. In order to launch this consultation of the EES, latent fingerprints may be used and may therefore be compared with the fingerprints stored in the EES;

(b) Facial image.

Consultation of the EES, in case of a hit, shall give access to any other data taken from the individual file as listed in Article 14(1), 14(6), ~~and Article 15(1)~~ and Article 16(1).

5. Consultation of the EES for the travel history of the third country national concerned shall be limited to searching with any of the following EES data in the individual file or in the entry/exit records:

(a) Surname(s) (family name);, first name(s) (given names);, date of birth, nationality or nationalities and/or sex;

(b) Type and number of travel document or documents, three letter code of the issuing country and date of expiry of the validity of the travel document;

(c) Visa sticker number and the date of expiry of the validity of the visa; -

- (d) Fingerprints, ~~(including latents)~~ **In order to launch this consultation of the EES, latent fingerprints may be used and may therefore be compared with the fingerprints stored in the EES;**
- (e) Facial image;
- (f) Date and time of entry, entry authoriser authority and entry border crossing point;
- (g) Date and time of exit and exit border crossing point;

In order to launch this consultation of the EES, latent fingerprints may be used and may therefore be compared with the fingerprints stored in the EES.

Consultation of the EES shall, in the event of a hit, give access to the data listed in this paragraph as well as to any other data taken from the individual file, ~~and~~ the entry/exit records **and refusal of entry records** including data entered in respect of revocation or extension of ~~authorisation to~~ **authorised** stay in accordance with Article 17.

Article 30

Procedure and conditions for access to EES data by Europol

1. Europol shall have access to consult the EES where all the following conditions are met:
 - (a) the consultation is necessary to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling under Europol's mandate, thus making a search of the database proportionate if there is an overriding public security concern;
 - (b) the consultation is necessary in a specific case;
 - (c) reasonable grounds exist to consider that the consultation may substantially contribute to the prevention, detection or investigation of any of the criminal offences in question, in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls under a category covered by this Regulation.

2. The conditions laid down and Article 29 (2 3) to (5) shall apply accordingly.
- 2a. **In addition, the access to the EES as a criminal identification tool for the purpose of identifying an unknown suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence shall be allowed only if prior consultation of data stored in any information processing systems that are technically and legally accessible by Europol did not lead to the establishment of the identity of the data subject. Since fingerprint data of visa holding third country nationals are only stored in the VIS, a request for consultation of the VIS on the same data subject may be submitted in parallel to a request for consultation of the EES in accordance with the conditions laid down in Decision 2008/633/JHA provided the searches carried out in accordance with the first subparagraph did not lead to the verification of the identity of the data subject.**
3. Europol's designated authority may submit a reasoned electronic request for the consultation of all data or a specific set of data stored in the EES to the Europol central access point referred to in Article 27. Upon receipt of a request for access the Europol central access point shall verify whether the conditions for access referred to in paragraphs 1 and 2 are fulfilled. If all conditions for access are fulfilled, the duly authorised staff of the central access point(s) shall process the requests. The EES data accessed shall be transmitted to the operating units referred to in Article 27 (1) in such a way as not to compromise the security of the data.
4. The processing of information obtained by Europol from consultation with EES data shall be subject to the authorisation of the Member State of origin. That authorisation shall be obtained via the Europol national unit of that Member State.

CHAPTER V

Retention and amendment of the data

Article 31

Retention period for data storage

- 1 Each entry/exit record or refusal of entry record linked to an individual file shall be stored for five years following the date of the exit record or of the refusal of entry record, as applicable.
2. Each individual file together with the linked entry/exit record(s) or refusal of entry records shall be stored in the EES for five years and one day following the date of the last exit record if there is no entry record within five years from that last exit record or refusal of entry record.
3. If there is no exit record following the date of expiry of the ~~authorised~~ period of **authorised** stay, the data shall be stored for a period of five years following the last day of the authorised stay. The EES shall automatically inform the Member States three months in advance of the scheduled deletion of data on overstayers in order for them to adopt the appropriate measures including to detect the overstayer and ~~increase the possibilities for return where possible contributing to return of the overstayer.~~
4. By way of derogation to paragraphs (2) and (3), the entry/exit record(s) generated by third country nationals in their condition members of family ~~members~~ of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC, shall be stored in the EES for a maximum of one year after the last exit record.
5. Upon expiry of the retention period referred to in paragraphs 1 ~~and~~, 2 and 4 such data shall automatically be erased from the Central System.

Article 32

Amendment of data and advance data deletion

1. The Member State responsible shall have the right to amend data which it has introduced into the EES, by correcting or deleting such data.
2. If the Member State responsible has evidence to suggest that data recorded in the EES are factually inaccurate or that data were processed in the EES in contravention of this Regulation, it shall check the data concerned and, if necessary, amend or erase them without delay from the EES and, where applicable, from the list of identified persons referred to in Article 11. This may also be done at the request of the person concerned in accordance with Article 46.
3. By way of derogation from paragraphs 1 and 2, if a Member State other than the Member State responsible has evidence to suggest that data recorded in the EES are factually inaccurate or that data were processed in the EES in contravention of this Regulation, it shall check the data concerned if it is possible to do this without consulting the Member State responsible and, if necessary, amend or erase them from the EES without delay and, where applicable, from the list of identified persons referred to in Article 11. Otherwise the Member State shall contact the authorities of the Member State responsible within a time limit of 14 days and the Member State responsible shall check the accuracy of the data and the lawfulness of its processing within a time limit of one month. This may also be done at the request of the person concerned in accordance with Article 46.

4. In the event that ~~the a Member State responsible or a Member State other than the Member State responsible~~ has evidence to suggest that visa-related data recorded in the EES are factually inaccurate or that such data were processed in the EES in contravention of this Regulation they shall first check the accuracy of these data against the VIS and if necessary shall amend them in the EES. Should the data recorded in the VIS be the same as in the EES, they shall inform the Member State responsible for entering those data in the VIS immediately through the infrastructure of the VIS in accordance with Article 24(2) of Regulation (EC) No 767/2008. The Member State responsible for entering the data in the VIS shall check the data concerned and if necessary correct or delete them immediately from the VIS and inform the Member State ~~responsible or the Member State to which the request has been made~~ **concerned** which shall, if necessary, amend or delete them from the EES without delay and, where applicable, from the list of identified overstayers referred to in Article 11.
5. The data of identified persons referred to in Article 11 shall be deleted without delay from the list referred to in that Article and shall be corrected in the EES where the third country national provides evidence, in accordance with the national law of the Member State responsible ~~or of the Member State to which the request has been made~~, that he or she was forced to exceed the ~~authorised~~ duration of **authorised** stay due to unforeseeable and serious events, that he or she has acquired a legal right to **authorised** stay or in case of errors. The third country national shall have access to an effective **administrative or judicial** remedy to ensure the data is amended.
6. Where a third country national has acquired the nationality of a Member State or has fallen under the scope of Article 2(3) before the expiry of the period referred to in Article 31, the individual file and the records linked to it in accordance with Articles 14 and 15 shall be deleted without delay from the EES as well as, where applicable, from the list of identified persons referred to in Article 11:

- (a) by the Member State the nationality of which he or she has acquired, or
- (b) the Member State that issued the residence permit or card **or long stay visa.**

Where a third country national has acquired the nationality of Andorra, Monaco or San Marino he or she shall inform the competent authorities of the Member State he or she next enters of this change. That Member State shall delete their data without delay from the EES. The individual shall have access to an effective judicial remedy to ensure the data is deleted.

- 7. The Central System shall immediately inform all Member States of the erasure of data from the EES and where applicable from the list of identified persons referred to in Article 11.
- 8. In case another Member State than the Member State responsible has amended or erased data in accordance with this Regulation, this Member State shall be responsible for the amendments or erasure. The system will record all amendments and erasures applied.

CHAPTER VI

Development, Operation and Responsibilities

Article 33

Adoption of implementing measures by the Commission prior to development

The Commission shall adopt the following measures necessary for the development and technical implementation of the Central System, the National Uniform Interfaces, and the Communication Infrastructure, in particular measures for:

- (a) the specifications for the resolution and use of fingerprints for biometric verification and identification in the EES;
- (b) the specifications for the resolution and use of facial image for biometric verification and identification in the EES;
- (c) entering the data in accordance with Article 14, 15, 16, 17 and 18;
- (d) accessing the data in accordance with Articles 21 to 30;
- (e) amending, deleting and advance deleting of data in accordance with Article 32;
- (f) keeping and accessing the records in accordance with Article 41;
- (g) performance requirements, including minimal specifications for technical equipment;
- (h) the specifications and conditions for the web-service referred to in Article 12;
- ~~(i) the common leaflet referred to Article 44(3);~~
- (j) the specifications and conditions for the provision of information in writing, or if appropriate by electronic means in another effective way website referred to in Article 44(3);

- (k) the establishment and the high level design of the interoperability referred to in Article 7;
- (l) for the specifications and conditions for the central repository referred in Article 57 (2);
- (m) adopt a decision on the date from which the EES is to start operations, after the conditions referred to in Article 60 are met;
- (n) **the establishment of the list referred to in Article 11(2) and procedure for distribution of the list to Member States.**

Those implementing acts shall be adopted as soon as possible in accordance with the examination procedure referred to in Article 61(2).

For the adoption of the measures set down for the establishment and the high level design of the interoperability specified in point (j), the Committee set up by Article 61 of this Regulation shall consult the VIS Committee set up by Article 49 of Regulation (EC) 767/2008.

Article 34

Development and operational management

1. eu-LISA shall be responsible for the development of the Central System, the National Uniform Interfaces, the Communication Infrastructure and the Secure Communication Channel between the EES Central System and the VIS Central System. It shall also be responsible for the development of the web service referred to in Article 12 in accordance with the specifications and conditions adopted in accordance with the examination procedure referred to in Article 61(2).

eu-LISA shall define the design of the physical architecture of the system including its Communication Infrastructure as well as the technical specifications and their evolution as regards the Central System, the Uniform Interfaces, the Secure Communication Channel between the EES Central System and the VIS Central System and the Communication Infrastructure, which shall be adopted by the Management Board, subject to a favourable opinion of the Commission. eu-LISA shall also implement any necessary adaptations to the VIS deriving from the establishment of interoperability with the EES as well as from the implementation of the amendments to Regulation (EC) No 767/2008 referred to in Article 55.

eu-LISA shall develop and implement the Central System, the National Uniform Interfaces, the Secure Communication Channel between the EES Central System and the VIS Central System, and the Communication Infrastructure as soon as possible after the entry into force of this Regulation and the adoption by the Commission of the measures provided for in Article 33.

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

2. During the designing and development phase, a Programme Management Board composed of a maximum of 10 members shall be established. It shall be composed of ~~eight~~ seven members appointed by eu-LISA's Management Board from among its members or their alternates, the Chair of the EES Advisory Group referred to in Article 62, a member representing eu-LISA appointed by its Executive Director and one member appointed by the Commission. The members appointed by eu-LISA's Management Board shall be elected only from those Member States which are fully bound under Union law by the legislative instruments governing the development, establishment operation and use of all the large-scale IT systems managed by eu-LISA and which will participate in the EES.

The Programme Management Board will meet ~~regularly once a month~~. It shall ensure the adequate management of the design and development phase of the EES and ensure the consistency between central and national EES projects. The Programme Management Board shall submit written reports every month to the Management Board on progress of the project. It shall have no decision-making power nor any mandate to represent the members of the Management Board.

The Management Board shall establish the rules of procedure of the Programme Management Board which shall include in particular rules on:

- (a) chairmanship;
- (b) meeting venues;
- (c) preparation of meetings;
- (d) admission of experts to the meetings;
- (e) communication plans ensuring full information to non-participating Members of the Management Board.

The chairmanship shall be held by ~~the a~~ Member State ~~holding the Presidency of the Council, provided it is fully bound under Union law by the legislative instruments governing the development, establishment operation and use of all the large-scale IT systems managed by eu-LISA or, if this requirement is not met, by the Member State which shall next hold the Presidency and which meets that requirement.~~

All travel and subsistence expenses incurred by the members of the Programme Management Board shall be paid by the Agency and Article 10 of the eu-LISA Rules of Procedure shall apply mutatis mutandis. The Programme Management Board's secretariat shall be ensured by eu-LISA.

During the designing and development phase, the EES Advisory Group referred to in Article 62 shall be composed of the national EES project managers. It shall meet **at least once a month regularly** until the start of operations of the EES. It shall report after each meeting to the Programme Management Board. It shall provide the technical expertise to support the tasks of the Programme Management Board and shall follow-up on the state of preparation of the Member States.

3. eu-LISA shall be responsible for the operational management of the Central System, the Secure Communication Channel between the EES Central System and the VIS Central System and the National Uniform Interfaces. It shall ensure, in cooperation with the Member States, at all times the best available technology, subject to a cost-benefit analysis. eu-LISA shall also be responsible for the operational management of the Communication Infrastructure between the Central system and the National Uniform Interfaces and for the web-service referred to in Article 12.

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 response time for interrogation of the central database by border crossing points, in accordance with the technical specifications.

4. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, eu-LISA 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.

Article 35

Responsibilities of Member States and Europol

1. Each Member State shall be responsible for:
 - (a) the integration of the existing national border infrastructure and the connection to the National Uniform Interface;
 - (b) the organisation, management, operation and maintenance of its existing national border infrastructure and of its connection to the EES for the purpose of Article 5 excepted points (j), (k) and (l);
 - (c) the organisation of central access points and their connection to the National Uniform Interface for the purpose of law enforcement;
 - (d) 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 profiles.
2. Each Member State shall designate a national authority, which shall provide the competent authorities referred to in Article 8 with access to the EES. Each Member State shall connect that national authority to the National Uniform Interface. Each Member State ~~and Europol~~ shall connect their respective central access points referred to in Article 26 ~~and 27~~ to the National Uniform Interface.
3. Each Member State shall use 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 rules in particular and on relevant fundamental rights.

5. Europol shall assume the responsibilities foreseen under paragraphs 3 and 4. It shall connect its central access point referred to in Article 27 to the EES and shall be responsible for that connection.

Article 36

Responsibility for the use of data

1. 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 the details of this authority to the Commission.

Each Member State shall ensure that the data recorded in the EES is processed lawfully, and in particular that only duly authorised staff have access to the data for the performance of their tasks. The Member State responsible shall ensure in particular that:

- (a) the data are collected lawfully and in full respect of the human dignity of the third country national;
 - (b) the data are registered lawfully into the EES;
 - (c) the data are accurate and up-to-date when they are transmitted to the EES.
2. eu-LISA shall ensure that the EES is operated in accordance with this Regulation and the implementing acts referred to in Article 33. In particular, eu-LISA shall:
 - (a) take the necessary measures to ensure the security of the Central System and the Communication Infrastructure between the Central System and the National Uniform Interface, without prejudice to the responsibilities of each Member State;
 - (b) ensure that only duly authorised staff has access to data processed in the EES.

3. eu-LISA shall inform the European Parliament, the Council and the Commission as well as the European Data Protection Supervisor of the measures it takes pursuant to paragraph 2 for the start of operations of the EES.

Article 37

Keeping of data in ~~national files and~~ National Entry Exit systems

1. A Member State may keep the alphanumeric data which that Member State entered into the EES, in accordance with the purposes of the EES in its ~~national files and~~ national entry and exit system in full respect of Union Law.
2. The data shall not be kept in ~~the national files or~~ national entry/exit systems longer than it is kept in the EES.
3. Any use of data which does not comply with paragraph 1 shall be considered a misuse under the national law of each Member State as well as Union law.
4. This Article shall not be construed as requiring any technical adaptation of the EES. Member States may keep data in accordance with this Article at their own cost, risk and with their own technical means.

Article 38

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 party.
2. By way of derogation from paragraph 1, the data referred to in Article 14(1)(a), (b) and (c) and Article 15(1) may be transferred or made available to a third country or to an international organisation listed in the Annex in individual cases, if necessary in order to prove the identity of third country nationals for the purpose of return, only where the following conditions are satisfied:

- (a) 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/EC, or a readmission agreement **or any other type of similar arrangement** is in force between the ~~Community~~ the European Union or a Member State 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
 - (c) the data are transferred or made available in accordance with the relevant provisions of Union law, in particular readmission agreements and transfer of personal data, 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;
 - (d) ~~the Member State which entered the data in the EES has given its consent.~~
3. Transfers of personal data to third countries or international organisations pursuant to paragraph 2 shall not prejudice the rights of applicants for and beneficiaries of international protection, in particular as regards non-refoulement.
4. Personal data obtained from the Central System by a Member State or by Europol for law enforcement purposes shall not be transferred or made available to any third country, international organisation or private entity established in or outside the Union. The prohibition shall also apply if those data are further processed at national level or between Member States within the meaning of Article 2(b) of Framework Decision 2008/977/JHA.
- 4a. By way of derogation from paragraph 4, the data referred to in Article 14(1)(a), (b) and (c) ~~and Article 15(1)~~ may be transferred or made available **by the designated authority** to a third country or to an international organisation **listed in the Annex only in individual specific cases and when strictly if-necessary** for the purpose ~~of a mutual legal assistance of prevention, detecting and investigating of terrorist offences or other serious criminal offences~~ **and in accordance with Framework Decision 2008/977/JHA.**

Article 39

Data security

1. The Member State responsible shall ensure the security of the data before and during the transmission to the National Uniform Interface. 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 border infrastructure, adopt the necessary measures, including a security plan and a business continuity and disaster recovery 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;
 - (c) prevent the unauthorised reading, copying, modification or removal of data media;
 - (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data;
 - (e) prevent the unauthorised processing of data in the EES and any unauthorised modification or deletion of data processed in the EES;
 - (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;
 - (g) 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 national supervisory authorities referred to in Article 49 and to the national supervisory authorities referred to in Article 52(2) without delay at their request;

- (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment;
 - (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;
 - (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;
 - (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.
3. As regards the operation of the EES, eu-LISA shall take the necessary measures in order to achieve the objectives set out in paragraph 2 including the adoption of a security plan and a business continuity and disaster recovery plan.

Article 40

Liability

1. Any person or Member State that has suffered damage 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 Member State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event which gave rise to the damage.
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 eu-LISA or another Member State participating in the 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 41

*Keeping of records **by eu-LISA and Member States***

1. eu-LISA shall keep records of all data processing operations within the EES. Those records shall show the purpose of access referred to in Article 8, the date and time, the data transmitted as referred to in Article 14 to 17, the data used for interrogation as referred to in Articles 21 to 25 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 enter or retrieve the data.~~
2. For the consultations listed in Article 7, a record of each data processing operation carried out within the EES and the VIS shall be kept in accordance with this Article and Article 34 of Regulation (EC) 767/2008. eu-LISA shall ensure in particular that the relevant records of the concerned data processing operations are kept when the competent authorities launch a data processing operation directly from one system to the other.
 - 2a. In addition to paragraphs 1 and 2, each Member State shall keep records of the staff duly authorised to enter or retrieve the data.**
3. Such records may be used only for the data protection monitoring of the admissibility of data processing as well as to ensure data security. Those records shall be protected by appropriate measures against unauthorised access and deleted one year after the retention period referred to in Article 31 has expired, if they are not required for monitoring procedures which have already begun.

Article 42

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 43

Penalties

Member States shall take the necessary measures to ensure that any use of data entered in the EES in contravention of this Regulation is punishable by penalties, ~~including administrative and criminal penalties~~ in accordance with national law, that are effective, proportionate and dissuasive.

CHAPTER VII

Rights and supervision on data protection

Article 44

Right of information

1. Without prejudice to the right of information in Article 10 of Directive 95/46/EC, third country nationals whose data are recorded in the EES shall be informed **by the Member State responsible** in writing **or in another effective way** of the following:
 - (a) an explanation using clear and plain language, of the fact that the EES may be accessed by the Member States and Europol for law enforcement purposes;
 - (b) the obligation on visa exempt third country nationals to have their fingerprints taken;
 - (c) the obligation on all third country nationals subject to registration in the EES to have their facial image recorded;
 - (d) that the collection of the data is mandatory for the examination of entry conditions;
 - (d1) **an explanation that entry shall be refused if a third country national refuses to provide the requested biometric data for registration or verification in the EES**
 - (e) 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.

2. The information provided in paragraph 1 of this Article shall be provided in writing, or in another effective way ~~if appropriate, by electronic means~~ at the time when the individual file of the person concerned is being created in accordance with Articles 14, 15 or 16.
3. ~~A common leaflet and a website containing at least~~ The **common** information referred to in paragraph 1 of this Article shall be drawn up and set up by the Commission in accordance with the examination procedure referred to in Article 61(2) and ~~The leaflet and the content of the website shall be clear and~~ **simple plain language** and available in a linguistic version the person concerned understands or is reasonably supposed to understand.

The information, such as a poster ~~leaflet and the website~~ shall be established in such a manner as to enable Member States to complete them with additional Member State specific information, if necessary. That Member State specific information shall include at least the rights of the data subject, the possibility of assistance by the national supervisory authorities, as well as contact details of the office of the controller and national supervisory authorities.

Article 45

Information campaign

The Commission shall, in cooperation with the national supervisory authorities and the European Data Protection Supervisor, accompany the start of the EES operation with an information campaign informing the public about the objectives, the data stored, the authorities having access and the rights of persons.

Article 46

Right of access, correction and deletion

~~1. Without prejudice to Article 12 of Directive 95/46/EC any third country national shall have the right to obtain the data relating to him or her recorded in the EES and of the Member State which transmitted it to the EES.~~

~~1a. Any person may request that data relating to him which are inaccurate be corrected and that data recorded unlawfully be deleted. The correction and deletion shall be carried out without delay by a Member State responsible, in accordance with its laws, regulations and procedures.~~

1. **The requests of third country nationals related to the rights set out in Article 12 of Directive 95/46/EC may be addressed to the competent authority of any Member State.**

2. If a request ~~for correction or deletion~~ is made to a Member State other than the Member State responsible, the authorities of the Member State to which the request has been made shall check the accuracy of the data and the lawfulness of the data processing in the EES within a time limit of one month if that check can be done without consulting the Member State responsible. Otherwise the Member State other than the Member State responsible shall contact the authorities of the Member State responsible within a time limit of 14 days and the Member State responsible shall check the accuracy of the data and the lawfulness of the data processing within a time limit of one month.

3. In the event that data recorded in the EES are factually inaccurate or have been recorded unlawfully, the Member State responsible or, where applicable, the Member State to which the request has been made shall correct or delete the data in accordance with Article 32. The Member State responsible or, where applicable, the Member State to which the request has been made shall confirm in writing to the person concerned without delay that it has taken action to correct or delete data relating to him.

In the event that visa-related data recorded in the EES are factually incorrect or have been recorded unlawfully, the Member State ~~responsible or, where applicable, the Member State to which the request has been made~~ shall first check the accuracy of these data against the VIS and if necessary will amend them in the EES. Should the data recorded in the VIS be the same as in the EES, the Member State ~~responsible or the Member State to which the request was made~~, shall contact the authorities of the Member State responsible for entering these data in the VIS within a time limit of 14 days. The Member State responsible for entering the data in the VIS shall check the accuracy of the visa related data and the lawfulness of its processing in the EES within a time limit of one month and inform the Member State concerned ~~responsible or the Member State to which the request has been made~~ which shall, if necessary, amend or erase them without delay from the EES and, where applicable, from the list of persons referred to in Article 11(2).

4. If the Member State responsible or, where applicable, the Member State to which the request has been made does not agree that data recorded in the EES are factually inaccurate or have been recorded unlawfully, that Member State shall adopt an administrative decision explaining in writing to the person concerned without delay why it is not prepared to correct or delete data relating to him.
5. The Member State responsible or, where applicable, the Member State to which the request has been made shall also provide the person concerned with information explaining the steps which he can take if he does not accept the explanation for the decision pursuant to paragraph 5 4. 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.

6. Any request made pursuant to paragraphs 1 and 2 shall contain the necessary information to identify the person concerned, ~~including fingerprints~~. That information shall be used exclusively to enable the exercise of the rights referred to in paragraphs 1 and 2 and shall be erased immediately afterwards.
7. Whenever a person requests data relating to him in accordance with paragraph 2, the competent authority shall keep a record in the form of a written document that such a request was made and how it was addressed and by which authority and shall make that document available to the national supervisory authorities without delay.

Article 47

Cooperation to ensure the rights on data protection

1. The competent authorities of the Member States shall cooperate actively to enforce the rights laid down in Article 46(3), (4) and (5).
2. In each Member State, the supervisory authority shall, upon request, assist and advise the person concerned in exercising his right to correct or delete data relating to him in accordance with Article 28(4) of Directive 95/46/EC.

In order to achieve those aims, the supervisory authority of the Member State responsible which transmitted the data and the supervisory authorities of the Member States to which the request has been made shall cooperate with each other.

Article 48

Remedies

1. In each Member State any person shall have the right to bring an action or a complaint before the competent authorities and/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 46 and 47(2).
2. The assistance of the supervisory authorities shall remain available throughout the proceedings.

Article 49

Supervision by the national supervisory authority

1. Each Member State shall ensure that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor the lawfulness of the processing of personal data referred to in Articles 13 to 19 by the Member State concerned, including their transmission to and from the EES.
2. The supervisory authority shall ensure that an audit of the data processing operations in the National System is carried out in accordance with relevant international auditing standards at least every four years from the start of operations of the EES.
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 the details of this authority to the Commission.~~
5. Each Member State shall supply any information requested by the supervisory authorities and shall, in particular, provide them with information on the activities carried out in accordance with Articles 35, 36(1) and 39. Each Member State shall grant the supervisory authorities access to their records pursuant to Article ~~30~~ 41 and allow them access at all times to all their EES related premises.

Article 50

Supervision by the European Data Protection Supervisor

1. The European Data Protection Supervisor shall ensure that the personal data processing activities of eu-LISA concerning the EES are carried out in accordance with this Regulation.

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 that audit shall be sent to the European Parliament, the Council, eu-LISA, the Commission and the national supervisory authorities. eu-LISA shall be given an opportunity to make comments before the report is adopted.
3. eu-LISA shall supply information requested by the European Data Protection Supervisor, give him access to all documents and to its records referred to in Article 41 and allow him access to all its premises at any time.

Article 51

Cooperation between national supervisory authorities and the European Data Protection Supervisor

1. The national supervisory authorities and the European Data Protection Supervisor shall actively cooperate within the framework of their responsibilities and shall ensure coordinated supervision of the EES and the National Systems.
2. They shall exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties over the interpretation or application of this Regulation, assess problems in the exercise of independent supervision or 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 eu-LISA every two years. That report shall include a chapter of each Member State prepared by the supervisory authority of that Member State.

Article 52

Protection of personal data for law enforcement access

1. Each Member State shall ensure that the provisions adopted under national law implementing Framework Decision 2008/977/JHA are also applicable to the access to EES by its national authorities in line with Article 1(2).
2. The monitoring of the lawfulness of the access to personal data by the Member States for the purposes listed in Article 1(2) of this Regulation, including their transmission to and from the EES, shall be carried out by the national supervisory authorities designated pursuant to Framework Decision 2008/977/JHA.
3. The processing of personal data by Europol shall be carried out in accordance with Decision 2009/371/JHA and shall be supervised by an independent external data protection supervisor. Articles 30, 31 and 32 of that Decision shall be applicable to the processing of personal data by Europol pursuant to this Regulation. The independent external data protection supervisor shall ensure that the rights of the third country national are not infringed.
4. Personal data accessed in the EES for the purposes laid down in Article 1(2) shall only be processed for the purposes of the prevention, detection or investigation of the specific case for which the data have been requested by a Member State or by Europol.
5. The Central System, the designated authorities, the central access points and Europol shall keep records of the searches for the purposes of enabling the national data protection authorities and the European Data Protection Supervisor to monitor the compliance of data processing with Union data protection rules. Other than for such purpose, personal data, as well as the records of the searches, shall be erased in all national and Europol files after a period of one month, unless those data and records are required for the purposes of the specific ongoing criminal investigation for which they were requested by a Member State or by Europol.

Article 53

Logging and documentation

1. Each Member State and Europol shall ensure that all data processing operations resulting from requests to access to EES data for the purposes laid down in Article 1(2) are logged or documented for the purposes of checking the admissibility of the request, monitoring the lawfulness of the data processing and data integrity and security, and self-monitoring.
2. The log or documentation shall show:
 - (a) the exact purpose of the request for access to EES data, including the terrorist offence or other serious criminal offence concerned and, for Europol, the exact purpose of the request for access;
 - (b) the reasonable grounds given for not making comparisons with other Member States under Decision 2008/615/JHA, in accordance with Article 29(2)(b) of this Regulation;
 - (c) the national file reference;
 - (d) the date and exact time of the request for access by the ~~National~~ Central Access Point to the Central System;
 - (f) where applicable, the use of the urgent procedure referred to in Article 28(2) and the decision taken with regard to the ex-post verification;
 - (g) the data used for comparison;
 - (h) in accordance with national rules or with Decision 2009/371/JHA, the identifying mark of the official who carried out the search and of the official who ordered the search or supply.

3. Logs and documentation shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Only logs containing non-personal data may be used for the monitoring and evaluation referred to in Article 64. The competent national supervisory authorities responsible for checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security shall have access to those logs at their request for the purpose of fulfilling their duties.

CHAPTER VIII

Amendments to other Union instruments

Article 54

Amendment to the Convention implementing the Schengen Agreement

In Article 20, of the Convention implementing the Schengen Agreement, paragraph 2 is replaced by the following:

- ‘2. Paragraph 1 shall not affect each Contracting Party’s right to extend beyond 90 **in any 180-day period** days an alien’s stay in its territory in exceptional circumstances or **if in accordance with** a bilateral agreement, concluded before the entry into force of this Convention, **provides a right to stay beyond 90 days in any 180-day period.**
- 3. Third country nationals who wish to be authorised to stay beyond 90 days in any 180-day period within the territory of the Contracting Party on the basis of a bilateral agreement concluded by a Member State within the meaning of paragraph 2, have to indicate this to the competent authorities of that Member State upon entry and they have to enter and exit at the external border of that Member State.**
- 4. The right to stay referred to in paragraph 2 cannot be combined with any other stay in the territories of the Contracting Parties.’**

Article 55

Amendments to Regulation (EC) 767/2008 concerning the Visa Information System

Regulation (EU) No 767/2008 is amended as follows:

(1) In Article 13 the following paragraph is added:

"3. Where a decision has been taken to annul or to revoke an issued visa, the visa authority which has taken the decision shall immediately retrieve and export automatically from the VIS into the Entry/Exit System (EES) the data listed under paragraph 1 of Article 17 of [Regulation N° XXX of the European Parliament and 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 and determining the conditions for access to the EES for law enforcement purposes] *."

* Regulation No XXX of the European Parliament and 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 and determining the conditions for access to the EES for law enforcement purposes (OJ ...) [full title + OJ reference]

(2) In Article 14 the following paragraph is added:

"3. The visa authority which has taken a decision to extend the period of validity and/or the duration of stay of an issued visa shall immediately retrieve and export from the VIS into the EES the data listed under paragraph 1 of Article 17 of [Regulation establishing an Entry/Exit System (EES)]."

(3) Article 15 is amended as follows:

(a) points (b) and (c) of paragraph 2 are replaced by the following:

"(b) surname (family name), first name(s) (given names); date of birth, nationality; sex;

(c) type and number of the travel document; three letter code of the issuing country of the travel document, and the date of expiry of the validity of the travel document;"

(b) the following paragraphs are added:

"4. For the purposes of carrying out the consultation of the EES for examining and deciding on visa applications in accordance with Article 22 of [Regulation establishing an Entry/Exit System (EES)], the competent visa authority shall be given access to search the EES directly from the VIS with one or several of the data referred to in that Article.

5. In circumstances where the search with the data referred to in paragraph 2 indicates that data on the third country national are not recorded in the VIS or where there are doubts as to the identity of the third country national, the competent visa authority shall have access to data for identification in accordance with Article 20."

(4) In Chapter III a new Article 17a is added:

"Article 17a

Interoperability with the EES

1. From the start of operations of the EES referred to in Article 60(1) of [Regulation establishing an Entry/Exit System (EES)], interoperability between the EES and the VIS is established to ensure more efficiency and rapidity of border checks. To this effect eu-LISA shall establish a Secure Communication Channel between the EES Central System and the VIS Central System to enable interoperability between the EES and the VIS. Direct consultation between the systems shall only be possible if both this Regulation and [Regulation establishing an Entry/Exit System (EES)] (~~EC~~) No 767/2008⁵ provide for it.

2. The interoperability requirement shall enable the visa authorities using the VIS to consult the EES from the VIS in order to:
 - (a) consult the EES when examining and deciding on visa applications as referred to in Article 22 of [Regulation establishing an Entry/Exit System (EES)] and Article 15(4) of this Regulation;
 - (b) to retrieve and export automatically the visa related data directly from the VIS into the EES in case a visa is annulled, revoked or extended in accordance with Article 17 of [Regulation establishing an Entry/Exit System (EES)] and Articles 13 and 14 of this Regulation;
3. The interoperability requirement shall enable the border authorities using the EES to consult the VIS from the EES in order to:
 - (a) retrieve and import automatically the visa related data directly from the VIS to the EES in order to create or update the individual file of a visa holder in the EES in accordance with Articles 13, 14 and 16 of [Regulation establishing an Entry/Exit System (EES)] and Article 18a of this Regulation;
 - (b) retrieve and import automatically the visa related data directly from the VIS in case a visa is annulled, revoked or extended in accordance with Article 17 of [Regulation establishing an Entry/Exit System (EES)] and Articles 13 and 14 of this Regulation;
 - (c) verify at the external borders the authenticity and validity of the visa and/or whether the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are fulfilled as referred to in Article 18(2) of this Regulation;
 - (d) check at the external borders whether third country nationals exempt from the visa obligation who do not have an individual file recorded in the EES were previously registered in the VIS in accordance with Article 21 of [Regulation establishing an Entry/Exit System (EES)] and Article 19a of this Regulation;

(e) where the identity of a visa holder cannot be verified against the EES, verify at the external borders the identity of a visa holder with fingerprints against the VIS in accordance with Articles 21(2) and 21(4) of [Regulation establishing an Entry/Exit System (EES)] and 18(6) of this Regulation.

4. In accordance with Article 33 of the [Regulation establishing an Entry/Exit System (EES)], the Commission shall adopt the measures necessary for the establishment and the high level design of the interoperability in accordance with Article 34 of the [Regulation establishing an Entry/Exit System (EES)]. In order to establish the interoperability with the EES, the Management Authority shall develop the required evolutions and/or adaptations of the Central Visa Information System, the National Interface in each Member State, and the communication infrastructure between the Central Visa Information System and the National Interfaces. The national infrastructures shall be adapted and/or developed by the Member States.

(5) Article 18 is replaced by the following:

"Article 18 Access to data for verification at external border crossing points

1. ~~When For the sole purpose of~~ verifying the identity of the visa holders, the authenticity, temporal and territorial validity and status of the visa ~~and/or whether~~ **with a view to checking if** the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are fulfilled, the competent authorities for carrying out checks at external border crossing points in accordance with Regulation (EU) 2016/399 shall have access to search using the following data:

- (a) surname (family name), first name(s) (given names); date of birth, nationality; sex; type and number of the travel document; three letter code of the issuing country of the travel document, and the date of expiry of the validity of the travel document;
- (b) or the number of the visa sticker.

2. Solely for the purposes referred to in paragraph 1, where a search is launched in the EES pursuant to Article 21(2) or Article 21(4) of [Regulation establishing an Entry/Exit System (EES)], the competent border authority may launch a search in the VIS directly from the EES using the data referred to in point (a) of paragraph 1.
3. If the search with the data listed in paragraph 1 indicates that the VIS stores data on one or more issued or extended visa(s)), which are under their validity period and are under their territorially validity for the border crossing, the competent border control authority shall be given access to consult the following data of the concerned application file as well as of linked application file(s) pursuant to Article 8(4), solely for the purposes referred to in paragraph 1:
 - (a) the status information and the data taken from the application form, referred to in Article 9(2) and (4);
 - (b) photographs;
 - (c) the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended referred to in Articles 10, 13 and 14.

In addition, for those visa holders for whom certain data are not required to be provided for legal reasons or factually cannot be provided, the competent border control authority shall receive a notification related to the specific data field(s) concerned which shall be marked as 'not applicable'.

4. If the search with the data listed in paragraph 1 indicates that data on the person are recorded in the VIS but that the visa(s) recorded are not valid, the competent border authority shall be given access to consult the following data of the application file(s) as well as of the linked application file(s) pursuant to Article 8(4), solely for the purposes referred to in paragraph 1:

- (a) the status information and the data taken from the application form, referred to in Article 9(2) and (4);
- (b) photographs;
- (c) the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended, referred to in Articles 10, 13 and 14.

5. In addition to the consultation carried out under paragraph 1, **and prior to consulting the data in accordance with paragraphs 3 or 4**, the competent border authority shall verify the identity of a person against the VIS if the search with the data listed in paragraph 1 indicates that data on the person are recorded in the VIS and one of the following conditions is met:

- (a) the identity of the person cannot be verified against the EES in accordance with Article 21(2) of [Regulation establishing an Entry/Exit System (EES)], when:
 - (i) the visa holder is not yet registered into the EES;
 - (ii) the technology is not available at the border crossing point for the use of live facial image and therefore the identity of the visa holder cannot be verified against the EES;
 - (iii) there are doubts as to the identity of the visa holder;
 - (iv) for any other reason, the identity of the visa holder cannot be verified against the EES;
- (b) the identity of the person can be verified against the EES but, for the first time after the creation of the individual file, that person intends to cross the external borders of a Member State in which this Regulation is applicable.

The border authorities shall verify the fingerprints of the visa holder against the fingerprints recorded in the VIS. For visa holders whose fingerprints cannot be used, the search mentioned under paragraph 1 shall be carried out only with the alphanumeric data foreseen under paragraph 1 of this Article.

6. For the purpose of a verifying the fingerprints against the VIS as laid down under paragraph 5, the competent authority may launch a search from the EES to the VIS.
 7. In circumstances where verification of the visa holder or of the visa fails or where there are doubts as to the identity of the visa holder, the authenticity of the visa and/or the travel document, the duly authorised staff of those competent authorities shall have access to data in accordance with Article 20(1) and (2)."
- (6) The following Article 18a is inserted:

"Article 18a

*Retrieval of VIS data for creating or updating ~~the individual file~~ **entry/exit record or refusal of entry record** of a visa holder into the EES*

1. ~~Solely for the purpose of~~ **When** creating or updating the ~~individual file~~ **entry/exit record or refusal of entry record** of a visa holder in the EES in accordance with Article 13(2) and Articles 14 and 16 of [Regulation establishing an Entry/Exit System (EES)], the competent border authority shall be given access to retrieve in the VIS and import automatically to the EES, the data stored in the VIS and listed in Article 14(~~+~~ 2)(d), (e) and (g) of [Regulation establishing an Entry/Exit System (EES)].

(7) The following Article 19a is inserted:

"Article 19a

Use of the VIS before creating in the EES the individual files of third country nationals exempt from the visa obligation as laid down in Article ~~10~~ 21 of [Regulation establishing an Entry/Exit System (EES)]

1. For the purpose of checking whether a person has been previously registered in the VIS, the competent authorities for carrying out checks at external border crossing points in accordance with Regulation (EU) 2016/399 shall consult the VIS:
 - (a) before creating in the EES the individual file of third country nationals exempt from the visa obligation as laid down in Article 15 of [Regulation establishing an Entry/Exit System (EES)];
 - (b) for third country nationals exempt from the visa obligation who had their individual file created in the EES by a Member State in which this Regulation is not applicable, when, for the first time after the creation of the individual file, the person intends to cross the external borders of a Member State in which this Regulation is applicable.
2. For the purpose of paragraph 1, where Article 21(4) of [Regulation establishing an Entry/Exit System (EES)] applies and the search referred to in Article 25 of that Regulation indicates that data on a person are not recorded in the EES or where Article 21(5) of [Regulation establishing an Entry/Exit System (EES)] applies, the competent border authority shall have access to search using the following data: surname (family name), first name(s) (given names); date of birth, nationality; sex; type and number of the travel document; three letter code of the issuing country of the travel document, and the date of expiry of the validity of the travel document.
3. Solely for the purposes referred to in paragraph 1, further to a search launched in the EES pursuant to Article 21(4) of [Regulation establishing an Entry/Exit System (EES)] or where Article 21(5) of [Regulation establishing an Entry/Exit System (EES)] applies, the competent border authority may launch a search in the VIS directly from the EES using the alphanumeric data foreseen under paragraph 2.

~~5.4~~ In addition, if the search with the data listed in paragraph 2 indicates that data on the person are recorded on the VIS, the competent border authority shall verify the fingerprints of the person against the fingerprints recorded in the VIS. The competent border control authority may launch such verification from the EES. For persons whose fingerprints cannot be used, the search shall be carried out only with the alphanumeric data foreseen under paragraph 2 of this Article.

~~4.5.~~ If the search with the data listed in paragraph 2 and the verification of paragraph 4 indicates that data on the person are recorded on the VIS, the competent border authority shall be given access to consult the following data of the concerned application file(s) as well as of linked application file(s) pursuant to Article 8(4), solely for the purposes referred to in paragraph 1:

- (a) the status information and the data taken from the application form, referred to in Article 9(2) and (4);
- (b) photographs;
- (c) the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended referred to in Articles 10, 13 and 14.

~~5. In addition, if the search with the data listed in paragraph 2 indicates that data on the person are recorded on the VIS, the competent border authority shall verify the fingerprints of the person against the fingerprints recorded in the VIS. The competent border control authority may launch such verification from the EES. For persons whose fingerprints cannot be used, the search shall be carried out only with the alphanumeric data foreseen under paragraph 2 of this Article.~~

6. In circumstances where the verification provided under paragraphs 2 and/or 5 fails or where there are doubts as to the identity of the person or the authenticity of the travel document, the duly authorised staff of those competent authorities shall have access to data in accordance with Article 20(1) and (2). The competent border authority may launch from the EES the identification referred to in Article 20 of this Regulation."

(8) In Article 20, paragraph 1 is replaced by the following:

"1. **The authorities competent for carrying out checks at external border crossing points in accordance with Regulation (EU) 2016/399 or within the territory of the Member States as to whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, shall have access to search with the fingerprints of that person.** Solely for the sole purposes of the identification of any person who may have been registered previously in the VIS or who may not, or may no longer, fulfil the conditions for the 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 Regulation (EU) 2016/399 or within the territory of the Member States as to whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, shall have access to search with the fingerprints of that person.~~"

(9) In Article 26 the following paragraph is inserted:

"3a. [*Six months after the entry into force of Regulation establishing an Entry/Exit System (EES)*], the Management Authority shall be responsible for the tasks referred to in paragraph 3 of this Article."

(10) In Article 34, paragraph 1 is replaced by the following:

"1. Each Member State and the Management Authority shall keep records of all data processing operations within the VIS. These records shall show the purpose of access referred to in Article 6(1) and in Articles 15 to 22, the date and time, the type of data transmitted as referred to in Articles 9 to 14, the type of data used for interrogation as referred to in Articles 15(2), 17, 18(1), 18 (5), 19(1), 19a(2), 19a(5), 20(1), 21(1) and 22(1) 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 enter or retrieve the data.

- 1a. For the operations listed in Article 17a a record of each data processing operation carried out within the VIS and the EES shall be kept in accordance with this Article and Article 41 of the [Regulation establishing an Entry/Exit System (EES)]."

Article 56

Amendments to Regulation (EU) No 1077/2011

Regulation (EU) No 1077/2011 is amended as follows:

- (1) In Article 1, paragraph 2 is replaced by the following:
- “2. The Agency shall be responsible for the operational management of the second generation Schengen Information System (SIS II), the Visa Information System, Eurodac and the Entry/Exit System (EES).
- (2) A new Article 5a is added after Article 5:

"Article 5a

Tasks relating to the EES

In relation to the EES, the Agency shall perform:

- (a) the tasks conferred on it by Regulation (EU) No XXX/20XX of the European Parliament and of the Council of X.X.X establishing an Entry/Exit System to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes;
- (b) tasks relating to training on the technical use of the EES. "
- (3) Article 7 is amended as follows:

(a) paragraphs 5 and 6 are replaced by the following:

“5. Tasks related to the operational management of the communication infrastructure may be entrusted to external private-sector entities or bodies in accordance with Regulation (EC, Euratom)1605/2002. In such a case, the network provider shall be bound by the security measures referred to in paragraph 4 and shall have no access to SIS II, VIS, Eurodac or EES operational data, or to the SIS II-related SIRENE exchange, by any means.

6. Without prejudice to the existing contracts on the network of SIS II, VIS, Eurodac and EES, the management of encryption keys shall remain within the competence of the Agency and shall not be outsourced to any external private-sector entity.”

(4) In Article 8, paragraph 1 is replaced by the following:

“1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, Eurodac, EES and other large-scale information systems”.

(5) In Article 12, paragraph 1 is amended as follows:

(a) a new point (sa) is added after point (s):

“(sa) adopt the reports on the development of the EES pursuant to Article 64(2) of Regulation (EU) XX/XX of XXX”.

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

“(t) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively, of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA and of EES pursuant to Article 64(4) of Regulation (EU) XX/XX of XXX.”

(b) point (v) is replaced by the following:

"(v) make comments on the European Data Protection Supervisor's reports on the audits pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008, Article 31(2) of Regulation (EU) No 603/2013 and Article 50(2) of Regulation (EU) XX/XX of XXX and ensure appropriate follow-up of those audits".

(b) a new point (xa) is inserted after point x:

"(xa) publish statistics related to EES pursuant to Article 57 of Regulation (EU) No XXXX/XX.

(c) a new point (za) is added to point z:

"(za) ensure annual publication of the list of competent authorities pursuant to Article 8(2) of Regulation (EU) No XXXX/XX.

(6) In Article 15, paragraph 4 is replaced by the following:

"4. Europol and Eurojust may attend the meetings of the Management Board as observers when a question concerning SIS II, in relation to the application of Decision 2007/533/JHA, is on the agenda. Europol may also attend the meetings of the Management Board as observer when a question concerning VIS, in relation to the application of Decision 2008/633/JHA, or a question concerning Eurodac, in relation to the application of Regulation (EU) No 603/2013, or a question concerning EES in relation to the application of Regulation (EU) XX/XX of XXX is on the agenda".

(7) In Article 17 paragraph 5

,point (g) is replaced by the following:

"(g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008, Article 4(4) of Regulation (EU) No 603/2013 and Article 34(4) of [Regulation (EU) XX/XX of XXX.]"

(8) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. The following Advisory Groups shall provide the Management Board with expertise relating to large-scale IT systems and, in particular, in the context of the preparation of the annual work programme and the annual activity report:

(a) SIS II Advisory Group;

(b) VIS Advisory Group;

(c) Eurodac Advisory Group;

(d) EES Advisory Group.”

(e) paragraph (3) is replaced by the following:

“Europol and Eurojust may each appoint a representative to the SIS II Advisory Group. Europol may also appoint a representative to the VIS, Eurodac and EES Advisory Groups”.

CHAPTER IX

Final provisions

Article 57

Use of data for reporting and statistics

1. The duly authorised staff of the competent authorities of Member States, the Commission, eu-LISA and Frontex shall have access to consult the following data, solely for the purposes of reporting and statistics without allowing for individual identification:
 - (a) status information;
 - (b) nationality, gender and date of birth of the third country national;
 - (c) date and border crossing point of the entry to a Member State and date and border crossing point of the exit from a Member State;
 - (d) the type of the travel document and three letter code of the issuing country;
 - (e) number of overstayers referred to in Article 11, nationalities and border crossing point of entry;
 - (f) the data entered in respect of any stay revoked or whose validity is extended;
 - (g) the three letter code of the Member State that issued the ~~short-stay~~ visa, {or the touring visa} if applicable;
 - (h) the number of persons exempt from the requirement to give fingerprints pursuant to Article 15(2) and (3);
 - (i) the number of third country nationals refused entry, the nationalities of third country nationals refused entry and the type of border (land, air or sea) ~~and~~ the border crossing point at which entry was refused and the grounds on which entry has been refused.

2. For the purpose of paragraph 1, eu-LISA shall establish, implement and host a central repository in its technical sites containing the data referred to in paragraph 1 which would not allow for the identification of individuals and would allow the authorities listed in paragraph 1 to obtain customisable reports and statistics on the entries and exits, refusals of entry and overstay of third country nationals to improve the assessment of the risk of overstay, to enhance the efficiency of border checks, to help consulates processing the visa applications and to support evidence-based Union migration policymaking. The repository shall also contain daily statistics on the data referred to in paragraph 4. Access to the central repository shall be granted by means of secured access through S-TESTA with control of access and specific user profiles solely for the purpose of reporting and statistics.

Detailed rules on the operation of the central repository and the data protection and security rules applicable to the repository shall be adopted in accordance with the examination procedure referred to in Article 61(2).

3. The procedures put in place by eu-LISA to monitor the development and the functioning of the EES referred to in Article 64(1) shall include the possibility to produce regular statistics for ensuring that monitoring.
4. Every quarter, eu-LISA shall publish statistics on the EES showing in particular the number, nationality and border crossing point of entry of overstayers, of third country nationals who were refused entry, including the grounds for refusal, and of third country nationals whose stays were revoked or extended as well as the number of third country nationals exempt from the requirement to give fingerprints.
5. At the end of each year, statistical data shall be compiled in the form of quarterly statistics for that year. The statistics shall contain a breakdown of data for each Member State.
6. At the request of the Commission , eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation as well as the statistics pursuant to paragraph 3, **and make it upon request available to a Member State.**

Article 58

Costs

1. The costs incurred in connection with the establishment and operation of the Central System, the Communication Infrastructure and the National Uniform Interface shall be borne by the general budget of the Union.
2. Costs incurred by the integration of the existing national border infrastructure and the connection to the National Uniform Interface as well as by hosting the National Uniform Interface shall be borne by the general budget of the Union.

The following costs shall be excluded:

- (a) Member States' project management office (meetings, missions, offices);
 - (b) hosting of national systems (space, implementation, electricity, cooling);
 - (c) operation of national systems (operators and support contracts);
 - (d) customisation of existing border control and policing systems for national entry-exit systems;
 - (e) project management of national entry-exit systems;
 - (f) design, development, implementation, operation and maintenance of national communication networks;
 - (g) Automatic Border Control systems, self-service systems and e-gates.
3. The costs incurred by the central access points as referred to in article 26 and 27 **shall be borne by each Member State and Europol, respectively.** ~~and~~ **The costs for their connection** of these central access points to the National Uniform Interface **and to the EES** shall be borne by each Member State and Europol, respectively.

4. Each Member State and Europol shall set up and maintain at their expense the technical infrastructure necessary to implement Article 5(2) 1(2) and shall be responsible for bearing the costs resulting from access to the EES for that purpose.

Article 59

Notifications

1. Member States shall notify the Commission of the authority which is to be considered as controller referred to in Article 49.
2. Member States shall notify eu-LISA of the competent authorities referred to in Article 8 which have access to enter, amend, delete, consult or search data.
3. Member States shall notify the Commission and eu-LISA of their designated authorities and of their central access points referred to in Article 26 and shall notify without delay any amendments thereto.
4. Europol shall notify the Commission and eu-LISA of its designated authority and its central access point referred to in Article 27 and shall notify without delay any amendments thereto.
5. eu-LISA shall notify the Commission of the successful completion of the test referred to in Article 60(1)(b).
6. Commission shall make the information notified pursuant to paragraph 1 available to the Member States and the public by a constantly updated public website.
- 6a. The Commission shall publish the information referred to in paragraphs 3 and 4 in the *Official Journal of the European Union* on an annual basis and via an electronic publication that shall be available online and updated without delay.

Article 60

Start of operations

1. ~~In accordance with Article 33, the Commission shall adopt a decision on the~~ **The Commission 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 33 have been adopted;
 - (b) eu-LISA has declared the successful completion of a comprehensive test of the EES, which shall be conducted by eu-LISA in cooperation with the Member States;
 - (c) the Member States have validated the technical and legal arrangements to collect and transmit the data referred to in Articles 14 to 18 to the EES and have notified them to the Commission;
 - (d) the Member States have completed the notifications to the Commission referred to in Article 59 (1) and (3).
2. The Commission shall inform the European Parliament and the Council of the results of the test carried out pursuant to point (b) of paragraph 1.
3. The Commission decision referred to in paragraph 1 shall be published in the *Official Journal*.
4. The Member States and Europol shall start using the EES from the date determined by the Commission in accordance with paragraph 1.

Article 61
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 apply.

Article 62

Advisory group

An Advisory Group shall be established by eu-LISA 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. **During the design and development phase, ~~as referred to in~~ article 34 (3) applies.**

Article 63

Training

eu-LISA shall perform tasks related to providing training on the technical use of the EES in accordance with the relevant provisions in Regulation 1077/2011.

Article 63a

Practical Handbook

The Commission shall, in close cooperation with the Member States, eu-LISA and other relevant agencies, make available a practical handbook for the implementation and management of the EES. The Handbook shall provide technical and operational guidelines, recommendations and best practices. The Commission shall adopt the Handbook in the form of a recommendation.

Article 64

Monitoring and evaluation

1. eu-LISA shall ensure that procedures are in place to monitor the development of the EES in light of objectives relating to planning and costs and to monitor the functioning of the EES in light of objectives relating to the technical output, cost-effectiveness, security and quality of service.
2. By [*Six months after the entry into force of this Regulation* – OPOCE, please replace with the actual date] and every six months thereafter during the development phase of the EES, eu-LISA shall submit a report to the European Parliament and the Council on the state of play of the development of the Central System, the Uniform Interfaces and the Communication Infrastructure between the Central System and the Uniform Interfaces. Once the development is finalised, a report shall be submitted to the European Parliament and the Council explaining in detail how the objectives, in particular relating to planning and costs, were achieved as well as justifying any divergences.
3. For the purposes of technical maintenance, eu-LISA shall have access to the necessary information relating to the data processing operations performed in the EES.
4. Two years after the start of operations of the EES and every two years thereafter, eu-LISA shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of EES, including the security thereof.
5. Three years after the start of operations of the EES 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 and the impact on fundamental rights, and assessing the continuing validity of the underlying rationale, the application of the Regulation, the security of the EES and any implications on future operations, and shall make ~~any necessary~~ recommendations **or proposals, if necessary.** The Commission shall transmit the evaluation report to the European Parliament and the Council.

6. The Member States and Europol shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraphs 4 and 5 according to the quantitative indicators and a template **in electronic format** predefined by the Commission and/or eu-LISA. This information shall not jeopardise working methods or include information that reveals sources, staff members or investigations of the designated authorities.
7. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.
8. While respecting the provisions of national law on the publication of sensitive information, each Member State and Europol shall prepare annual reports on the effectiveness of access to EES data for law enforcement purposes containing ~~information and~~ statistics **and if possible, information on:**
- (a) - the exact purpose of the consultation (whether for identification or for entry/exit records) including the type of terrorist or serious criminal offence;
 - (b) - reasonable grounds given for the substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence is covered by this Regulation;
 - (c) - the reasonable grounds given not to conduct consultation of other Member States' automated fingerprint identification systems under Decision 2008/615/JHA in accordance with Article 29(2)(b);
 - (d) - the number of requests for access to the EES for law enforcement purposes;
 - (e) - the number and type of cases which have ended in successful identifications;
 - (f) - the need and use made of the exceptional case of urgency including those cases where that urgency was not accepted by the ex post verification carried out by the central access point.

Member States' and Europol's annual reports shall be transmitted to the Commission by 30 June of the subsequent year.

Article 65
Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. 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

For the Council

The President The President
