

Council of the European Union

> Brussels, 22 May 2017 (OR. en)

9465/17

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LIMITE

FRONT 235 VISA 190 CODEC 868 COMIX 371

NOTE

| From: Presidency | |
|------------------|---|
| То: | JHA Counsellors/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 the four-column table relating to the draft Regulation in the subject.

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ANNEX

2

4-column table on the Regulation 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, which comprises the Commission proposal, the mandate for negotiations as voted in the LIBE Committee of the EP on 27/02 and the Coreper mandate of 2 March 2017.

The markings in this table are to be read as follows:

• Second column with EP position: new text is marked in bold italics; deleted parts of the text are marked in strikethrough, text identical with the Commission proposal is marked - with a diagonal line in the box.

- Third column with Coreper mandate: new text is marked in underlined; deleted parts of the text are marked in [...]
- Fourth column: the diagonal line in the box indicates that the text is identical for all three institutions.

NOTICE TO DELEGATIONS: text in the 2nd column marked in vellow – reactions/ position of delegations to the EP proposals.

| COMMISSION PROPOSAL | EP POSITION | COUNCIL POSITION | COMPROMISE |
|---------------------------------------|--|--|--|
| THE EUROPEAN PARLIAMENT | THE EUROPEAN PARLIAMENT | THE EUROPEAN PARLIAMENT | |
| AND THE COUNCIL OF THE | AND THE COUNCIL OF THE | AND THE COUNCIL OF THE | |
| EUROPEAN UNION, | EUROPEAN UNION | EUROPEAN UNION | |
| Having regard to the Treaty of the | Having regard to the Treaty of the | Having regard to the Treaty of the | EP to confirm the deletion of Art. 88, |
| Functioning of the European Union, | Functioning of the European Union, | Functioning of the European Union, | subject to an opinion of the JURI |
| and in particular, Article 77(2)(b) | and in particular, Article 77(2)(b) | and in particular, Article 77(2)(b) | Committee |
| and (d), Article 87(2)(a) and Article | and (d), Article 87(2)(a) and Article | and (d) <u>and</u> Article 87(2)(a) [] | |
| 88(2)(a) thereof, | 88(2)(a) thereof, | thereof, | |
| Having regard to the proposal from | Having regard to the proposal from | Having regard to the proposal from | |
| the European Commission, | the European Commission, | the European Commission, | |
| After transmission of the draft | After transmission of the draft | After transmission of the draft | |
| legislative act to the national | legislative act to the national | legislative act to the national | |
| parliaments, | parliaments, | parliaments, | |
| Having regard to the opinion of the | Having regard to the opinion of the | Having regard to the opinion of the | |
| European Economic and Social | European Economic and Social | European Economic and Social | |
| Committee ¹ , | Committee ² , | Committee ¹ , | |
| Having regard to the opinion of the | Having regard to the opinion of the | Having regard to the opinion of the | |
| Committee of the Regions^2 , | Committee of the Regions ^{2} , | Committee of the Regions^2 , | |
| Acting in accordance with the | Acting in accordance with the | Acting in accordance with the | |
| ordinary legislative procedure, | ordinary legislative procedure, | ordinary legislative procedure, | |
| Whereas: | /Whereas: | Whereas: | |

¹ OJ C , , p. . 2 OJ C , , p. .

| $(1) \qquad T = O \qquad : : : : : : : : : :$ | | | |
|--|--|--|--|
| (1) The Communication of the (12 Fr) | (1) The Communication of the 12 F l 2000 | (1) The Communication of the C_{12} | |
| Commission of 13 February 2008 | Commission of 13 February 2008 | Commission of 13 February 2008 | |
| entitled 'preparing the next steps in | entitled 'preparing the next steps in | entitled 'preparing the next steps in | |
| border management in the European | border management in the European | border management in the European | |
| Union ³ outlined the need, as part of | Union ³ outlined the need, as part of | Union ³ outlined the need, as part of | |
| the European integrated border | the European integrated border | the European integrated border | |
| management strategy, to establish an | management strategy, to establish an | management strategy, to establish an | |
| Entry/Exit System (EES) which | Entry/Exit System (EES) which | Entry/Exit System (EES) which | |
| registers electronically the time and | registers electronically the time and | registers electronically the time and | |
| place of entry and exit of third | place of entry and exit of third | place of entry and exit of third | |
| country nationals admitted for a short | -/ | country nationals admitted for a short | |
| stay to the Schengen area and which | stay to the Schengen area and which | stay to the territory of the Member | |
| calculates the duration of their | calculates the duration of their | States [] and which calculates the | |
| authorised stay. | authorised stay. | duration of their authorised stay. | |
| (2) The European Council of 19 | (2) The European Council of 19 | (2) The European Council of 19 | |
| and 20 June 2008 underlined the | and 20 June 2008 underlined the | and 20 June 2008 underlined the | |
| importance of continuing to work on | importance of continuing to work on | importance of continuing to work on | |
| the development of the EU's | the development of the EU's | the development of the EU's | |
| integrated border management | integrated border management | integrated border management | |
| strategy, including better use of | strategy, including better use of | strategy, including better use of | |
| modern technologies to improve the | modern technologies to improve the | modern technologies to improve the | |
| management of external borders. | management of external borders. | management of external borders. | |
| (3) The Communication of the | (3) The Communication of the | (3) The Communication of the | |
| Commission of 10 June 2009, | Commission of 10 June 2009, | Commission of 10 June 2009, | |
| entitled 'An area of freedom, security | entitled 'An area of freedom, security | entitled 'An area of freedom, security | |
| and justice serving the citizens', | and justice serving the citizens', | and justice serving the citizens', | |
| advocates establishing an electronic | advocates establishing an electronic | advocates establishing an electronic | |
| system for recording entry to and exit | | system for recording entry to and exit | |
| from Member States' territory via the | from Member States' territory via the | from Member States' territory via the | |
| crossing of external borders to ensure | crossing of external borders to ensure | crossing of external borders to ensure | |
| more effective management of access | more effective management of access | more effective management of access | |

³ COM (2008) 69 final.



| to this territory. | to this territory. | to this territory. | |
|--|--|--|---|
| (4) The European Council of 23 | (4) The European Council of 23 | (4) The European Council of 23 | |
| and 24 of June 2011 called for work | and 24 of June 2011 called for work | and 24 of June 2011 called for work | |
| on "smart borders" to be pushed | on "smart borders" to be pushed | on "smart borders" to be pushed | |
| forward rapidly. The Commission | forward rapidly. The Commission | forward rapidly. The Commission | |
| published a Communication "Smart | published a Communication "Smart | published a Communication "Smart | |
| borders – options and the way ahead" | borders – options and the way ahead" | borders – options and the way ahead" | |
| on 25 October 2011. | on 25 October 2011. | on 25 October 2011. | |
| (5) The European Council in its | (5) The European Council in its / | (5) The European Council in its | |
| Strategic guidelines adopted in June | Strategic guidelines adopted in June | Strategic guidelines adopted in June | |
| 2014 stressed that "the Schengen | 2014 stressed that "the Schengen/ | 2014 stressed that the Schengen area, | |
| area, allowing people to travel | area, allowing people to travel/ | allowing people to travel without | |
| without internal border controls, and | without internal border controls, and | internal border controls, and the | |
| the increasing numbers of people | the increasing numbers of people | increasing numbers of people | |
| travelling to the EU require efficient | travelling to the EU require efficient | travelling to the EU require efficient | |
| management of the EU's common | management of the EU's common | management of the EU's common | |
| external borders to ensure strong | external borders to ensure strong | external borders to ensure strong | |
| protection. The Union must mobilise | protection. The Union must mobilise | protection. The Union must mobilise | |
| all the tools at its disposal to support | all the tools at its/disposal to support | all the tools at its disposal to support | |
| the Member States in their task. To | the Member States in their task. To | the Member States in their task. To | |
| this end: integrated Border | this end: integrated Border | this end, integrated Border | |
| Management of external borders | Management of external borders | Management of external borders | |
| should be modernised in a cost | should be/modernised in a cost | should be modernised in a cost | |
| efficient way to ensure smart border | efficient way to ensure smart border | efficient way to ensure smart border | |
| management inter alia with an entry- | management inter alia with an entry- | management inter alia with an entry- | |
| exit system and supported by the new | exit/system and supported by the new | exit system and supported by the new | |
| agency for large-scale IT systems | agency for large-scale IT systems | agency for large-scale IT systems | |
| (eu-LISA)". | /(eu-LISA)". | (eu-LISA). | / |
| (6) The Communication of the | (6) The Communication of the | (6) The Communication of the | |
| Commission of 13 May 2015 entitled | Commission of 13 May 2015 entitled | Commission of 13 May 2015 entitled | |
| "A European agenda on migration" | "A European agenda on migration" | "A European agenda on migration" | |
| noted that "a new phase would come | noted that "a new phase would come | noted that "a new phase would come | |
| with the "Smart Borders" initiative | with the "Smart Borders" initiative | with the "Smart Borders" initiative | |



| to increase the efficiency of border crossings, facilitating crossings for the large majority of 'bona fide' third country travellers, whilst at the same time strengthening the fight against irregular migration by creating a record of all cross-border movements by third country nationals, fully respecting proportionality". | to increase the efficiency of border crossings, facilitating crossings for the large majority of 'bona fide' third country travellers, whilst at the same time strengthening the fight against irregular migration by creating a record of all cross-border movements by third country nationals, fully respecting proportionality". | to increase the efficiency of border crossings, facilitating crossings for the large majority of 'bona fide' third country travellers, whilst at the same time strengthening the fight against irregular migration by creating a record of all cross-border movements by third country nationals, fully respecting proportionality". | |
|---|---|---|--|
| | (6a) With a view to further | | |
| | <i>improving the management of the external borders and, in particular,</i> | | |
| | in order to verify the respect of the | | |
| | provisions on an authorised period | | |
| | of stay within the Schengen area, a | | |
| | system which registers electronically | | |
| | the time and place of entry and exit | | |
| | of third-country nationals admitted | | |
| | for a short stay to the Schengen | | |
| | area and which calculates the | | |
| | duration of their authorised stay | | |
| | should be established. | | |
| (7) It is necessary to specify the | (7) It is necessary to specify the | (7) It is necessary to specify the | |
| objectives of the Entry/Exit System | objectives of the Entry/Exit System | objectives of the Entry/Exit System | |
| (EES) and its technical architecture, | (EES), and its technical architecture, | (EES) and its technical architecture, | |
| to lay down rules concerning its | to lay down rules concerning its | to lay down rules concerning its | |
| operation and use and to define | operation and use and to define | operation and use and to define | |
| responsibilities for the system, the | responsibilities for the system, the | responsibilities for the system, the | |
| categories of data to be entered into | categories of data to be entered into | categories of data to be entered into | |
| the system, the purposes for which | the system, the purposes for which | the system, the purposes for which | |
| the data are to be entered, the criteria | the data are to be entered, the criteria | the data are to be entered, the criteria | |
| for their entry, the authorities | for their entry, the authorities | for their entry, the authorities | |



| authorised to access the data and | authorised to access the data and , | authorised to access the data and | |
|--|--|--|--|
| further rules on data processing and | further rules on data processing and | further rules on data processing and | |
| the protection of personal data. | the protection of personal data as | the protection of personal data. | |
| | well as the technical architecture of | | |
| | the system, rules concerning its | | |
| | operation and use and | | |
| | interoperability with other | | |
| | information systems. It is also | | |
| | necessary to define responsibilities | | |
| | for the system. | | |
| (8) The EES should apply to third | (8) The EES should apply to third $/$ | (8) The EES should apply to third | |
| country nationals admitted for a short | country nationals admitted for a short | country nationals admitted for a short | |
| stay to the Schengen area. It should | stay to the Schengen area. It should | stay to the territory of the Member | |
| also apply to third country nationals | also apply to third country nationals | States []. It should also apply to | |
| whose entry for a short stay has been | whose entry for a short stay has been | third country nationals whose entry | |
| refused. | refused. | for a short stay has been refused. | |
| | | The EES should be deployed at the | |
| | | external borders of the Member | |
| | | States which apply the Schengen | |
| | | <i>acquis</i> in full as well as those that do | |
| | | not yet apply the Schengen <i>acquis</i> in | |
| | | full but for which the verification in | |
| | | accordance with the applicable | |
| | | Schengen evaluation procedure has | |
| | | already been successfully completed | |
| | | and to which passive access to the | |
| | | Visa Information System (VIS) for | |
| | | the purpose of operating the EES has | |
| | | been granted. Moreover, the EES | |
| | | should be deployed at all internal | |
| | | borders of Member States operating | |
| | | the EES where the controls have not | |
| | | yet been lifted. However, specific | |
| | V | yet been meet. nowever, specific | |



| provisions with regard of the EES at |
|---|
| such borders should apply, justified |
| by reasons of economy of the process |
| of the checks on such borders, while |
| not affecting the level of security and |
| the correct functioning of the EES |
| and without prejudice to the other |
| border control obligations under |
| Regulation (EU) 2016/399. |
| 8a. The length of the authorised |
| stay of third country nationals in the |
| territories of the Member States for |
| the purpose of this Regulation results |
| from the Schengen <i>acquis</i> applicable. |
| 8b. The calculator included in the |
| EES should take into account stays in |
| the territory of the Member States |
| which operate the EES for the |
| calculation of the overall limit of 90 |
| days in a 180-day period. Any |
| extensions of authorised stay should |
| be taken into account for the purpose |
| of calculation of the overall limit of |
| 90 days in any 180-day period upon |
| the subsequent entry of the third |
| country national to the territory of |
| the Member States. |
| By derogation to the general rule set |
| out in Article 6(1) of the Schengen |
| Borders Code, pending their |
| connection to the EES, stays in the |
| territories of the Member States |
| which do not operate the EES should |
| when do not operate the LLb should |



| S |
|--|
| |
| authorised by a visa. |
| when calculating the duration of stay |
| acquis in full but operate the EES, |
| which do not yet apply the Schengen |
| account stays in Member States |
| The calculator should not take into |
| operates the EES. |
| apply the Schengen <i>acquis</i> in full but |
| Member State which does not yet |
| a national short stay visa issued by a |
| The calculator should not calculate the duration of stay as authorised by |
| visa. The coloulator should not coloulate |
| verifying the period of validity of the |
| period and for the purposes of |
| limit of 90 days in any 180-day |
| verifying compliance with the overall |
| calculator for the purposes of |
| only be taken into account by the |
| in full but operate the EES should |
| do not yet apply the Schengen <i>acquis</i> |
| 8c. Stays in Member States which |
| documents of third country nationals. |
| be counted separately, on the basis of stamps affixed in the travel |
| |



| | in accordance with this Regulation and the relevant provisions of Regulation (EU) No 1077/2011 should be amended accordingly. \overline{Ia} Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large- scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p 1). | | |
|--|---|---|--|
| (9) The EES should have the | (9) The <i>objective of the</i> EES | (9) The EES should have the | |
| objective of improving the management of external borders, | should have the objective of improving <i>be to improve</i> the | objective of improving the management of external borders, | |
| | management of external borders, | | |
| preventing irregular immigration and | e , | preventing irregular immigration and facilitating the management of | |
| facilitating the management of migration flows. The EES should, in | preventing to prevent irregular immigration and facilitating to | migration flows. The EES should, in | |



| particular and when relevant, | <i>facilitate</i> the management of | particular and when relevant, | |
|---|---|---|--|
| contribute to the identification of any | migration flows. The EES should, in | contribute to the identification of any | |
| person who does not or no longer | particular and when relevant, | person who does not or no longer | |
| fulfils the conditions of duration of | contribute to the identification of any | fulfils the conditions of duration of | |
| stay within the territory of the | 5 | authorised stay within the territory of | |
| Member States. | person who does not or no longer fulfils the conditions of duration of | the Member States. | |
| Wember States. | | the Member States. | |
| | the authorised stay within the | | |
| | territory of the Member States. | | |
| | Additionally, the EES should | | |
| | contribute to the prevention, | | |
| | detection and investigation of | | |
| | terrorist offences and of other | | |
| | serious criminal offices. | | |
| | (9a) The EES should consist of a | | |
| | Central System, which operates a | | |
| | computerised central database of | | |
| | biometric and alphanumeric data, a | | |
| | National Uniform Interface in each | | |
| | Member State, a Secure | | |
| | Communication Channel between | | |
| | the EES Central System and the | | |
| | Central Visa Information System | | |
| | (VIS Central System) of the Visa | | |
| | Information System (VIS), | | |
| | established by Council Decision | | |
| | $2004/512/EC^{1a}$, and the secure and | | |
| | encrypted Communication | | |
| | Infrastructure between the Central | | |
| | System and the National Uniform | | |
| | Interfaces. Each Member State | | |
| | should connect its national border | | |
| | infrastructures to the National | | |
| | Uniform Interface in a secure | | |
| <u>L</u> | | l | |



| | manner. In order to enable third | |
|----------|--|--|
| | country nationals and carriers to | |
| | verify at any moment the remaining | |
| | authorised period of stay a web | |
| | service should be developed. | |
| | Relevant stakeholders should be | |
| | consulted in the development phase | |
| | of the web service. | |
| | 0 | |
| | ^{<i>Ia</i>} Council Decision | |
| | 2004/512/EC of 8 June 2004 | |
| | establishing the Visa Information | |
| | System (VIS) (OJ L 213, 15.6.2004, | |
| | <i>p.5</i>). | |
| <u> </u> | (9b) Interoperability should be | |
| | <i>(sb) Interoperability should be</i> <i>established between the EES and</i> | |
| | | |
| | the VIS by way of a direct communication channel between | |
| | | |
| | the VIS Central System and the | |
| | EES Central System to enable the | |
| | border authorities using the EES to | |
| | consult the VIS in order to retrieve | |
| | visa-related data to create or update | |
| | the individual file, to enable the | |
| | border authorities to verify the | |
| | | |
| | of the visa holder by means of | |
| | fingerprints directly against the VIS | |
| | at the external borders and to | |
| | enable the border authorities to | |
| | verify the identity of visa exempt | |
| | | |
| | • | |
| | validity of the visa and the identity of the visa holder by means of fingerprints directly against the VIS at the external borders and to enable the border authorities to | |



| Interoperability should also enable | |
|---|--|
| the border authorities using the VIS | |
| to directly consult the EES from the | |
| VIS for the purposes of examining | |
| visa applications and decisions | |
| relating to those applications and | |
| enabling visa authorities to update | |
| the visa-related data in the EES in | |
| the event that a visa is annulled, | |
| revoked or extended. Regulation | |
| (EC) No 767/2008 of the European | |
| Parliament and of the Council ^{1a} | |
| should be amended accordingly. | |
| | |
| \overline{Ia} Regulation (EC) No 767/2008 | |
| of the European Parliament and of | |
| the Council of 9 July 2008 | |
| concerning the Visa Information | |
| System (VIS) and the exchange of | |
| data between Member States on | |
| short-stay visas (VIS Regulation) | |
| (OJ L 218, 13.8.2008, p.60). | |
| (9c) In order to structurally | |
| improve the Union's data | |
| management architecture for border | |
| control and security, the | |
| Commission's Communication of 6 | |
| April 2016 entitled 'Stronger and | |
| Smarter Information Systems for | |
| Borders and Security' presented a | |
| process towards the interoperability | |
| of information systems. The High- | |
| level Expert Group on Information | |
| | |



| ~ | |
|---|--|
| Systems and Interoperability, set up | |
| as announced in this | |
| Communication, is expected to | |
| present its results in the spring of | |
| 2017. Those results might be | |
| relevant for the further development | |
| of the EES and, where this is the | |
| case, the Commission is invited to | |
| propose any appropriate measures | |
| concerning the EES. | |
| (9d) This Regulation should define | |
| the authorities of the Member States | |
| which may be authorised to have | |
| access to the EES to enter, amend, | |
| delete or consult data for the | |
| specific purposes of the EES and to | |
| the extent necessary for the | |
| performance of their tasks. | |
| (9e) Any processing of EES data | |
| should be proportionate to the | |
| objectives pursued and necessary | |
| for the performance of the tasks of | |
| the competent authorities. When | |
| using the EES, the competent | |
| authorities should ensure that the | |
| human dignity and integrity of the | |
| person whose data are requested, | |
| are respected and should not | |
| discriminate against persons on | |
| grounds of sex, race, colour, ethnic | |
| or social origin, genetic features, | |
| language, religion or belief, political | |
| or any other opinion, membership | |
| <i>y i y r</i> | |



| | of a national minority, property, birth, disability, age or sexual orientation. | | |
|---|--|---|--|
| (10) To meet those objectives, the EES should process alphanumeric data and biometric data (fingerprints and facial image). The use of biometrics, despite its impact on the privacy of travellers, is justified for two reasons. Firstly, biometrics are a reliable method to identify third country nationals within the territory of the Member States not in possession of travel documents or any other means of identification, a common modus operandi of irregular migrants. Secondly, biometrics provide for the more reliable matching of entry and exit data of legal travellers. Where facial images are used in combination with fingerprint data, it allows for the reduction of fingerprints registered while enabling the same result in terms of accuracy of the identification. | orientation. (10) The To meet those objectives, the EES should collect and process alphanumeric data and biometric data (fingerprints and facial image) primarily for the purposes of improving the management of external borders, preventing irregular immigration and facilitating the management of migration flows. Personal data collected in the EES may be further processed to contribute to the prevention, detection and investigation of terrorist offences and of other serious criminal offices only under the conditions laid down in this Regulation. The use of biometrics, despite its impact on the privacy of travellers, is justified for two reasons. Firstly, biometrics are a reliable method to identify third country nationals within the territory of the Member States not in possession of travel documents or any other means of identification, a common modus operandi of irregular | (10) To meet those objectives, the EES should process alphanumeric data and biometric data (fingerprints and facial image). The use of biometrics, despite its impact on the privacy of travellers, is justified for two reasons. Firstly, biometrics are a reliable method to identify third country nationals within the territory of the Member States not in possession of travel documents or any other means of identification, a common modus operandi of irregular migrants. Secondly, biometrics provide for the more reliable matching of entry and exit data of legal travellers. Where facial images are used in combination with fingerprint data, it allows for the reduction of fingerprints registered while enabling the same result in terms of accuracy of the identification. | |
| | migrants. Secondly, biometrics provide for the more reliable matching of entry and exit data of legal travellers. Where facial images | | |



| | are used in combination with | | |
|---|---|---|--|
| | fingerprint data, it allows for the | | |
| | reduction of fingerprints registered | | |
| | while enabling the same result in | | |
| | terms of accuracy of the | | |
| | identification. | | |
| (11) Four fingerprints of visa | (11) Four fingerprints of visa | (11) Four fingerprints of visa | |
| exempt third country nationals | exempt third country nationals | exempt third country nationals | |
| should be enrolled in the EES, if | should be enrolled in the EES, if | should be enrolled in the EES, if | |
| , | , , | · · · · · · · · · · · · · · · · · · · | |
| physically possible, to allow for accurate verification and | physically possible, to allow for accurate verification and | physically possible, to allow for accurate verification and | |
| | | | |
| identification (ensuring that the third | identification (ensuring that the third | identification (ensuring that the third | |
| country national is not already | country national is not already | country national is not already | |
| enrolled under another identity or | enrolled under another identity or | enrolled under another identity or | |
| with another travel document) and to | with another travel document) and to | with another travel document) and to | |
| guarantee that sufficient data is | guarantee that sufficient data is | guarantee that sufficient data is | |
| available in every circumstance. The | available to achieve the objectives of | available in every circumstance. The | |
| check of the fingerprints of visa | the EES in every circumstance. The | check of the fingerprints of visa | |
| holders will be done against the Visa | check of the fingerprints of visa | holders will be done against the Visa | |
| Information System. (VIS) | holders will be done against the VIS | Information System. (VIS) | |
| established by Council Decision | Visa Information System. (VIS) | established by Council Decision | |
| $2004/512/\text{EC}^4$. The facial image of | established by Council Decision | $2004/512/\text{EC}^4$. The facial image of | |
| both visa exempt and visa holding | 2004/512/EC⁴ . The facial image of | both visa exempt and visa holding | |
| third country nationals should be | both visa exempt and visa holding | third country nationals should be | |
| registered in the EES and it should be | third country nationals should be | registered in the EES. Fingerprints | |
| used as the main biometric identifier | registered in the EES and it should be | and facial image [] should be used | |
| for verifying the identity of third | used as the main biometric identifier | as the [] biometric identifier for | |
| country nationals who have been | for verifying the identity of third | verifying the identity of third country | |
| previously registered in the EES and | country nationals who have been | nationals who have been previously | |
| for as long as their individual file has | previously registered in the EES and | registered in the EES and for as long | |
| not been deleted. Alternatively, that | for as long as their individual file has | as their individual file has not been | |

Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p.5).

4

| verification should be performed using fingerprints. | not been deleted. Alternatively, that verification should be performed using fingerprints. | deleted. [] <u>In order to take into</u> <u>account the specificities of each</u> border crossing point and the | |
|---|--|---|--|
| | Council Decision 2004/512/EC | different kind of borders, the national | |
| | of 8 June 2004 establishing the Visa | authorities should define for each | |
| | Information System (VIS) (OJ L 213, | border crossing whether the | |
| | 15.6.2004, p.5). | fingerprints or the facial image | |
| | | should be used as the main biometric | |
| | | identifier to perform the required | |
| | | verifications. | |
| (12) The EES should consist of a | deleted | (12) The EES should consist of a | |
| Central System, which will operate a | | Central System, which will operate a | |
| computerised central database of | | computerised central database of | |
| biometric and alphanumeric data, a | | biometric and alphanumeric data, a | |
| National Uniform Interface in each | | National Uniform Interface in each | |
| Member State, a Secure | | Member State, a Secure | |
| Communication Channel between the | | Communication Channel between the | |
| EES Central System and the VIS | | EES Central System and the VIS | |
| Central System and the | | Central System and the | |
| Communication Infrastructure | | Communication Infrastructure | |
| between the Central System and the | | between the Central System and the | |
| National Uniform Interfaces. Each | | National Uniform Interfaces. Each | |
| Member State should connect its | | Member State should connect its | |
| national border infrastructures to the | | national [] infrastructures | |
| National Uniform Interface. | | necessary for border check to the | |
| | | National Uniform Interface. | |
| (13) Interoperability should be | deleted | (13) Interoperability should be | |
| established between the EES and the | | established between the EES and the | |
| VIS by way of a direct | | VIS by way of a <u>n</u> <u>automatic</u> [] | |
| communication channel between the | | communication channel between the | |
| Central Systems to enable the border | | Central Systems to enable the border | |
| authorities using the EES to consult | | check authorities using the EES to | |
| the VIS in order to retrieve visa- | | consult the VIS in order to retrieve | |



| unlated data to support on you date the | riss valeted date to supply our undets | |
|--|---|--|
| related data to create or update the | visa-related data to create or update | |
| individual file; to enable the border | the entry/exit record or refusal of | |
| authorities to verify the validity of | entry record []; to enable the | |
| the visa and the identity of a visa | border <u>check</u> authorities to verify the | |
| holder by means of fingerprints | validity of the visa and the identity of | |
| directly against the VIS at the | a visa holder by means of | |
| external borders and to enable the | fingerprints automatically [] | |
| border authorities to verify the | against the VIS at the [] borders <u>at</u> | |
| identity of visa exempt third country | which the EES is operated and to | |
| nationals against the VIS with | enable the border <u>check</u> authorities to | |
| fingerprints. Interoperability should | verify the identity of visa exempt | |
| also enable the border authorities | third country nationals against the | |
| using the VIS to directly consult the | VIS with fingerprints. | |
| EES from the VIS for the purposes of | Interoperability should also enable | |
| examining visa applications and | the border check and the visa | |
| decisions relating to those | authorities using the VIS to directly | |
| applications and enable visa | consult the EES from the VIS for the | |
| authorities to update the visa-related | purposes of examining visa | |
| data in the EES in the event that a | applications and decisions relating to | |
| visa is annulled, revoked or | those applications and [] to update | |
| extended. Regulation (EC) No | the visa-related data in the EES in the | |
| 767/2008/EC of the European | event that a visa is annulled, revoked | |
| Parliament and of the Council ⁵ | or extended. Regulation (EC) No | |
| should be amended accordingly. | 767/2008/EC of the European | |
| 6,5 | Parliament and of the Council ⁵ | |
| | should be amended accordingly. The | |
| | launch of the automated processes | |
| | between the EES and the VIS should | |
| | in each case be subject to a | |
| | confirmation by the authority | |
| | <u>communication by the authority</u> | |

⁵ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p.60).

| 9465/17 | | RG/cr | 18 |
|---------|----------|--------|----|
| ANNEX | DG D 1 A | LIMITE | EN |

| | | concerned. | |
|---|---------|---|--|
| (14) This Regulation should define the authorities of the Member States which may be authorised to have access to the EES to enter, amend, delete or consult data for the specific purposes of the EES and to the extent necessary for the performance of their tasks. | deleted | (14) This Regulation should define the authorities of the Member States which may be authorised to have access to the EES to enter, amend, delete or consult data for the specific purposes of the EES and to the extent necessary for the performance of their tasks. | Council proposes a new Recital 14a to be included after recital 14 to clarify that the definition on immigration authorities does not include asylum authorities. Delegations are encouraged to accept the following recital: 14a. Immigration authorities should have access to the EES for the purposes of checking whether the conditions for entry and/or stay in the territory of the Member States are met, examining the conditions and taking decisions relating to the residence by third country nationals in the territory of the Member States, or providing advice in accordance with Regulation (EU) 377/2004, and for the purpose of returning third country nationals to a third country of origin or transit. This does not include authorities responsible for determining applications for international protection, notwithstanding the fact that such determination would subsequently lead to the issuing or otherwise of a residence permit. |



| (15) Any processing of EES data | deleted | (15) Any processing of EES data | |
|---|--|---|--|
| should be proportionate to the | | should be proportionate to the | |
| objectives pursued and necessary for | | objectives pursued and necessary for | |
| the performance of tasks of the | | the performance of tasks of the | |
| competent authorities. When using | | competent authorities. When using | |
| the EES, the competent authorities | | the EES, the competent authorities | |
| should ensure that the human dignity | | should ensure that the human dignity | |
| and integrity of the person, whose | | and integrity of the person, whose | |
| data are requested, are respected and | | data are requested, are respected and | |
| should not discriminate against | | should not discriminate against | |
| persons on grounds of sex, colour, | | persons on grounds of sex, colour, | |
| ethnic or social origin, genetic | | ethnic or social origin, genetic | |
| features, language, religion or belief, | | features, language, religion or belief, | |
| political or any other opinion, | | political or any other opinion, | |
| membership of a national minority, | | membership of a national minority, | |
| property, birth, disability, age or | | property, birth, disability, age or | |
| sexual orientation. | | sexual orientation. | |
| (16) In the fight against terrorist | (16) In the fight against terrorist | (16) In the fight against terrorist | |
| offences and other serious criminal | offences and other serious criminal | offences and other serious criminal | |
| offences, it is imperative that law | offences, it is imperative necessary | offences, it is imperative that | |
| enforcement authorities have the | that <i>designated</i> law enforcement | designated [] authorities have the | |
| most up-to-date information if they | authorities have the most up-to-date | most up-to-date information if they | |
| are to perform their tasks. Access to | information if they are to perform | are to perform their tasks. Access to | |
| VIS data for law enforcement | their tasks. Access to VIS data for | VIS data for law enforcement | |
| purpose has already proven its | law enforcement purpose has already | purpose has already proven its | |
| usefulness in identifying people who | proven its usefulness in identifying | usefulness in identifying people who | |
| died violently or for helping | people who died violently or for | died violently or for helping | |
| investigators to make substantial | helping investigators to make | investigators to make substantial | |
| progress in cases related to human | substantial progress in cases related | progress in cases related to human | |
| being trafficking, terrorism or drug | to human being trafficking, terrorism | being trafficking, terrorism or drug | |
| trafficking. Access to the information | or drug trafficking. Access to the | trafficking. Access to the information | |
| contained in the EES is necessary to | information contained in the EES is | contained in the EES is necessary to | |
| prevent, detect and investigate | necessary to prevent, detect and | prevent, detect and investigate | |



| terrorist offences as referred to in | investigate terrorist offences as | terrorist offences as referred to in | |
|--|--|--|--|
| Council Framework Decision | referred to in Council Framework | Council Framework Decision | |
| | | _ | |
| 2002/475/JHA ⁶ or other serious | Decision 2002/475/JHA ⁶ or other | $2002/475/JHA^6$ or other serious | |
| criminal offences as referred to in | serious criminal offences as referred | criminal offences as referred to in | |
| Council Framework Decision | to in Council Framework Decision | Council Framework Decision | |
| 2002/584/JHA ⁷ . The data generated | 2002/584/JHA ⁷ . The data generated | 2002/584/JHA ⁷ . The data generated | |
| by the EES may be used as an | by the EES may be used as an | by the EES may be used as an | |
| identity verification tool both in | identity verification tool both in | identity verification tool both in | |
| cases where the third country | cases where the third country | cases where the third country | |
| national has destroyed his/her | national has destroyed his/her | national has destroyed his/her | |
| documents and where law | documents and where law | documents and where designated | |
| enforcement authorities are | enforcement authorities are | [] authorities are investigating a | |
| investigating a crime through the use | investigating a crime through the use | crime through the use of fingerprints | |
| of fingerprints or facial image and | of fingerprints or facial image and | or facial image and wish to establish | |
| wish to establish an identity. It may | wish to establish an identity. It may | an identity. It may also be used as a | |
| also be used as a criminal | also be used as a criminal | criminal intelligence tool to construct | |
| intelligence tool to construct | intelligence tool to construct | evidence by tracking the travel routes | |
| evidence by tracking the travel routes | evidence by tracking the travel routes | of a person suspected of having | |
| of a person suspected of having | of a person suspected of having | committed a crime or a victim of | |
| committed a crime or a victim of | committed a crime or a victim of | crime. Therefore, the data in the EES | |
| crime. Therefore, the data in the EES | crime. Therefore, the data in the EES | should be available, to the designated | |
| should be available, to the designated | should be available, to the designated | authorities of the Member States and | |
| authorities of the Member States and | authorities of the Member States and | the European Police Office | |
| the European Police Office | the European Police Office | ('Europol'), subject to the conditions | |
| ('Europol'), subject to the conditions | ('Europol'), subject to the conditions | set out in this Regulation. | |
| set out in this Regulation. | set out in this Regulation. <i>From the</i> | The conditions of access to the EES | |
| | perspective of the law enforcement | for the purposes of the prevention, | |
| | purposes and in order to prevent, | detection or investigation of terrorist | |
| | detect and investigate terrorist | offences or of other serious criminal | |

⁶ Council Framework Decision 2002/475/JHA of 13 June 2002 on combatting terrorism (OJ L 164, 22.6.2002 p.6).

⁷ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member State (OJ L 190, 18.7.2002, p. 1).



| | offences or other serious criminal | offences should be such as to allow | |
|---------------------------------------|---|--|--|
| | offences a search of the database is | the law enforcement authorities of | |
| | proportionate if there is an | the Member States to tackle the cases | |
| | overriding public security concern. | of suspects using multiple identities. | |
| | Any search must be duly justified | For this purpose obtaining a hit | |
| | and proportionate in the light of the | during a consultation of a relevant | |
| | interest invoked. | database prior to acceding the EES | |
| | | should not prevent such access. | |
| (17) Moreover, Europol plays a key | (17) Moreover, Europol plays a key | (17) Moreover, Europol plays a key | |
| role with respect to cooperation | role with respect to cooperation | role with respect to cooperation | |
| between Member States' authorities | between Member States' authorities | between Member States' authorities | |
| in the field of cross-border crime | in the field of cross-border crime | in the field of cross-border crime | |
| investigation in supporting Union- | investigation in supporting Union- | investigation in supporting Union- | |
| wide crime prevention, analyses and | wide crime prevention, analyses and | wide crime prevention, analyses and | |
| investigation. Consequently, Europol | investigation. Consequently, Europol | investigation. Consequently, Europol | |
| should also have access to the EES | should also have access to the EES | should also have access to the EES | |
| within the framework of its tasks and | within the framework of its tasks and | within the framework of its tasks and | |
| in accordance with Council Decision | in accordance with Council Decision | in accordance with Council Decision | |
| 2009/371/JHA. ⁸ | 2009/371/JHA Regulation (EU) | 2009/371/JHA. ⁸ | |
| | 2016/794 of the European | | |
| | Parliament and of the Council. ⁸ The | | |
| | European Data Protection | | |
| | Supervisor should monitor the | | |
| | processing of data by Europol and | | |
| | ensure full compliance with | | |
| | applicable data protection rules. | | |
| | 8 Council Decision | | |
| | 2009/371/JHA of 6 April 2009 | | |
| | establishing the European Police | | |
| | Office (Europol) (OJ L 121, | | |
| | Office (Europoi) (Of E 121, | 1 | |

Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

8



| 15.5.2009, p. 37). Regulation (EU) 2016/794 of the European Parliament and of the Council 11 May 2016 on the European Parliament and of the Council 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53). (18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the private life of individuals and to |
|--|
| Parliament and of the Council 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (0J L 135, 24.5.2016, p. 53).(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences |
| May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the |
| Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the |
| Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences constitutes an interference with the fundamental rights to respect for the |
| replacing and repealing Council Decisions 2009/371/JHA, 2009/936/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the |
| Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the |
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| 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the(18) Access to the EES for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for the |
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| fundamental rights to respect for the fundamental rights to respect for the fundamental rights to respect for the |
| |
| private life of individuals and to private life of individuals and to private life of individuals and to |
| |
| protection of personal data of persons protection of personal data of persons protection of personal data of persons |
| whose personal data are processed in whose personal data are processed in whose personal data are processed in / |
| the EES. Any such interference must the EES. Any such interference must the EES. Any such interference must |
| be in accordance with the law, which be in accordance with the law, which be in accordance with the law, which |
| must be formulated with sufficient must be formulated with sufficient must be formulated with sufficient |
| precision to allow individuals to precision to allow individuals to precision to allow individuals to |
| adjust their conduct and it must adjust their conduct and it must |
| protect individuals against protect individuals against / |
| arbitrariness and indicate with arbitrariness and indicate with |
| sufficient clarity the scope of sufficient clarity the scope of |
| discretion conferred on the discretion conferred on the |
| competent authorities and the manner competent authorities and the manner competent authorities and the manner |
| of its exercise. Any interference must of its exercise. Any interference must |
| be necessary in a democratic society be necessary in a democratic society |
| to protect a legitimate and to protect a legitimate and |

| proportionate interest and | proportionate interest and | proportionate interest and | |
|---|--|---|--|
| proportionate to the legitimate | proportionate to the legitimate | proportionate to the legitimate | |
| objective to achieve. | objective to achieve. | objective to achieve. | |
| (19) Comparisons of data on the | (19) Comparisons of data on the | (19) Comparisons of data on the | |
| basis of a latent fingerprint, which is | basis of a latent fingerprint, which is | basis of a latent fingerprint, which is | |
| the dactyloscopic trace which may be | the dactyloscopic trace which may be | the dactyloscopic trace which may be | |
| found at a crime scene, is | found at a crime scene, is | found at a crime scene, is | |
| fundamental in the field of police | fundamental in the field of police | fundamental in the field of police | |
| cooperation. The possibility to | cooperation. The possibility to | cooperation. The possibility to | |
| compare a latent fingerprint with the | compare a latent fingerprint with the | compare a latent fingerprint with the | |
| fingerprint data which is stored in the | fingerprint data which is stored in the | fingerprint data which is stored in the | |
| EES in cases where there are | EES in cases where there are | EES in cases where there are | |
| reasonable grounds for believing that | reasonable grounds for believing that | reasonable grounds for believing that | |
| the perpetrator or victim may be | the perpetrator or victim may be | the perpetrator or victim may be | |
| registered in the EES should provide | registered in the EES is necessary | registered in the EES should provide | |
| the law enforcement authorities of | <i>for</i> should provide the law | the <u>designated []</u> authorities of the | |
| the Member States with a very | enforcement authorities of the | Member States with a very valuable | |
| valuable tool in preventing, detecting | Member States to prevent, detect or | tool in preventing, detecting or | |
| or investigating terrorist offences or | <i>investigate</i> with a very valuable tool | investigating terrorist offences or | |
| other serious criminal offences, when | in preventing, detecting or | other serious criminal offences, when | |
| for example the only evidence at a | investigating terrorist offences or | for example the only evidence at a | |
| crime scene are latent fingerprints. | other serious criminal offences, when | crime scene are latent fingerprints. | |
| | for example the only evidence at a | | |
| | crime scene are latent fingerprints. | | |
| (20) It is necessary to designate the | (20) It is necessary to designate the | (20) It is necessary to designate the | |
| competent authorities of the Member | competent authorities of the Member | competent authorities of the Member | |
| States as well as the central access | States as well as the central access | States as well as the central access | |
| point through which the requests for | point through which the requests for | point through which the requests for | |
| access to EES data are made and to | access to EES data are made and to | access to EES data are made and to | |
| keep a list of the operating units | keep a list of the operating units | keep a list of the operating units | |
| within the designated authorities that | within the designated authorities that | within the designated authorities that | |
| are authorised to request such access | are authorised to request such access | are authorised to request such access | |
| for the specific purposes for the | for the specific purposes for the | for the specific purposes for the | |



| prevention, detection or investigation | prevention, detection or investigation | prevention, detection or investigation | |
|--|--|--|--|
| of terrorist offences or of other | of terrorist offences or of other | of terrorist offences or of other | |
| serious criminal offences. | serious criminal offences. | serious criminal offences. | |
| (21) Requests for access to data | (21) Requests for access to data $/$ | (21) Requests for access to data | |
| stored in the Central System should | stored in the Central System should / | stored in the Central System should | |
| be made by the operating units | be made by the operating units / | be made by the operating units | |
| within the designated authorities to | within the designated authorities to | within the designated authorities to | |
| the central access point and should | the central access point and should | the central access point and should | |
| be justified. The operating units | be justified. The operating units | be justified. The operating units | |
| within the designated authorities that | within the designated authorities that | within the designated authorities that | |
| are authorised to request access to | are authorised to request access to | are authorised to request access to | |
| EES data should not act as a | EES data should not act as a | EES data should not act as a | |
| verifying authority. The central | verifying authority. The central | verifying authority. The central | |
| access points should act | access points should act/ | access point should be a body or | |
| independently of the designated | independently of the designated | entity entrusted by national law to | |
| authorities and should be responsible | authorities and should/be responsible | exercise public authority and be | |
| for ensuring, in an independent | for ensuring, in an independent | capable, through the quality and the | |
| manner, strict compliance with the | manner, strict compliance with the | quantity of its staffing, to effectively | |
| conditions for access as established | conditions for access as established | verify that the conditions to request | |
| in this Regulation. In exceptional | in this Regulation. In exceptional | access to the EES are fulfilled in the | |
| cases of urgency, where early access | cases of urgency, where early access | concrete case at hand. The central | |
| is necessary to respond to a specific | is necessary to respond to a specific | access points should act | |
| and actual threat related to terrorist | and actual threat related to terrorist | independently of the designated | |
| offences or other serious criminal | offences or/other serious criminal | authorities and should be responsible | |
| offences, the central access point | offences, the central access point | for ensuring, in an independent | |
| should be able to process the request | should be able to process the request | manner, strict compliance with the | |
| immediately and only carry out the | immediately and only carry out the | conditions for access as established | |
| verification afterwards. | verification afterwards. | in this Regulation. [] Where early | |
| | | access is necessary to respond to a | |
| | | specific and actual threat related to | |
| | | terrorist offences or other serious | |
| | | criminal offences, the central access | |
| | V | point should be able to process the | |



| | | request immediately and only carry | |
|---|---|---|--|
| | | out the verification afterwards. | |
| (22) To protect personal data and to | (22) To protect personal data and to | (22) To protect personal data and to | |
| exclude systematic searches, the | exclude systematic searches, the | exclude systematic searches, the | |
| processing of EES data should only | processing of EES data should only | processing of EES data should only | |
| take place in specific cases and when | take place in specific cases and when | take place in specific cases and when | |
| it is necessary for the purposes of | it is necessary for the purposes of | it is necessary for the purposes of | |
| preventing, detecting or investigating | preventing, detecting or investigating | preventing, detecting or investigating | |
| terrorist offences or other serious | terrorist offences or other serious | terrorist offences or other serious | |
| criminal offences. The designated | criminal offences. The designated | criminal offences. The designated | |
| authorities and Europol should only | authorities and Europol should only | authorities and Europol should only | |
| request access to the EES when they | request access to the EES when they | request access to the EES when they | |
| have reasonable grounds to believe | have reasonable grounds to believe | have reasonable grounds to believe | |
| that such access will provide | that such access will provide | that such access will provide | |
| information that will substantially | information that will substantially | information that will substantially | |
| assist them in preventing, detecting | assist them in preventing, detecting | assist them in preventing, detecting | |
| or investigating a terrorist offence or | or/investigating a terrorist offence or | or investigating a terrorist offence or | |
| other serious criminal offence. | other serious criminal offence. | other serious criminal offence. | |
| (23) In addition, access to the EES | (23) In addition, access to the EES | (23) [] | |
| for identification of unknown | for identification of unknown | | |
| suspects, perpetrators or victims of | suspects, perpetrators or victions of | | |
| terrorist offences or other serious | terrorist offences or other serious | | |
| criminal offences should be allowed | criminal offences should be allowed | | |
| only on the condition that searches | only on the condition that searches | | |
| with the national fingerprint | with the national fingerprint | | |
| databases of the Member State and | databases of the Member State and | | |
| with the automated fingerprinting | with the automated fingerprinting | | |
| identification systems of all other | identification systems of all other | | |
| Member States under Council | Member States under Council | | |
| Decision 2008/615/JHA ⁹ did not lead | Decision 2008/615/JHA ⁹ did not lead | | |

⁹ Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).



| to the establishment of the identity of | to the establishment of the identity of | | |
|---|---|---|--|
| the data subject Furthermore, access | the data subject Furthermore, access | | |
| to the EES to consult the entry/exit | to the EES to consult the entry/exit | | |
| records of a known person should be | records of a known person should be | | |
| duly justified. | duly justified. | | |
| (24) For the purpose of efficient | (24) For the purpose of efficient | (24) For the purpose of efficient | |
| comparison and exchange of | comparison and exchange of | comparison and exchange of | |
| personal data, Member States should | personal data, Member States should | personal data, Member States should | |
| fully implement and make use of the | fully implement and make use of the | fully implement and make use of the | |
| existing international agreements as | existing international agreements as | existing international agreements as | |
| well as of Union law concerning the | well as of Union law concerning the | well as of Union law concerning the | |
| exchange of personal data already in | exchange of personal data already in | exchange of personal data already in | |
| force, in particular of Decision | force, in particular of Decision | force, in particular of Decision | |
| 2008/615/JHA. | 2008/615/JHA. | 2008/615/JHA. | |
| | (24a) Member States should ensure | | |
| | that border guards have access to | | |
| | Interpol's Stolen and Lost Travel | | |
| | Documents database, and the | | |
| | relevant national and Union | | |
| | databases. They should also ensure | | |
| | that border guards make full use of | | |
| | their right to access those databases | | |
| | when registering travellers from | | |
| | third countries entering or exiting | | |
| | the territory of the Union. | | |
| (25) The personal data stored in the | (25) The personal data stored in the | (25) The personal data stored in the | |
| EES should be kept for no longer | EES should be kept for no longer | EES should be kept for no longer | |
| than is necessary for the purposes of | than <i>strictly</i> necessary for the | than is necessary for the purposes of | |
| the EES. It is appropriate to keep the | purposes for which the data are | the EES. It is appropriate to keep the | |
| data related to third country nationals | processed of the EES. It is | data related to third country nationals | |
| for a period of five years for border | appropriate sufficient to keep the | for a period of five years for border | |
| management purposes in order to | data related to third country nationals | management purposes in order to | |
| avoid the need for third country | who have lawfully used the EES | avoid the need for third country | |



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| nationals to re-enrol in the EES | and for third-country nationals | nationals to re-enrol in the EES | |
|---|---|---|--|
| before that period has lapsed. For | whose entry for a short stay {or on | before that period has lapsed. For | |
| third country nationals who are | the basis of a touring visa} has been | third country nationals who are | |
| family members of a Union citizen to | <i>refused</i> for a period of five two years | family members of a Union citizen to | |
| whom Directive 2004/38/EC ¹⁰ | for border management purposes in | whom Directive 2004/38/EC ¹⁰ | |
| applies or of a national of a third | order to avoid the need for third | applies or of a national of a third | |
| country enjoying the right of free | country nationals to re-enrol in the | country enjoying the right of free | |
| movement under Union law and who | EES before that period has lapsed. | movement under Union law and who | |
| do not hold a residence card referred | The two-year data retention period | do not hold a residence card referred | |
| to under Directive 2004/38/EC, it is | will reduce the frequency of re- | to under Directive 2004/38/EC, it is | |
| appropriate to store each coupled | enrolments and will be beneficial | appropriate to store each coupled | |
| entry/ exit reccord for a maximum | for all travellers as both the average | entry/exit record for a maximum | |
| period of one year after the last exit. | border crossing time and the waiting | period of one year after the last exit. | |
| | time at border crossing points will | If there is no exit record the data | |
| | decrease. Even for a traveller | shall be stored for a period of five | |
| | entering only once in the Schengen | years from the last entry record. | |
| | area, the fact that other travellers | | |
| | already registered in the EES do not | | |
| | have to re-enrol before the expiry of | | |
| | this two-year period will reduce the | | |
| | waiting time at the border crossing | | |
| | point. This two-year data retention | | |
| | period is also necessary to facilitate | | |
| | border crossings by using process | | |
| | accelerators and self-service | | |
| | systems. For third country nationals | | |
| | who are family members of a Union | | |
| | citizen to whom Directive | | |

¹⁰ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

| 2004/38/EC ¹⁰ applies | | |
|---|---------------------------------------|--|
| of a third country en | • • | |
| of free movement un | | |
| and who do not hold | residence card | |
| referred to under Dir | ive | |
| 2004/38/EC, it is app | priate to store | |
| each coupled entry/e | reccord | |
| <i>record</i> for a maximu | period of one | |
| year after the last exi | Following the | |
| expiry of the relevant | ata retention | |
| periods the data sho | | |
| automatically erased | | |
| | | |
| 10 Directive 2004 | 3/EC of the | |
| European Parliament | | |
| Council of 29 April 2 | | |
| of citizens of the Unit | 6 | |
| family members to n | | |
| freely within the terr | | |
| Member States amen | • | |
| (EEC) No 1612/68 a | 0 0 | |
| Directives 64/221/EI | | |
| 72/194/EEC, 73/148 | | |
| 72/194/EEC, 75/140 75/34/EEC, 75/35/EI | | |
| | · · · · · · · · · · · · · · · · · · · | |
| 90/365/EEC and 93/ | EEC (UJ L | |
| 158, 30.4.2004, p. 77 | | |

| | (25a) A retention period of four years is necessary for data on third- country nationals who have not exited the territory of the Member States within the authorised period of stay in order to support the identification and return process. The data should be automatically erased after the period of four years, unless there are grounds to delete it | | |
|--|--|---|--|
| | earlier. | | |
| (26) A five year data retention | (26) A five <i>two</i> year data | (26) A five year data retention | |
| period is necessary to allow the | retention period is for the personal | period is necessary to allow the | |
| border guard performing the | data of third-country nationals who | border guard performing the | |
| necessary risk analysis requested by | have lawfully used the EES and of | necessary risk analysis requested by | |
| the Schengen Borders Code before | third-country nationals whose entry | the Schengen Borders Code before | |
| authorising a traveller entering the | for a short stay {or on the basis of a | authorising a traveller entering the | |
| Schengen area. The processing of | touring visa} has been refused and a | territory of Member States []. The | |
| visa application in consular posts | four year data retention period for | processing of visa application in | |
| requires also analysing the travel | the personal data of third country | consular posts requires also | |
| history of the applicant to assess the | nationals who have not exited the | analysing the travel history of the | |
| use of previous visas and the respect | territory of the Member States | applicant to assess the use of | |
| of the conditions of stay. The | within the authorised period of stay | previous visas and the respect of the | |
| abandoning of passport stamping will | are necessary to allow the border | conditions of <u>authorised</u> stay. The | |
| be compensated by a consultation of | guard performing to perform the | abandoning of passport stamping will | |
| the EES. The travel history available | necessary risk analysis requested by | be compensated by a consultation of | |
| in the system should therefore cover | the Schengen Borders Code before | the EES. The travel history available | |
| a period of time which is sufficient | authorising a traveller entering to | in the system should therefore cover | |
| for the purpose of visa issuance. The | enter the Schengen area. The | a period of time which is sufficient | |
| five year data retention period will | processing of visa application | for the purpose of visa issuance. The | |
| reduce the re-enrolment frequency | applications in consular posts also | five year data retention period will | |
| and will be beneficial for all | requires also analysing the travel | reduce the re-enrolment frequency | |
| travellers as the average border | history of the applicant to assess the | and will be beneficial for all | |



| | | . 11 .1 1 1 | |
|---|---|---|--|
| crossing time will decrease as will do | use of previous visas and the respect | travellers as the average border | |
| the waiting time at border crossing | of whether the conditions of stay | crossing time will decrease as will do | |
| points. Even for a traveller entering | have been respected. The | the waiting time at border crossing | |
| only once in the Schengen area, the | abandoning of passport stamping will | points. Even for a traveller entering | |
| fact that other travellers being | be compensated by a consultation of | only once in the <u>territory of Member</u> | |
| already registered in the EES will not | the EES. The travel history available | States [], the fact that other | |
| have to re-enrol will reduce the | in the system should therefore cover | travellers being already registered in | |
| waiting time at border. This data | a period of time which is sufficient | the EES will not have to re-enrol will | |
| retention period will also be | for the purpose of visa issuance. | reduce the waiting time at border. | |
| necessary to allow for facilitation for | The five year data retention period | This data retention period will also | |
| the border crossing by using process | will reduce the re-enrolment | be necessary to allow for facilitation | |
| accelerators and self-service systems. | frequency and will be beneficial for | for the border crossing by using | |
| Such facilitation is dependent of the | all travellers as the average border | process accelerators and self-service | |
| data registered in the system. A | crossing time will decrease as will do | systems. Such facilitation is | |
| shorter data retention period would | the waiting time at border crossing | dependent of the data registered in | |
| have a negative impact on the | points. Even for a traveller entering | the system. A shorter data retention | |
| duration of border controls. A shorter | only once in the Schengen area, the | period would have a negative impact | |
| data retention period would also | fact that other travellers being | on the duration of border checks | |
| reduce the group of travellers that | already registered in the EES will not | []. A shorter data retention period | |
| can benefit of such facilitation and | have to re-enrol will reduce the | would also reduce the group of | |
| thereby undermine the stated | waiting time at border. This data | travellers that can benefit of such | |
| objective of EES to facilitate border | retention period will also be | facilitation and thereby undermine | |
| crossing. | necessary to allow for facilitation for | the stated objective of EES to | |
| | the border crossing by using process | facilitate border crossing. | |
| | accelerators and self-service systems. | | |
| | Such facilitation is dependent of the | | |
| | data registered in the system. A | | |
| | shorter data retention period would | | |
| | have a negative impact on the | | |
| | duration of border controls. A shorter | | |
| | data retention period would also | | |
| | reduce the group of travellers that | | |
| | can benefit of such facilitation and | | |

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| | thereby undermine the stated objective of EES to facilitate border crossing. While performing the risk analysis at the border and while processing a visa application, the travel history of third-country nationals should be checked in order to determine whether they have exceeded the maximum duration of their authorised stay in the past. It is thus necessary to retain the personal data of third- country nationals who have not exited the territory of the Member States within the authorised period of stay for the longer period of four years compared to that for the personal data of the third-country nationals who have lawfully used the system and of third-country nationals whose entry for a short stay {or on the basis of a touring visa} has been refused. | | |
|--|---|--|--|
| (27) The same retention period of | deleted | (27) The same retention period of | |
| five years would be necessary for data on persons who have not exited | | five years would be necessary for data on persons who have not exited | |
| the territory of the Member States | | the territory of the Member States | |
| within the authorised period of stay | | within the authorised [] stay in | |
| in order to support the identification | | order to support the identification | |
| and return process and for persons | | and return process and for persons | |
| whose entry for a short stay {or on | | whose entry for a short stay [or on | |
| the basis of a touring visa} has been | | the basis of a touring visa] has been | |
| refused. The data should be deleted | | refused. The data should be deleted | |



| after the period of five years, unless | | after the period of five years, unless | |
|---|------------------------------------|---|--|
| | | | |
| there are grounds to delete it earlier. | | there are grounds to delete it earlier. | |
| (28) Precise rules should be laid | deleted | (28) Precise rules should be laid | |
| down as regards the responsibilities | | down as regards the responsibilities | |
| for the development and operation of | | for the development and operation of | |
| the EES and the responsibilities of | | the EES and the responsibilities of | |
| the Member States for the connection | | the Member States for the connection | |
| to the EES. The Agency for the | | to the EES. The Agency for the | |
| operational management of large- | | operational management of large- | |
| scale information systems in the area | | scale information systems in the area | |
| of freedom, security and justice, | | of freedom, security and justice, | |
| established by Regulation (EU) No | | established by Regulation (EU) No | |
| 1077/2011 of the European | | 1077/2011 of the European | |
| Parliament and of the Council ¹¹ , | | Parliament and of the Council ¹¹ , | |
| should be responsible for the | | should be responsible for the | |
| development and operational | | development and operational | |
| management of a centralised EES in | | management of a centralised EES in | |
| accordance with this Regulation and | | accordance with this Regulation and | |
| the relevant provisions of Regulation | | the relevant provisions of Regulation | |
| (EU) No 1077/2011 should be | | (EU) No 1077/2011 should be | |
| amended accordingly. | | amended accordingly. | |
| (29) Rules on the liability of the | (29) Rules on the liability of the | (29) Rules on the liability of the | |
| Member States in respect to damage | Member States in respect to damage | Member States in respect to damage | |
| arising from any breach of this | arising from any breach of this | arising from any breach of this | |
| Regulation should be laid down. | Regulation should be laid down. | Regulation should be laid down. | |



¹¹ Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p 1).

| (30) Directive 95/46/EC of the | (30) Regulation (EU) 2016/679 | (30) Directive 95/46/EC of the | |
|--|--|--|--|
| European Parliament and of the | Directive 95/46/EC of the European | European Parliament and of the | |
| Council ¹² applies to the processing of | | Council ¹² applies to the processing of | |
| personal data by the Member States | applies to the processing of personal | personal data by the Member States | |
| in application of this Regulation | data by the Member States in | in application of this Regulation | |
| unless such processing is carried out | application of this Regulation unless | unless such processing is carried out | |
| by the designated or verifying | such processing is carried out by the | by the designated or verifying | |
| authorities of the Member States for | designated or verifying authorities of | authorities of the Member States for | |
| the purposes of the prevention, | the Member States for the purposes | the purposes of the prevention, | |
| detection or investigation of terrorist | of the prevention, <i>investigation</i> , | detection or investigation of terrorist | |
| offences or of other serious criminal | detection or investigation | offences or of other serious criminal | |
| offences. | prosecution of terrorist offences or | offences. | |
| | of other serious criminal offences. | | |
| | | | |
| | ¹² Directive 95/46/EC of the | | |
| | European Parliament and of the | | |
| | Council of 24 October 1995 on the | | |
| | protection of individuals with regard | | |
| | to the processing of personal data | | |
| | and on the free movement of such | | |
| | data Regulation (EU) 2016/679 of | | |
| | 27 April 2016 of the European | | |
| | Parliament and of the Council on | | |
| | the protection of natural persons | | |
| | with regard to the processing of | | |
| | personal data and on the free | | |
| | movement of such data, and | | |
| | repealing Directive 95/46/EC | | |
| | (General Data Protection | | |
| | <i>Regulation</i>) (OJ L 281- <i>119</i> , | | |

¹² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

¹³ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (OJ L 350, 30.12.2008, p. 60).

| offences or of other serious cri offences pursuant to this Regulation. ^{12a} Council Framework Decisio 2008/977/JHA of 27 Novembe on the protection of personal da processed in the framework of and judicial co-operation in cri matters (OJ L 350, 30.12.2008, 60). Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons w regard to the processing of per data by competent authorities j the purposes of the prevention, investigation, detection or prosecution of criminal offence | n r 2008 atta police minal , p. e he te with rsonal for , es or |
|--|---|
| prosecution of criminal offenc the execution of criminal pena and on the free movement of s data, and repealing Council | lties, uch |
| Framework Decision 2008/977 (OJ L 119, 4.5.2016, p. 89). | //JHA |
| | 31a In accordance with Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the |
| | Member States of the European Union, information contained in the |



| | | EES can be provided to Member | |
|---|---|--|--|
| | | States not operating the EES, and to | |
| | | Member States to which this | |
| | | Regulation does not apply, by the | |
| | | competent authorities of the Member | |
| | | States whose designated authorities | |
| | | have access to the EES pursuant to | |
| | | this Decision. Such provision of | |
| | | information should be subject to a | |
| | | duly motivated request, and limited | |
| | | to where it is necessary for the | |
| | | prevention, detection or investigation | |
| | | of a terrorist offence or another | |
| | | serious criminal offence. A Member | |
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| made available to a third country, | | or made available to a third country, | |
| international organisation or any | an international organisation or any | an international organisation or any | |
| ivate party established in or outside | private party established in or outside | private party established in or outside | |
| e Union except if necessary in | the Union except if necessary in | the Union except if necessary in | |
| dividual cases in order to assist the | individual cases in order to assist the | individual cases in order to assist the | |
| entification of a third country | identification of a third country | identification of a third country | |
| international organisation or any ivate party established in or outside e Union except if necessary in dividual cases in order to assist the | private party established in or outside the Union except if necessary in | State that operates the EES may only provide such information if a reciprocal provision of any information on entry/exit records held by the requesting Member State to the Member States operating the EES is ensured. Framework Decision 2008/977/JHA applies to all the subsequent treatment of data obtained from the EES.(32) Personal data obtained by Member States pursuant to this Regulation should not be transferred or made available to a third country, | |



| national in relation to his/her return | national in relation to his/her return / | national in relation to his/her return | |
|--|--|--|--|
| and subject to strict conditions. | and subject to strict conditions | and subject to strict conditions or in | |
| | | an exceptional case of urgency, | |
| | | where there is an immediate and | |
| | | serious threat of a terrorist offence or | |
| | | other serious criminal offences and in | |
| | | accordance with Framework | |
| | | Decision 2008/977/JHA. With regard | |
| | | to the rules on transfer of data, the | |
| | | return of overstayers should be | |
| | | regarded as an important public | |
| | | interest. Such data should only be | |
| | | transferred to a third country if the | |
| | | reciprocal provision of any | |
| | | information on entry/exit records | |
| | | held by the requesting third country | |
| | | to the Member States operating the | |
| | \bigvee | EES is ensured. | |



| <u>32a.</u> The transfer of data to a third |
|--|
| country, to a Member State not |
| operating the EES, or to a Member |
| State to which this Regulation does |
| not apply, and which is authorised in |
| a exceptional case of urgency, where |
| there is an immediate and serious |
| threat of a terrorist offence or other |
| serious criminal offence should be |
| carried out in accordance with the |
| applicable conditions set under |
| Directive (EU) 2016/680 ^{13a} once this |
| Directive would became applicable. |

^{13a} Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016).



| (33) Regulation (EC) No 45/2001 of | (33) Regulation (EC) No 45/2001 of | (33) Regulation (EC) No 45/2001 of | |
|--|--|--|--|
| the European Parliament and the | the European Parliament and the | the European Parliament and the | |
| Council ¹⁴ applies to the activities of | Council ¹⁴ applies to the activities of | Council ¹⁴ applies to the activities of | |
| the Union institutions or bodies when | the Union institutions or bodies when | the Union institutions or bodies when | |
| carrying out their tasks as responsible | carrying out their tasks as responsible | carrying out their tasks as responsible | |
| for the operational management of | for the operational management of | for the operational management of | |
| EES. | EES. | EES. | |
| (34) The independent supervisory | (34) The independent supervisory | (34) The independent supervisory | |
| authorities established in accordance | authorities established in accordance | authorities established in accordance | |
| with Article 28 of Directive | with Article 28 51 of Directive | with Article 28 of Directive | |
| 95/46/EC should monitor the | 95/46/EC Regulation (EU) 2016/679 | 95/46/EC should monitor the | |
| lawfulness of the processing of | should monitor the lawfulness of the | lawfulness of the processing of | |
| personal data by the Member States, | processing of personal data by the | personal data by the Member States, | |
| whilst the European Data Protection | Member States, whilst the European | whilst the European Data Protection | |
| Supervisor as established by | Data Protection Supervisor as | Supervisor as established by | |
| Regulation (EC) No 45/2001 should | established by Regulation (EC) No | Regulation (EC) No 45/2001 should | |
| monitor the activities of the Union | 45/2001 should monitor the activities | monitor the activities of the Union | |
| institutions and bodies in relation to | of the Union institutions and bodies | institutions and bodies in relation to | |
| the processing of personal data. The | in relation to the processing of | the processing of personal data. The | |
| European Data Protection Supervisor | personal data. The European Data | European Data Protection | |
| and the supervisory authorities | Protection Supervisor and the | Supervisor, and the supervisory | |
| should cooperate with each other in | supervisory authorities should | authorities should cooperate with | |
| the monitoring of the EES. | cooperate with each other in the | each other in the monitoring of the | |
| | monitoring of the EES. | EES. | |



¹⁴ Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

| (35) National supervisory | (35) National supervisory | (35) National supervisory | |
|--|---|--|--|
| authorities established in accordance | authorities established in accordance | authorities established in accordance | |
| with Article 25 of Council | with Article 25 41 of Council | with Article 25 of Council | |
| Framework Decision 2008/977/JHA | Framework Decision 2008/977/JHA | Framework Decision 2008/977/JHA | |
| should monitor the lawfulness of the | <i>Directive (EU) 2016/680</i> should | should monitor the lawfulness of the | |
| processing of personal data for law | monitor the lawfulness of the | processing of personal data for law | |
| enforcement purposes by the | processing of personal data for law | enforcement purposes by the | |
| Member States, and the national | enforcement purposes by the | Member States, and the national | |
| supervisory authorities established in | Member States , and the national | supervisory authorities established in | |
| accordance with Article 33 of | supervisory authorities established in | accordance with Article 33 of | |
| Decision 2009/371/JHA should | accordance with Article 33 of | Decision 2009/371/JHA should | |
| monitor the lawfulness of data | Decision 2009/371/JHA should | monitor the lawfulness of data | |
| processing activities performed by | monitor the lawfulness of data | processing activities performed by | |
| Europol. | processing activities performed by | Europol. | |
| | Europol. | | |
| (36) "() The European Data | (36) "() The European Data | (36) The European Data Protection | |
| Protection Supervisor was consulted | Protection Supervisor was consulted | Supervisor was consulted in | |
| in accordance with Article 28(2) of | in accordance with Article 28(2) of | accordance with Article 28(2) of | |
| Regulation (EC) No 45/2001 and | Regulation (EC) No 45/2001 and | Regulation (EC) No 45/2001 and | |
| delivered an opinion on | delivered an opinion on21 | delivered an opinion on 21 | |
| Ĩ | September 2016. | September 2016. | |
| (37) The proposal establishes strict | (37) The proposal establishes strict | (37) The proposal establishes strict | |
| access rules to the EES system and | access rules to the EES system and | access rules to the EES system and | |
| the necessary safeguards. It also sets | the necessary safeguards. It also sets | the necessary safeguards. It also sets | |
| out the individuals' rights of access, | out the individuals' rights of access, | out the individuals' rights of access, | |
| correction, deletion and redress, in | correction, deletion rectification, | correction, deletion and redress, in | |
| particular the right to a judicial | completion, erasure and redress, in | particular the right to a judicial | |
| remedy and the supervision of | particular the right to a judicial | remedy and the supervision of | |
| processing operations by public | remedy and the supervision of | processing operations by public | |
| independent authorities. This | processing operations by public | independent authorities. This | |
| Regulation therefore respects the | independent authorities. This | Regulation therefore respects the | |
| fundamental rights and observes the | Regulation therefore respects the | fundamental rights and observes the | |
| principles recognised by the Charter | fundamental rights and observes the | principles recognised by the Charter | |

| of Fundamental Rights of the | principles recognised by the Charter | of Fundamental Rights of the | |
|---|---|---|--|
| European Union, in particular the | of Fundamental Rights of the | European Union, in particular the | |
| right to dignity (Article 1 of the | European Union, in particular the | right to dignity (Article 1 of the | |
| Charter); the prohibition of slavery | right to dignity (Article 1 of the | Charter); the prohibition of slavery | |
| and forced labour (Article 5 of the | Charter); the prohibition of slavery | and forced labour (Article 5 of the | |
| Charter); the right to liberty and | and forced labour (Article 5 of the | Charter); the right to liberty and | |
| security (Article 6 of the Charter), | Charter); the right to liberty and | security (Article 6 of the Charter), | |
| respect for private and family life | security (Article 6 of the Charter), | respect for private and family life | |
| (Article 7 of the Charter), the | respect for private and family life | (Article 7 of the Charter), the | |
| protection of personal data (Article 8 | (Article 7 of the Charter), the | protection of personal data (Article 8 | |
| of the Charter), the right to non- | protection of personal data (Article 8 | of the Charter), the right to non- | |
| discrimination (Article 21 of the | of the Charter), the right to non- | discrimination (Article 21 of the | |
| Charter), the rights of the child | discrimination (Article 21 of the | Charter), the rights of the child | |
| (Article 24 of the Charter), the rights | Charter), the rights of the child | (Article 24 of the Charter), the rights | |
| of elderly (Article 25 of the Charter), | (Article 24 of the Charter), the rights | of elderly (Article 25 of the Charter), | |
| the rights of persons with disabilities | of elderly (Article 25 of the Charter), | the rights of persons with disabilities | |
| (article 26 of the Charter) and the | the rights of persons with disabilities | (Article 26 of the Charter) and the | |
| right to an effective remedy (Article | (article 26 of the Charter) and the | right to an effective remedy (Article | |
| 47 of the Charter). | right to an effective remedy (Article | 47 of the Charter). | |
| | 47 of the Charter). | | |
| | (37a) Access to data contained in | | |
| | the EES should in no circumstances | | |
| | be used by Member States as a | | |
| | ground to circumvent their | | |
| | international obligations under the | | |
| | Geneva Convention Relating to the | | |
| | Status of Refugees of 28 July 1951, | | |
| | | | |
| | as supplemented by the New York | | |
| | Protocol of 31 January 1967, and | | |
| | should not be used to deny asylum | | |
| | seekers safe and effective legal | | |
| | avenues to Union territory to | | |
| | exercise their right to international | | |

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| | protection. | | |
|--------------------------------------|---------------------------------------|--------------------------------------|--|
| (38) The effective monitoring of the | (38) The effective monitoring of the | (38) The effective monitoring of the | |
| application of this Regulation | application of this Regulation | application of this Regulation | |
| requires evaluation at regular | requires evaluation at regular | requires evaluation at regular | |
| intervals. The Member States should | intervals. The Member States should | intervals. The Member States should | |
| lay down rules on penalties | lay down rules on penalties | lay down rules on penalties | |
| applicable to infringements of the | applicable to infringements of the | applicable to infringements of the | |
| provisions of this Regulation and | provisions of this Regulation and | provisions of this Regulation and | |
| ensure that they are implemented. | ensure that they are implemented. | ensure that they are implemented. | |
| (39) In order to ensure uniform | (39) In order to ensure uniform | (39) In order to ensure uniform | |
| conditions for the implementation of | conditions for the implementation of | conditions for the implementation of | |
| this Regulation, implementing | this Regulation, implementing | this Regulation, implementing | |
| powers should be conferred on the | powers should be conferred on the | powers should be conferred on the | |
| Commission. Those powers should | Commission. Those powers should | Commission. Those powers should | |
| be exercised in accordance with | be exercised in accordance with | be exercised in accordance with | |
| Regulation (EU) No 182/2011 of the | Regulation (EU) No 182/2011 of the | Regulation (EU) No 182/2011 of the | |
| European Parliament and of the | European Parliament and of the | European Parliament and of the | |
| Council ¹⁵ . | Council ¹⁵ . | Council ¹⁵ . | |
| | (39a) By the start operations it | | |
| | should be assumed that all | | |
| | remaining internal border controls | | |
| | have been lifted and that all the | | |
| | current Schengen Member States | | |
| | apply Title III of Regulation (EU) | | |
| | 2016/399 of the European | | |
| | Parliament and of the Council $15a$. | | |
| | The EES as a border management | | |
| | tool enhancing the efficiency of | | |
| | border checks by calculating and | | |
| | monitoring the duration of the | | |

¹⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commision's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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|---------|----------|--------|----|
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| | authorised stay should therefore be developed and its integration into national border infrastructures be prepared on the basis of one common area without internal border controls in which persons may move freely for one defined period of authorised stay. | | |
|--|--|--|--|
| | ^{15a} Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing | | |
| | the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1). | | |
| (40) The establishment of a common EES and the creation of common obligations, conditions and procedures for use of data cannot be | (40) The establishment of a common EES and the creation of common obligations, conditions and procedures for use of data capnot be | (40) The establishment of a common EES and the creation of common obligations, conditions and procedures for use of data cannot be | |
| sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Union level in | sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Union level in | sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Union level in | |
| accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of | accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of | accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of | |
| proportionality, as set out in that Article, the Regulation does not go beyond what is necessary in order to achieve this objective. | proportionality, as set out in that Article, the Regulation does not go beyond what is necessary in order to achieve this objective. | proportionality, as set out in that Article, the Regulation does not go beyond what is necessary in order to achieve this objective. | |



| (41) Following the entry into operation of the Entry/Exit System, Article 20(2) of the Convention implementing the Schengen Agreement should be amended as it is incompatible with Article 77(2)(a) and (c) of the Treaty on Functioning of the European Union due to the fact that the common policy on visas cannot be based on the existence or non-existence of bilateral visa waiver agreements concluded by Member States and the authorised length of stay of third country nationals should not depend on the number and content of such bilateral agreements. Furthermore the Entry/Exit system could not take into account of and calculate the authorised length of stay of visa free third country nationals benefitting from such agreements and they should be | that the common policy on visas cannot be based on the existence or non-existence of bilateral visa waiver agreements concluded by Member States and the authorised length of stay of third country nationals should not depend on the number and content of such bilateral agreements. Furthermore the Entry/Exit system could not take into account of and calculate the authorised length of stay of visa free third country nationals benefitting from such | (41) Following the entry into operation of the [] EES, Article 20(2) of the Convention implementing the Schengen Agreement should be amended [] with regard to bilateral [] agreements concluded by Member States and the authorised length of stay beyond 90 days in any 180-day period of third country nationals exempt from the visa obligation []. [] | |
|---|---|--|--|
| agreements and they should be eliminated. | agreements and they should be eliminated. | | |

| (42) The projected costs of the EES | (42) The projected costs of the EES/ | (42) The projected costs of the EES | |
|--|--|--|--|
| are lower than the budget earmarked | are lower than the budget earmarked | are lower than the budget earmarked | |
| for Smart Borders in Regulation | for Smart Borders in Regulation | for Smart Borders in Regulation | |
| (EU) 515/2014 of the European | (EU) 515/2014 of the European | (EU) 515/2014 of the European | |
| Parliament and the Council ¹⁶ . | Parliament and the Council ¹⁶ . | Parliament and the Council ¹⁶ . | |
| Accordingly, following the adoption | Accordingly, following the adoption | Accordingly, following the adoption | |
| of this Regulation, pursuant to | of this Regulation, pursuant to | of this Regulation, pursuant to | |
| Article $5(5)(b)$ of Regulation (EU) | Article 5(5)(b) of Regulation (EU) | Article 5(5)(b) of Regulation (EU) | |
| 515/2014, the Commission should, | 515/2014, the Commission should, | 515/2014, the Commission should, | |
| by means of a delegated act, re- | by means of a delegated act, re- | by means of a delegated act, re- | |
| allocate the amount currently | allocate the amount currently | allocate the amount currently | |
| attributed for developing IT systems | attributed for developing IT systems | attributed for developing IT systems | |
| supporting the management of | supporting the management of | supporting the management of | |
| migration flows across the external | migration flows across the external | migration flows across the external | |
| borders. | borders. | borders. | |
| (43) This Regulation establishing | (43) This Regulation establishing | (43) [] | |
| the EES replaces the obligation to | the EES replaces the obligation to | | |
| stamp passports of third country | stamp passports of third country | | |
| nationals which is applicable by all | nationals which is applicable by all | | |
| acceding Member States. Stays in | acceding Member States. Stays in | | |
| Member States which are not yet | Member States which are not yet | | |
| fully applying the Schengen acquis in | fully applying the Schengen acquis in | | |
| accordance with their respective Acts | | | |
| of Accession should not be taken into | of Accession should not be taken into | | |
| account in the calculation of the | account in the calculation of the | | |
| duration of the authorised stay in the | duration of the authorised stay in the | | |
| Schengen area. Such Member States | Schengen area. Such Member States | | |
| should register in the EES the stay of | should register in the EES the stay of | | |
| third country nationals but the | third country nationals but the | | |
| automated calculator in the system | automated calculator in the system | | |

¹⁶ Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing as part of the Internal Security Fund, the Instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).



| should not compute it as part of the | should not compute it as part of the | | |
|--|--|--|--|
| authorised length of stay. | authorised length of stay. | | |
| (44) This Regulation is without | (44) This Regulation is without | (44) This Regulation is without | |
| prejudice to the application of | prejudice to the application of | prejudice to the application of | |
| Dreictive 2004/38/EC. | Dreictive Directive 2004/38/EC. | Directive 2004/38/EC. | |
| (45) In accordance with Articles 1 | (45) In accordance with Articles 1 | (45) In accordance with Articles 1 | |
| and 2 of Protocol No 22 on the | and 2 of Protocol No 22 on the | and 2 of Protocol No 22 on the | |
| position of Denmark, annexed to the | position of Denmark, annexed to the | position of Denmark, annexed to the | |
| Treaty on European Union and to the | Treaty on European Union and to the | Treaty on European Union and to the | |
| Treaty on the Functioning of the | Treaty on the Functioning of the | Treaty on the Functioning of the | |
| European Union, Denmark is not | European Union, Denmark is not | European Union, Denmark is not | |
| taking part in the adoption of this | taking part in the adoption of this | taking part in the adoption of this | |
| Regulation and is not bound by it or | Regulation and is not bound by it or | Regulation and is not bound by it or | |
| subject to its application. Given that | subject to its application. Given that | subject to its application. Given that | |
| this Regulation builds upon the | this Regulation builds upon the | this Regulation builds upon the | |
| Schengen acquis, Denmark shall, in | Schengen acquis, Denmark shall, in | Schengen acquis, Denmark shall, in | |
| accordance with Article 4 of that | accordance with Article 4 of that | accordance with Article 4 of that | |
| Protocol, decide within a period of | Protocol, decide within a period of | Protocol, decide within a period of | |
| six months after the Council has | six months after the Council has | six months after the Council has | |
| decided on this Regulation whether it | decided on this Regulation whether it | decided on this Regulation whether it | |
| will implement it in its national law. | will implement it in its national law. | will implement it in its national law. | |
| (46) This Regulation constitutes a | (46) This Regulation constitutes a | (46) This Regulation constitutes a | |
| development of the provisions of the | development of the provisions of the | development of the provisions of the | |
| Schengen acquis in which the United | Schengen acquis in which the United | Schengen acquis in which the United | |
| Kingdom does not take part, in | Kingdom does not take part, in | Kingdom does not take part, in | |
| accordance with Council Decision | accordance with Council Decision | accordance with Council Decision | |
| $2000/365/\text{EC}^{17}$; the United Kingdom | $2000/365/\text{EC}^{17}$; the United Kingdom | 2000/365/EC ¹⁷ ; the United Kingdom | |
| is therefore not taking part in the | is therefore not taking part in the | is therefore not taking part in the | |
| adoption of this Regulation and is not | adoption of this Regulation and is not | adoption of this Regulation and is not | |

¹⁷ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (OJ L 131, 1.6.2000, p. 43).



| hound by it on subject to its | hound by it on subject to its | hound by it or subject to its | |
|--|---|--|--|
| bound by it or subject to its | bound by it or subject to its | bound by it or subject to its | |
| application. | application. | application. | |
| (47) This Regulation constitutes a | (47) This Regulation constitutes a | (47) This Regulation constitutes a | |
| development of the provisions of the | development of the provisions of the | development of the provisions of the | |
| Schengen <i>acquis</i> in which Ireland | Schengen acquis in which Ireland | Schengen acquis in which Ireland | |
| does not take part, in accordance | does not take part, in accordance | does not take part, in accordance | |
| with Council Decision | with Council Decision | with Council Decision | |
| 2002/192/EC ¹⁸ ; Ireland is therefore | $2002/192/EC^{18}$; Ireland is therefore | 2002/192/EC ¹⁸ ; Ireland is therefore | |
| not taking part in the adoption of this | not taking part in the adoption of this | not taking part in the adoption of this | |
| Regulation and is not bound by it or | Regulation and is not bound by it or | Regulation and is not bound by it or | |
| subject to its application. | subject to its application. | subject to its application. | |
| (48) As regards Iceland and | (48) As regards Iceland and | (48) As regards Iceland and | |
| Norway, this Regulation constitutes a | Norway, this Regulation constitutes a | Norway, this Regulation constitutes a | |
| development of the provisions of the | development of the provisions of the | development of the provisions of the | |
| Schengen <i>acquis</i> within the meaning | Schengen <i>acquis</i> within the meaning | Schengen <i>acquis</i> within the meaning | |
| of the Agreement concluded by the | of the Agreement concluded by the | of the Agreement concluded by the | |
| Council of the European Union and | Council of the European Union and | Council of the European Union and | |
| the Republic of Iceland and the | the Republic of Iceland and the | the Republic of Iceland and the | |
| Kingdom of Norway concerning the | Kingdom of Norway concerning the | Kingdom of Norway concerning the | |
| latters' association with the | latters' association with the | latters' association with the | |
| implementation, application and | implementation, application and | implementation, application and | |
| development of the Schengen | development of the Schengen | development of the Schengen | |
| acquis ¹⁹ which fall within the area | acquis ¹⁹ which fall within the area | acquis ¹⁹ which fall within the area | |
| referred to in Article 1, point A of | referred to in Article 1, point A of | referred to in Article 1, point A of | |
| Council Decision 1999/437/EC ²⁰ . | Council Decision $1999/437/EC^{20}$. | Council Decision 1999/437/EC ²⁰ . | |
| (49) As regards Switzerland, this | (49) As regards Switzerland, this | (49) As regards Switzerland, this | |

¹⁸ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

¹⁹ OJ L 176, 10.7.1999, p. 36.

²⁰ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

| | | | / |
|--|--|--|---|
| Regulation constitutes a development | Regulation constitutes a development | Regulation constitutes a development | |
| of the provisions of the Schengen | of the provisions of the Schengen | of the provisions of the Schengen | |
| acquis within the meaning of the | acquis within the meaning of the | acquis within the meaning of the | |
| Agreement between the European | Agreement between the European | Agreement between the European | |
| Union, the European Community and | Union, the European Compunity and | Union, the European Community and | |
| the Swiss Confederation on the Swiss | the Swiss Confederation on the Swiss | the Swiss Confederation on the Swiss | |
| Confederation's association with the | Confederation's association with the | Confederation's association with the | |
| implementation, application and | implementation, application and | implementation, application and | |
| development of the Schengen | development of the Schengen | development of the Schengen | |
| $acquis^{21}$ which fall within the area | $acquis^{21}$ which fall within the area | $acquis^{21}$ which fall within the area | |
| referred to in Article 1, point A of | referred to in Article 1, point A of | referred to in Article 1, point A of | |
| Council Decision 1999/437/EC read | Council Decision 1999/437/EC read | Council Decision 1999/437/EC read | |
| in conjunction with Article 3 of | in conjunction with Article 3 of | in conjunction with Article 3 of | |
| Council Decision 2008/146/EC ²² and | Coupcil Decision 2008/146/EC ²² and | Council Decision 2008/146/EC ²² and | |
| with Article 3 of Council Decision | with Article 3 of Council Decision | with Article 3 of Council Decision | |
| 2008/149/JHA ²³ . | /2008/149/JHA ²³ . | 2008/149/JHA ²³ . | |
| (50) As regards Liechtenstein, this | (50) As regards Liechtenstein, this | (50) As regards Liechtenstein, this | |
| Regulation constitutes a development | Regulation constitutes a development | Regulation constitutes a development | |
| of the provisions of the Schengen | of the provisions of the Schengen | of the provisions of the Schengen | |
| <i>acquis</i> within the meaning of the | acquis within the meaning of the | <i>acquis</i> within the meaning of the | |
| Protocol between the European | Protocol between the European | Protocol between the European | |
| Union, the European Community, the | Union, the European Community, the | Union, the European Community, the | |
| Swiss Confederation and the | Swiss Confederation and the | Swiss Confederation and the | |
| Principality of Liechtenstein on the | Principality of Liechtenstein on the | Principality of Liechtenstein on the | |
| accession of the Principality of | accession of the Principality of | accession of the Principality of | |

²¹ OJ L 53, 27.2.2008, p. 52.

²² Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1.

²³ Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 50).



| Liechtenstein to the Agreement | Liechtenstein to the Agreement | Liechtenstein to the Agreement | |
|--|--|--|--|
| e | e / | 0 | |
| between the European Union, the | between the European Union, the | between the European Union, the | |
| European Community and the Swiss | European Community and the Swiss | European Community and the Swiss | |
| Confederation on the Swiss | Confederation on the Swiss | Confederation on the Swiss | |
| Confederation's association with the | Confederation's association with the | Confederation's association with the | |
| implementation, application and | implementation, application and | implementation, application and | |
| development of the Schengen | development of the Schengen | development of the Schengen | |
| $acquis^{24}$ which fall within the area | $acquis^{24}$ which fall within the area | $acquis^{24}$ which fall within the area | |
| referred to in Article 1, point A of | referred to in Article 1, point A of | referred to in Article 1, point A of | |
| Council Decision 1999/437/EC read | Council Decision 1999/437/EC read | Council Decision 1999/437/EC read | |
| in conjunction with Article 3 of | in conjunction with Article 3 of | in conjunction with Article 3 of | |
| Council Decision 2011/350/EU ²⁵ and | Council Decision 2011/350/EU ²⁵ and | Council Decision 2011/350/EU ²⁵ and | |
| with Article 3 of Council Decision | with Article 3 of Council Decision | with Article 3 of Council Decision | |
| 2011/349/EU. ²⁶ | 2011/349/EU. ²⁶ | 2011/349/EU. ²⁶ | |
| (51) This Regulation constitutes an | deleted | (51) [As regards Cyprus, Bulgaria, | |
| act building upon, or otherwise | | Romania and Croatia, provisions of | |
| relating to, the Schengen acquis | | this Regulation referring to VIS | |
| within, respectively, the meaning of | | constitute [] <u>provisions</u> building | |
| Article 3(2) of the 2003 Act of | | upon, or otherwise relating to, the | |
| Accession, Article 4(2) of the 2005 | | Schengen acquis within, | |
| Act of Accession and Article 4(2) of | | respectively, the meaning of Article | |

- ²⁴ OJ L 160, 18.6.2011, p. 21.
- ²⁵ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).
- ²⁶ Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

| the 2011 Act of Accession, | 3(2) of the 2003 Act of Accession, |
|----------------------------|--|
| | Article 4(2) of the 2005 Act of |
| | Accession and Article 4(2) of the |
| | 2011 Act of Accession]. |
| | (52) The EES should not be |
| | operated by the Member States for |
| | which the verification in accordance |
| | with the applicable Schengen |
| | evaluation procedure has not yet |
| | been successfully completed and to |
| | which passive access to the VIS for |
| | the purpose of operating the EES has |
| | not yet been granted. Member States |
| | not operating the EES from the initial |
| | start of the operation should be |
| | connected to the EES in accordance |
| | with the procedure set out in this |
| | Regulation, as soon as all the |
| | relevant conditions are met, |



| HAVE ADOPTED THIS | HAVE ADOPTED THIS | HAVE ADOPTED THIS | |
|---|---|---|--|
| REGULATION: | REGULATION: | REGULATION: | |
| CHAPTER 1 | CHAPTER 1 | CHAPTER 1 | |
| General Provisions | General Provisions | General Provisions | |
| Article 1 | Article 1 | Article 1 | |
| Subject matter | Subject matter | Subject matter | |
| 1. This Regulation establishes an | 1. This Regulation establishes an | 1. This Regulation establishes an | References to "borders at which the |
| 'Entry/Exit System' (EES) for the | 'Entry/Exit System' (EES) for the | 'Entry/Exit System' (EES) for the | EES is operated" throughout the text |
| recording and storage of information | recording and storage of information | recording and storage of information | will be tackled when discussing the |
| on the date, time and place of entry | on the date, time and place of entry | on the date, time and place of entry | issue of territorial scope. |
| and exit of third country nationals | and exit of third country nationals | and exit of third country nationals | |
| crossing the external borders of the | crossing the external borders of the | crossing the [] borders at which | |
| Member States, for the calculation of | Member States, for the calculation of | the EES is operated of the Member | |
| the duration of their stay, and for the | the duration of their <i>authorised</i> stay, | States, for the calculation of the | |
| generation of alerts to Member States | and for the generation of alerts to | duration of their <u>authorised</u> stay, and | |
| when authorised periods for stay | Member States when authorised | for the generation of alerts to | |
| have expired as well as for the | periods for stay have expired as well | Member States when the authorised | |
| recording of the date, time and place | as for the recording of the date, time | [] stay has expired as well as for | |
| of refusal of entry of third country | and place of refusal of entry of third | the recording of the date, time and | |
| nationals whose entry for a short stay | country nationals whose entry for a | place of refusal of entry of third | |
| {or on the basis of a touring visa} | short stay {or on the basis of a | country nationals whose entry for a | |
| has been refused as well as the | touring visa} has been refused as | short stay [or on the basis of a | |
| authority of the Member State which | well as the authority of the Member | touring visa] has been refused as well | |
| refused the entry and the reasons for | State which refused the entry and the | as the authority of the Member State | |
| the refusal. | reasons for the refusal. | which refused the entry and the | |
| | | reasons for the refusal. | |
| 2. This Regulation also lays down | 2. This For the purposes of the | 2. This Regulation also lays down | Provisionally agreed: |
| in its Chapter IV the conditions | prevention, detection and | in its Chapter IV the conditions | 2. For the purposes of the |
| under which Member States' | investigation of terrorist offences or | under which Member States' | prevention, detection and |
| designated law enforcement | of other serious criminal offences, | designated [] authorities and the | investigation of terrorist offences or |
| authorities and the European Police | this Regulation also lays down in its | European Police Office (Europol) | of other serious criminal offences, |
| Office (Europol) may obtain access | Chapter IV the conditions and | may obtain access for consultation of | this Regulation also lays down in its |
| for consultation of the EES for the | limitations under which Member | the EES for the purposes of the | Chapter IV the conditions [and |



| purposes of the prevention, detection and investigation of terrorist offences or of other serious criminal offences. | 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. | prevention, detection and investigation of terrorist offences or of other serious criminal offences. | <i>limitations]</i> under which Member States' designated [] authorities and the European Police Office (Europol) may obtain access for consultation of the EES. Addition of a recital specifying that all rules of this Regulation, including police directive, to apply also to intelligence authorities. "and limitations": The Presidency suggests not to accept the addition to keep text aligned with Ch. IV. Keep Council text. |
|--|--|--|--|
| Article 2 | Article 2 | Article 2 | |
| Scope | Scope | Scope | |
| 1. This Regulation applies to third | 1. This Regulation applies to third | 1. This Regulation applies to third | Commission proposal: |
| country nationals admitted for a short | country nationals admitted for a short | country nationals admitted for a short | 1. This Regulation applies to third |
| stay {or on the basis of a touring | stay {or on the basis of a touring | stay [or on the basis of a touring | country nationals admitted for a short |
| visa} in the territory of the Member | visa} in the territory of the Member | visa] in the territory of the Member | stay [or on the basis of a touring |
| States subject to border checks in | States subject to border checks in | States subject to border checks in | visa] in the territory of the Member |
| accordance with Regulation (EU) | accordance with Regulation (EU) | accordance with Regulation (EU) | States subject to border checks in |
| 2016/399 when crossing the external | 2016/399 when crossing the external | 2016/399 when crossing the $[\ldots]$ | accordance with Regulation (EU) |
| borders of the Member States. When | borders of the Member States. When | borders at which the EES is operated | 2016/399 when crossing the borders |
| entering and exiting the territory of | entering and exiting the territory of | []. When entering and exiting the | at which the EES is operated. When |
| the Member States, it applies to third | the Member States, it applies to third | territory of the Member States, it | entering and exiting the territory of |
| country nationals who are family | country nationals who are family | applies to third country nationals | the Member States, it applies to third |
| members of a Union citizen to whom | members of a Union citizen to whom | who are [] members of [] <u>the</u> | country nationals: |
| Directive 2004/38/EC applies or of a | Directive 2004/38/EC applies or of a | <u>family</u> of [] national <u>s</u> of third | who are family members of a Union |
| national of a third country enjoying | national of a third country enjoying | countr <u>ies</u> enjoying the right of free | citizen to whom Directive |
| the right of free movement under | the right of free movement under | movement under Union law or | 2004/38/EC applies or of a national |
| Union law and who do not hold a | Union law and who do not hold a | enjoying the right of free movement | of a third country enjoying the right |

| residence card referred to under Directive 2004/38/EC. | residence card referred to under Directive 2004/38/EC. | equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other, and who do not hold a residence card referred to under Directive 2004/38/EC or a residence document pursuant to the agreement as applicable. | of free movement under Union law and who do not hold a residence card referred to under Directive2004/38/EC.i) who are family members of a Union citizen to whom Directive2004/38/EC applies or of a national of a third country enjoying the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other; and ii) who do not hold a residence card referred to under Directive 2004/38/EC or a residence permit pursuant to Regulation (EC) No 1030/2002. |
|---|---|--|--|
| 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. | 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. | 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: | 3. This Regulation does not apply to: | 3. This Regulation does not apply to: | |

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| (a) family members of a Union citizen to whom Directive 2004/38/EC applies who hold a residence card pursuant to that Directive; | (a) family members of a Union citizen to whom Directive 2004/38/EC applies who hold a residence card pursuant to that Directive; | (a) [] <u>third country nationals</u> <u>who are members of the family</u> of a Union citizen to whom Directive 2004/38/EC applies <u>and</u> who hold a residence card pursuant to that | <u>Commission proposal:</u> (a) third country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies and who hold a |
|--|--|---|--|
| | | Directive; | residence card pursuant to that Directive; |
| (b) family members of third country nationals enjoying the right of free movement under Union law who hold a residence card pursuant to Directive 2004/38/EC; | (b) family members of third country nationals enjoying the right of free movement under Union /aw who hold a residence card pursuant to Directive 2004/38/EC; | (b) [] third country nationals who are members of the family of nationals of third countries enjoying the right of free movement under Union law <u>or enjoying the right of</u> free movement equivalent to that of <u>Union citizens under an agreement</u> between the Union and its Member States on the one hand and a third country on the other, and who hold a residence card pursuant to Directive 2004/38/EC <u>or a residence document</u> pursuant to the agreement as applicable; | <i>Commission proposal:</i> (b)third country nationals who are members of the family of a national of a third country enjoying the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other and who hold a residence card pursuant to Directive 2004/38/EC or a residence permit pursuant to Regulation 1030/2002; |
| (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; | (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; | (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; (cc) third country nationals exercising mobility in accordance with Directive 2014/66/EU or Directive (EU) 2016/801; | <i>Provisionally agreed:</i> (cc) third country nationals exercising mobility in accordance with Directive 2014/66/EU or Directive (EU) 2016/801; |



| (d) holders of long-stay visas; | (d) holders of long-stay visas; | (d) holders of long-stay visas; | |
|---|---|---|--|
| (e) nationals of Andorra, Monaco | (e) nationals of Andorra, Monaeo | (e) nationals of Andorra, Monaco, | Provisionally agreed: |
| and San Marino; | and San Marino; | [] San Marino, and holders of a | (e) nationals of Andorra, Monaco, |
| | | passport issued by the Vatican City | [] San Marino, and holders of a |
| | | State; | passport issued by the Vatican City |
| | | | State; |
| (f) persons or categories of | (f) persons or categories of | (f) persons or categories of | To be discussed with amendments to |
| persons exempt from or benefiting | persons exempt from or benefiting | persons exempt from <u>border checks</u> | SBC |
| from facilitation of border crossing | from facilitation of border crossing | or benefiting from facilitation of | |
| as referred to in Article 6a (3)(d),(e) | as referred to in Article 6a (3)(d),(e) | border crossing as referred to in | |
| and (f) of Regulation (EU) 2016/399. | and (f) of Regulation (EU) 2016/399. | Article 6a (3)(d) [] of Regulation | |
| | | (EU) 2016/399 | |
| | | (g) persons or categories of | To be discussed with amendments to |
| | | persons as referred to in Article 6a | SBC |
| | | (3) (e), (f), (g) and (h) of Regulation | |
| | | <u>(EU) 2016/399.</u> | |
| This Regulation does not apply to | This Regulation does not apply to | This Regulation does not apply to | Provisionally agreed: |
| family members referred to in points | family members referred to in points | third country nationals who are [] | This Regulation does not apply to |
| (a) and (b) of the first subparagraph | (a) and (b) of the first subparagraph | members of the family referred to in | third country nationals who are |
| even if they are not accompanying or | even if they are not accompanying or | points (a) and (b) of the first | members of the family referred to in |
| joining the Union citizen or a third | joining the Union citizen or a third | subparagraph even if they are not | points (a) and (b) of the first |
| country national enjoying the right of | country national enjoying the right of | accompanying or joining the Union | subparagraph even if they are not |
| free movement. | free movement. | citizen or a third country national | accompanying or joining the Union |
| | | enjoying the right of free movement. | citizen or a third country national |
| | | | enjoying the right of free movement. |
| 4. The provisions of this | 4. The provisions of this | 4. The provisions of this | |
| Regulation regarding the calculation | Regulation regarding the calculation | Regulation regarding the calculation | Commission proposal: |
| of the duration of stay and the | of the duration of stay and the | of the duration of <u>the authorised</u> stay | 4. The provisions of this |
| generation of alerts to Member States | generation of alerts to Member States | and the generation of alerts to | Regulation regarding the calculation |
| when authorised periods for stay | when authorised periods for stay | Member States when the authorised | of the duration of the authorised stay |
| have expired do not apply to third | have expired do not apply to third | [] stay has expired do not apply to | and the generation of alerts to |
| country nationals who are family | country nationals who are family | third country nationals who are | Member States when the authorised |
| members of a Union citizen to whom | members of a Union citizen to whom | family members of a Union citizen to | stay has expired do not apply to third |



| 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. | 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. | 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. | 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. i) 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 equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other; and ii) who do not hold a residence card referred to under Directive 2004/38/EC or a residence permit pursuant to Regulation (EC) No 1030/2002. |
|--|--|---|---|
| Article 3 Definitions | Article 3 Definitions | Article 3 Definitions | |
| Definitions1. For the purposes of thisRegulation, the following definitionsapply: | Deptitions1. For the purposes of thisRegulation, the following definitionsapply: | Depinitions1. For the purposes of thisRegulation, the following definitionsapply: | |
| (1) 'external borders' mean external borders as defined in Article 2(2) of Regulation (EU) 2016/399; | (1) 'external borders' mean external borders as defined in Article 2(2) of Regulation (EU) 2016/399; | (1) 'external borders' means 'external borders' as defined in Article 2(2) of Regulation (EU) 2016/399; | |

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| ANNEX |



| | | (1a) <u>'internal borders' means</u> | |
|--|--|---|--|
| | | <u>internal borders as defined in Article</u> 2(1) of Regulation (EU) 2016/399; | |
| (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 in accordance with Regulation (EU) 2016/399; | (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 in accordance with Regulation (EU) 2016/399; | (2) 'border <u>check</u> authorities' mean the competent authorities assigned, in accordance with national law, to carry out checks on persons at the [] border crossing points <u>at which the EES is operated</u> in accordance with <u>Article 60 of this</u> Regulation []; | Provisionally agreed (2) 'border authorities' mean the border guard assigned in accordance with national law to carry out border checks as defined in Article 2(11) of Regulation (EU) 2016/399; |
| (3) 'immigration authorities' mean the competent authorities assigned, in accordance with national law, to examine the conditions and take decisions related to the stay of third country nationals on the territory of the Member States; | (3) 'immigration authorities' mean the competent authorities assigned, in accordance with national law, to examine the conditions and take decisions related to the stay of third country nationals on the territory of the Member States; | (3) 'immigration authorities' mean the competent authorities assigned, in accordance with national law, to: | Provisionally agreed: (3) 'immigration authorities' mean the competent authorities responsible, in accordance with national law, <u>for</u> : |
| | | (a) check within the territory of the Member States whether the conditions for entry to or of authorised stay in the territory of the Member States are fulfilled and/or | (a) <u>checks</u> within the territory of the Member States whether the conditions for entry to or of authorised stay in the territory of the Member States are fulfilled and/or |
| | | (b) examine the conditions and take decisions related to the [] <u>residence of third country nationals</u> on the territory of the Member States <u>and where relevant provide advice in</u> <u>accordance with Regulation (EU)</u> <u>377/2004 and/or;</u> | (b) <u>examining</u> the conditions and take decisions related to the residence of third country nationals on the territory of the Member States and where relevant provide advice in accordance with Regulation (EU) 377/2004 and/or; |
| | | <u>c)</u> <u>facilitate the return of third</u> <u>country nationals to a third country</u> <u>of origin or transit.</u> | (c) the return of third country nationals to a third country of origin or transit. |



| (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, | (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, | (4) 'visa authorities' mean the [] authorities <u>as defined in Article 4(3)</u> <u>of Regulation (EC) No 767/2008</u> []; | |
|--|--|--|--|
| | | (4a) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases, | |
| | (4a) 'designated law enforcement authorities' means the authorities responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences designated by the Member States pursuant to Article 26; | | |
| (5) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 20 of the Treaty, with the exception of persons who 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, | (5) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 20 of the Treaty, with the exception of persons who 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, | (5) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 20 (1) of the [] <u>TFEU</u> , 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 | |



| and third countries on the other hand; | and third countries on the other hand; | the one hand, and third countries on | |
|--|---|--|--|
| | | the other hand; | |
| (6) 'travel document' means a | (6) 'travel document' means a | (6) 'travel document' means a | |
| passport or other equivalent | passport or other equivalent | passport or other equivalent | |
| document, entitling the holder to | document, entitling the holder to | document, entitling the holder to | |
| cross the external borders and to | cross the external borders and to | cross the external borders and to | |
| which a visa may be affixed; | which a visa may be affixed; | which a visa may be affixed; | |
| (7) 'short stay' means stays in the | (7) 'short stay' means stays in the | (7) 'short stay' means stay as | |
| territory of the Member States of a | territory of the Member States of a | defined in Article 6(1) of Regulation | |
| duration of no more than 90 days in | duration of no more than 90 days in | (EU) 2016/399 []; | |
| any 180 day period; | any 180 day period; | | |
| (8) 'short stay visa' means an | (8) 'short stay visa' means an | (8) 'short stay visa' means visa as | |
| authorisation issued by a Member | authorisation issued by a Member | defined in Article 2(2)(a) of | |
| State with a view to an intended stay | State with a view to an intended stay | Regulation (EC) No 810/2009 []; | |
| on the territory of the Member States | on the territory of the Member States | | |
| of a duration of no more than 90 days | of a duration of no more than 90 days | | |
| in any 180 day period; | in any 180 day period visa as defined | | |
| | in point (a) of point 2 of Article 2 of | | |
| | Regulation (EC) No 810/2009 of the | | |
| | European Parliament and of the | | |
| | Council ^{1a} ; | | |
| | , , , , , , , , , , , , , , , , , , , | | |
| | ^{<i>Ia</i>} 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). | | |
| | | (8a) <u>'national short stay visa' means</u> | |
| | | an authorisation issued by a Member | |
| | | State which does not apply the | |
| | | Schengen acquis in full with a view | |
| | | to an intended stay in the territory of | |
| | | that Member State of a duration of no | |



| | | man than 00 days in any 190 days | |
|--|--|--|--|
| | | more than 90 days in any 180-day | |
| | | period; | |
| (9) 'touring visa' means an | (9) 'touring visa' means an | (9) ['touring visa' means visa as | |
| authorisation issued by a Member | authorisation issued by a Member | defined in Article 3(2) of Regulation | |
| State with a view to an intended stay | State with a view to an intended stay | (EU) No xxx/20xx establishing a | |
| in the territory of two or more | in the territory of two or more | touring visa and amending the | |
| Member States for a duration of | Member States for a duration of | Convention implementing the | |
| more than 90 days in any 180 day | more than 90 days in any 180 day | Schengen Agreement and | |
| period, provided that the applicant | period, provided that the applicant | Regulations (EC) No 562/2006 and | |
| does not intend to stay for more than | does not intend to stay for more than | (EC) No 767/2008 []]; | |
| 90 days in any 180 day period in the | 90 days in any 180 day period in the | | |
| territory of the same Member State; | territory of the same Member State | | |
| | 12 months in any 15 month period, | | |
| | provided that the applicant does not | | |
| | stay for more than 90 days in any | | |
| | 180 day period in the territory of the | | |
| | same Member State; | | |
| | | (9a) 'visa' means short stay visa | |
| | | [and touring visa]; | |
| | | (9b) 'authorised stay' means the | |
| | | | |
| | | exact number of days during which a | |
| | | third country national may legally | |
| | | stay in the territory of Member | |
| | | States, counting from the date of the | |
| | | entry in accordance with the | |
| | | applicable provisions; | |
| (10) 'carriers' mean any natural or | (10) 'carriers' mean any natural or | (10) 'carriers' mean <u>s carriers, as</u> | |
| legal person whose profession it is to | legal person whose profession it is to | defined in Article 2(15) of | |
| provide transport of persons; | provide transport of persons; | <u>Regulation (EU) 2016/399 [];</u> | |
| (11) 'Member State responsible' | (11) 'Member State responsible' | (11) 'Member State responsible' | |
| means the Member State which has | means the Member State which has | means the Member State which has | |
| entered the data in the EES; | entered the data in the EES; | 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 | (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 | (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 | process of determining a person's | process of determining a person's | |
| identity through a database search | identity through a database search | identity through a database search | |
| against multiple sets of data (one-to- | against multiple sets of data (one-to- | against multiple sets of data (one-to- | |
| many check); | many check); | many check); | |
| (14) 'alphanumeric data' means data | (14) 'alphanumeric data' means data | (14) 'alphanumeric data' means data | |
| represented by letters, digits, special | represented by letters, digits, special | represented by letters, digits, special | |
| characters, space and punctuation | characters, space and punctuation | characters, space and punctuation | |
| marks; | marks; | marks; | |
| (15) 'fingerprint data' means the data relating to 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; | (15) 'fingerprint data' means the data relating to fingerprints of the index, middle finger, ring finger and little finger from the right hand, where present, and otherwise from the left hand, <i>with sufficient image</i> <i>resolution and quality to be used in</i> <i>automated biometric matching</i> , or a latent fingerprint; | (15) 'fingerprint data' means the data relating to <u>four</u> fingerprints of the index, middle finger, ring finger and little finger from the right hand, where present, and otherwise from the left hand, [] <u>with sufficient</u> resolution and quality to be used in <u>automated biometric matching</u> ; | Presidency proposes to move the rules concerning the resolution and the quality of fingerprints in the operative part of the articles, namely under article 15(1). Delegations are encouraged to accept the following compromise proposal: (15) 'fingerprint data' means the data relating to the <u>four</u> fingerprints of the index, middle finger, ring finger and little finger <i>from the right</i> <i>or left hand</i> ; |
| (16) 'facial image' means digital | (16) 'facial image' means digital | (16) 'facial image' means digital | |
| images of the face with sufficient | images of the face with sufficient | images of the face with sufficient | |
| image resolution and quality to be | image resolution and quality to be | image resolution and quality to be | |
| used in automated biometric | used in automated biometric | used in automated biometric | |
| matching; | matching; | matching; | |



| (17) 'biometric data' means | (17) 'biometric data' means | (17) 'biometric data' means | |
|--|---|---------------------------------------|--------------------------------------|
| fingerprint data and facial image; | fingerprint data and facial image; | fingerprint data and facial image; | |
| (18) 'overstayer' means a third | (18) 'overstayer' means a third | (18) 'overstayer' means a third | |
| country national who does not fulfil, | country national who does not fulfil, | country national who does not fulfil, | |
| or no longer fulfils the conditions | or no longer fulfils the conditions | or no longer fulfils the conditions | |
| relating to the duration of a short stay | relating to the duration of a short stay | relating to [] his or her authorised | |
| on the territory of the Member | on the territory of the Member | stay on the territory of the Member | |
| 5 | States; | 5 | |
| States; | | States; | |
| (19) 'eu-LISA' means the European | (19) 'eu-LISA' means the European | (19) 'eu-LISA' means the European | |
| Agency for the operational | Agency for the operational | Agency for the operational | |
| management of large-scale | management of large-scale | management of large-scale | |
| information systems in the area of | information systems in the area of | information systems in the area of | |
| freedom, security and justice | freedom, security and justice | freedom, security and justice | |
| established by Regulation (EU) No | established by Regulation (EU) No | established by Regulation (EU) No | |
| 1077/2011; | _1077/2011; | 1077/2011; | |
| (20) 'Frontex' means the European | (20) 'Frontex' means the European | (20) []; | Deletion of definition provisionally |
| Agency for the Management of | Agency for the Management of | | <mark>agreed</mark> |
| Operational Cooperation at the | Operational Cooperation at the | | |
| External Borders of the Member | External Borders of the Member | | |
| States of the European Union | States of the European Union | | |
| established by Regulation (EC) No | European Border and Coast Guard | | |
| 2007/2004; | Agency established by Regulation | | |
| | (EC) No 2007/2004 (EU) 2016/1624 | | |
| | of the European Parliament and of | | |
| | the Council ^{1a} ; | | |
| | | | |
| | ^{<i>Ia</i>} Regulation (EU) 2016/1624 of the | | |
| | European Parliament and of the | | |
| | Council of 14 September 2016 on | | |
| | the European Border and Coast | | |
| | Guard and amending Regulation | | |
| | (EU) 2016/399 of the European | | |
| | Parliament and of the Council and | | |
| | | | |



| | repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1). | | |
|--|---|--|---|
| (21) 'supervisory authority' means the supervisory authorities established in accordance with Article 28 of Directive 95/46/EC; | deleted | (21) 'supervisory authority' means the supervisory authorities established in accordance with Article 28 of Directive 95/46/EC; | Provisionally agreed: (21) "supervisory authorities" means the supervisory authority established in accordance with Article 51(1) of Regulation (EU) 2016/679 and the supervisory <u>authority established</u> in accordance with Article 41(1) of Directive (EU) 2016/680; |
| (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; | deleted | (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; | Deletion Provisionally agreed |
| (23) 'national supervisory body' means the supervisory bodies established in accordance with Article 33 of Decision 2009/371/JHA; | deleted | (23) []; | |
| (24) 'EES data' means all data stored in the Central System in accordance with Articles 13, 14, 15, 16, 17 and 18; | (24) 'EES data' means all data stored in the Central System in accordance with Articles 13, 14, 15, 16, 17 and 18; | (24) 'EES data' means all data stored in the Central System in accordance with Articles 13, 14, 15, 16, 17 and 18; | |

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|---------|----------|--------|----|
| ANNEX | DG D 1 A | LIMITE | EN |

| (25) 'law enforcement' means the | (25) 'law enforcement' means the | (25) 'law enforcement' means the | |
|--|--|--|--|
| prevention, detection or investigation | prevention, detection or investigation | prevention, detection or investigation | |
| of terrorist offences or other serious | of terrorist offences or other serious | of terrorist offences or other serious | |
| criminal offences; | criminal offences; | criminal offences; | |
| (26) 'terrorist offences' mean the | (26) 'terrorist offences' mean the | (26) 'terrorist offences' mean the | |
| offences under national law which | offences under national law which | offences under national law which | |
| correspond or are equivalent to those | correspond or are equivalent to those | correspond or are equivalent to those | |
| referred to in Articles 1 to 4 of | referred to in Articles 1 to 4 of | referred to in Articles 1 to 4 of | |
| Framework Decision 2002/475/JHA; | Eramework Decision 2002/475/JHA; | 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' | (27) 'serious criminal offences' | (27) 'serious criminal offences' | |
| means the offences which correspond | means the offences which correspond | means the offences which correspond | |
| or are equivalent to those referred to | or are equivalent to those referred to | or are equivalent to those referred to | |
| in Article 2(2) of Framework | in Article 2(2) of Framework | in Article 2(2) of Framework | |
| Decision 2002/584/JHA, if they are | Decision 2002/584/JHA, if they are | Decision 2002/584/JHA, if they are | |
| punishable under national law by a | punishable under national law by a | punishable under national law by a | |
| custodial sentence or a detention | custodial sentence or a detention | custodial sentence or a detention | |
| order for a maximum period of at | order for a maximum period of at | order for a maximum period of at | |
| least three years; | least three years; | least three years; | |
| | | (28) <u>'Self Service System' means an</u> | |
| | | automated system as defined in | |
| | | Article 2(23) of Regulation (EU) | |
| | | <u>2016/399;</u> | |



| | | (29) <u>'e-gate' means an</u> | |
|--|---|---|--|
| | | infrastructure as defined in Article | |
| | | <u>2(24) of Regulation (EU) 2016/399;</u> | |
| | | (30) <u>'Failure To Enrol Rate (FTE)'</u> | Provisionally agreed text: |
| | | means the proportion of registrations | (30) 'Failure To Enrol Rate (FTE)' |
| | | with insufficient quality of the | means the proportion of registrations |
| | | biometric enrolment; | with insufficient quality of the |
| | | | biometric enrolment; |
| | | (31) 'False Positive Identification | Provisionally agreed text: |
| | | Rate (FPIR) ' means the proportion | 31) 'False Positive Identification |
| | | of returned matches which do not | Rate (FPIR) ' means the proportion |
| | | belong to the checked traveller; | of returned matches which do not |
| | | | belong to the checked traveller; |
| | | (32) 'False Negative Identification | Provisionally agreed text: |
| | | Rate (FNIR) ' means the proportion | 32) 'False Negative Identification |
| | | of missed matches during biometric | Rate (FNIR) ' means the proportion |
| | | search although the traveller was | of missed matches during biometric |
| | | registered with biometric data. | search although the traveller was |
| | | | registered with biometric data. |
| 2. The terms defined in Article 2 | 2. The terms defined in Article 2 | 2. The terms defined in Article 2 | Provisionally agreed text: |
| of Directive 95/46/EC shall have the | 4 of Directive 95/46/EC Regulation | of Directive 95/46/EC shall have the | 2. The terms defined in Article 4 |
| same meaning in this Regulation in | (EU) 2016/679 shall have the same | same meaning in this Regulation in | of Regulation (EU) 2016/679 shall |
| so far as personal data are processed | meaning in this Regulation in so far | so far as personal data are processed | have the same meaning in this |
| by the authorities of Member States | as personal data are processed by the | by the authorities of Member States | Regulation in so far as personal data |
| for the purpose laid down in Article 5 | authorities of Member States for the | for the purpose laid down in Article 5 | are processed by the authorities of |
| of this Regulation. | purpose <i>purposes</i> laid down in | of this Regulation. | Member States for the purposes laid |
| | Article $5(1)$ of this Regulation. | 6 | down in Article 5(1) of this |
| | | | Regulation. |
| | l | | 100501001011 |



| 3. The terms defined in Article 2 | 3. The terms defined in Article 3 | 3. The terms defined in Article 2 | |
|---------------------------------------|--|---|-------------------|
| of Framework Decision | of <i>Directive (EU) 2016/680</i> shall | of Framework Decision | |
| 2008/977/JHA shall have the same | have the same meaning in this | 2008/977/JHA shall have the same | |
| meaning in this Regulation in so far | Regulation in so far as personal data | meaning in this Regulation in so far | |
| as personal data are processed by the | are processed by the authorities of | as personal data are processed by the | |
| authorities of the Member States for | the Member States for law | authorities of the Member States for | |
| law enforcement purposes. | enforcement purposes laid down in | law enforcement purposes. | |
| | Article 5(1a) of this Regulation. | | |
| | | <u>Article 3a</u> | EP is reflecting. |
| | | Borders at which the EES applies | |
| | | and use of the EES at these borders | |
| | | <u>1.</u> <u>The EES shall apply at the</u> | |
| | | external borders of the Member | |
| | | States. | |
| | | 2. <u>The Member States which</u> | |
| | | apply the Schengen acquis in full | |
| | | shall introduce the EES at their | |
| | | internal borders with Member States | |
| | | which do not yet apply the Schengen | |
| | | acquis in full but operate the EES. | |
| | | 2a. The Member States which | |
| | | apply the Schengen acquis in full and | |
| | | the Member States which do not yet | |
| | | apply the Schengen acquis in full but | |
| | | operate the EES shall introduce the | |
| | | EES at their internal borders with the | |
| | | Member States which do not yet | |
| | | apply the Schengen acquis in full and | |
| | | do not operate the EES. | |
| | | 2b. Member States which do not | |
| | | yet apply the Schengen acquis in full | |
| | | but operate the EES shall introduce | |
| | | the EES at their internal borders | |



| | | I | 1 |
|---------------------------------------|--|--|--|
| | | defined under Article 2(1) (b) and (c) | |
| | | of Regulation (EU) 2016/399. | |
| | | 3. At the internal land borders | |
| | | between two Member States which | |
| | | do not yet apply the Schengen acquis | |
| | | in full but operate the EES, those | |
| | | Member States shall introduce the | |
| | | EES without biometric | |
| | | functionalities by derogation from | |
| | | Art. 21(2) third and fourth | |
| | | subparagraphs, as well as Art. 25. At | |
| | | these internal borders, where the | |
| | | third country national is not yet | |
| | | registered into the EES, the | |
| | | individual file shall be created | |
| | | without recording biometric data. | |
| | | Biometric data shall be added at the | |
| | | next border crossing where the EES | |
| | | is operated with the biometric | |
| | | functionalities. | |
| Article 4 | Article 4 | Article 4 | Provisionally agreed: |
| Set-up of the EES | Set-up Development and operational | Set-up of the EES | Article 4 |
| | management of the EES | | Set-up of the EES |
| The Agency for the operational | The Agency for the operational | [] 'eu-LISA' shall, in cooperation | EP insists |
| management of large-scale | management of large-scale | with Member States and in | - on the deletion of the reference to |
| information systems in the area of | information systems in the area of | accordance with Article 34, develop | MS and Art. 34 (because MS' role is |
| freedom, security and justice ('eu- | freedom, security and justice ('eu- | the EES and ensure its operational | clear in Art. 34). The Presidency |
| LISA') shall develop the EES and | LISA') shall develop the EES and | management, including the | suggests to come back to this when |
| ensure its operational management, | ensure its operational management, | functionalities for processing | discussing Art. 34(1). Keep Council |
| including the functionalities for | including the functionalities for | biometric data referred to in Article | text. |
| processing biometric data referred to | processing biometric data referred to | 14(1)(f) and Article 15 (1) (b) and | Provisionally agreed: |
| in Article 14(1)(f) and Article 15. | in Article 14(1)(f) and Article 15, as | <u>(c).</u> | 'eu-LISA' shall,[in cooperation with |
| | well as adequate security. | | eu-LISA Shan, <u>In cooperation with</u> |
| | · · · | | J |



| | | | <u>Member States and in accordance</u> <u>with Article 34,]</u> 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 (1) (b) and (c), as well as adequate security. |
|--|--|---|---|
| Article 5 | Article 5 | Article 5 | The Presidency suggests to accept |
| Purpose of the EES | Purpose Objectives of the EES | Purpose of the EES | <i>"objectives" <mark>Accepted by delegations</mark>.</i> Provisionally agreed Article 5 Objectives of the EES |
| By recording, storing and providing | <i>1.</i> By recording, storing and | By recording, storing and providing | The Presidency would like |
| access to Member States to the date, | providing access to Member States | access to Member States to the <u>data</u> | delegations' view on the |
| time and place of the entry and exit and refusals of entry of third country | <i>with access</i> to the date, time and place of the entry and exit and | recorded in the EES pursuant to Articles 14 to 18 [], the objectives | restructuring of the provision by the EP. Accepted by delegations. |
| nationals at external borders, the EES shall: | refusals of entry of third country nationals at external borders, the EES shall: | of EES shall <u>be</u> : | El . Accepteu by delegations. |
| (a) enhance the efficiency of | (a) enhance the efficiency of | (a) <u>to</u> enhance the efficiency of | |
| border checks by calculating and monitoring the duration of the | border checks by calculating and monitoring the duration of the | border checks by calculating and monitoring the duration of the | |
| authorised stay at entry and exit of | authorised stay at entry and exit of | authorised stay at entry and exit of | |
| third country nationals admitted for a | third country nationals admitted for a | third country nationals admitted for a | |
| short stay {or on the basis of a | short stay {or on the basis of a | short stay [or on the basis of a | |
| touring visa}; | touring visa}; | touring visa], | |



| (b) assist in the identification of | (b) assist in the identification of | (b) to assist in the identification of | |
|--|---|---|---|
| any person who does not, or does no | any person who does not, or does no | <u>a third country national</u> [] who | |
| longer fulfil the conditions for entry | longer fulfil the conditions for entry | does not, or does no longer fulfil the | |
| to or stay on the territory of the | to or stay on the territory of the | conditions for entry to or for short | |
| Member States; | Member States; | stay [or stay based on touring visa] | |
| | | on the territory of the Member | |
| | | States; | |
| (c) allow to identify and detect | (c) allow to identify and detect the | (c) <u>to</u> allow to identify and detect | Compromise proposal: |
| overstayers (also within the territory) | identification and detection of | overstayers [] and enable | c) allow <i>the identification and</i> |
| and enable competent national | overstayers (also within the territory) | competent national authorities of the | <i>detection of</i> overstayers and enable |
| authorities of the Member States to | and enable competent national | Member States to take appropriate | competent national authorities of the |
| take appropriate measures including | authorities of the Member States to | measures including to increase the | Member States to take appropriate |
| to increase the possibilities for return | take appropriate measures including | possibilities for return; | measures |
| | to increase the possibilities for | | |
| | return ; | | |
| (d) allow to electronically check | d) allow to electronically check | (d) <u>to</u> allow to electronically check | Provisionally agreed: |
| refusals of entry in the EES; | refusals of entry in the EES; | refusals of entry in the EES; | (d) <u>to</u> allow to electronically check |
| | | | refusals of entry in the EES; |
| (e) free up border control | (e) free up border control | (e) [] <u>to enable automation of</u> | Provisionally agreed: |
| resources from performing checks | resources from performing checks | border [] checks <u>procedure</u> []; | (e)enable the automation of border |
| that can be automated and enable | that can be automated and enable | | check procedures in relation to |
| better focus on the assessment of | better focus on the assessment of | | third-country nationals; |
| third country nationals; | third country nationals enable the | | |
| | automation of border checks on | | |
| | third-country nationals; | | |
| (f) enable consulates to have | (f) enable consulates to have | (f) <u>to enable [] visa authorities</u> | Provisionally agreed: |
| access to information on the lawful | access to information on the lawful | to have access to information on the | (f) to enable visa authorities to |
| use of previous visas; | use of previous visas; | lawful use of previous visas, | have access to information on the |
| | | | lawful use of previous visas, |
| (g) inform third country nationals | (g) inform third country nationals | (g) <u>to</u> inform third country | Provisionally agreed: |
| of the duration of their authorised | of the duration of their authorised | nationals of the duration of their | (g) <u>to</u> inform third country |
| stay; | stay; | authorised stay; | 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; | (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; | (h) to 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; (ha) where relevant, to support Member States in operating their national facilitation programmes, including the examination and decision on applications; | Provisionally agreed: (h) to 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; Provisionally agreed: (ha) where relevant, to support Member States in operating their national facilitation programmes, by: Enabling the national competent authorities referred to in Article 8e of Regulation (EU) 2016/399 to have access to information on previous short stays or refusals of entry for the purposes of the examination of applications for access to national facilitation |
|---|---|---|--|
| (i) combat identity fraud; | (i) combat identity fraud; | (i) <u>to combat identity fraud and</u> | access to national facilitation programmes and the adoption of decisions referred to in Article 23; - Notifying the border [check] authorities that access has been granted to the national facilitation programme. Provisionally agreed: |
| (1) compat identity fraud, | (1) combat identity fraud; | the misuse of travel documents; | i) to 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; | deleted | (j) <u>to</u> 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; | deleted | (k) [] | Provisionally agreed: deleted |
|---|---|--|----------------------------------|
| (1) enable generating information on travel histories of terrorist, criminal suspects as well as of victims for investigations related to terrorism or serious crime. | deleted | (1) <u>to</u> enable generating information [] for investigations related to terrorism or <u>other</u> serious <u>criminal offences</u> , [] <u>including</u> <u>identification of perpetrators</u> , <u>suspects and victims of these</u> <u>offences</u> ; | |
| | | (m) <u>to facilitate the examination of</u> <u>an application for international</u> <u>protection;</u> | To be discussed with Art. 25a |
| | | (n) to facilitate the determination of the responsibility for asylum applications. | To be discussed with Art. 25b |
| | 1a. By granting access to law enforcement authorities in accordance with the conditions set out in this Regulation, the EES shall: (a) contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences; (b) enable identifying and apprehending terrorist and criminal suspects as well as identifying victims crossing the external borders; (c) enable the generation of information on the travel histories | | |



| | of terrorist and criminal suspects as well as of victims for investigations related to terrorism or serious crime. 1b. In order to facilitate border crossing for third-country nationals who frequently travel and have been pre-vetted, Member States may | | Refer to (ha) above. |
|--|---|--|----------------------|
| | establish national facilitation programmes in accordance with Article 8e of Regulation 2016/399 and connect them to the EES. | | |
| | The EES shall enable the national competent authorities referred to in Article 8e of Regulation (EU) 2016/399 to have access to information on previous short stays or refusals of entry for the purposes of the examination of applications for access to national facilitation | | |
| | programmes and the adoption of decisions referred to in Article 23. | | |
| Article 6 | Article 6 | Article 6 | |
| Technical architecture of the EES | Technical architecture of the EES | Technical architecture of the EES | |
| The EES shall be composed of: (a) a Central System; | 1.The EES shall be composed of:(a)a Central System; | 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; | (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 <i>in a</i> <i>secure manner</i> ; | (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 [] infrastructures in Member States <u>necessary for border checks.</u> | Provisionally agreed: (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 in a secure manner; |
|--|--|---|--|
| (c) a Secure Communication Channel between the EES Central System and the VIS Central System; | (c) a Secure Communication Channel between the EES Central System and the VIS Central System; | (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. | (d) a secure and encrypted Communication Infrastructure between the Central System and the National Uniform Interfaces. (Horizontal change: wording to be applied throughout the text.) | (d) a Communication Infrastructure between the Central System and the National Uniform Interfaces. | Provisionally agreed: (d) a Communication Infrastructure which shall be secure and encrypted between the Central System and the National Uniform Interfaces. |
| | | | <i>Provisionally agreed:</i> (e) the web service referred to in Article 12; (f) the central repository referred to in Article 57(2). |
| 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). | 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). | 2. The EES Central System shall be hosted by eu-LISA in its [] 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). | Provisionally agreed: 2. The EES Central System shall be hosted by eu-LISA in its 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 | 3. Without prejudice to | 3. Without prejudice to | Provisionally agreed: |
|---|--|--|---|
| Commission Decision | Commission Decision | Commission Decision | 3. Without prejudice to |
| $2008/602/\text{EC}^{27}$, some hardware and | 2008/602/EC ²⁷ , some hardware and | $2008/602/\text{EC}^{27}$, some hardware and | Commission Decision |
| software components of the | software components of the | software components of the | $2008/602/EC^{27}$, some hardware and |
| Communication Infrastructure of the | Communication Infrastructure of the | Communication Infrastructure of the | software components of the |
| EES shall be shared with the | EES shall be shared with the | EES shall be shared with the | Communication Infrastructure of the |
| communication infrastructure of the | communication infrastructure of the | communication infrastructure of the | EES shall be shared with the |
| VIS referred to in Article 1(2) of | VIS referred to in Article 1(2) of | VIS referred to in Article 1(2) of | communication infrastructure of the |
| Decision 2004/512/EC. A separate | Decision 2004/5/12/EC. A separate | Decision 2004/512/EC. [] <u>L</u> ogical | VIS referred to in Article 1(2) of |
| virtual private network dedicated to | virtual private network dedicated to | separation of VIS and EES data shall | Decision 2004/512/EC. Logical |
| the EES shall be established in | the EES shall be established in | be ensured. | separation of VIS and EES data shall |
| addition to the existing private virtual | addition to the existing private virtual | | be ensured. |
| network of the VIS to ensure the | network of the VIS to ensure the | | |
| logical separation of VIS and EES | logical separation of VIS and EES | | |
| data. | Áata. | | |
| Article 7 | Article 7 | Article 7 | Article 7 |
| Interoperability with the VIS | Interoperability with the VIS | Interoperability with the VIS | Interoperability with the VIS |
| 1. eu-LISA shall establish a | 1. eu-LISA shall establish a | 1. eu-LISA shall establish a | Provisionally agreed: |
| Secure Communication Channel | Secure Communication Channel | Secure Communication Channel | (1) Eu-LISA shall establish a |
| between the EES Central System and | between the EES Central System and | between the EES Central System and | Secure Communication Channel |
| the VIS Central System to enable | the VIS Central System to enable | the VIS Central System to enable | between the EES Central System and |
| interoperability between the EES and | interoperability between the EES and | interoperability between the EES and | the VIS Central System to enable |
| the VIS. Direct consultation between | the VIS. Direct consultation between | the VIS. Direct consultation between | interoperability between the EES and |
| the systems shall only be possible if | the systems shall only be possible if | the systems shall only be possible if | the VIS. Direct consultation between |
| both this Regulation and Regulation | both this Regulation and Regulation | both this Regulation and Regulation | the systems shall only be possible if |
| (EC) No $767/2008^{28}$ provide for it. | (EC) No 767/2008 ²⁸ provide for it. | (EC) No 767/2008 ²⁸ provide for it. | both this Regulation and Regulation |
| | | | 767/2008 provide for it. <i>Retrieval</i> , |
| | | | importation and updating of visa |

²⁷ 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).
 ²⁸ Pagulation (EC) No 767/2008 of the European Parliament and of the Council of 0 July 2008 concerning the Vise Information System (VIS) and

²⁸ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60–81).

| | | | related data directly from the VIS into the EES shall be an automated process once the operation in question is launched by the authority concerned. |
|--|--|--|--|
| 2. The interoperability requirement shall enable the border authorities using the EES to consult the VIS from the EES in order to: | 2. The interoperability requirement shall enable the border authorities using the EES to consult the VIS from the EES in order to: | 2. The interoperability requirement shall enable the border <u>checks</u> authorities using the EES to consult the VIS from the EES in order to: | Provisionally agreed: 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 the visa related data directly from the VIS in order to create or update the 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; | (a) retrieve and import the visa related data directly from the VI8 in order to create or update the 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; | (a) retrieve and import <u>automatically</u> the visa related data directly from the VIS in order to create or update the <u>entry/exit record</u> <u>or the refusal of entry record [] of</u> a visa holder in the EES in accordance with Articles 13, 14 and 16 of this Regulation and Article 18a of Regulation (EC) No 767/2008; | Provisionally agreed:(a) retrieve and importautomatically the visa related datadirectly from the VIS in order tocreate or update the entry/exit recordor the refusal of entry record of avisa holder in the EES in accordancewith Articles 13, 14 and 16 of thisRegulation and Article 18a ofRegulation (EC) No 767/2008; |
| (b) retrieve and import 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; | (b) retrieve and import the visa related data directly from the VIS in order to update the EES <i>record</i> 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; | (b) retrieve and import <u>automatically</u> the visa related data directly from the VIS in order to update the <u>entry/exit record</u> [] 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; | <i>Provisionally agreed</i> : (b) retrieve and import the visa related data directly from the VIS in order to update the <u>entry/exit record</u> 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 the authenticity and validity of the visa or whether the conditions for entry to the territory of the Member States in accordance | (c) verify <i>at the external borders</i> the authenticity and validity of the visa or whether the conditions for entry to the territory of the Member | (c) verify <u>pursuant to Article 21 of</u> <u>this Regulation and Article 18(2) of</u> <u>Regulation (EC) No 767/2008</u> the authenticity and validity of the visa | <i>Provisionally agreed:</i> (c) verify pursuant to Article 21 of this Regulation and Article 18(2) of Regulation (EC) No 767/2008 the |



| with Article 6 of Regulation (EU) | States in accordance with Article 6 of | or whether the conditions for entry to | authenticity and validity of the visa |
|---------------------------------------|--|---|--|
| 2016/399 are fulfilled pursuant to | Regulation (EU) 2016/399 are | the territory of the Member States in | or whether the conditions for entry to |
| Article 21 of this Regulation and | fulfilled pursuant to Article 21 of this | accordance with Article 6 of | the territory of the Member States in |
| Article 18(2) of Regulation (EC) No | Regulation and Article 18(2) of | Regulation (EU) 2016/399 are | accordance with Article 6 of |
| 767/2008; | Regulation (EC) No 767/2008; | fulfilled [] | Regulation (EU) 2016/399 are |
| | | | fulfilled |
| (d) verify at the external borders | (d) verify at the external borders | (d) verify at the [] borders <u>at</u> | |
| whether a visa exempt third country | whether a visa exempt third country | which the EES is operated whether a | |
| national has been previously | national has been previously | visa exempt third country national | |
| registered in the VIS in accordance | registered in the VHS in accordance | has been previously registered in the | |
| with Article 21 of this Regulation | with Article 21 of this Regulation | VIS in accordance with Article 21 of | |
| and Article 19a of Regulation (EC) | and Article 19a of Regulation (EC) | this Regulation and Article 19a of | |
| No 767/2008; | No 767/2008; | Regulation (EC) No 767/2008; | |
| (e) where the identity of a visa | (e) where the identity of a visa | (e) where the identity of a visa | |
| holder cannot be verified against the | holder cannot be verified against the | holder cannot be verified against the | |
| EES, verify at the external borders | EES, verify at the external borders | EES, verify at the [] borders <u>at</u> | |
| the identity of a visa holder with | the identity of a visa holder with | which the EES is operated the | |
| fingerprints against the VIS in | fingerprints against the VIS in | identity of a visa holder with | |
| accordance with Article 21 of this | accordance with Article 21 of this | fingerprints against the VIS in | |
| Regulation and Article 18(6) of | Regulation and Article 18(6) of | accordance with Article 21 of this | |
| Regulation (EC) No 767/2008. | Regulation (EC) No 767/2008. | Regulation and Article 18(6) of | |
| | | Regulation (EC) No 767/2008. | |
| 3. The interoperability | 3. The interoperability | 3. The interoperability | Provisionally agreed: |
| requirement shall enable the visa | requirement shall enable the visa | requirement shall enable the visa | 3. This interoperability shall also |
| authorities using the VIS to consult | authorities using the VIS to consult | authorities using the VIS to consult | enable the visa authorities using the |
| the EES from the VIS in order to: | the EES from the VIS in order to: | the EES from the VIS in order []: | VIS to consult the EES from the VIS |
| | | | in order: |



| (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; | (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; | (a) <u>to</u> 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; | Provisionally agreed: (a) to 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; |
|--|--|--|--|
| | | (aa) for the Member States which do not yet apply Schengen acquis in full but operate the EES, to examine applications for a national short stay visa and to adopt decisions relating to those applications; | To revert to this when discussing the calculator. |
| (b) update the visa related data in 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. | (b) update the visa related data in 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. | (b) <u>to</u> update <u>automatically</u> the visa related data in the <u>entry/exit record</u> [] 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. | Provisionally agreed: (b) to update the visa related data in the entry/exit record 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. |
| | | | Provisionally agreed: 4.For the operation of the EES Web service referred to in Article 12, the separate read-only database referred to in Article 12(2aa) of [Regulation establishing an Entry/Exit System (EES)] shall be on a daily basis updated by the VIS via a one-way extraction of the minimum necessary subset of VIS data. |

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|---------|----------|--------|----|
| ANNEX | DG D 1 A | LIMITE | EN |

| Article 8 | Article 8 | Article 8 | |
|--|---|---|---|
| Access to the EES for entering, | Access to the EES for entering, | Access to the EES for entering, | |
| amending, deleting and consulting | amending, deteting and consulting | amending, deleting and consulting | |
| data | data | data | |
| 1. Access to the EES for entering, | 1. Access to the EES for entering, | 1. Access to the EES for entering, | |
| amending, deleting and consulting | amending, deleting and consulting | amending, deleting and consulting | |
| the data referred to in Articles 13, 14, | the data referred to in Articles 13 , 14, | the data referred to in Articles 13, 14, | |
| 15, 16, 17 and 18 shall be reserved | 15, 16, 17 and 18 shall be reserved | 15, 16, 17 and 18 shall be reserved | |
| exclusively to duly authorised staff | exclusively to duly authorised staff | exclusively to duly authorised staff | |
| of the authorities of each Member | of the authorities of each Member | of the authorities of each Member | |
| State which are competent for the | State which are competent for the | State which are competent for the | |
| purposes laid down in Articles 21 to | purposes laid down in Articles 21 to | purposes laid down in Articles 21 to | |
| 32. That access shall be limited to the | 32. That access shall be limited to the | 32. That access shall be limited to the | |
| extent needed for the performance of | extent needed for the performance of | extent needed for the performance of | |
| the tasks in accordance with this | the tasks in accordance with this | the tasks in accordance with this | |
| purpose, and proportionate to the | purpose, and proportionate to the | purpose, and proportionate to the | |
| objectives pursued. | objectives pursued. | objectives pursued. | |
| 2. Each Member State shall | 2. Each Member State shall | 2. Each Member State shall | Provisionally agreed except text in [] |
| designate the competent national | designate the competent national | designate the competent national | brackets: |
| authorities, including border, visa | authorities, including border, visa | authorities which shall be [] border | 2. Each Member State shall |
| and immigration authorities. The | and immigration authorities. The | check, visa [], immigration, and | designate the competent national |
| duly authorised staff shall have | duly authorised staff shall have | determining authorities [as well as | authorities which shall be border, |
| access to the EES to enter, amend, | access to the EES to enter, amend, | the competent authorities referred to | visa immigration, [and determining |
| delete or consult data. Each Member | delete or consult data, Éach Member | in Article 35(1) of Regulation (EU) | authorities as well as the competent |
| State shall communicate a list of | State shall communicate a list of | 604/2013 ^{28a}], for the purposes of this | authorities referred to in Article |
| these authorities to eu-LISA without | these authorities to eu-LISA without | <u>Regulation</u> . The duly authorised staff | 35(1) of Regulation (EU) |
| delay. That list shall specify for | delay. That list shall specify for | shall have access to the EES to enter, | 604/2013 ^{28a}], for the purposes of this |
| which purpose each authority shall | which purpose each authority shall | amend, delete or consult data. Each | Regulation. The duly authorised staff |
| · · · · · | | Member State shall communicate a | shall have access to the EES to enter, |
| have access to the data in the EES. | have access to the data in the EES. | Wiember State shan communicate a | , |
| have access to the data in the EES. Within three months after the EES | Within three months after the EES. | list of these authorities to eu-LISA | amend, delete or consult data. Each |
| | | | |
| Within three months after the EES | Within three months after the EES | list of these authorities to eu-LISA | amend, delete or consult data. Each |



| the Official Journal of the European | the Official Journal of the European | EES. | for which purpose each authority |
|--|--|---|--------------------------------------|
| Union. Where there are amendments | Union. Where there are amendments | Within three months after the EES | shall have access to the data in the |
| thereto, eu-LISA shall publish an | thereto, eu-LISA shall publish an | has started operations in accordance | EES. |
| updated consolidated list once a year. | updated consolidated list once a year. | with Article 60, a consolidated list of | |
| | | those authorities shall be published in | The second sub-paragraph has been |
| | | the Official Journal of the European | moved under Article 59 – |
| | | Union. Where there are amendments | Notifications. |
| | | thereto, eu-LISA shall publish an | |
| | | updated consolidated list once a year. | |

28a Regulation (EU) N° 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31-59.

| | | 3. The authorities which are | <i>EP to revert.</i> |
|------------------------------------|------------------------------------|--|----------------------|
| | | entitled to consult or access the data | |
| | | stored in the EES in order to prevent, | |
| | | detect and investigate terrorist | |
| | | offences or other serious criminal | |
| | | offences shall be designated in | |
| | | accordance with the provisions of | |
| | | Chapter IV. | |
| Article 9 | Article 9 | Article 9 | |
| General principles | General principles | General principles | |
| 1. Each competent authority | 1. Each competent authority | 1. Each competent authority | |
| authorised to access the EES shall | authorised to access the EES shall | authorised to access the EES shall | |
| ensure that the use of the EES is | ensure that the use of the EES is | ensure that the use of the EES is | |
| necessary, appropriate and | necessary, appropriate and | necessary, appropriate and | |
| proportionate. | proportionate. | proportionate. | |



| 2. Each competent authority shall | 2. Each competent authority shall | 2. Each competent authority shall | Provisionally garand |
|--|--|--|---------------------------------------|
| 1 2 | 1 2 | 1 5 | Provisionally agreed : |
| ensure that in using the EES, it does | ensure that in using the EES, it does | ensure that in using the EES, it does | 2. Each competent authority shall |
| not discriminate against third country | not discriminate against third country | not discriminate against third country | ensure that the use of the EES, |
| nationals on the grounds of sex, | nationals on the grounds of sex, | nationals on the grounds of sex, | including the capturing of biometric |
| racial or ethnic origin, religion or | racial or race, colour, ethnic or | racial or ethnic origin, religion or | data, shall be in accordance with |
| belief, disability, age or sexual | social origin, genetic features, | belief, disability, age or sexual | the safeguards laid down in the |
| orientation and that it fully respects | <i>language</i> , religion or belief, <i>political</i> | orientation and that it fully respects | Council of Europe's Convention |
| human dignity and the integrity of | or any other opinion, membership | human dignity and the integrity of | for the Protection of Human |
| the person. Particular attention shall | of a national minority, property, | the person. Particular attention shall | Rights and Fundamental Freedom, |
| be paid to the specific situation of | <i>birth</i> , disability, age or sexual | be paid to the specific situation of | in the Charter of Fundamental |
| children, the elderly and persons with | orientation and that it fully respects | children, the elderly and, persons | Rights of the European Union and |
| a disability. In particular, when | human dignity and the integrity of | with a disability. [] | in the United Nations Convention |
| retaining a child's data, the best | the person. Particular attention shall | • | on the Rights of the Child. |
| interest of the child shall be a | be paid to the specific situation of | | 0 |
| primary consideration. | children, the elderly and persons with | | |
| 1 5 | a disability. In particular, when | | |
| | retaining a child's data, the best | | |
| | interest of the child shall be a | | |
| | primary consideration. | | |
| | 2a. Border guards shall, when | | Incorporated under article 9(2). |
| | capturing biometric data for the | | meorporatea anaer article 7(2). |
| | EES, fully respect human dignity, in | | |
| | | | |
| | particular in the event of difficulties | | |
| | encountered in the capturing of | | |
| | facial images or the taking of | | |
| | fingerprints. | | |

| Article 10 | Article 10 | Article 10 | |
|---|--|--|---|
| Automated calculator and obligation | Automated calculator and obligation | Automated calculator and obligation | |
| to inform third country nationals on | to inform third country nationals on | to inform third country nationals on | |
| the remaining authorised stay | the remaining authorised stay | the remaining authorised stay | |
| 1. The EES shall include an | 1. The EES shall include an / | 1. The EES shall include an | Provisionally agreed: |
| automated calculator that indicates | automated calculator that indicates / | automated calculator that indicates | 1. The EES shall include an |
| the maximum authorised duration of | the maximum authorised duration ϕf | the maximum [] duration of | automated calculator that indicates |
| stay in accordance with Article $6(1)$ | stay in accordance with Article $6(1)$ | <u>authorised</u> stay, [] for third country | the maximum [] duration of |
| of Regulation (EU) 2016/399 for | of Regulation (EU) 2016/399 for | nationals registered in the EES. [] | authorised stay, [] for third country |
| third country nationals registered in | third country nationals registered in | The calculator shall not apply to third | nationals registered in the EES. []. |
| the EES admitted for a short stay {or | the EES admitted for a short stay {or | country nationals who are [] | |
| on the basis of a touring visa}. | on the basis of a touring visa $\}$. | members of the family of a Union | The calculator shall not apply to third |
| The calculator shall not apply to third | The calculator shall not apply to third | citizen to whom Directive | country nationals: who are [] |
| country nationals who are family | country nationals who are family | 2004/38/EC applies or of a national | members of the family of a Union |
| members of a Union citizen to whom | members of a Union citizen to whom | of a third country enjoying the right | citizen to whom Directive |
| Directive 2004/38/EC applies or of a | Directive 2004/38/EC applies or of a | of free movement under Union law | 2004/38/EC applies or of a national |
| national of a third country enjoying | national of a third country enjoying | and who do not hold a residence card | of a third country enjoying the right |
| the right of free movement under | the right of free movement under | referred to under Directive | of free movement under Union law |
| Union law and who do not hold a | Union law and who do not hold a | 2004/38/EC. | and who do not hold a residence card |
| residence card referred to under | residence card referred to under | | referred to under Directive |
| Directive 2004/38/EC. | Directive 2004/38/EC. | | 2004/38/EC. |
| | | | i) 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 equivalent to that |
| | | | of Union citizens under an agreement |
| | | | between the Union and its Member |
| | | | States on the one hand and a third |
| | | | country on the other; and |
| | | | ii) who do not hold a residence |
| | / | | card referred to under Directive |
| | V | | 2004/38/EC or a residence permit |



| | | | pursuant to Regulation (EC) No 1030/2002. |
|---|---|---|--|
| 2. The automated calculator shall: | 2. The automated calculator shall: | 2. The automated calculator shall | Provisionally agreed: |
| | | inform the competent authorities: | 2. The automated calculator shall |
| | | | inform the competent authorities: |
| (a) inform the competent | (a) inform the competent | a) [] <u>on entry</u> , of the <u>maximum</u> | Provisionally agreed |
| authorities of the authorised length of | authorities of the authorised length of | [] <u>duration of authorised</u> stay <u>of</u> | a) <u>on entry</u> , of the <u>maximum</u> |
| stay on entry and whether the | stay on entry and whether the | third country nationals [] and | duration of authorised stay of third |
| number of authorised entries of the | number of authorised entries of the | whether the number of authorised | country nationals and whether the |
| single or double entry visas have | single or double entry visas have | entries of short stay visa issued for | number of authorised entries of short |
| been previously used; | been previously used; | [] single or double entry [] have | stay visa issued for single or double |
| | | been previously used | entry have been previously used |
| | | (b) during checks or verifications | Provisionally agreed: |
| | | carried out within the territory of the | (b) during checks or verifications |
| | | Member States, of duration of | carried out within the territory of the |
| | | remaining authorised stay or overstay | Member States, of duration of |
| | | of the third country nationals; | remaining authorised stay or overstay |
| | | | of the third country nationals; |
| (b) identify third country nationals | (b) identify third country nationals | (c) [] upon exit, of any overstay | Provisionally agreed: |
| upon exit who have overstayed. | upon exit who have overstayed. | of third country nationals []; | (c) upon exit, of any overstay of |
| | | | third country nationals; |
| | | (d) when examining and deciding | Provisionally agreed: |
| | | on visa applications, of the maximum | (d) when examining and deciding |
| | | remaining duration of authorised stay | on visa applications, of the maximum |
| | | based on intended entry dates. | remaining duration of authorised stay |
| | | | based on intended entry dates. |
| 3. The border authorities shall | 3. The border authorities shall | 3. [] <u>Any third country national</u> | EP were not convinced that it should |
| inform the third country national of | inform the third country national of | shall have the right to ask border | be the TCN who asks about his/her |
| the maximum number of days of | the maximum number of days of | check authorities during border | maximum remaining no. of days. |
| authorised stay which shall take into | authorised stay which shall take into | checks at entry about the maximum | TCN might not know that s/he could |
| account the number of entries and the | account the number of entries and the | remaining number of days of his/her | ask the border check authority. |
| length of stay authorised by the visa | length of stay authorised by the visa | authorized stay, which shall take into | EP suggested the idea of having a |
| {or the touring visa}, in accordance | {or the touring visa}, in accordance | account the number of entries and the | 21 suggested the fact of having a |



| with Article 8(9) of Regulation (EU) 2016/399. | with Article 8(9) of Regulation (EU) 2016/399. | length of stay authorised by the visa {or the touring visa}, [] <u>and be</u> <u>provided with such information by</u> <u>the border check authorities on that</u> <u>occasion.</u> | kiosk which could provide the max remaining No. of days and if not, the obligation is on the border guard. LIBE compromise proposal: 3. The border authorities shall inform 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. <u>The information may be</u> <u>provided either by the border guard</u> <u>at the moment of the border check</u> <u>or by means of a self-service kiosk</u> <u>installed at the border crossing point</u> <u>behind the location in which the</u> <u>border check is made.</u> |
|---|---|---|---|
| 4. Stays in Member States which | deleted | 4. [] With regard to third | EP deleted para 4 because it is a |
| are not yet fully applying the | | country nationals subject to visa | political vision to not have internal |
| Schengen <i>acquis</i> in accordance with | | requirement, staying on the basis of a | border controls. |
| their respective Acts of Accession | | visa ^{28b} or a national short stay visa, | |
| shall not be taken into account in the calculation of the duration of the | | in the Member States which do not | |
| authorised stay in the Schengen area. | | yet apply the Schengen acquis in full but operate the EES, the calculator | |
| Those Member States shall register | | shall not indicate the authorised stay | |
| the stays of third country nationals in | | based on the visa or the national | |
| the EES. The automated calculator in | | short visa. In this case the calculator | |
| the system shall not however | | shall only verify compliance with the | |
| compute stays in Member States | | overall limit of 90 days in any 180- | |
| which are not yet fully applying the | | day period and with the period of | |



| Schengen <i>acquis</i> as part of the authorised length of stay. | validity of the visa. | |
|--|--|---|
| | 5.The automated calculator shall apply also for short stays based on a visa with limited territorial validity issued on the basis of Article 25(1)(b) of Regulation (EC) No 810/2009. In this case, the calculator shall take into account the authorised stay as defined by such visa, irrespective of whether his/her cumulative stay exceeds 90 days within any 180-days. | Provisionally agreed:5.The automated calculator shall apply also for short stays based on a visa with limited territorial validity issued on the basis of Article 25(1)(b) of Regulation (EC) No 810/2009. In this case, the calculator shall take into account the authorised stay as defined by such visa, irrespective of whether his/her cumulative stay exceeds 90 days within any 180-days. |

28b Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC.

| Article 11 | Article 11 | Article 11 | |
|--|--|--------------------------------------|--------------------------------------|
| Information mechanism | Information mechanism | Information mechanism | |
| 1. The EES shall include a | 1. The EES shall include a | 1. The EES shall include a | Provisionally agreed: |
| mechanism that shall automatically | mechanism that shall automatically | mechanism that shall automatically | 1. The EES shall include a |
| identify which entry/exit records do | identify which entry/exit records do | identify which entry/exit records do | mechanism that shall automatically |
| not have exit data immediately | not have exit data immediately | not have exit data immediately | identify which entry/exit records do |
| following the date of expiry of the | following the date of expiry of the | following the date of expiry of the | not have exit data immediately |
| authorised length of stay and identify | authorised length of stay and identify | authorised [] stay and identify | following the date of expiry of the |
| records for which the maximum stay | records for which the maximum | records for which the maximum | authorised stay and identify records |
| allowance has been exceeded. | authorised stay allowance has been | authorised stay [] was exceeded. | for which the maximum authorised |
| | exceeded. | | stay <u>was</u> exceeded. |

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|---------|
| ANNEX |



| | | <u>1a.</u> For the third country nationals | Provisionally agreed. |
|---------------------------------------|---------------------------------------|--|--|
| | | who perform their border crossing on | <u>1a.</u> For the third country nationals |
| | | the basis of valid Facilitated Transit | who perform their border crossing on |
| | | Document (FTD) issued in | the basis of valid Facilitated Transit |
| | | accordance with Regulation (EC) | Document (FTD) issued in |
| | | 693/2003, the EES shall include a | accordance with Regulation (EC) |
| | | mechanism that shall automatically | 693/2003, the EES shall include a |
| | | identify which entry/exit records do | mechanism that shall automatically |
| | | not have exit data immediately | identify which entry/exit records do |
| | | following the time of expiry of the | not have exit data immediately |
| | | duration of authorised stay and | following the time of expiry of the |
| | | identify records for which the | duration of authorised stay and |
| | | maximum period of authorised stay | identify records for which the |
| | | allowance has been exceeded. | maximum period of authorised stay |
| | | | allowance has been exceeded. |
| 2. A list generated by the system | 2. A list generated by the system | 2. A list generated by the system | Provisionally agreed: |
| containing the data referred to in | containing the data referred to in | containing the data referred to in | A list generated by the system |
| Article 14 and 15 of all identified | Article 14 and 15 of all identified | Article 14 and 15 of all identified | containing the data referred to in |
| overstayers shall be available to the | overstayers shall be available to the | overstayers shall be available to the | Article 14 and 15 of all identified |
| designated competent national | designated competent national | designated competent national | overstayers shall be available to the |
| authorities. | authorities. | authorities according to Article 8(2) | designated competent national |
| | | in order for them to adopt the | authorities according to Article 8(2) |
| | | appropriate measures including to | in order for them to adopt |
| | | detect the overstayer and where | appropriate measures. |
| | | possible and applicable contributing | |
| | | to the return of the overstayer. | |
| | 2a. In accordance with Article 31, | | EP withdrew its amendment. |
| | Member States shall be | | |
| | automatically informed three | | |
| | months in advance of the scheduled | | |
| | deletion of data on overstayers in | | |
| | order for them to adopt the | | |
| | appropriate measures. | | |



| Article 12 | Article 12 | Article 12 | |
|---|---|--------------------------------------|---|
| Web service | Web service | Web service | |
| <u>1.</u> In order to enable third | 1. In order to enable third country | 1. In order to enable third | Provisionally agreed: |
| country nationals to verify at any | nationals to verify at any moment the | country nationals to verify at any | -1. In order to enable third country |
| moment the remaining authorised | remaining authorised length of stay, | moment the remaining [] | nationals to verify at any moment the |
| length of stay, a secure internet | a secure internet access to a web | maximum number of days of | remaining authorised length of stay, |
| access to a web service hosted by | service hosted by eu-LISA in its two | authorised stay, a secure internet | a secure internet access to a web |
| eu-LISA in its two technical sites | technical sites shall allow those third | access to a web service hosted by | service hosted by eu-LISA in its two |
| shall allow those third country | country nationals to provide the data | eu-LISA in its-[] technical sites | technical sites shall allow those third |
| nationals to provide the data | required pursuant to Article 14(1)(b) | shall allow those third country | country nationals to provide the data |
| required pursuant to Article | together with the anticipated entry | nationals to provide the type, | required pursuant to Article 14(1)(b) |
| <u>14(1)(b)</u> together with the | and exit dates. On that basis, the web | number and three letter code of | together with the anticipated entry |
| anticipated entry and exit dates. | service shall provide them with an | the issuing country of the travel | and exit dates. On that basis, the web |
| On that basis, the web service shall | OK/NOT OK answer. The web | <u>document [] together with the</u> | service shall provide them with an |
| provide them with an OK/NOT | service shall use a separate read-only | anticipated entry and exit dates or | OK/NOT OK answer. The web |
| OK answer. The web service shall | database updated on a daily basis via | for third country nationals who are | service shall use a separate read-only |
| use a separate read-only database | a one-way extraction of the minimum | within the territory of the Member | database updated on a daily basis via |
| updated on a daily basis via a one- | necessary subset of EES data. eu- | States, the intended exit date. On | a one-way extraction of the |
| way extraction of the minimum | LISA shall be the controller | that basis, the web service shall | minimum necessary subset of EES |
| necessary subset of EES data. | responsible for the security of the | provide them with an OK/NOT | data. |
| | web service, for the security of the | OK answer, including information | |
| | personal data it contains and the | on the maximum remaining number | |
| | process to extract the personal data | of days of authorised stay. The web | |
| | from the central system into the web | service shall use a separate read- | |
| | service. eu-LISA shall perform an | only database updated on a daily | |
| | information security risk assessment | basis via a one-way extraction of | |
| | in order to define the specific | the minimum necessary subset of | |
| | security needs of the web service. | EES data. | |
| 2. Carriers may use the secure | 2. Carriers may use the secure | 2. Carriers may use [] the | Provisionally agreed: |
| internet access to the web service | internet access to the web service | web service referred to in | 2. In view of fulfilling their |
| referred to in paragraph 1 to | referred to in paragraph 1 to verify | paragraph 1 to verify whether or | obligations under Article 26(1)(b) of |
| verify whether or not third country | whether or not third country | not third country nationals holding | the Convention implementing the |
| nationals holding a single or | nationals holding a single or double | a short stay visa issued for single | Schengen Agreement, carriers shall |

| double ontre vice barre alura d | anter vice here also de la constat | an dauble antique [] harres aleres] | was the Web Comiss of from 14. |
|--------------------------------------|---|---------------------------------------|---|
| double entry visa have already | entry visa have already used the visa. | or double entry [] have already | use the Web Service referred to in |
| used the visa. The carrier shall | The carrier shall provide the data | used the short stay visa. The | paragraph 2aa to verify whether or |
| provide the data listed in Article | listed in Article 14(1)(d). The web | carrier shall provide the data | not third country nationals holding a |
| 14(1)(d). The web service shall on | service shall on that basis provide the | contained in the Machine Readable | single or double entry visa have |
| that basis provide the carriers with | carriers with an OK/NOT OK | Zone of the travel document []. | already used the number of entries |
| an OK/NOT OK answer. Carriers | answer. Carriers shall establish an | The web service shall on that basis | authorised by their visa. The carrier |
| may store the information sent and | authentication scheme to ensure | provide the carriers with an | shall provide the data listed under |
| the answer received. | that only authorised staff may | OK/NOT OK answer. Carriers | Article 14(1)(a), (b) and (c). The web |
| | access the web service. Carriers may | may store the information sent and | service shall on that basis provide the |
| | store the information sent and the | the answer received. The OK/NOT | carriers with an OK/NOT OK |
| | answer received for a maximum of | OK answer cannot be regarded as | answer. Carriers may store the |
| | 48 hours, following which the data | a decision to authorise or refuse | information sent and the answer |
| | shall be automatically deleted, for | entry in accordance with | received in accordance to the |
| | the sole purpose of informing the | Regulation (EU) 2016/399. | applicable law. Carriers shall |
| | third country nationals concerned. | | establish an authentication scheme to |
| | | | ensure that only authorised staff may |
| | | | access the web service. The |
| | | | OK/NOT OK answer cannot be |
| | | | regarded as a decision to authorise or |
| | | | refuse entry in accordance with |
| | | | Regulation (EU) 2016/399. |
| | | | 2a. For the purpose of |
| | | | implementing Article 26(2) of the |
| | | | Convention implementing the |
| | | | Schengen Agreement and/ or for the |
| | | | purpose of resolving any potential |
| | | | dispute arising from Article 26 of the |
| | | | Convention implementing the |
| | | | 1 0 |
| | | | Schengen Agreement, eu-LISA shall |
| | | | keep logs of all data processing |
| | | | operations carried out within the |
| | | | website by the carriers. Those logs |
| | | | shall show the date and time of each |



| | | | operation, the data used for interrogation, the data transmitted by the webservice and the name of the carrier. Each log shall be stored for two years. The logs shall be protected by appropriate measures against unauthorised access. 2aa. 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 and VIS data . eu- |
| | | | LISA shall be the controller |
| | | | responsible for the security of the |
| | | | web service, for the security of the |
| | | | personal data it contains and the |
| | | | process to extract the personal data |
| | | | into the separate read-only database- |
| 3. Detailed rules on the | 3. Detailed rules on the | 3. Detailed rules on the | |
| conditions for operation of the web | conditions for operation of the web | conditions for operation of the web | |
| service and the data protection and | service and the data protection and | service and the data protection and | |
| security rules applicable to the web | security rules applicable to the web | security rules applicable to the web | |
| service shall be adopted in | service shall be adopted in | service shall be adopted in | |
| accordance with the examination | accordance with the examination | accordance with the examination | |
| procedure referred to in Article | procedure referred to in Article | procedure referred to in Article | |
| <u>61(2).</u> | <u>61(2).</u> | <u>61(2).</u> | |

| CHAPTER II | CHAPTER II | CHAPTER II | |
|---|--|---|--|
| Entry and use of data by border | Entry and use of data by border | Entry and use of data by <u>competent</u> | |
| authorities | authorities | [] authorities | |
| Article 13 | Article 13 | Article 13 | |
| Procedures for entering data in the | Procedures for entering data in the | Procedures for entering data in the | |
| EES | EES | EES | |
| 1. Border authorities shall verify, | 1. Border authorities shall verify, | 1. Border <u>check</u> authorities shall | Provisionally agreed: |
| in accordance with Article 21, | in accordance with Article 21, | verify, in accordance with Article 21, | 1. Border authorities shall verify, |
| whether a previous individual file has | whether a previous individual file has | whether a previous individual file has | in accordance with Article 21, |
| been created in the EES for the third | been created in the EES for the third | been created in the EES for the third | whether a previous individual file has |
| country national as well as their | country national as well as their | country national as well as [] | been created in the EES for the third |
| identity. Where a third country | identity. Where a third country | his/her identity. Where a third | country national as well as his/her |
| national uses a self-service system | national uses a self-service system | country national uses a self-service | identity. Where a third country |
| for pre-enrolment of data or for the | for pre-enrolment of data or for the | system for pre-enrolment of data or | national uses a self-service system |
| performance of border checks | performance of border checks | for the performance of border checks | for pre-enrolment of data or for the |
| [should this self-service system not | [should this self-service system not | [], a verification may be carried | performance of border checks a |
| be defined or explained?], a | be defined or explained?], a | out through the self service system. | verification may be carried out |
| verification may be carried out | verification may be carried out | | through the self service system. |
| through the self service system. | through the self service system. | | |
| 2. Where a previous individual | 2. Where a previous individual | 2. Where a previous individual | Provisionally agreed: |
| file has been created, the border | file has been created, the border | file has been created, the border | 2. Where a previous individual |
| authority shall, if necessary, | authority shall, if necessary, update | check authority shall, if necessary, | file has been created, the border |
| update the individual file data, | the individual file data, enter an | <u>update the individual file data,</u> | authority shall, if necessary, |
| enter an entry/exit record for each | entry/exit record for each entry and | referred to in Articles 14, 15 and | update the individual file data, |
| entry and exit in accordance with | exit in accordance with Articles 14 | <u>16 as applicable,</u> enter an entry [] | referred to in Articles 14, 15 and |
| Articles 14 and 15 or, where | and 15 or, where applicable, a refusal | or exit record for each entry and | <u>16 as applicable,</u> enter an entry <u>or</u> |
| applicable, a refusal of entry | of entry record in accordance with | exit in accordance with Articles 14 | exit record for each entry and exit |
| record in accordance with Article | Article 16. That record shall be | and 15 or, where applicable, a | in accordance with Articles 14 and |
| 16. That record shall be linked to | linked to the individual file of the | <u>refusal of entry record in</u> | 15 or, where applicable, a refusal |
| the individual file of the third | third country national concerned. | accordance with Article 16. That | of entry record in accordance with |
| <u>country national concerned.</u> Where | Where applicable, the data referred | record shall be linked to the | Article 16. That record shall be |
| applicable, the data referred to in | to in Article 17(1) shall be added to | individual file of the third country | linked to the individual file of the |
| Article 17(1) shall be added to the | the individual file and the data | national concerned. Where | third country national concerned. |

| 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 | 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 | applicable, the data referred to in Article 17(1). (1a), [] (3) and (4) shall be added to the entry/exit record of the third country national concerned. The different travel | Where applicable, the data referred to in Article $17(1)$, [(1a)], (3) and (4) shall be added to the entry/exit record of the third country national concerned. The different travel |
|---|--|--|--|
| identities used legitimately by a third country national shall be added to the third country national's individual file. <u>Where a previous file has been</u> | 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 | documents and identities used legitimately by a third country national shall be added to the third country national's individual file. Where a previous individual file | 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 refered under Article 14(1)(f) shall also be updated if the facial image reccorded in the chip of the new travel document can be extracted electronically. | national presents a <i>valid</i> travel document which differs from the one which was previously registered, the data referred under <i>referred to in</i> Article 14(1)(f) shall also be updated if the facial image recorded <i>recorded</i> in the chip of the new travel document can be extracted electronically. | <u>has been registered and the third</u> <u>country national presents a travel</u> <u>document which differs from the</u> <u>one which was previously</u> <u>registered, the data referred under</u> <u>Article 14(1)(f) and Article 15(1)</u> (b) shall also be updated []. | registered and the third country national presents a <i>valid</i> travel document which differs from the one which was previously registered [] <i>EP to revert back on the deletion of</i> <i>the last part of the paragraph. EP</i> <i>were not convinced that it is more</i> <i>secure to update the file by taking a</i> <i>live facial image rather than taking</i> |
| 3. Where it is necessary to create or update the individual file data of a visa holder, the border authorities may retrieve and import the data provided for in Article 14(1) (d), (e) and (g) directly from the VIS in accordance with Article 18a of Regulation (EC) No 767/2008. | 3. Where it is necessary to create or update the individual file data of a visa holder, the border authorities may retrieve and import the data provided for in Article 14(1) (d) , (e) and to (g) directly from the VIS in accordance with Article 18a of Regulation (EC) No 767/2008. | 3. Where it is necessary to [] enter or update the [] entry/exit record data of a visa holder, the border check authorities may retrieve and import the data provided for in Article 14([]2) (c), (d), (e), (f) and [g] directly from the VIS in accordance with Article 7 of this Regulation and Article 18a of Regulation (EC) No 767/2008. | the image from the chip. Provisionally agreed: The reference to " article 7 of this Regulation.". EP to revert back on its proposal: by including Ar 14(1)(f), the facial image could be retrieved and imported from VIS. |



| 4. In the absence of a previous | 4. In the absence of a previous | 4. In the absence of a previous | Provisionally agreed: |
|---|---|---|--|
| registration of a third country | registration of a third country | registration of a third country | 4. In the absence of a previous |
| national in the EES, the border | national in the EES, the border | national in the EES, the border <u>check</u> | registration of a third country |
| authority shall create the individual | authority shall create the individual | authority shall create the individual | national in the EES, the border |
| file of the person by entering the data | file of the person by entering the data | file of the person by entering the data | authority shall create the individual |
| referred to in Articles 14, 15 and 16 | referred to in Articles 14, 15 and 16 | referred to in Articles $14(1)$, (6), | file of the person by entering the data |
| as applicable. | as applicable. | 15(1) and $16(1)$ as applicable. | referred to in Articles $14(1)$, (6), |
| | | | 15(<u>1</u>) and 16(<u>1</u>) as applicable. |
| 5. Where a third country national | 5. Where a third country national | 5. Where a third country national | Provisionally agreed: |
| uses a self-service system for pre- | uses a self-service system for pre- | uses a self-service system for pre- | 5. Where a third country national |
| enrolment of data, Article 8c of | enrolment of data, Article 8c of | enrolment of data, Article 8c of | uses a self-service system for pre- |
| Regulation (EU) 2016/399 shall | Regulation (EU) 2016/399 shall | Regulation (EU) 2016/399 shall | enrolment of data, Article 8c of |
| apply. In that case, the third country | apply. In that case, the third country | apply. In that case, the third country | Regulation (EU) 2016/399 shall |
| national may pre-enrol the individual | national may pre-enrol the individual | national may pre-enrol the individual | apply. In that case, the third country |
| file data or, if applicable, the data | file data or, if applicable, the data | file data or, if applicable, the data <u>in</u> | national may pre-enrol the individual |
| that needs to be updated. The data | that needs to be updated. The data | the entry/exit record that needs to be | file data or, if applicable, the data in |
| shall be confirmed by the border | shall be confirmed by the border | updated. The data shall be confirmed | the entry/exit record that needs to be |
| guard when the decision to authorise | guard when the decision to authorise | by the border <u>check authorities</u> [] | updated. The data shall be confirmed |
| or to refuse entry has been taken in | or to refuse entry has been taken in | when the decision to authorise or to | by the border authorities when the |
| accordance with Regulation (EU) | accordance with Regulation (EU) | refuse entry has been taken in | decision to authorise or to refuse |
| 2016/399. The verification referred | 2016/399. The verification referred | accordance with Regulation (EU) | entry has been taken in accordance |
| to in paragraph 1 of this Article shall | to in paragraph 1 of this Article shall | 2016/399. The verification referred | with Regulation (EU) 2016/399. The |
| be carried out through the self | be carried out through the self | to in paragraph 1 of this Article shall | verification referred to in paragraph 1 |
| service system. The data listed in | service system. The data listed in | be carried out through the self | of this Article shall be carried out |
| Article $14(1)(d)$, (e) and (g) may be | Article 14(1), (d) , (e) and <i>to</i> (g) may | service system. The data listed in | through the self service system. The |
| retrieved and imported directly from | be retrieved and imported directly | Article $14([]2)$ (c), (d), (e), (f) and | data listed in Article 14(2) (c), (d), |
| the VIS. | from the VIS. | [g] may be retrieved and imported | (e), (f) and [g] may be retrieved and |
| | | automatically [] from the VIS. | imported from the VIS. |
| 6. Where a third country national | 6. Where a third country national | 6. Where a third country national | |
| uses a self-service system for the | uses a self-service system for the | uses a self-service system for the | |
| performance of the border checks, | performance of the border checks, | performance of the border checks, | |
| Article 8d of Regulation (EU) | Article 8d of Regulation (EU) | Article 8d of Regulation (EU) | |
| 2016/399 shall apply. In that case, | 2016/399 shall apply. In that case, | 2016/399 shall apply. In that case, | |

| the verification referred to in | the verification referred to in | the verification referred to in | |
|--|--|--|---|
| paragraph 1 of this Article shall be | paragraph 1 of this Article shall be | paragraph 1 of this Article shall be | |
| carried out through the self service | carried out through the self service | carried out through the self service | |
| system. | system. | system. | |
| 7. Where a third country national | 7. Where a third country national | 7. Where a third country national | |
| uses an e-gate for crossing the | uses an e-gate for crossing the | uses an e-gate for crossing the | |
| external border, Article 8d of | external border, Article 8d of | external border, Article 8d of | |
| Regulation (EU) 2016/399 shall | Regulation (EU) 2016/399 shall | Regulation (EU) 2016/399 shall | |
| apply. In that case, the corresponding | apply. In that case, the corresponding | apply. In that case, the corresponding | |
| registration of the entry/exit record | registration of the entry/exit record | registration of the entry/exit record | |
| and the linking of that record to the | and the linking of that record to the | and the linking of that record to the | |
| concerned individual file shall be | concerned individual file shall be | concerned individual file shall be | |
| carried out through the e-gate. | earried out through the e-gate. | carried out through the e-gate. | |
| 8. Where it is necessary to create | 8. Where it is necessary to create | 8. Where it is necessary to create | EP to revert back on Council text |
| an individual file or to update the | an individual file or to update the | an individual file or to update the | where first, the facial image should |
| facial image referred to in Article | facial image referred to in Article | facial image referred to in Article | be take live. EP were not convinced |
| 14(1)(f), the facial image can only be | 14(1)(f), the facial image can only be | 14(1)(f) and Article $15(1)(b)$, the | that it is more secure to update the |
| extracted electronically from the | extracted electronically from the | facial image shall be taken live and | file by taking a live facial image |
| electronic Machine Readable Travel | electronic Machine Readable Travel | where this is not possible [] | rather than taking the image from the |
| Documents (eMRTD) and inserted | Documents (eMRTD) and inserted | extracted electronically from the | chip. |
| into the individual file where it has | into the individual file where it has | electronic Machine Readable Travel | Provisionally agreed: |
| been verified that the facial image | been verified that the facial image | Documents (eMRTD) and inserted | " extracted electronically from the |
| recorded in the chip of the eMRTD | recorded in the chip of the eMRTD | into the individual file <u>after</u> | electronic Machine Readable Travel |
| corresponds to the live facial image | corresponds to the live facial image | electronic verification [] that the | Documents (eMRTD) and inserted |
| of the concerned third country | of the concerned third country | facial image recorded in the chip of | into the individual file <u>after</u> |
| national. | national. | the eMRTD corresponds to the live | electronic verification that the facial |
| | | facial image of the concerned third | image recorded in the chip of the |
| | | country national. | eMRTD corresponds to the live |
| | | | facial image of the concerned third |
| | | | country national." |

| <u>9.</u> <u>Without prejudice to Article 18</u> | Concerns were raised of the added |
|--|--|
| of this Regulation and Article 12(3) | value of this paragraph because the |
| of Regulation (EU) 2016/399, if the | competent authorities would only |
| authorised stay of a third country | create the individual file if the TCN |
| national who is present on the | makes him/herself known to the |
| territory of a Member State starts | authorities. In other words, unless |
| directly after the stay based on | the TCN alerts the authorities that |
| residence permit or long-stay visa | his stay is not based any longer on |
| and no individual file has been | the residence permit or long stay |
| created, the competent authorities | visa, the authorities would not know. |
| according to Article 8(2) may create | Also, by referring to 'competent |
| an individual file and the entry/exit | authorities' this text would allow |
| record by entering the data referred | immigration authorities to create the |
| to in Articles 14(1), (2) and (6) and | individual file. This is not catered for |
| 15(1). Instead of the data referred to | in the rest of the text as these |
| in Article 14(2)(a), they shall insert | authorities are only able to consult |
| the date of start of the authorised stay | the individual file. It is only the |
| and, instead of the data in Article | border authorities that can amend/ |
| 14(2)(b), they shall insert the | update the file. As a consequence of |
| authority that authorised the | the Council text, immigration |
| authorised stay. | authorities would have to be |
| | equipped with the necessary |
| | equipment in order for them to be |
| | able to carry out the necessary |
| | enrolment of the third country |
| | national into the EES, which entails |
| | more costs. |
| | Presidency urges the delegations to |
| | delete this paragraph. |

| Article 14 | Article 14 | Article 14 | Provisionally agreed |
|---|--|---|---|
| Personal data for visa holders | Personal data for <i>third country</i> | Personal data for [] <u>third country</u> | Article 14 |
| | <i>nationals subject to a</i> visa holders | national subject to a visa | Personal data for third country |
| | requirement to cross the external | <u>requirement</u> | national subject to a visa requirement |
| | borders | | |
| 1. The border authority shall | 1. The border authority shall | 1. <u>At the borders at which the</u> | Provisionally agreed with Council |
| create the individual file of the visa | create the individual file of the visa | EES is operated the border checks | <mark>structure of Art 14 on individual file</mark> |
| holding third country national by | holding third country national third | authority shall create the individual | and entry/exit record |
| entering the following data: | country national subject to a visa | file of the [] third country national | |
| | requirement to cross the external | subject to a visa requirement by | |
| | <i>borders</i> by entering the following | entering the following data: | |
| | data: | | |
| (a) surname (family name); first | a) surname (family name); first | (a) surname (family name); first | |
| name(s) (given names); date of birth; | name(s) (given names); date of birth; | name(s) (given names); date of birth; | |
| nationality or nationalities; sex; | nationality or nationalities; sex; | nationality or nationalities; sex; | |
| (b) type, number and three letter | (b) type <i>and</i> number <i>of the travel</i> | (b) type, number and three letter | Provisionally agreed: |
| code of the issuing country of the | document or documents and three | code of the issuing country of the | (b) type <i>and</i> number <i>of the travel</i> |
| travel document or documents; | letter code of the issuing country of | travel document or documents; | <i>document or documents</i> and three |
| | the travel document or documents; | | letter code of the issuing country of |
| (a) the data of every of the | (a) the data of avaims of the | (a) the data of annimulat the | the travel document or documents |
| (c) the date of expiry of the | (c) the date of expiry of the | (c) the date of expiry of the | |
| validity of the travel document(s); | validity of the travel document(s); | validity of the travel document(s); | Deletion and it is all a second to |
| (d) the short stay visa sticker | (d) the short stay visa sticker | (d) [] | Deletion provisionally agreed: |
| number, including the three letter code of the issuing Member State, | number, including the three letter code of the issuing Member State, | | |
| the type of visa, the date of end of | the type of visa, the date of end of | | |
| maximum duration of the stay as | maximum duration of the stay as | | |
| authorised by the visa which needs to | authorised by the visa which needs to | | |
| be updated at each entry and the date | be updated at each entry and the date | | |
| of expiry of the validity of the visa, if | of expiry of the validity of the visa, if | | |
| applicable; | applicable; | | |
| application, | pappineuole, | | |



| (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 extracted electronically from the eMRTD, and where this is not possible, taken live; | (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 with sufficient image resolution and quality to be used in automated biometric matching, where possible extracted electronically from the eMRTD or the VIS, and where this is not possible, taken live; | (e) [] (f) the facial image, where possible <u>taken live</u> [], and where this is not possible, [] <u>extracted</u> <u>electronically from the eMRTD;</u> | Deletion Provisionally agreed: EP to revert back on Council text. EP were not convinced that it is more secure to update the file by taking a live facial image rather than taking the image from the chip. |
|--|--|---|---|
| (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, 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: | (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 which 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: | (g) [] 2. On each entry of [] <u>a third</u> <u>country national subject to a visa</u> <u>requirement, at a border at which the</u> <u>EES is operated, the following data</u> 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: | Deletion Provisionally agreed:References to "borders at which theEES is operated" throughout the textwill be tackled when discussing theissue of territoriality.Provisionally agreed:2. On each entry of a thirdcountry national subject to a visarequirement, [at a border at which theEES is operated,] the following datashall be entered in an entry/exitrecord. That record shall be linked tothe individual file of that thirdcountry national using the individualreference number created by the EESupon creation of that file: |



| (a) date and time of the entry; | (a) date and time of the entry; | (a) date and time of the entry; | |
|--------------------------------------|--------------------------------------|--|--|
| (b) the border crossing point and | (b) the border crossing point and | (b) the border crossing point and | |
| authority that authorised the entry; | authority that authorised the entry; | authority that authorised the entry; | |
| | | (c) if applicable, the status of the | Commission proposal: |
| | | person indicating that it is a third | (c) if applicable, the status of the |
| | | country national who is member of | person indicating that it is a third |
| | | family of a Union citizen to whom | country national who: is member of |
| | | Directive 2004/38/EC applies or a | family of a Union citizen to whom |
| | | national of a third country enjoying | Directive 2004/38/EC applies or a |
| | | the right of free movement under | national of a third country enjoying |
| | | Union law and who do not hold a | the right of free movement under |
| | | residence card referred to under | Union law and who do not hold a |
| | | Directive 2004/38/EC. | residence card referred to under |
| | | | Directive 2004/38/EC. |
| | | | i) who is family member 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 equivalent to that |
| | | | of Union citizens under an agreement |
| | | | between the Union and its Member |
| | | | States on the one hand and a third |
| | | | country on the other; and |
| | | | ii) who do not hold a residence |
| | | | card referred to under Directive |
| | | | 2004/38/EC or a residence permit |
| | | | pursuant to Regulation (EC) No |
| | | | 1030/2002. |
| | | (d) the short stay visa sticker | Provisionally agreed |
| | | number, including the three letter | (d) the short stay visa sticker |
| | | code of the issuing Member State, | number, including the three letter |
| | | the type of short stay visa, the date of | code of the issuing Member State, |
| | | end of maximum duration of the stay | the type of short stay visa, the date of |

| | | | · · · · · · · · · · · · · · · · · · · |
|---|---|---|--|
| | | as authorised by the short stay visa | end of maximum duration of the stay |
| | | which needs to be updated at each | as authorised by the short stay visa |
| | | entry and the date of expiry of the | which needs to be updated at each |
| | | validity of the short stay visa, if | entry and the date of expiry of the |
| | | applicable; | validity of the short stay visa, if |
| | | | applicable; |
| | | (e) at the first entry on the basis of | Provisionally agreed |
| | | the short stay visa, the number of | (e) at the first entry on the basis of |
| | | entries and the duration of stay as | the short stay visa, the number of |
| | | authorised by the short stay visa as | entries and the duration of stay as |
| | | indicated on the short stay visa | authorised by the short stay visa as |
| | | sticker; | indicated on the short stay visa |
| | | , | sticker; |
| | | (f) if applicable, the information | Provisionally agreed |
| | | indicating that the visa has been | (\underline{f}) if applicable, the information |
| | | issued with limited territorial | indicating that the visa has been |
| | | validity, on the basis of Article | issued with limited territorial |
| | | 25(1)(b) of the Regulation (EC) | validity, on the basis of Article |
| | | 810/2009; | 25(1)(b) of the Regulation (EC) |
| | | 010/2007; | 810/2009; |
| | | (g) [the touring visa sticker | Provisionally agreed |
| | | number of the touring visa, the type | (g) [the touring visa sticker] |
| | | of touring visa and the date of expiry | number of the touring visa sucker |
| | | of the validity of the touring visa, if | of touring visa and the date of expiry |
| | | applicable.] | of the validity of the touring visa, if |
| | | | applicable.] |
| 3. On each exit, the following | 3. On each exit, the following | 3. On each exit, at a border at | |
| , O | , | · | Provisionally agreed except text in [] |
| data shall be entered in the entry/exit | data shall be entered in the entry/exit | which the EES is operated the | brackets: |
| record linked to the individual file of | record linked to the individual file of | following data shall be entered in the | 3. On each exit, [at a border at |
| that visa holding third country | that visa holding third country | entry/exit record linked to the | which the EES is operated] the |
| national: | national: | individual file of that [] third | following data shall be entered in the |
| | | country national subject to a visa | entry/exit record linked to the |
| | | requirement: | individual file of that third country |



| | | | national subject to a visa |
|---------------------------------------|--|---|--|
| | | | requirement: |
| (a) date and time of the exit; | (a) date and time of the exit; | (a) date and time of the exit; | |
| (b) the border crossing point of the | (b) the border crossing point of the | (b) the border crossing point of the | |
| exit. | exit. | exit. | |
| | | (c) Where a third country national | Provisionally agreed |
| | | subject to a visa requirement uses a | (c) Where a third country national |
| | | different visa than the visa recorded | subject to a visa requirement uses a |
| | | in the last entry record, the data of | different visa than the visa recorded |
| | | the entry/exit record listed in | in the last entry record, the data of |
| | | paragraph 2(d), (e), (f) and [(g)] shall | the entry/exit record listed in |
| | | be updated accordingly. | paragraph 2(d), (e), (f) and [(g)] shall |
| | | | be updated accordingly. |
| 4. Where there is no exit data | 4. Where there is no exit data | 4. Where there is no exit data | Provisionally agreed : |
| immediately following the date of | immediately following the date of | immediately following the date of | 4. Where there is no exit data |
| expiry of the authorised length of | expiry of the <i>duration of</i> authorised | expiry of the authorised [] stay, the | immediately following the date of |
| stay, the entry/exit record shall be | length of stay, the entry/exit record | entry/exit record shall be identified | expiry of the authorised stay, the |
| identified with a mark or flag by the | shall be identified with a mark or flag | with a mark or flag by the system | entry/exit record shall be identified |
| system and the data of the visa | by the system and the data of the visa | and the data of the [] third country | with a mark or flag by the system |
| holding third country national | holding third country national | national subject to a visa requirement | and the data of the third country |
| identified as an overstayer shall be | identified as an overstayer shall be | is identified as an overstayer shall be | national subject to a visa requirement |
| entered into the list referred to in | entered into the list referred to in | entered into the list referred to in | is identified as an overstayer shall be |
| Article 11. | Article 11. | Article 11. | entered into the list referred to in |
| | | | Article 11. |
| 5. In order to create the individual | 5. In order to create <i>or update the</i> | 5. In order to [] <u>enter or update</u> | EP to revert back |
| file of a visa holding third country | entry/exit record on the individual | the [] <u>entry/exit record</u> of a [] | |
| national the data provided for in | file of a visa holding third country | third country national subject to a | |
| paragraph 1 (d), (e) and (g) may be | national third country national | <u>visa requirement</u> the data provided | |
| retrieved and imported directly from | subject to a visa requirement to | for in paragraph 2 (c), (d), (e), (f) and | |
| the VIS by the border authority in | cross the external borders the data | [(g)] may be retrieved and imported | |
| accordance with Article 18a of | provided for in paragraph 1 (d) , (e) | <u>automatically</u> [] from the VIS by | |
| Regulation (EC) No 767/2008 | and to (g) may be retrieved and | the border <u>check</u> authority in | |
| | imported directly from the VIS by | accordance with Article 18a of | |



| the border authority in accordance | Regulation (EC) No 767/2008. | |
|--------------------------------------|---|---------------------------------------|
| the border authority in accordance | Regulation(EC) NO / O / 2008. | |
| with Article 18a of Regulation (EC) | | |
| No 767/2008. | | |
| 5a. Where a visa holding third | | |
| country national benefits from the | | |
| national facilitation programme of a | | |
| Member State in accordance with | | |
| Article 8e of Regulation (EU) | | |
| 2016/399, the Member State | | |
| concerned may insert a notification | | |
| in the individual file of that third | | |
| country national specifying the | | |
| national facilitation programme | | |
| concerned. | | |
| | 6. Where relevant, Member States | Compromise proposed by the |
| | shall insert a notification in the | Council (covers para 5 of EP text |
| | individual file if the third country | and para 6 of Council text). |
| | national benefits from their national | Provisionally agreed: |
| | facilitation programme in accordance | 6. Where relevant, Member States |
| | with Article 8e of Regulation (EU) | shall insert a notification in the |
| | 2016/399 specifying the Member | individual file if the third country |
| | State's national facilitation | national benefits from their national |
| | programme concerned. The | facilitation programme in accordance |
| | notification shall only be available to | with Article 8e of Regulation (EU) |
| | the Member State implementing such | 2016/399 specifying the Member |
| | a programme and to those Member | State's national facilitation |
| | States having concluded an | programme concerned. |
| | agreement with the Member State | |
| | which granted the access as referred | |
| | to under Article 8e(4) of Regulation | |
| | (EU) 2016/399. | |

| | | 7. <u>The specific provisions set out</u> <u>in Annex II shall apply for third</u> <u>country nationals who perform their</u> <u>border crossing on the basis of a</u> <u>valid Facilitated Transit Document</u> (FTD) issued in accordance with <u>Regulation (EC) 693/2003.</u> | Provisionally agreed. 7. The specific provisions set out in Annex II shall apply for third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003. |
|---|---|---|--|
| Article 15 Personal data for third country nationals exempt from the visa obligation | Article 15 Personal data for t hir d country nationals exempt from the visa obligation | 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 the data provided for in Article 14(1)(a), (b), (c) and (f). In addition it shall enter into that individual file the four fingerprint of | 1. For third country nationals exempt from the visa obligation, the border authority shall enter into their individual file the data provided for in Article 14(1)(a), (b), (c) and (f). In addition it shall enter into that individual file the four fingerprint of | 1. [] The border check authority shall [] create the individual file of third country nationals exempt from visa obligation by entering following data | Provisionally agreed: 1. <u>The border authority shall</u> create the individual file of third country nationals exempt from visa obligation by entering following data |
| 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 | 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. | 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 <i>accordingly</i> . | | |



| <u>a)</u> [] provided for in Article | Provisionally agreed: |
|---|--|
| 14(1) (a), (b) <u>and</u> (c) []; | <u>a)</u> provided for in Article 14(1) |
| | (a), (b) <u>and</u> (c); |
| b) the facial image, where | Provisionally agreed but subject to |
| possible taken live, and where this is | the issue of the live facial image. |
| not possible, extracted electronically | |
| from the eMRTD; | |
| | Provisionally agreed: |
| <u>c)</u> [] <u>fingerprint</u> <u>data</u> []; | |
| | <u>c)</u> <u>fingerprint</u> <u>data</u> |
| | |
| | Drafting suggestion by LIBE to move |
| | rules out of the definitions |
| | Fingerprint data shall consist of data |
| | relating to the four fingerprints of the |
| | index, middle finger, ring finger and |
| | little finger from the right hand, |
| | where present, and otherwise the |
| | corresponding fingerprints from the |
| | left hand. Fingerprint data shall have |
| | sufficient resolution and quality to be |
| | used in automated biometric |
| | matching. |
| d) where relevant data provided | |
| | Provisionally agreed : |
| for in Article 14(6). | d) where relevant data provided |
| | for in Article 14(6). |
| <u>1a.</u> For third country nationals | Provisionally agreed: |
| exempt from the visa obligation, | 1a. For third country nationals |
| Articles 14(2)(a), (b) and (c), 14(3) | exempt from the visa obligation, |
| (a) and (b) and 14(4) shall apply. | Articles 14(2)(a), (b) and (c), 14(3) |
| | (a) and (b) and 14(4) shall apply |
| | mutatis mutandis. |

| 2. Children under the age of 12 | 2. Children under the age of 12 | 2. Children under the age of 12 | Provisionally agreed : |
|--|--|--|---|
| shall be exempt from the requirement | shall be exempt from the requirement | shall be exempt from the requirement | 2. Children under the age of 12 |
| to give fingerprints for legal reasons. | to give fingerprints for legal reasons. | to give fingerprints-[]. | shall be exempt from the requirement |
| | | | to give fingerprints. |
| 3. Persons for whom | 3. Persons for whom | 3. Persons for whom | Provisionally agreed: |
| fingerprinting is physically | fingerprinting is physically | fingerprinting is physically | 3. Persons for whom |
| impossible shall be exempt from the | impossible shall be exempt from the | impossible shall be exempt from the | fingerprinting is physically |
| requirement to give fingerprints for | requirement to give fingerprints for | requirement to give fingerprints []. | impossible shall be exempt from the |
| factual reasons. | factual reasons. | However, where the physical | requirement to give fingerprints. |
| However, where the physical | However, where the physical | impossibility is of a temporary | However, where the physical |
| impossibility is of a temporary | impossibility is of a temporary | nature, this fact shall be recorded in | impossibility is of a temporary |
| nature, the person shall be required to | nature, the person shall be required to | the system and the person shall be | nature, this fact shall be recorded in |
| give the fingerprints at the | give the fingerprints at the | required to give the fingerprints at | the system and the person shall be |
| subsequent entry. The border | subsequent entry. The border | the exit or the subsequent entry. The | required to give the fingerprints at |
| authorities shall be entitled to request | authorities shall be entitled to request | border check authorities shall be | the exit or the subsequent entry. The |
| further clarification on the grounds | further clarification on the grounds | entitled to request further | border authorities shall be entitled to |
| for the temporary impossibility to | for the temporary impossibility to | clarification on the grounds for the | request further clarification on the |
| provide fingerprints. | provide fingerprints. Such grounds | temporary impossibility to provide | grounds for the temporary |
| Member States shall ensure that | shall be stored in the individual file | fingerprints. This information shall | impossibility to provide fingerprints. |
| appropriate procedures guaranteeing | until such time as the person is able | be deleted from the system once the | This information shall be deleted |
| the dignity of the person are in place | to give fingerprints but no longer | fingerprints have been given. | from the system once the fingerprints |
| in the event of difficulties | than the retention period for that | Member States shall ensure that | have been given. |
| encountered in capturing | individual file. | appropriate procedures guaranteeing | Member States shall ensure that |
| fingerprints. | Member States shall ensure that | the dignity of the person are in place | appropriate procedures guaranteeing |
| | appropriate procedures guaranteeing | in the event of difficulties | the dignity of the person are in place |
| | the dignity of the person are in place | encountered in capturing | in the event of difficulties |
| | in the event of difficulties | fingerprints. | encountered in capturing |
| | encountered in capturing | | fingerprints. |
| | 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. | 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. <i>The fact that the</i> <i>physical impossibility to give</i> <i>fingerprints is of a temporary nature</i> <i>shall be recorded</i> . | 4. Where the person concerned is exempt from the requirement to give fingerprints [] pursuant to paragraphs 2 or 3, the specific data field shall be marked as 'not applicable'. [] | Provisionally agreed: 4. Where the person concerned is exempt from the requirement to give fingerprints pursuant to paragraphs 2 or 3, the specific data field shall be marked as 'not applicable'. |
|---|---|--|--|
| Article 16 Personal data for third country | Article 16 Personal data for third country | Article 16 Personal data for third country | |
| nationals who have been refused entry | nationals who have been refused entry | nationals who have been refused entry | |
| 1.Where a decision has been | 1. Where a decision has been | 1. Where a decision has been | <i>EP strongly oppose to retain</i> |
| taken by the border authority, in | taken by the border authority, in | taken by the border check authority, | biometric data of TCN who are |
| accordance with Article 14 of | accordance with Article 14 of | in accordance with Article 14 of | refused entry. EP to revert back. |
| Regulation (EU) 2016/399 and | Regulation (EU) 2016/399 and | Regulation (EU) 2016/399 and | |
| Annex V thereto, to refuse the entry | Annex V thereto, to refuse the entry | Annex V thereto, to refuse the entry | |
| of a third country national referred to | of a third country national referred to | of a third country national referred to | |
| in Article 2(2) of this Regulation to | in Article 2(2) of this Regulation to | in Article 2(2) of this Regulation to | |
| the territories of the Member States, | the territories of the Member States, | the territories of the Member States, | |
| and where no previous file has been | and where no previous file has been | and where no previous file has been | |
| registered in the EES for that third country national the border authority | registered in the EES for that third | registered in the EES for that third country national the border check | |
| shall create an individual file in | country national the border authority shall create an individual file in | authority shall create an individual | |
| which it shall enter the data required | which it shall enter the | file in which it shall enter: | |
| pursuant to Article 14(1) in the case | <i>alphanumeric</i> data required pursuant | me m winch it shan enter. | |
| pursuant to Article 14(1) in the case | <i>uipnunumeric</i> data required pursuant | | |



| of visa holding third country nationals and the data required pursuant to Article 15(1) in the case of visa exempt third country nationals. | to Article 14(1) in the case of visa holding third country nationals and the <i>alphanumeric</i> data required pursuant to Article 15(1) in the case of visa exempt third country nationals. Stick with Council text. | | |
|---|---|---|---|
| | Suck with Council text. | (a) the data required pursuant to Article 14(1) and, where relevant, the data referred to under Article 14(6) in the case of [] third country nationals <u>subject to a visa</u> requirement [] | <i>EP questioned the relevance of inputting data as referred to under article 14(6) on the national facilitation programme.</i> |
| | | (b) [] the data required pursuant to Article 15(1) in the case of visa exempt third country nationals <u>and in</u> the case of a third country national subject to a visa requirement if the border check <u>authority has verified</u> that the third country national is not registered in the VIS. | |
| | | If a third country national refuses to provide biometric data, the border check authority shall create the individual file without biometric data. If the third country national possesses an eMRTD the facial image shall be extracted from this eMRTD. | EP opposed the taking of the facial image from the eMRTD when the TCN refuses to give the biometric data. EP to revert back. |

| 9465/17 | | RG/cr | 105 |
|---------|----------|--------|-----|
| ANNEX | DG D 1 A | LIMITE | EN |

| 2. In order to create the individual | 2. In order to create the individual | [] | Deletion Provisionally agreed |
|--|--|--|--|
| file of visa holder third country | file of visa holder third country | | |
| nationals, the data provided for in | nationals, the data provided for in | | |
| Article 14 (1) (d), (e) and (g) may be | Article 14 (1) (d), (e) and (g) may be | | |
| retrieved and imported directly from | retrieved and imported directly from | | |
| the VIS into the EES by the | the VIS into the EES by the | | |
| competent border authority in | competent border authority in | | |
| accordance with Article 18a of | accordance with Article 18a of | | |
| Regulation (EC) No 767/2008. | Regulation (EC) No 767/2008. | | |
| 3. For both visa holding and visa | 3. For both visa holding and visa | 2. For both <u>third country nationals</u> | Provisionally agreed : |
| exempt third country nationals the | exempt third country nationals the | subject to a visa requirement [] | 2. For both <u>third country nationals</u> |
| following data shall be entered in a | following data shall be entered in a | and visa exempt third country | subject to a visa requirement and visa |
| separate refusal of entry record: | separate refusal of entry record: | nationals the following data shall be | exempt third country nationals the |
| | | entered in a separate refusal of entry | following data shall be entered in a |
| | | record: | separate refusal of entry record: |
| (a) the date and time of refusal of | (a) the date and time of refusal of | (a) the date and time of refusal of | |
| entry, | entry, | entry, | |
| (b) the border crossing point, | (b) the border crossing point, | (b) the border crossing point, | |
| (c) the authority that refused the | (c) the authority that refused the | c) the authority that refused the | |
| entry, | entry, | entry, | |
| (d) the letter(s) corresponding to | (d) the letter(s) corresponding to | (d) the letter(s) corresponding to | |
| the reason(s) for refusing entry, in | the reason(s) for refusing entry, in | the reason(s) for refusing entry, in | |
| accordance with Annex V, Part B of | accordance with Annex V, Part B of | accordance with Annex V, Part B of | |
| Regulation (EU) 2016/399. | Regulation (EU) 2016/399. | Regulation (EU) 2016/399. | |
| | | In addition, for third country | Provisionally agreed: |
| | | nationals subject to a visa | In addition, for third country |
| | | requirement the data provided for in | nationals subject to a visa |
| | | Article 14(2)(d), (e), (f) and [(g)] | requirement the data provided for in |
| | | shall be entered in the refusal of | Article 14(2)(d), (e), (f) and [(g)] |
| | | entry record. | shall be entered in the refusal of |
| | | In order to create or update the | entry record. |
| | | refusal of entry record of third | In order to create or update the |
| | | country nationals subject to a visa | refusal of entry record of third |



| | | | 1 |
|---------------------------------------|---------------------------------------|--|---|
| | | requirement, the data provided for in | country nationals subject to a visa |
| | | Article 14(2)(d), (e), (f) and [(g)] may | requirement, the data provided for in |
| | | be retrieved and imported | Article 14(2)(d), (e), (f) and [(g)] may |
| | | automatically from the VIS into the | be retrieved and imported from the |
| | | EES by the competent border checks | VIS into the EES by the competent |
| | | authority in accordance with Article | border checks authority in |
| | | <u>18a of Regulation (EC) No</u> | accordance with Article 18a of |
| | | <u>767/2008.</u> | Regulation (EC) No 767/2008. |
| 4. Where a previous file already | 4. Where a previous file already | <u>3.</u> [] <u>The record</u> provided for in | Provisionally agreed : |
| exists in the EES the data provided | exists in the EES the data provided | paragraph 2 shall be <u>linked</u> [] to | <u>3.</u> <u>The record provided for in</u> |
| for in paragraph 2 shall be added to | for in paragraph 2 shall be added to | [] the individual file of the third | paragraph 2 shall be linked to the |
| the existing file. | the existing file. | country national. | individual file of the third country |
| | | | national. |
| Article 17 | Article 17 | Article 17 | Provisionally agreed :. |
| Data to be added where an | Data to be added where an | Data to be added where an | Article 17 |
| authorisation to stay is revoked, | authorisation to stay is revoked, | authorisation <u>for short</u> [] stay is | Data to be added where an |
| annulled or extended | annulled or extended | revoked, annulled or extended | authorisation <u>for short</u> stay is |
| | | | revoked, annulled or extended |
| 1. Where a decision has been | 1. Where a decision has been | 1. Where a decision has been | Provisionally agreed: |
| taken to revoke or annul an | taken to revoke or annul an | taken to revoke or annul an | 1. Where a decision has been |
| authorisation to stay or a visa or to | authorisation to stay or a visa or to | authorisation for short stay [] or a | taken to revoke or annul an |
| extend the duration of the authorised | extend the duration of the authorised | visa or to extend the duration of the | authorisation for short stay or a visa |
| stay or visa, the competent authority | stay or visa, the competent authority | authorised stay or visa, the | or to extend the duration of the |
| that has taken the decision shall add | that has taken the decision shall add | competent authority that has taken | authorised stay or visa, the |
| the following data to the individual | the following data to the individual | the decision shall add the following | competent authority that has taken |
| file: | file: | data to the latest relevant entry/exit | the decision shall add the following |
| | | <u>record []</u> : | data to the latest relevant entry/exit |
| | | | record: |



| (a) the status information indicating that the authorisation to stay or the visa has been revoked or annulled or that the duration of the authorised stay or the visa has been extended; | (a) the status information indicating that the authorisation to stay or the visa has been revoked or annulled or that the duration of the authorised stay or the visa has been extended; | (a) the status information indicating that the authorisation <u>for</u> <u>short</u> [] stay or the visa has been revoked or annulled or that the duration of the authorised_stay or the visa has been extended; | Provisionally agreed: (a) the status information indicating that the authorisation <u>for</u> <u>short</u> stay or the visa has been revoked or annulled or that the duration of the authorised stay or the visa has been extended; |
|---|---|---|--|
| (b) the identity of the authority that revoked or annulled the authorisation to stay or the visa or extended the duration of the authorised stay or visa; | (b) the identity of the authority that revoked or annulled the authorisation to stay or the visa or extended the duration of the authorised stay or visa; | (b) the identity of the authority that revoked or annulled the authorisation <u>for short</u> [] stay or the visa or extended the duration of the authorised stay or visa; | <i>Provisionally agreed:</i> (b) the identity of the authority that revoked or annulled the authorisation for short stay or the visa or extended the duration of the authorised 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 stay or the 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 stay or the visa; | (c) the place and date of the decision to revoke or annul the authorisation <u>for short</u> [] stay or the visa or to extend the duration of the authorised stay or the visa; | Provisionally agreed: (c) the place and date of the decision to revoke or annul the authorisation <u>for short</u> stay or the visa or to extend the duration of the authorised stay or the visa; |
| (d) the new visa sticker number including the three letter code of the issuing country; | (d) the new visa sticker number including the three letter code of the issuing country; | (d) <u>where applicable</u> the new visa sticker number including the three letter code of the issuing country; | <i>Provisionally agreed:</i> (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 stay; | (e) the period of the extension of the authorised duration of stay; | (e) <u>if possible</u> the period of the extension of the [] duration of <u>authorised</u> stay; | <i>Provisionally agreed:</i>e) the period of the extension of the authorised duration of stay; |
| (f) the new expiry date of the authorisation to stay or the visa. | (f) the new expiry date of the authorisation to stay or the visa. | (f) <u>if possible</u> the new expiry date of the [] <u>authorised</u> stay or the visa. <u>1a.</u> <u>Where the duration of</u> <u>authorised stay has been extended in</u> <u>accordance with Article 20(2) of the</u> Convention implementing the | <i>Provisionally agreed:</i> (f) the new expiry date of the authorisation to stay or the visa. <i>To be discussed with the article on Bilateral Agreements.</i> |



| 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 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. | 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 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. | <u>Schengen Agreement the competent</u> <u>authority shall add the data regarding</u> <u>the period of extension of the</u> <u>authorised stay to the latest relevant</u> <u>entry/exit record.</u> 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 <u>automatically</u> 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. | <i>Provisionally agreed:</i> 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 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 of the authorisation to stay, which shall be: | 3. The entry/exit record shall indicate the ground(s) for revocation of the authorisation to stay, which shall be: | 3. The entry/exit record shall indicate the ground(s) for revocation <u>or annulment</u> of the [] <u>authorised</u> stay, which shall be: | <i>Provisionally agreed:</i> 3. The entry/exit record shall indicate the ground(s) for revocation <u>or annulment</u> of the <u>authorised</u> stay, which shall be: |
| (a) the grounds on which the person is being expelled; | (a) the grounds on which the person is being expelled; | (a) [] <u>a return decision adopted</u> <u>pursuant to Directive</u> <u>2008/115/EC^{28c};</u> | Provisionally agreed: a) <u>a return decision adopted</u> <u>pursuant to Directive</u> <u>2008/115/EC^{28c}</u> ; |

^{28c} <u>Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member</u> States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

| (b) any other decision taken by the competent authorities of the Member State, in accordance with national legislation, resulting in the removal or departure of the third country national who does not fulfil or no longer fulfils the conditions for the | (b) any other decision taken by the competent authorities of the Member State, in accordance with national legislation, resulting in the removal or <i>voluntary</i> departure of the third country national who does not fulfil or no longer fulfils the conditions for | (b) any other decision taken by the competent authorities of the Member State, in accordance with national legislation, resulting in the <u>return or</u> removal or departure of the third country national who does not fulfil or no longer fulfils the conditions for | <i>Provisionally agreed:</i> b) any other decision taken by the competent authorities of the Member State, in accordance with national legislation, resulting in the return or removal or voluntary departure of the third country national who does |
|---|---|---|---|
| entry into or for the stay in the territory of the Member States. | the entry into or for the stay in the territory of the Member States. | the entry into or for the <u>authorised</u> stay in the territory of the Member States. | 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. | 4. The entry/exit record shall indicate the grounds for extending the duration of an authorised stay. | 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. | 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. | 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 | Article 18 | Article 18 | Provisionally agreed: |
| 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 | 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 | Data to be added in case of rebuttal of the presumption that the third country national does not fulfil the conditions of duration of <u>authorised</u> stay in accordance with Article 12 of Regulation (EU) 2016/399 | 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 <u>authorised</u> stay in accordance with Article 12 of Regulation (EU) 2016/399 |
| Without prejudice to Article 20, | Without prejudice to Article 20, | Without prejudice to Article 20, | EP considers that a TCN cannot |
| where a third country national present on the territory of a Member | where a third country national present on the territory of a Member | where a third country national present on the territory of a Member | rebut the presumption that he does not fulfil the conditions related to the |



| State is not registered in the EES or | State is not registered in the EES or | State [] has no individual file | duration of stars if he is at the low der |
|--|--|--|---|
| State is not registered in the EES or | State is not registered in the EES or | State [] <u>has no individual file</u> | duration of stay if he is at the border. |
| the entry/exit record does not contain | the entry/exit record does not contain | created in the EES or there is no last | Can delegations agree to the deletion |
| an exit date following the date of | an exit date following the date of | relevant entry/exit record [], the | of the paragraph: |
| expiry of the authorised length of | expiry of the authorised length of | competent authorities may presume | In addition, without prejudice to |
| stay, the competent authorities may | stay, the competent authorities may | that the third country national does | Article 20, the competent authorities |
| presume that the third country | presume that the third country | not fulfil or no longer fulfils the | may presume that a third country |
| national does not fulfil or no longer | national does not fulfil or no longer | conditions relating to duration of | national did not fulfil the conditions |
| fulfils the conditions relating to | fulfils the conditions relating to | authorised stay within [] the | related to the duration of the |
| duration of stay in the territory of the | duration of stay in the territory of the | territory of the Member States. | previous authorised stay if during the |
| Member States. | Member States. | In addition, without prejudice to | performance of the border checks on |
| In that case Article 12 of Regulation | In that case Article 12 of Regulation | Article 20, the competent authorities | entry it results that the previous |
| (EU) 2016/399 shall apply and if that | (EU) 2016/399 shall apply and if that | may presume that a third country | entry/exit record of the third country |
| presumption is rebutted by proof that | presumption is rebutted by proof that | national did not fulfil the conditions | national does not contain an exit |
| the third country national concerned | the third country national concerned | related to the duration of the | date. |
| has respected the conditions relating | has respected the conditions relating | previous authorised stay if during the | Stick with Council text. |
| to the condition of short stay, the | to the condition of short stay, in | performance of the border checks on | |
| competent authorities shall create an | accordance with Article 12(3) of | entry it results that the previous | |
| individual file for that third country | that Regulation, the competent | entry/exit record of the third country | |
| national in the EES if necessary, or | authorities shall create an individual | national does not contain an exit | |
| update the latest entry/exit record by | file for that third country national in | date. | |
| entering the missing data in | the EES if necessary, or update the | In that case Article 12 of Regulation | |
| accordance with Articles 14 and 15 | latest entry/exit record by entering | (EU) 2016/399 shall apply and if that | |
| or delete an existing file where | the missing data in accordance with | presumption is rebutted by proof that | |
| Article 32 applies. | Articles 14 and 15 or delete an | the third country national concerned | |
| 11 | existing file where Article 32 | has respected the conditions relating | |
| | applies. | to the condition of <u>authorised []</u> | |
| | TT | 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 | |
| | | riticies i rund 15 of delete ull | |



| | | existing file where Article 32 | |
|---|---|--|--|
| | | applies. | |
| Article 19 | Article 19 | Article 19 | |
| Fall-back procedures in case of | Fall-back procedures in case of | Fall-back procedures in case of | |
| technical impossibility to enter data | technical impossibility to enter data | technical impossibility to enter data | |
| 1 1 | | 1 1 | |
| <i>or failure of the EES</i> In the event of technical | or failure of the EES | <i>or failure of the EES</i> 1. In the event of technical | |
| | | — | Provisionally agreed: |
| impossibility in entering data in the | impossibility in entering data in the | impossibility in entering data in the | $\underline{1.}$ In the event of technical |
| Central System or in the event of a | Central System or in the event of a | Central System or in the event of a | impossibility in entering data in the |
| failure of the Central System, the | failure of the Central System, the | failure of the Central System, the | Central System or in the event of a |
| data referred to in Articles 14, 15, | data referred to in Articles 14, 15, | data referred to in Articles 14, 15, | failure of the Central System, the |
| 16, 17 and 18 shall be temporarily | 16, 17 and 18 shall be temporarily | 16, 17 and 18 shall be temporarily | data referred to in Articles 14, 15, |
| stored in the National Uniform | stored in the National Uniform | stored in the National Uniform | 16, 17 and 18 shall be temporarily |
| Interface as provided for in Article 6. | Interface as provided for/in Article 6. | Interface as provided for in Article 6. | stored in the National Uniform |
| If this is not possible, the data shall | If this is not possible, the data shall | If this is not possible, the data shall | Interface as provided for in Article 6. |
| be temporarily stored locally. In both | be temporarily stored locally. In both | be temporarily stored locally. In [] | If this is not possible, the data shall |
| cases, the data shall be entered into | cases, the data shall be entered into | all cases, the data shall be entered | be temporarily stored locally. In both |
| the Central System of the EES as | the Central System of the EES as | into the Central System of the EES | cases, the data shall be entered into |
| soon as the technical impossibility or | soon as the technical impossibility or | as soon as the technical impossibility | the Central System of the EES as |
| failure has been remedied. The | failure has been remedied. The | or failure has been remedied. The | soon as the technical impossibility or |
| Member States shall take the | Member States shall take the | Member States shall take the | failure has been remedied. The |
| appropriate measures and deploy the | appropriate measures and deploy the | appropriate measures and deploy the | Member States shall take the |
| required infrastructure, equipment | required/infrastructure, equipment | required infrastructure, equipment | appropriate measures and deploy the |
| and resources to ensure that such | and resources to ensure that such | and resources to ensure that such | required infrastructure, equipment |
| temporary local storage can be | temporary local storage can be | temporary local storage can be | and resources to ensure that such |
| carried out at any time and for any of | carried out at any time and for any of | carried out at any time and for any of | temporary local storage can be |
| their border crossing points. | their border crossing points. | their border crossing points. | carried out at any time and for any of |
| | | | their border crossing points. |
| | | 2. In the exceptional situation | ~ . |
| | | where there is no technical | Compromise proposal: |
| | | possibility to register in the Central | (2) in the exceptional situation where |
| | | System, in the National Uniform | there is no technical possibility to |
| | | Interface and local electronic | register in the Central System, in the |



| | , , , , , , , , , , , , , , , , , , , | |
|--|---|--|
| | temporary storage is technically | National Uniform Interface, and |
| | impossible, Member States shall | local electronic temporary storage is |
| | store manually the data referred to in | technically impossible Member |
| | articles 14, 15, 16, 17 and 18 with | States shall store entry/exit data in |
| | the exception of the biometric data | accordance with articles 14, 15, 16, |
| | and in addition affix an entry or exit | 17 and 18 of this Regulation |
| | stamp in the travel document of the | Member States shall store manually |
| | third country national. These | the data referred to in with the |
| | manually stored data shall be entered | exception of the biometric data and |
| | in the system as soon as possible. | shall in addition affix an entry or exit |
| | Member States shall inform the | stamp in the travel document of the |
| | Commission of the stamping of | third country national, without |
| | travel documents in the event of | prejudice to the border checks |
| | exceptional situations mentioned in | required by Union Law. This data |
| | first subparagraph. Detailed rules on | shall be inserted into the Central |
| | the modalities to inform the | |
| | | System as soon as technically |
| | Commission shall be adopted in | possible. These manually stored data |
| | accordance with examination | shall be entered in the system as soon |
| | procedure referred to in Article | as possible. |
| | <u>61(2).</u> | Member states shall inform the |
| | | Commission of the stamping of |
| | | travel documents in the event of |
| | | exceptional situations mentioned in |
| | | first sub-paragraph. Detailed rules on |
| | | the modalities to inform the |
| | | commission shall be adopted in |
| | | accordance with examination |
| | | procedure referred to in Article |
| | | 61(2). |
| | | 01(2). |

| | | 3. The EES shall indicate that | Linked with the previous paragraph. |
|---|---|---|--|
| | | data referred to in Articles 14, 15, | |
| | | 16, 17 and 18 were entered during | |
| | | fall-back procedure and that the | |
| | | individual file created according to | |
| | | paragraph 2 is missing biometric | |
| | | data. | |
| Article 20 | Article 20 | Article 20 | |
| Transitional period and transitional | Transitional period and transitional | Transitional period and transitional | |
| measures | measures | measures | |
| 1. For a period of six months after | 1. For a period of six months after | 1. For a period of six months after | Provisionally agreed: |
| the EES has started operations, in | the EES has started operations, in | the EES has started operations, in | 1. For a period of <i>180 days</i> after |
| order to verify at entry that the third | order to verify at entry that the third | order to verify at entry that the third | the EES has started operations, in |
| country national has not exceeded | country national has not exceeded | country national has not exceeded | order to verify at entry and at exit |
| the number of entries authorised by | the number of entries authorised by | the number of entries authorised by | that third country nationals admitted |
| the single or double entry visa and to | the single or double entry visa and to | the short stay visa issued for single | for a short stay {or on the basis of a |
| verify at entry and at exit that third | verify at entry and at exit that third | or double entry [] and to verify at | touring visa} entering for a short stay |
| country nationals entering for a short | country nationals entering for a short | entry and at exit that third country | have not exceeded the duration of the |
| stay have not exceeded the length of | stay have not exceeded the length of | nationals [] have not exceeded the | maximum authorised stay and, where |
| the maximum authorised stay, the | the maximum authorised stay, the | <u>duration []</u> of the maximum | relevant, to verify at entry that the |
| competent border authorities shall | competent border authorities shall | authorised_stay, the competent border | third country national has not |
| take into account the stays in the | take into account the stays in the | check authorities shall take into | exceeded the number of entries |
| territories of the Member States | territories of the Member States | account the stays in the territories of | authorised by the short stay visa |
| during the 180 days preceding the | during the 180 days preceding the | the Member States during the 180 | issued for single or double entry, the |
| entry or the exit by checking the | entry or the exit by checking the | days preceding the entry or the exit | competent border authorities shall |
| stamps in the travel documents in | stamps in the travel documents in | by checking the stamps in the travel | take into account the stays in the |
| addition to the entry/exit data | addition to the entry/exit data | documents in addition to the | territories of the Member States |
| recorded in the EES. | recorded in the EES. | entry/exit data recorded in the EES. | 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 |
| | \bigvee | | 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. <i>Article 21</i> Use of data for verification at the external borders | 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. <i>Article 21</i> Use of data for verification at the external borders | 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. <i>Article 21 Use of data for verification at the [] borders at which the EES is</i> | |
|---|---|---|--|
| 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. | 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. | operated1. Border check authorities shallhave access to the EES for verifyingthe identity and previous registrationof the third country national, forupdating the data registered into theEES where necessary and forconsulting the data to the extentrequired for the performance ofborder check [] tasks. | Provisionally agreed: 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 <u>checks.</u> |

| 2. Pursuant to paragraph 1, the | 2. Pursuant to paragraph 1, the / | 2. Pursuant to paragraph 1, the | Provisionally agreed: 2. |
|--|--|--|--|
| border authorities shall have access | border authorities shall have access | border <u>check</u> authorities shall have | Pursuant to paragraph 1, the |
| to search with the data referred to in | to search with the data referred to in | access to search with the data | border authorities shall have access |
| Article 14(1)(a), (b) and (c). | Article 14(1)(a), (b) and (c). | referred to in Article 14(1)(a), (b) | to search with the data referred to in |
| In addition, for third country | In addition, for third country | and (c) and Article 15(1)(a). | Article $14(1)(a)$, (b) and (c) and |
| nationals who are subject to a visa | nationals who are subject to a visa | In addition, for third country | Article 15(1)(a). |
| requirement to cross the external | requirement to cross the external | nationals who are subject to a visa | In addition, for third country |
| borders, the border authorities may | borders, the border authorities may | requirement [], the border check | nationals who are subject to a visa |
| launch a search in the VIS directly | launch a search in the VIS directly | authorities [] shall where | requirement the border authorities |
| from the EES using the same | from the EES using the same | necessary launch a search in the VIS | shall launch a search in the VIS |
| alphanumeric data for the purposes | alphanumeric data for the/purposes | directly from the EES using the same | directly from the EES using the same |
| of carrying out the consultation of | of carrying out the consultation of | alphanumeric data for the purposes | alphanumeric data for the purposes |
| the VIS for verification at external | the VIS for verification/at external | of carrying out the consultation of | of carrying out the consultation of |
| borders in accordance with Article | borders in accordance/with Article | the VIS for verification [] in | the VIS for verification in |
| 18 of Regulation (EC) No 767/2008. | 18 of Regulation (EC) No 767/2008. | accordance with Article 18 of | accordance with Article 18 of |
| If the search in the EES with those | If the search in the EES with those | Regulation (EC) No 767/2008, at | Regulation (EC) No 767/2008, [at |
| data indicates that data on the third | data indicates that data on the third | borders at which the EES is operated. | borders at which the EES is |
| country national are recorded in the | country national are recorded in the | If the search in the EES with those | operated.] |
| EES, the border authorities shall | EES, the border/authorities shall | data indicates that data on the third | If the search in the EES with those |
| compare the live facial image of the | compare the live facial image of the | country national are recorded in the | data indicates that data on the third |
| third country national with the facial | third country national with the facial | EES, the border <u>check</u> authorities | country national are recorded in the |
| image referred to in Article 14(1)(f). | image referred to in Article 14(1)(f). | shall compare the live facial image of | EES, the border authorities shall |
| Where the technology is not | Where the technology is not | the third country national with the | compare the live facial image of the |
| available at the border crossing for | available at the border crossing for | facial image referred to in Article | third country national with the facial |
| the use of live facial image, the | the use of live facial image, the | 14(1)(f) and Article 15(1)(b) [] or | image referred to in Article 14(1)(f) |
| border authorities shall, in the case of | border authorities shall, in the case of | the border check authorities shall, in | and Article 15(1)(b) or the border |
| visa exempt third country nationals, | visa exempt third country nationals, | the case of visa exempt third country | authorities shall, in the case of visa |
| proceed to a verification of | proceed to a verification of | nationals, proceed to a verification of | exempt third country nationals, |
| fingerprints against the EES and in | fingerprints against the EES and in | fingerprints against the EES and in | proceed to a verification of |
| the case of visa holding third country | the/case of visa holding third country | the case of [] third country | fingerprints against the EES and in |
| nationals, proceed to a verification of | nationals, proceed to a verification of | nationals subject to a visa | the case of third country nationals |
| fingerprints directly against the VIS | fingerprints directly against the VIS | requirement, proceed to a verification | subject to a visa requirement, |
| in accordance with Article 18 of | /in accordance with Article 18 of | of fingerprints directly against the | proceed to a verification of |



| Regulation (EU) No 767/2008. For | Regulation (EU) No 767/2008. For | VIS in accordance with Article 18 of | fingerprints directly against the VIS |
|--|--|--|---|
| the verification of fingerprints | the verification of fingerprints | Regulation (EU) No 767/2008. For | in accordance with Article 18 of |
| against the VIS for visa holders, the | against the VIS for visa holders, the | the verification of fingerprints | Regulation (EU) No 767/2008. For |
| border authorities may launch the | border authorities may launch the | against the VIS for visa holders, the | the verification of fingerprints |
| search in the VIS directly from the | search in the VIS directly from the | border check authorities may launch | against the VIS for visa holders, the |
| • | | | 5 |
| EES as provided in Article 18(6) of | EES as provided in Article 18(6) of | the search in the VIS directly from | border authorities may launch the |
| Regulation (EC) No 767/2008. | Regulation (EC) No 767/2008. | the EES as provided in Article 18(6) | search in the VIS directly from the |
| If the verification of the facial image | If the verification of the facial image | of Regulation (EC) No 767/2008. | EES as provided in Article 18(6) of |
| fails, the verification shall be carried | fails, the verification shall be carried | If the verification of the facial image | Regulation (EC) No 767/2008. |
| out using fingerprints and vice versa. | out using fingerprints and vice versa. | fails, the verification shall be carried | |
| | / | out using fingerprints and vice versa. | |
| 3. If the search with the data set | 3. If the search with the data set | 3. If the search with the data set | Provisionally agreed: |
| out in paragraph 2 indicates that data | out in paragraph 2 indicates that data | out in paragraph 2 indicates that data | 3. If the search with the data set |
| on the third country national are | on the third country national are | on the third country national are | out in paragraph 2 indicates that data |
| recorded in the EES, the competent | recorded in the EES, the competent | recorded in the EES, the [] border | on the third country national are |
| authority shall be given access to | authority shall be given access to | check authority shall be given access | recorded in the EES, the border |
| consult the data of the individual file | consult the data of the individual file | to consult the data of the individual | authority shall be given access to |
| of that third country national and the | of that third country national and the | file of that third country national and | consult the data of the individual file |
| entry/exit record(s) linked to it. | entry/exit record(s) linked to it. | the entry/exit record(s) or refusal of | of that third country national and the |
| | | entry record(s) linked to it. | entry/exit record(s) or refusal of |
| | | | entry record(s) linked to it. |
| 4. Where the search with the | 4. Where the search with the | 4. Where the search with the | Provisionally agreed: |
| alphanumeric data set out in | alphanumeric data set out in | alphanumeric data set out in | 4. Where the search with the |
| paragraph 2 indicates that data on the | paragraph 2 indicates that data on the | paragraph 2 indicates that data on the | alphanumeric data set out in |
| third country national are not | third country national are not | third country national are not | paragraph 2 indicates that data on the |
| recorded in the EES, where a | recorded in the EES, where a | recorded in the EES, where a | third country national are not |
| verification of the third country | verification of the third country | verification of the third country | recorded in the EES, where a |
| national pursuant to paragraph 2 of | national pursuant to paragraph 2 of | national pursuant to paragraph 2 of | verification of the third country |
| this Article fails or where there are | this Article fails or where there are | this Article fails or where there are | national pursuant to paragraph 2 of |
| doubts as to the identity of the third | doubts as to the identity of the third | doubts as to the identity of the third | this Article fails or where there are |
| country national, the border | country national, the border | country national, the border check | doubts as to the identity of the third |
| authorities shall have access to data | authorities shall have access to data | authorities shall have access to data | country national, the border |
| for identification in accordance with | for identification in accordance with | for identification in accordance with | authorities shall have access to data |
| | v | | |

| Article 25. | Article 25. | Article 25. | for identification in accordance with Article 25. |
|---|---|--|---|
| In addition, the following provisions | In addition, the following provisions | In addition, the following provisions | |
| shall apply: | shall apply: | shall apply: | |
| (a) for third country nationals who | (a) for third country nationals who/ | (a) for third country nationals who | Provisionally agreed: |
| are subject to a visa requirement to | are subject to a visa requirement to | are subject to a visa requirement | (a) for third country nationals who |
| cross the external borders, if the | cross the external borders, if the / | [], if the search in the VIS with the | are subject to a visa requirement, if |
| search in the VIS with the data | search in the VIS with the data / | data referred to in Article 18(1) of | the search in the VIS with the data |
| referred to in Article 18(1) of | referred to in Article $18(1)$ of / | Regulation (EC) No 767/2008 | referred to in Article 18(1) of |
| Regulation (EC) No 767/2008 | Regulation (EC) No 767/2008 | indicates that that third country | Regulation (EC) No 767/2008 |
| indicates that that third country | indicates that that third country | national is recorded in the VIS, a | indicates that that third country |
| national is recorded in the VIS, a | national is recorded in the VIS, a | verification of fingerprints against | national is recorded in the VIS, a |
| verification of fingerprints against | verification of fingerprints against | the VIS shall be carried out in | verification of fingerprints against |
| the VIS shall be carried out in | the VIS shall be carried out in | accordance with Article 18 (5) of | the VIS shall be carried out in |
| accordance with Article 18 (5) of | accordance with Article 18 (5) of | Regulation (EC) No 767/2008. For | accordance with Article 18 (5) of |
| Regulation (EC) No 767/2008. For | Regulation (EC) No 767/2008. For | this purpose, the [] border check | Regulation (EC) No 767/2008. For |
| this purpose, the competent authority | this purpose, the competent authority | authority may launch a search from | this purpose, the border authority |
| may launch a search from the EES to | may launch a search from the EES to | the EES to the VIS as provided for in | may launch a search from the EES to |
| the VIS as provided for in Article | the VIS as provided for in Article | Article 18(6) of Regulation (EC) No | the VIS as provided for in Article |
| 18(6) of Regulation (EC) No | 18(6) of Regulation (EC) No | 767/2008. In circumstances where a | 18(6) of Regulation (EC) No |
| 767/2008. In circumstances where a | 767/2008/In circumstances where a | verification of the person pursuant to | 767/2008. In circumstances where a |
| verification of the person pursuant to | verification of the person pursuant to | paragraph 2 of this Article failed, the | verification of the person pursuant to |
| paragraph 2 of this Article failed, the | paragraph 2 of this Article failed, the | border <u>check</u> authorities shall access | paragraph 2 of this Article failed, the |
| border authorities shall access the | border authorities shall access the | the VIS data for identification in | border authorities shall access the |
| VIS data for identification in | VIS data for identification in | accordance with Article 20 of | VIS data for identification in |
| accordance with Article 20 of | accordance with Article 20 of | Regulation (EC) No 767/2008. | accordance with Article 20 of |
| Regulation (EC) No 767/2008. | /Regulation (EC) No 767/2008. | | Regulation (EC) No 767/2008. |
| (b) for third country nationals who | (b) for third country nationals who | (b) for third country nationals who | Provisionally agreed : |
| are not subject to a visa requirement | are not subject to a visa requirement | are not subject to a visa requirement | (b) for third country nationals who |
| to cross the external borders and who | to cross the external borders and who | [] and who are not found in the | are not subject to a visa requirement |
| are not found in the EES further to | are not found in the EES further to | EES further to the identification run | and who are not found in the EES |
| the identification run in accordance | the identification run in accordance | in accordance with Article 25, the | further to the identification run in |
| with Article 25, the VIS shall be | with Article 25, the VIS shall be | VIS shall be consulted in accordance | accordance with Article 25, the VIS |



| consulted in accordance with Article 19a of Regulation (EC) No 767/2008. The competent authority may launch a search from the EES to the VIS as provided for in Article 19a of Regulation (EC) No 767/2008." | consulted in accordance with Article 19a of Regulation (EC) No 767/2008. The competent authority may launch a search from the EES to the VIS as provided for in Article 19a of Regulation (EC) No 767/2008." | with Article 19a of Regulation (EC) No 767/2008. The [] <u>border check</u> authority may launch a search from the EES to the VIS as provided for in Article 19a of Regulation (EC) No 767/2008. | shall be consulted in accordance with Article 19a of Regulation (EC) No 767/2008. The 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. | 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. | 5. []. | Linked to the territorial scope. |

| CHAPTER III | CHAPTER III | CHAPTER III | |
|---|---|--|----------------------------------|
| Entry of data and use of the EES | Entry of data and use of the EES | Entry of data and use of the EES | |
| by other authorities | by other authorities | by other authorities | |
| Article 22 | Article 22 | Article 22 | Provisionally agreed: |
| Use of the EES for examining and | Use of the EES for examining and | Use of the EES for examining and | Article 22 |
| deciding on visa applications | deciding on visa applications | deciding on visa [] | Use of the EES for examining and |
| | | | deciding on visa s |
| 1. Visa authorities shall consult | 1. Visa authorities shall consult | 1. Visa authorities shall consult | |
| the EES for examining visa | the EES for examining visa | the EES for examining visa | |
| applications and adopting decisions | applications and adopting decisions | applications and adopting decisions | |
| relating to those applications, | relating to those applications, | relating to those applications, | |
| including decisions to annul, revoke | including decisions to annul, revoke | including decisions to annul, revoke | |
| or extend the period of validity of an | or extend the period of validity of an | or extend the period of validity of an | |
| issued visa, in accordance with the | issued visa, in accordance/with the | issued visa, in accordance with the | |
| relevant provisions of Regulation | relevant provisions of Regulation | relevant provisions of Regulation | |
| (EU) No 810/2009 of the European | (EU) No 810/2009 of the European | (EU) No 810/2009 of the European | |
| Parliament and of the Council ²⁹ | Parliament and of the Council ²⁹ | Parliament and of the Council. ²⁹ | |
| | | In addition, visa authorities of a | |
| | | Member State which does not yet | |
| | | apply Schengen acquis in full, but | |
| | | operate the EES, shall consult EES | |
| | | when examining national short stay | |
| | | visa applications and adopting | |
| | | decisions relating to those | |
| | | applications, including decisions to | |
| | | annul, revoke or extend the period of | |
| | | validity of an issued national short | |
| | \bigvee | <u>stay visa.</u> | |

²⁹ 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)

| | | | / |
|---|---|--|--|
| 2. The visa authority shall be given access to search the EES | 2. The visa authority shall be given access to search the EES | 2. The visa authority shall be given access to search the EES | |
| directly from the VIS with one or several of the following data: | directly from the VIS with one or several of the following data: | 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); | (a) the data referred to in Article 14(1)(a), (b) and (c); | (a) the data referred to in Article $14(1)(a)$, (b) and (c) and $15(1)(a)$; | <i>Provisionally agreed:</i> (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); | (b) the visa sticker number, including the three letter code of the issuing Member State referred to in Article 14(1)(d); | (b) the <u>short stay</u> visa sticker number, including the three letter code of the issuing Member State referred to in Article 14([] 2)(d); | Provisionally agreed: (b) the short stay visa sticker number, including the three letter code of the issuing Member State referred to in Article 14(2)(d); |
| (c) the biometric data as referred to in Articles 14(1)(f) and 15. | (c) the biometric data as referred to in Articles 14(1)(f) and 15 | (c) the biometric data as referred to in Articles 14(1)(f) and 15(1) (b) and (c). | Concerns were raised about checks using facial image. To be reverted to. Commission drafting suggestion (c) the fingerprint data or the fingerprint data combined with the facial image |
| | | (d) [the touring visa sticker number of the touring visa referred to in Article 14(2)(g)]; | Provisionally agreed: (d) [the touring 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 linked to it. | 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 linked to it. | 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 <u>and also refusals of</u> entry record linked to it. Visa | Provisionally agreed: 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 |



| | | authorities shall be given access to | entry record linked to it. Visa |
|--|--|--|--------------------------------------|
| | | consult the automated calculator in | authorities shall be given access to |
| | | order to check the maximum | consult the automated calculator in |
| | | remaining duration of an authorised | order to check the maximum |
| | | stay. They shall also be able to | remaining duration of an authorised |
| | | consult the EES and its calculator | stay. They shall also be able to |
| | | when examining and taking decision | consult the EES and its calculator |
| | | on a new visa application, so as to | when examining and taking decision |
| | | automatically establish the maximum | on a new visa application, so as to |
| | | duration of authorised stay. | automatically establish the maximum |
| | | | duration of authorised stay. |
| Article 23 | Article 23 | Article 23 | |
| Use of the EES for examining | Use of the EES for examining | Use of the EES for examining | |
| applications for access to national | applications for access to national | applications for access to national | |
| facilitation programmes | facilitation programmes | facilitation programmes | |
| 1. The competent authorities | 1. The competent authorities | 1. The competent authorities | |
| referred to in Article 8e of | referred to in Article 8e of | referred to in Article 8e of | |
| Regulation (EU) 2016/399 shall | Regulation (EU) 2016/399 shall | Regulation (EU) 2016/399 shall | |
| consult the EES for the purposes of | consult the EES for the purposes of | consult the EES for the purposes of | |
| the examination of applications for | the examination of applications for | the examination of applications for | |
| access to national facilitation | access to national facilitation | access to national facilitation | |
| programmes referred to in that | programmes referred to in that | programmes referred to in that | |
| Article as regards the use of the | Article as regards the use of the | Article as regards the use of the | |
| Entry/Exit System and the adoption | Entry/Exit System and the adoption | Entry/Exit System and the adoption | |
| of decisions relating to those | of decisions relating to those | of decisions relating to those | |
| applications, including decisions to | applications, including decisions to | applications, including decisions to | |
| refuse, revoke or extend the period of | refuse, revoke or extend the period of | refuse, revoke or extend the period of | |
| validity of access to the national | validity of access to the national | validity of access to the national | |
| facilitation programmes in | facilitation programmes in | facilitation programmes in | |
| accordance with that Article. | accordance with that Article. | accordance with that Article. | |



| 2. The competent authority shall | 2. The competent authority shall | 2. The competent authority shall | Concerns were raised about checks |
|---|---|---|---|
| be given access to search with one or | be given access to search with one or | be given access to search with one or | using facial image. To be reverted to. |
| several of the data referred to in | several of the data referred to in | several of the data referred to in | Commission drafting suggestion. |
| Article 14(1)(a), (b), (c) and (f). | Article 14(1)(a), (b), (c) and (f). | Article 14(1)(a), (b), (c), and (f) and | Commission drafting suggestion: |
| | | 15(1)(a), (b) and (c). | The competent authority shall be |
| | | | given access to search with one or |
| | | | several of the following data: |
| | | | (a) the data referred to in Article |
| | | | 14(1)(a), (b) and (c) or the data |
| | | | referred to in Article 15(1)(a); |
| | | | (b) the fingerprint data or the |
| | | | fingerprint data combined with the |
| | | | facial image |
| 3. If the search with the data set | 3. If the search with the data set | 3. If the search with the data set | Provisionally agreed: |
| out in paragraph 2 indicates that data | out in paragraph 2 indicates that data | out in paragraph 2 indicates that data | 3. If the search with the data set |
| on the third country national are | on the third country national are | on the third country national are | out in paragraph 2 indicates that data |
| recorded in the EES, the competent | recorded in the EES, the competent | recorded in the EES, the competent | on the third country national are |
| authority shall be given access to | authority shall be given access to | authority shall be given access to | recorded in the EES, the competent |
| consult the data of the individual file | consult the data of the individual file | consult the data of the individual file | authority shall be given access to |
| of that third country national and the | of that third country national and the | of that third country national and the | consult the data of the individual file |
| entry/exit records linked to it. | entry/exit records and refusals of | entry/exit records and also refusals of | of that third country national and the |
| | entry records with justifications | entry records linked to it. | entry/exit records and also refusals of |
| | linked to it. | | entry records linked to it. |
| Article 24 | Article 24 | Article 24 | |
| Access to data for verification within | Access to data for verification within | Access to data for verification within | |
| the territory of the Member States | the territory of the Member States | the territory of the Member States | |
| 1. For the purpose of verifying | 1. For the purpose of verifying | 1. For the purpose of verifying | |
| the identity of the third country | the identity of the third country | the identity of the third country | |
| national and/or whether the | national and/or whether the | national and/or [] <u>checking or</u> | |
| conditions for entry to or stay on the | conditions for entry to or stay on the | verifying if the conditions for entry | |
| territory of the Member States are | territory of the Member States are | to or <u>authorised</u> stay on the territory | |
| fulfilled, the authorities of the | fulfilled, the authorities of the | of the Member States are fulfilled, | |



| | | 1 | |
|---|---|---|--|
| Member States competent to carry | Member States competent to carry / | the <u>immigration</u> authorities of the | |
| out checks within the territory of the | out checks within the territory of the | Member States [] shall have access | |
| Member States as to whether the | Member States as to whether the / | to search with the data referred to in | |
| conditions for entry to, stay or | conditions for entry to, stay or / | Article 14(1)(a), (b), [] (c) <u>and</u> | |
| residence on the territory of the | residence on the territory of the | <u>15(1)(a)</u> . | |
| Member States are fulfilled, shall | Member States are fulfilled, shall | If the search indicates that data on | |
| have access to search with the data | have access to search with the data | the third country national are | |
| referred to in Article 14(1)(a), (b) | referred to in Article $14(1)(a)$, (b) | recorded in the EES, the <i>immigration</i> | |
| and (c). | and (c). | [] authorities <u>may</u> [] compare | |
| If the search indicates that data on | If the search indicates that data on | the live facial image of the third | |
| the third country national are | the third country national are | country national with the facial | |
| recorded in the EES, the competent | recorded in the EES, the competent | image referred to in Article 14(1)(f) | |
| authorities shall compare the live | authorities shall compare the live | and 15(1) (b) [] or the immigration | |
| facial image of the third country | facial image of the third country | [] authorities <u>may</u> [] <u>verify</u> [] | |
| national with the facial image | national with the facial image | the fingerprints of visa exempt third | |
| referred to in Article 14(1)(f). Where | referred to in Article $14(1)(f)$. Where | country nationals in the EES and of | |
| the technology is not available for | the technology is not available for | [] third country nationals subject | |
| the use of live facial imaging, the | the use of live facial imaging, the | to a visa requirement in the VIS in | |
| competent authorities shall proceed | competent authorities shall proceed | accordance with Article 19 of | |
| with the verification of fingerprints | with the verification of fingerprints | Regulation (EC) No 767/2008. | |
| of visa exempt third country | of visa exempt third country | | |
| nationals in the EES and of visa | nationals in the EES and of visa | | |
| holding third country nationals in the | holding third country nationals in the | | |
| VIS in accordance with Article 19 of | YIS in accordance with Article 19 of | | |
| Regulation (EC) No 767/2008. | /Regulation (EC) No 767/2008. | | |
| 2. If the search with the data set | 2. If the search with the data set | 2. If the search with the data set | |
| out in paragraph 1 indicates that data | out in paragraph 1 indicates that data | out in paragraph 1 indicates that data | |
| on the third country national is | on the third country national is | on the third country national is | |
| recorded in the EES, the competent | recorded in the EES, the competent | recorded in the EES, the immigration | |
| authority shall be given access to | authority shall be given access to | [] authority shall be given access | |
| consult the data of the individual file | consult the data of the individual file | to consult the data of the individual | |
| of that person and the entry/exit | of that person and the entry/exit | file of that person, [] the entry/exit | |
| record(s) linked to it. | record(s) linked to it. | record(s), the automated calculator | |

| | | and refusals of entry record(s) linked | |
|---|---|--|--|
| | | to it. | |
| 3. Where the search with the data | 3. Where the search with the data | 3. Where the search with the data | |
| set out in paragraph 2 indicates that | set out in paragraph 2 indicates that | set out in paragraph 1 indicates that | |
| data on the third country national are | data on the third country national are | data on the third country national are | |
| not recorded in the EES, where | not recorded in the EES, where | not recorded in the EES, where | |
| verification of the third country | verification of the third country | verification of the third country | |
| national fails or where there are | national fails or where there are | national fails or where there are | |
| doubts as to the identity of the third | doubts as to the identity of the third | doubts as to the identity of the third | |
| - | • | • | |
| country national, the border authorities shall have access to data | country national, the border authorities shall have access to data | country national, the | |
| for identification in accordance with | | [] <u>immigration</u> authorities shall have access to data for identification | |
| | for identification in accordance with Article 25. | | |
| Article 25. | | in accordance with Article 25. Article 25 | |
| | Article 25 | | |
| Access to data for identification | Access to data for identification | Access to data for identification | |
| 1. For the sole purpose of | 1. For the sole purpose of | 1. <u>The border check authorities or</u> | Provisionally agreed with Council |
| identifying any third country national | identifying any third country national | immigration authorities shall have | text. |
| who may have been registered | who may have been registered | access to search with the biometric | Commission drafting suggestion: |
| previously in the EES under a | previously in the EES under a | data of third country nationals | 1. The border authorities or |
| different identity or who does not or | different identity or who does not or | referred to in Articles 14(1)(f) and | immigration authorities shall have |
| no longer fulfils the conditions for | no longer fulfils the conditions for | <u>15(1) (b) and (c)</u> , for the sole | access to search with the fingerprint |
| entry to, for stay or for residence on | entry to, for stay or for residence on | purpose of identifying any third | data or the fingerprint data combined |
| the territory of the Member States, | the territory of the Member States, | country national who may have been | with the facial image, for the sole |
| the competent authorities for | the competent authorities for | registered previously in the EES | purpose of identifying any third |
| carrying out checks at external | carrying out checks at external | under a different identity or who | country national who may have been |
| border crossing points in accordance | border crossing points in accordance | does not or no longer fulfils the | registered previously in the EES |
| with Regulation (EU) 2016/399 or | with Regulation (EU) 2016/399 or | conditions for entry [] <u>or</u> , for | under a different identity or who |
| within the territory of the Member | within the territory of the Member | <u>authorised</u> stay [] on the territory | does not or no longer fulfils the |
| States as to whether the conditions | States as to whether the conditions | of the Member States. [] | conditions for entry <u>or</u> , for |
| for entry to, stay or residence on the | for entry to, stay or residence on the | Where the search with the data | <u>authorised</u> stay on the territory of the |
| territory of the Member States are | territory of the Member States are | referred to in Articles 14(1)(f) and | Member States. |
| fulfilled shall have access to search | fulfilled shall have access to search | 15(1) (b) and (c) indicates that data | Where the search with the fingerprint |
| with the biometric data of that third | with the biometric data of that third | on that third country national are not | in all of the section when the imporprint |

| country national referred to in | country national referred to in | recorded in the EES, access to data | data or with the fingerprint data |
|---|--|--|--|
| Articles 14(1)(f) and 15(1). | Articles 14(1)(f) and 15(1). | for identification shall be carried out | combined with the facial image |
| Where the search with the data | Where the search with the data | in the VIS in accordance with Article | indicates that data on that third |
| referred to in Articles 14(1)(f) and | referred to in Articles 14(1)(f) and | 20 of Regulation (EC) No 767/2008. | country national are not recorded in |
| 15(1) indicates that data on that third | 15(1) indicates that data on that third | At [] borders at which the EES is | the EES, access to data for |
| country national are not recorded in | country national are not recorded in | operated, prior to any identification | identification shall be carried out in |
| the EES, access to data for | the EES, access to data for | against the VIS, the competent | the VIS in accordance with Article |
| identification shall be carried out in | identification shall be carried out in | authorities shall first access the VIS | 20 of Regulation (EC) No 767/2008. |
| the VIS in accordance with Article | the VIS in accordance with Article | in accordance with Articles 18 or 19a | At [borders at which the EES is |
| 20 of Regulation (EC) No 767/2008. | 20 of Regulation (EC) No 767/2008. | of Regulation (EC) No 767/2008. | operated], prior to any identification |
| At external borders, prior to any | At external borders, prior to any | Where the fingerprints of that third | against the VIS, the competent |
| identification against the VIS, the | identification against the VIS, the | country national cannot be used or | authorities shall first access the VIS |
| competent authorities shall first | competent authorities shall first | the search with the fingerprints [] | in accordance with Articles 18 or 19a |
| access the VIS in accordance with | access the VIS in accordance with | has failed, the search shall be carried | of Regulation (EC) No 767/2008. |
| Articles 18 or 19a of Regulation | Articles 18 or 19a of Regulation | out with <u>all or some of</u> the data | Where the fingerprints of that third |
| (EC) No 767/2008. | (EC) No 767/2008. | referred to in Articles 14(1)(a), [] | country national cannot be used or |
| Where the fingerprints of that third | Where the fingerprints of that third | (b), (c), and <u>15(1)(a).</u> | the search with the fingerprints [] |
| country national cannot be used or | country national cannot be used or | | has failed, the search shall be carried |
| the search with the fingerprints and | the search with the fingerprints and | | out with <u>all or some of the data</u> |
| the facial image has failed, the search | the facial image has failed, the search | | referred to in Articles 14(1)(a), [] |
| shall be carried out with the data | shall be carried out with the data | | (b), (c), and <u>15(1)(a).</u> |
| referred to in Article 14(1)(a) or (b) | referred to in Article 14(1)(a) or (b) | | |
| or in both. | or in <i>both.</i> Article 14(1)(a) and (b). | | |
| 2. If the search with the data set | 2. If the search with the data set | 2. If the search with the data set | Provisionally agreed: |
| out in paragraph 1 indicates that data | out in paragraph 1 indicates that data | out in paragraph 1 indicates that data | 2. If the search with the data set |
| on the third country national are | on the third country national are | on the third country national are | out in paragraph 1 indicates that data |
| recorded in the EES, the competent | recorded in the EES, the competent | recorded in the EES, the competent | on the third country national are |
| authority shall be given access to | authority shall be given access to | authority shall be given access to | recorded in the EES, the competent |
| consult the data of the individual file | consult the data of the individual file | consult the data of the individual file, | authority shall be given access to |
| and the linked entry/exit records | and the linked entry/exit records | [] the linked entry/exit records and | consult the data of the individual file, |
| | | refusal of entry records. | the linked entry/exit records and |
| | | | refusal of entry records. |



| Article 25a | EP are strongly against giving |
|---|---------------------------------------|
| Access to data for examining the | access to EES for the purposes of |
| application for international | examining an asylum application. EP |
| | argues that this does not respect the |
| protection | 0 |
| | principle of purpose limitation, |
| | necessity and proportionality. |
| <u>1.</u> For the sole purpose of | |
| facilitation of examining an | |
| application for international | |
| protection, the determining | |
| authorities shall have access to | |
| search the EES with the data referred | |
| to in Article 14(1) and 15 (1) (a), | |
| <u>(b),(c).</u> | |
| 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 determining authorities | |
| shall be given access to consult the | |
| data referred to in Article 14(1), (2), | |
| (3)(a), (3)(b) and (4) as well as in | |
| Article $15(1)(a)$, (b), (c), for the sole | |
| purpose referred to in paragraph 1. | |
| [Art. 25b | To revert back depending on |
| Access to data for determining the | discussion on the Dublin Proposal. |
| responsibility for asylum | I. |
| applications | |
| 1. For the sole purpose of | |
| determining the Member State | |
| responsible for an application for | |
| international protection, the | |
| competent authorities referred to in | |
| | |



| Article 35(1) of Regulation (EU) |
|---|
| 604/2013 shall have access to search |
| in the EES with the data referred to |
| in Art. 14(1) and Art. 15(1)(a), (b) |
| and (c). |
| 2. If the search with the data |
| listed in paragraph 1 indicates that |
| the data of a third country national is |
| recorded in the EES, the competent |
| authority of the respective Member |
| State referred to in Article 35(1) of |
| Regulation (EU) 604/2013 shall be |
| |
| given access to consult the data |
| referred to in Article 14(1), (2)(a) |
| and (2)(b) as well as in Article |
| 15(1)(a), (b) and (c), for the sole |
| purpose referred to in paragraph 1.] |



| CHAPTER IV: Procedure and conditions for access to the EES for law enforcement purposes | CHAPTER IV: Procedure and conditions for access to the EES for law enforcement purposes | CHAPTER IV: Procedure and conditions for access to the EES for law enforcement purposes | The discussion on Chapter IV will be taken up at COREPER of 24 May. |
|--|--|--|---|
| Article 26 | Article 26 | Article 26 | Provisionally agreed: |
| Member States' designated law | Member States' designated law | Member States' designated [] | Article 26 |
| enforcement authorities | enforeement authorities | authorities | Member States' designated |
| 1 M 1 Q 4 1 11 1 ' 4 | | 1 M 1 G((1 11 1) (| authorities |
| 1. Member States shall designate | 1. Member States shall designate | 1. Member States shall designate | |
| the law enforcement authorities | the law enforcement authorities | the [] authorities <u>referred to under</u> | |
| which are entitled to consult the data | which are entitled to consult the data | <u>Article $3(1)(26a)$</u> which are entitled | |
| stored in the EES in order to prevent, | stored in the EES in order to prevent, | to consult the data stored in the EES | |
| detect and investigate terrorist | detect and investigate terrorist | in order to prevent, detect and | |
| offences or other serious criminal | offences or other serious criminal | investigate terrorist offences or other | |
| offences. | offences | serious criminal offences. | |
| 2. Each Member State shall keep | 2. Each Member State shall keep | 2. Each Member State shall keep | |
| a list of the designated authorities. | a list of the designated authorities. | a list of the designated authorities. | |
| Each Member State shall notify in a | Each Member State shall notify in a | Each Member State shall notify [] | |
| declaration to eu-LISA and the | declaration to eu-LISA and the | eu-LISA and the Commission of its | |
| Commission its designated | Commission its designated | designated authorities and may at | |
| authorities and may at any time | authorities and may at any time | any time amend or replace its | |
| amend or replace its declaration with | amend or replace its declaration with | notification. [] | |
| another declaration. The declarations | another declaration. The declarations | | |
| shall be published in the Official | shall be published in the Official | | |
| Journal of the European Union. | Yournal of the European Union. | | |
| 3. Each Member State shall | 3. Each Member State shall | 3. Each Member State shall | |
| designate a central access point | designate a central access point | designate a central access point | |
| which shall have access to the EES. | which shall have access to the EES. | which shall have access to the EES. | |
| The central access point shall be an | The central access point shall be an | []. The central access point shall | |
| authority of the Member State which | authority of the Member State which | [] <u>ensure</u> that the conditions to | |
| is responsible for the prevention, | is responsible for the prevention, | request access to the EES laid down | |
| detection or investigation of terrorist | detection or investigation of terrorist | in Article 29 of this Regulation are | |
| offences or of other serious criminal | offences or of other serious criminal | fulfilled. | |



| 66 771 1 | CC 771 1 | | |
|---|--|--|--|
| offences. The central access point | offences. The central access point | The designated authority and the | |
| shall verify that the conditions to | shall verify that the conditions to | central access point may be part of | |
| request access to the EES laid down | request access to the EES laid down | the same organisation if permitted | |
| in Article 29 are fulfilled. | in Article 29 are fulfilled. | under national law. [] <u>T</u> he central | |
| The designated authority and the | The designated authority and the | access point shall act independently | |
| central access point may be part of | central access point may be part of | of the designated authorities when | |
| the same organisation if permitted | the same organisation if permitted | performing its tasks under this | |
| under national law, but the central | under national law, but the central | Regulation. The central access point | |
| access point shall act independently | access point shall <i>be independent</i> | shall be separate from the designated | |
| when performing its tasks under this | and act independently fully | authorities and shall not receive | |
| Regulation. The central access point | <i>independently</i> when performing its | instructions from them as regards the | |
| shall be separate from the designated | tasks under this Regulation. The | outcome of the verification. | |
| authorities and shall not receive | central access point shall be separate | Member States may designate more | |
| instructions from them as regards the | from the designated authorities and | than one central access point to | |
| outcome of the verification. | shall not receive instructions from | reflect their organisational and | |
| Member States may designate more | them as regards the outcome of the | administrative structure in the | |
| than one central access point to | verification. | fulfilment of their constitutional or | |
| reflect their organisational and | Member States may designate more | legal requirements. | |
| administrative structure in the | than one central access point to | | |
| fulfilment of their constitutional or | reflect their organisational and | | |
| legal requirements. | administrative structure in the | | |
| | fulfilment of their constitutional or | | |
| | legal requirements. | | |
| 4. Each Member State shall notify | 4. Each Member State shall notify | 4. Each Member State shall notify | |
| in a declaration to eu-LISA and the | in a declaration to eu-LISA and the | [] eu-LISA and the Commission of | |
| Commission their central access | Commission their central access | its central access point and may at | |
| point(s) and may at any time amend | point(s) and may at any time amend | any time amend or replace its | |
| or replace its declaration with | or replace its declaration with | notification []. | |
| another declaration. The declarations | another declaration. The declarations | | |
| shall be published in the <i>Official</i> | shall be published in the Official | | |
| Journal of the European Union. | Journal of the European Union. | | |
| | | | |



| · · · · · · · · · · | | | |
|--|---|--|-----|
| 5. At national level, each Member | | , | |
| State shall keep a list of the operating | | State shall keep a list of the operating | |
| units within the designated | units within the designated | units within the designated | |
| authorities that are authorised to | authorities that are authorised to | authorities that are authorised to | |
| request access to data stored in the | request access to data stored in the | request access to data stored in the | |
| EES through the central access | EES through the central access | EES through the central access | |
| point(s). | point(s). | point(s). | |
| 6. Only duly empowered staff of | 6. Only duly empowered staff of | 6. Only duly empowered staff of | |
| the central access point(s) shall be | the central access point(s) shall be | the central access point(s) shall be | |
| authorised to access the EES in | authorised to access the EES in | authorised to access the EES in | |
| accordance with Articles 28 and 29. | accordance with Articles 28 and 29. | accordance with Articles 28 and 29. | |
| Article 27 | Article 27 | Article 27 | |
| Europol | Europol | Europol | |
| 1. Europol shall designate an | 1. Europol shall designate an | 1. Europol shall designate an | |
| authority which is authorised to | authority which is authorised to | authority which is authorised to | |
| request access to the EES through its | request access to the EES through its | request access to the EES through its | |
| designated central access point in | designated central access point in | designated central access point in | |
| order to prevent, detect and | order to prevent, detect and | order to prevent, detect and | |
| investigate terrorist offences or other | investigate terrorist offences or other | investigate terrorist offences or other | |
| serious criminal offences. The | serious criminal offences. The | serious criminal offences. The | |
| designated authority shall be an | designated authority shall be an | designated authority shall be an | |
| operating unit of Europol. | øperating unit of Europol. | operating unit of Europol. | |
| 2. Europol shall designate a | 2. Europol shall designate a | 2. Europol shall designate a | |
| specialised unit with duly | specialised unit with duly | specialised unit with duly | |
| empowered Europol officials as the | empowered Europol officials as the | empowered Europol officials as the | |
| central access point. The central | central access point. The central | central access point. The central | |
| access point shall verify that the | access point shall verify that the | access point shall verify that the | |
| conditions to request access to the | conditions to request access to the | conditions to request access to the | |
| EES laid down in Article 30 are | EES laid down in Article 30 are | EES laid down in Article 30 are | |
| fulfilled. | fulfilled. | fulfilled. | |
| The central access point shall act | The central access point shall act | The central access point shall act | |
| independently when performing its | independently when performing its | independently when performing its | |
| tasks under this Regulation and shall | tasks under this Regulation and shall | tasks under this Regulation and shall | |
| | | | |
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| not receive instructions from the | not receive instructions from the | not receive instructions from the | |
|---|--|--|--|
| designated authority referred to in | designated authority referred to in | designated authority referred to in | |
| paragraph 1 as regards the outcome | paragraph 1 as regards the outcome | paragraph 1 as regards the outcome | |
| of the verification. | of the verification. | of the verification. | |
| Article 28 | Article 28 | Article 28 | |
| Procedure for access to the EES for | Procedure for aecess to the EES for | Procedure for access to the EES for | |
| law enforcement purposes | taw enforcement purposes | law enforcement purposes | |
| 1. The operating units referred to | 1. The operating units referred to / | 1. The operating units referred to | |
| in Article 26(5) shall submit a | in Article 26(5) shall submit a | in Article 26(5) shall submit a | |
| reasoned electronic request to the | reasoned electronic request to the | reasoned electronic or written | |
| central access points referred to in | central access points referred to in | request to the central access points | |
| Article 26(3) for access to data | Article 26(3) for access to data | referred to in Article 26(3) for access | |
| stored in the EES. Upon receipt of a | stored in the EES. Upon receipt of a | to data stored in the EES. Upon | |
| request for access, the central access | request for access, the central access | receipt of a request for access, the | |
| point(s) shall verify whether the | point(s) shall verify whether the | central access point(s) shall verify | |
| conditions for access referred to in | conditions for access referred to in | whether the conditions for access | |
| Article 29 are fulfilled. If the | Article 29 are fulfilled. If the | referred to in Article 29 are fulfilled. | |
| conditions for PresidencyMT9 | conditions for access are fulfilled, | If the conditions for access are | |
| access are fulfilled, the duly | the duly authorised staff of the | fulfilled, [] the central access | |
| authorised staff of the central access | central access point(s) shall process | point(s) shall process the requests. | |
| point(s) shall process the requests. | the requests. The EES data accessed | The EES data accessed shall be | |
| The EES data accessed shall be | shall be transmitted to the operating | transmitted to the operating units | |
| transmitted to the operating units | units referred to in in Article 26(5) in | referred to in Article 26(5) in such a | |
| referred to in in Article 26(5) in such | such a way as to not compromise the | way as to not compromise the | |
| a way as to not compromise the | security of the data. | security of the data. | |
| security of the data. | | | |
| 2. In an exceptional case of | 2. In an exceptional case of | 2. $[\dots] \underline{W}$ here there is a need to | |
| urgency, where there is a need to | urgency, where there is a need to | prevent <u>a terrorist offence or</u> an | |
| prevent an imminent danger | prevent an imminent danger | imminent danger associated with | |
| associated with a terrorist offence or | associated with a terrorist offence or | [] another serious criminal | |
| another serious criminal offence, the | another serious criminal offence, the | offence, the central access point(s) | |
| central access point(s) shall process | central access point(s) shall process | shall process the request immediately | |
| the request immediately and shall | the request immediately and shall | and shall only verify ex post whether | |



| only verify ex post whether all the | only verify ex post whether all the | all the conditions of Article 29 are | |
|---|---|--|--|
| conditions of Article 29 are fulfilled. | conditions of Article 29 are fulfilled. | | |
| | | fulfilled, including whether $\underline{a}[]$ | |
| including whether an exceptional | including whether an exceptional | case of urgency actually existed. The | |
| case of urgency actually existed. The | case of urgency actually existed. The | ex post verification shall take place | |
| ex post verification shall take place | ex post verification shall take place | without undue delay after the | |
| without undue delay after the | without undue delay and in any | processing of the request. | |
| processing of the request. | event no later than 48 hours after | | |
| | the processing of the request. | | |
| 3. Where an ex post verification | 3. Where an ex post verification | 3. Where an ex post verification | |
| determines that the access to EES | determines that the access to EES | determines that the access to EES | |
| data was not justified, all the | data was not justified, all the | data was not justified, all the | |
| authorities that accessed such data | authorities that accessed such data | authorities that accessed such data | |
| shall erase the information accessed | shall erase the information accessed | shall erase the information accessed | |
| from the EES and shall inform the | from the EES and shall inform the | from the EES and shall inform the | |
| central access points of the erasure. | central access points of the erasure. | central access points of the erasure. | |
| Article 29 | Article 29 | Article 29 | |
| Conditions for access to EES data by | Conditions for access to EES data by | Conditions for access to EES data by | |
| designated authorities of Member | designated authorities of Member | designated authorities of Member | |
| States | States | States | |
| 1. Designated authorities may | 1. Designated authorities may | 1. Designated authorities may | |
| access the EES for consultation if all | access the EES for consultation if all | access the EES for consultation if all | |
| of the following conditions are met: | of the following conditions are met: | of the following conditions are met: | |
| (a) access for consultation is | (a) access for consultation is | (a) access for consultation is | |
| necessary for the purpose of the | necessary for the purpose of the | necessary for the purpose of the | |
| | prevention, detection , or | • • • | |
| prevention, detection or investigation | 1 , , | prevention, detection or investigation | |
| of a terrorist offences or another | investigation <i>or prosecution</i> of a | of a terrorist offences or another | |
| serious criminal offence, thus | terrorist <i>offence</i> or another serious | serious criminal offence, thus | |
| making a search of the database | criminal offence , thus making a | making a search of the database | |
| proportionate if there is an overriding | search of the database proportionate | proportionate if there is an overriding | |
| public security concer; | if there is an overriding public | public security concer <u>n</u> ; | |
| | security concern | | |
| | MS could support | | |



| (b) access for consultation is | (b) access for consultation is | (b) access for consultation is | |
|--|--|--|--|
| necessary in a specific case; | necessary <i>and proportionate</i> in a specific case; | necessary in a specific case; | |
| | MS could support | | |
| (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; | (c) evidence or reasonable grounds exist to consider that the consultation of the EES data may will substantially contribute to the prevention, detection, or investigation or prosecution 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; MS would prefer to keep 'may' | (c) reasonable grounds exist to consider that the consultation of the EES data may [] 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; | |
| | clause and do not support deletion of 'substantiated suspicion' | | |
| 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: | 2. The access to the EES as a eriminal 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: | 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; | (a) a prior search has been conducted in national databases without success; | (a) a prior search has been conducted in national databases [] | |

| | • • • | |
|--|--|--|
| | | |
| 0 1/ | <u> </u> | |
| • | of the other Member States under | |
| under Decision 2008/615/JHA where | Decision 2008/615/JHA where | |
| comparisons of fingerprints are | comparisons of fingerprints are | |
| technically available. | technically available. | |
| However, that prior search does not | However, the additional conditions | |
| have to be conducted where there are | in sub-paragraphs (a) and (b) of this | |
| reasonable grounds to believe that a | paragraph shall not apply [] where | |
| comparison with the systems of the | there are reasonable grounds to | |
| other Member States would not lead | believe that a comparison with the | |
| to the verification of the identity of | systems of the other Member States | |
| the data subject or in exceptionally | would not lead to the verification of | |
| urgent cases where it is necessary to | the identity of the data subject or | |
| avert an imminent danger arising | where there is a need to prevent a | |
| from a terrorist offence or other | terrorist offence or an imminent | |
| serious criminal offence. Those | danger associated with another | |
| reasonable grounds shall be included | serious criminal offence. Those | |
| in the electronic request for | reasonable grounds shall be included | |
| comparison with EES data sent by | in the electronic or written request | |
| the designated authority to the | for comparison with EES data sent | |
| central access point(s). | by the operational unit [] to the | |
| Since fingerprint data of visa holding | central access point(s). | |
| third country nationals are only | Since fingerprint data of [] third | |
| stored in the VIS, a request for | 01 | |
| consultation of the VIS on the same | requirement are only stored in the | |
| data subject may be submitted in | $\overline{\text{VIS}}$, a request for consultation of the | |
| | · • | |
| of the EES in accordance with the | | |
| conditions laid down in Decision | consultation of the EES in | |
| | accordance with the conditions laid | |
| | 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 or in exceptionally urgent cases where it is necessary to avert an imminent danger arising from a terrorist offence or other serious criminal offence. Those reasonable grounds shall be included in the electronic 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 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 | 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.fingerprints, a prior search has been launched [] in the automated fingerprint identification [] 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 or in exceptionally urgent cases where it is necessary to avert an imminent danger arising from a terrorist offence or other serious criminal offence. Those reasonable grounds shall be included in the electronic 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 Decisionfingerprints, a prior search has been launched [] in the automated fingerprints are technically available.fingerprintsareHowever, the additional conditions in sub-paragraphs (a) and (b) of this paragraph shall not apply [] where the data subject or in exceptionally urgent cases where it is necessary to any the designated authority to the central access point(s).However, the additional conditions in sub-paragraphs (a) and (b) of this paragraph shall not apply [] where the identity of the data subject or would not lead to the verification of the identity of the data subject or the identity of the data subject or sound in the VIS, a request for consultation of the |

| subject. | carried out in accordance with | down in Decision 2008/633/JHA | |
|---|--|--|--|
| | 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 | 3. The access to the EES as a | 3. The access to the EES as a | |
| criminal intelligence tool to consult | criminal intelligence tool to consult | criminal intelligence tool to consult | |
| the travel history or the periods of | the travel history or the periods of | the travel history or the periods of | |
| stay in the Schengen area of a known | stay in the Schengen area of a known | authorised stay on the territory of the | |
| suspect, perpetrator or suspected | suspect, perpetrator or suspected | Member States [] of a known | |
| victim of a terrorist offence or other | victim of a terrorist offence or other | suspect, perpetrator or suspected | |
| serious criminal offence shall be | serious criminal offence shall be | victim of a terrorist offence or other | |
| allowed when the conditions listed in | allowed when the conditions listed in | serious criminal offence shall be | |
| paragraph 1 are met and where there | paragraph 1 are met and where there | allowed when the conditions listed in | |
| is a duly justified need to consult the | is a duly justified need to consult the | paragraph 1 are met. [] | |
| entry/exit records of the person | entry/exit records of the person | | |
| concerned. | concerned. | | |
| 4. Consultation of the EES for | 4. Consultation of the EES for | 4. Consultation of the EES for | |
| identification shall be limited to | identification as referred to in | identification shall be limited to | |
| searching in the application file with | paragraph 2 shall be limited to | searching in the [] <u>individual</u> file | |
| any of the following EES data: | searching in the application file with | with any of the following EES data: | |
| | any of the following EES data: | | |
| (a) Fingerprints (including latents) | (a) Fingerprints (including latents) | (a) Fingerprints [] of visa | |
| of visa exempt third country | of visa exempt third country | exempt third country nationals or of | |
| nationals; | nationals; | holders of a Facilitated Transit | |
| | | Document (FTD) issued in | |
| | | accordance with Regulation (EC) | |
| | | 693/2003. 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; | |

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|---------|----------|--------|-----|
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| (b) Facial image. | (b) Facial image. | (b) Facial image. | |
|---|---|---|--|
| Consultation of the EES, in case of a | Consultation of the EES, in case of a | Consultation of the EES, in case of a | |
| hit, shall give access to any other | hit, shall give access to any other | hit, shall give access to any other | |
| data taken from the individual file as | data taken from the individual file as | data taken from the individual file as | |
| listed in Article 14(1) and Article | listed in Article 14(1) and Article | listed in Article 14(1), <u>14(6),</u> [] | |
| 15(1). | 15(T). | Article 15(1) and Article 16(1). | |
| 5. Consultation of the EES for the | 5. Consultation of the EES for the | 5. Consultation of the EES for the | |
| travel history of the third country | travel history of the third country | travel history of the third country | |
| national concerned shall be limited to | national concerned as referred to in | national concerned shall be limited to | |
| searching with any of the following | paragraph 3 shall be limited to | searching with any of the following | |
| EES data in the individual file or in | searching with any of the following | EES data in the individual file,[] in | |
| the entry/exit records: | EES data in the individual file or in | the entry/exit records or in the | |
| | the entry/exit records: | refusal of entry record: | |
| (a) Surname(s) (family name); | (a) Surname(s) (family name); | (a) Surname(s) (family name); | |
| first name(s) (given names); date of | first name(s) (given names); date of | first name(s) (given names), date of | |
| birth, nationality or nationalities and | birth, nationality or nationalities and | birth, nationality or nationalities | |
| sex; | sex; | and <u>/or</u> sex; | |
| (b) Type and number of travel | (b) Type and number of travel | (b) Type and number of travel | |
| document or documents, three letter | document or documents, three letter | document or documents, three letter | |
| code of the issuing country and date | code of the issuing country and date | code of the issuing country and date | |
| of expiry of the validity of the travel | of expiry of the validity of the travel | of expiry of the validity of the travel | |
| document; | document; | document; | |
| (c) Visa sticker number and the | (c) Visa sticker number and the | (c) Visa sticker number and the | |
| date of expiry of the validity of the | date of expiry of the validity of the | date of expiry of the validity of the | |
| visa. | visa. | visa <u>:</u> | |
| (d) Fingerprints (including | (d) Fingerprints (including | (d) Fingerprints. In order to launch | |
| latents); | latents); | 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; | (e) Facial image; | (e) Facial image; | |
|--|---|---|--|
| (f) Date and time of entry, entry | (f) Date and time of entry, entry | (f) Date and time of entry, [] | |
| authoriser authority and entry border | authoriser authority and entry border | authority that authorised the entry | |
| crossing point; | crossing point; | and entry border crossing point; | |
| (g) Date and time of exit and exit | (g) Date and time of exit and exit | (g) Date and time of exit and exit | |
| border crossing point: | border erossing point; | border crossing point. | |
| Consultation of the EES shall, in the | Consultation of the EES shall, in the | Consultation of the EES shall, in the | |
| event of a hit, give access to the data | event of a hit, give access to the data | event of a hit, give access to the data | |
| listed in this paragraph as well as to | listed in this paragraph as well as to | listed in this paragraph as well as to | |
| any other data taken from the | any other data taken from the | any other data taken from the | |
| individual file and the entry/exit | individual file and the entry/exit | individual file, [] the entry/exit | |
| records including data entered in | records including data entered in | records and refusal of entry records | |
| respect of revocation or extension of | respect of revocation or extension of | including data entered in respect of | |
| authorisation to stay in accordance | authorisation to stay in accordance | revocation or extension of <u>authorised</u> | |
| with Article 17. | with Article 17. | [] stay in accordance with Article | |
| | / | 17. | |
| Article 30 | Article 30 | Article 30 | |
| Procedure and conditions for access | Procedure and conditions for access | Procedure and conditions for access | |
| to EES data by Europol | to EES data by Europol | to EES data by Europol | |
| 1. Europol shall have access to | 1. Europol shall have access to | 1. Europol shall have access to | |
| consult the EES where all the | consult the EES where all the | consult the EES where all the | |
| | | | |
| following conditions are met: | following conditions are met: | following conditions are met: | |
| (a) the consultation is necessary to | following conditions are met: (a) the consultation is necessary to | following conditions are met:(a) the consultation is necessary to | |
| (a) the consultation is necessary to support and strengthen action by | following conditions are met:(a) the consultation is necessary tosupport and strengthen action by | following conditions are met:(a) the consultation is necessary tosupport and strengthen action by | |
| (a) the consultation is necessary to support and strengthen action by Member States in preventing, | following conditions are met: (a) the consultation is necessary to support and strengthen action by Member States in preventing, | following conditions are met:(a) the consultation is necessary tosupport and strengthen action byMember States in preventing, | |
| (a) the consultation is necessary to support and strengthen action by Member States in preventing, detecting or investigating terrorist | following conditions are met: (a) the consultation is necessary to support and strengthen action by Member States in preventing, detecting or investigating terrorist | following conditions are met:(a) the consultation is necessary tosupport and strengthen action byMember States in preventing,detecting or investigating terrorist | |
| (a) the consultation is necessary to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal | 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 | following conditions are met:(a) the consultation is necessary tosupport and strengthen action byMember States in preventing,detecting or investigating terroristoffences or other serious criminal | |
| (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 | 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 | following conditions are met:(a) the consultation is necessary tosupport and strengthen action byMember States in preventing,detecting or investigating terroristoffences or other serious criminaloffences falling under Europol's | |
| (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 | 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 | following conditions are met:(a) the consultation is necessary tosupport and strengthen action byMember States in preventing,detecting or investigating terroristoffences or other serious criminaloffences falling under Europol'smandate, thus making a search of the | |
| (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 | 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 | following conditions are met:(a) the consultation is necessary tosupport and strengthen action byMember States in preventing,detecting or investigating terroristoffences or other serious criminaloffences falling under Europol's | |



| (b) the consultation is necessary in | (b) the consultation is necessary | (b) the consultation is necessary in | |
|--|--|--|--|
| a specific case; | and proportionate in a specific case; | a specific case; | |
| (c) reasonable grounds exist to | (c) <i>evidence or</i> reasonable | (c) reasonable grounds exist to | |
| consider that the consultation may | grounds exist to consider that the | consider that the consultation may | |
| substantially contribute to the | consultation may <i>will</i> substantially | substantially contribute to the | |
| prevention, detection or investigation | contribute to the prevention, | prevention, detection or investigation | |
| of any of the criminal offences in | detection, or investigation or | of any of the criminal offences in | |
| question, in particular where there is | prosecution of any of the criminal | question, in particular where there is | |
| a substantiated suspicion that the | offences in question, in particular | a substantiated suspicion that the | |
| suspect, perpetrator or victim of a | where there is a substantiated | suspect, perpetrator or victim of a | |
| terrorist offence or other serious | suspicion that the suspect, | terrorist offence or other serious | |
| criminal offence falls under a | perpetrator or victim of a terrorist | criminal offence falls under a | |
| category covered by this Regulation. | offence or other serious criminal | category covered by this Regulation. | |
| | offence falls under a category | | |
| | covered by this Regulation. | | |
| | 1a. Access to the EES as a 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 where the | | |
| | conditions listed in paragraph 1 are | | |
| | met and the consultation, as a | | |
| | matter of priority, of the data stored | | |
| | in the databases that are technically | | |
| | and legally accessible by Europol | | |
| | has not made it possible to verify the | | |
| | identity of the person concerned. | | |
| | 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 | | |



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| | parallel to a request for consultation of the EES in accordance with the conditions laid down in Decision 2008/633/JHA provided that the consultation, as a matter of priority, of the data stored in the databases that are technically and legally accessible by Europol has not made it possible to verify the identity of the person concerned. | | |
|---|--|--|--|
| 2. The conditions laid down in Article 29 (2) to (5) shall apply accordingly. | 2. The conditions laid down in Article 29 (2) (3) to (5) shall apply accordingly. | 2. The conditions laid down in Article 29 ([] <u>3</u>) to (5) shall apply accordingly. | |
| | | 2a. <u>In addition, the access to the</u> <u>EES as a criminal identification tool</u> for the purpose of identifying an <u>unknown suspect, perpetrator or</u> <u>suspected victim of a terrorist</u> 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 VIS shall be | |



| | 1 | | 1 |
|--|--|--|---|
| | | carried out in accordance with the | |
| | | conditions laid down in Decision | |
| | | <u>2008/633/JHA.</u> | |
| 3. Europol's designated authority | 3. Europol's designated authority / | 3. Europol's designated authority | |
| may submit a reasoned electronic | may submit a reasoned electronic / | may submit a reasoned electronic | |
| request for the consultation of all | request for the consultation of all | request for the consultation of all | |
| data or a specific set of data stored in | data or a specific set of data stored in | data or a specific set of data stored in | |
| the EES to the Europol central access | the EES to the Europol central access | the EES to the Europol central access | |
| point referred to in Article 27. Upon | point referred to in Article/27. Upon | point referred to in Article 27. Upon | |
| receipt of a request for access the | receipt of a request for access the | receipt of a request for access the | |
| Europol central access point shall | Europol central access/point shall | Europol central access point shall | |
| verify whether the conditions for | verify whether the conditions for | verify whether the conditions for | |
| access referred to in paragraph 1 are | access referred to in paragraph 1 are | access referred to in paragraphs 1 | |
| fulfilled. If all conditions for access | fulfilled. If all conditions for access | and 2 are fulfilled. If all conditions | |
| are fulfilled, the duly authorised staff | are fulfilled, the duly authorised staff | for access are fulfilled, the duly | |
| of the central access point(s) shall | of the central access point(s) shall | authorised staff of the central access | |
| process the requests. The EES data | process the requests. The EES data | point(s) shall process the requests. | |
| accessed shall be transmitted to the | accessed shall be transmitted to the | The EES data accessed shall be | |
| operating units referred to in Article | operating units referred to in Article | transmitted to the operating units | |
| 27 (1) in such a way as not to | 27 (1) in such a way as not to | referred to in Article 27 (1) in such a | |
| compromise the security of the data. | compromise the security of the data. | way as not to compromise the | |
| | | security of the data. | |
| 4. The processing of information | 4. The processing of information | 4. The processing of information | |
| obtained by Europol from | obtained by Europol from | obtained by Europol from | |
| consultation with EES data shall be | consultation with EES data shall be | consultation with EES data shall be | |
| subject to the authorisation of the | subject to the authorisation of the | subject to the authorisation of the | |
| Member State of origin. That | Member State of origin. That | Member State of origin. That | |
| authorisation shall be obtained via | authorisation shall be obtained via | authorisation shall be obtained via | |
| the Europol national unit of that | the Europol national unit of that | the Europol national unit of that | |
| Member State. | Member State. | Member State. | |

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| CHAPTER V | CHAPTER V | CHAPTER V | The discussion on Chapter V will be |
|--|---|--|-------------------------------------|
| Retention and amendment of the | Retention and amendment of the | Retention and amendment of the | taken up at CORPER of 24 May. |
| data | data | data | |
| Article 31 | Article 31 | Article 31 | |
| Retention period for data storage | Retention period for data storage | Retention period for data storage | |
| 1. Each entry/exit record or | 1. Each entry/exit record or | 1 Each entry/exit record or | |
| refusal of entry record linked to an | refusal of entry record linked to an | refusal of entry record linked to an | |
| individual file shall be stored for five | individual file shall be stored <i>in the</i> | individual file shall be stored for five | |
| years following the date of the exit | EES Central System for five two | years following the date of the exit | |
| record or of the refusal of entry | years following the date of the exit | record or of the refusal of entry | |
| record, as applicable. | record or of the refusal of entry | record, as applicable. | |
| | record, as applicable. | | |
| 2. Each individual file together | 2. Each individual file together | 2. Each individual file together | |
| with the linked entry/exit record(s) or | with the linked entry/exit record(s) or | with the linked entry/exit record(s) or | |
| refusal of entry records shall be | refusal of entry records shall be | refusal of entry records shall be | |
| stored in the EES for five years and | stored in the EES <i>Central System</i> for | stored in the EES for five years and | |
| one day following the date of the last | <i>two</i> years and one day following the | one day following the date of the last | |
| exit record if there is no entry record | date of the last exit record if there is | exit record if there is no entry record | |
| within five years from that last exit | no entry record within <i>two</i> years | within five years from that last exit | |
| record or refusal of entry record. | from that last exit record or refusal of | record or refusal of entry record. | |
| | entry record. | | |
| 3. If there is no exit record | 3. If there is no exit record | 3. If there is no exit record | |
| following the date of expiry of the | following the date of expiry of the | following the date of expiry of the | |
| authorised period of stay, the data | authorised period of stay, the data | [] period of <u>authorised</u> stay, the | |
| shall be stored for a period of five | shall be stored for a period of five | data shall be stored for a period of | |
| years following the last day of the | <i>four</i> years following the last day of | five years following the last day of | |
| authorised stay. The EES shall | the authorised stay. The In | the authorised stay. The EES shall | |
| automatically inform the Member | accordance with the information | automatically inform the Member | |
| States three months in advance of the | mechanism provided for in Article | States three months in advance of the | |
| scheduled deletion of data on | 11, the EES shall automatically | scheduled deletion of data on | |
| overstayers in order for them to | inform the Member States three | overstayers in order for them to | |
| adopt the appropriate measures. | months in advance of the scheduled | adopt the appropriate measures that | |
| | deletion of data on overstayers in | could lead to the detection of the | |

| | | | 1 |
|--|--|---|---|
| | order for them to adopt the | overstayer and where possible and | |
| | appropriate measures. | applicable contribute to the return of | |
| | | the overstayer. | |
| | 4. By way of derogation to <i>from</i> | 4. By way of derogation of | |
| | paragraphs (2) and (3), the entry/exit | paragraph(1)[] the entry/exit | |
| | record(s) generated by third country | record(s) generated by third country | |
| nationals in their condition of family | nationals in their condition of who | nationals in their condition members | |
| members of a Union citizen to whom | are family members of a Union | of family [] of a Union citizen to | |
| Directive 2004/38/EC applies or of a | citizen to whom Directive | whom Directive 2004/38/EC applies | |
| national of a third country enjoying | 2004/38/EC applies or of a national | or of a national of a third country | |
| the right of free movement under | of a third country enjoying the right | enjoying the right of free movement | |
| Union law and who do not hold a | of free movement under Union law | under Union law and who do not | |
| residence card referred to under | and who do not hold a residence card | hold a residence card referred to | |
| Directive 2004/38/EC, shall be | referred to under Directive | under Directive 2004/38/EC, shall be | |
| stored in the EES for a maximum of | 2004/38/EC, shall be stored in the | stored in the EES for a maximum of | |
| one year after the last exit record. | EES for a maximum of one year after | one year after the last exit record. If | |
| | the last exit record. | there is no exit record the data shall | |
| | | be stored for a period of five years | |
| | | from the last entry record. | |
| 5. Upon expiry of the retention | 5. Upon expiry of the retention | 5. Upon expiry of the retention | |
| period referred to in paragraphs 1 | period referred to in paragraphs 1 | period referred to in paragraphs | |
| and 2 such data shall automatically | and 2 to 4 such data shall | 1[], 2 and 4 such data shall | |
| be erased from the Central System | automatically be erased from the | automatically be erased from the | |
| | Central System. | Central System. | |
| Article 32 | Article 32 | Article 32 | |
| Amendment of data and advance | Amendment o f da ta and advance | Amendment of data and advance | |
| data deletion | data deletion | data deletion | |
| 1. The Member State responsible | 1. The Member State responsible | 1. The Member State responsible | |
| shall have the right to amend data | shall have the right to amend data | shall have the right to amend data | |
| which it has introduced into the EES, | which it has introduced into the EES, | which it has introduced into the EES, | |
| by correcting or deleting such data. | by correcting or deleting rectifying, | by correcting or deleting such data. | |
| | completing or erasing such data. | - | |

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| 2. If the Member State | 2 If the Member State | 2. If the Member State | |
|---|---|---|--|
| responsible has evidence to suggest | responsible has evidence to suggest | responsible has evidence to suggest | |
| that data recorded in the EES are | that data recorded in the EES are | that data recorded in the EES are | |
| factually inaccurate or that data were | factually inaccurate, incomplete or | factually inaccurate or that data were | |
| processed in the EES in | that data were processed in the EES | processed in the EES in | |
| contravention of this Regulation, it | in contravention of this Regulation, it | contravention of this Regulation, it | |
| shall check the data concerned and, if | shall check the data concerned and, if | shall check the data concerned and, if | |
| necessary, amend or erase them | necessary, amend shall rectify, | necessary, amend or erase them | |
| without delay from the EES and, | <i>complete</i> or erase them without delay | without delay from the EES and, | |
| where applicable, from the list of | from the EES and, where applicable, | where applicable, from the list of | |
| identified persons referred to in | from the list of identified persons | identified persons referred to in | |
| Article 11. This may also be done at | referred to in Article 11. This may | Article 11. This may also be done at | |
| the request of the person concerned | also be done at the request of the | the request of the person concerned | |
| in accordance with Article 46. | person concerned in accordance with | in accordance with Article 46. | |
| | Article 46. | | |
| 3. By way of derogation from | 3. By way of derogation from | 3. By way of derogation from | |
| paragraphs 1 and 2, if a Member | paragraphs 1 and 2, if a Member | paragraphs 1 and 2, if a Member | |
| State other than the Member State | State other than the Member State | State other than the Member State | |
| responsible has evidence to suggest | responsible has evidence to suggest | responsible has evidence to suggest | |
| that data recorded in the EES are | that data recorded in the EES are | that data recorded in the EES are | |
| factually inaccurate or that data were | factually inaccurate, <i>incomplete</i> or | factually inaccurate or that data were | |
| processed in the EES in | that data were processed in the EES | processed in the EES in | |
| contravention of this Regulation, it | in contravention of this Regulation, it | contravention of this Regulation, it | |
| shall check the data concerned if it is | shall check the data concerned if it is | shall check the data concerned if it is | |
| possible to do this without consulting | possible to do this without consulting | possible to do this without consulting | |
| the Member State responsible and, if | the Member State responsible and, if | the Member State responsible and, if | |
| necessary, amend or erase them from | necessary, amend rectify, complete | necessary, amend or erase them from | |
| the EES without delay and, where | or erase them without delay from the | the EES without delay and, where | |
| applicable, from the list of identified | EES without delay and, where | applicable, from the list of identified | |
| persons referred to in Article 11. | applicable, from the list of identified | persons referred to in Article 11. | |
| Otherwise the Member State shall | persons referred to in Article 11. | Otherwise the Member State-shall | |
| contact the authorities of the Member | Otherwise the Member State shall | contact the authorities of the Member | |
| State responsible within a time limit | 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. | State responsible within a time limit of 7 <i>days</i> 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 14 <i>days</i> . This may also be done at the request of the person concerned in accordance with Article 46. | 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 Member | 4. In the event that the Member | 4. In the event that [] <u>a</u> | |
| State responsible or a Member State | State responsible or a Member State | Member State [] has evidence to | |
| other than the Member State | other than the Member State | suggest that visa-related data | |
| responsible has evidence to suggest | responsible has evidence to suggest | recorded in the EES are factually | |
| that visa-related data recorded in the | that visa-related data recorded in the | inaccurate or that such data were | |
| EES are factually inaccurate or that | EES are factually inaccurate, | processed in the EES in | |
| such data were processed in the EES | <i>incomplete</i> or that such data were | contravention of this Regulation they | |
| in contravention of this Regulation | processed in the EES in | shall first check the accuracy of these | |
| they shall first check the accuracy of | contravention of this Regulation they | data against the VIS and if necessary | |
| these data against the VIS and if | shall first check the accuracy of these | shall amend them in the EES. Should | |
| necessary shall amend them in the | data against the VIS and if necessary | the data recorded in the VIS be the | |
| EES. Should the data recorded in the | shall amend rectify, complete or | same as in the EES, they shall inform | |
| VIS be the same as in the EES, they | erase them in the EES. Should the | the Member State responsible for | |
| shall inform the Member State | data recorded in the VIS be the same | entering those data in the VIS | |
| responsible for entering those data in | as in the EES, they shall inform the | immediately through the | |
| the VIS immediately through the | Member State responsible for | infrastructure of the VIS in | |
| infrastructure of the VIS in | entering those data in the VIS | accordance with Article 24(2) of | |
| accordance with Article 24(2) of | immediately through the | Regulation (EC) No 767/2008. The | |
| Regulation (EC) No 767/2008. The | infrastructure of the VIS in | Member State responsible for | |
| Member State responsible for | accordance with Article 24(2) of | entering the data in the VIS shall | |
| entering the data in the VIS shall | Regulation (EC) No 767/2008. The | check the data concerned and if | |
| check the data concerned and if | Member State responsible for | necessary correct or delete them | |
| necessary correct or delete them | entering the data in the VIS shall | immediately from the VIS and | |
| immediately from the VIS and | check the data concerned and if | inform the Member State [] | |

| inform the Member State responsible or the Member State responsible or arease them immediately from the VIS and inform the Member State responsible or the Member State to which the request has been made which shall, if inccessary, amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary, amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary, amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary, amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary, amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary, amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary, amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary amend or delete <i>rectify</i>, tables to which the request has been made which shall, if inccessary amend or delete <i>rectify</i>, tables to which the request has been made, that he or she was forced to a that Article and shall be corrected <i>rectified</i> or in accordance with the national law of the Member State responsible or of the Me | informathe Member State mean angible | na a a a a a dalata na a tif u | concomed which shall if according | |
|--|--|---|--|--|
| request has been made which shall, if necessary, amend or delete them Member State to which the request has been made which shall, if necessary, amend or delete to member of the request has been made which shall, if necessary, amend or delete rectify, complete or erase them from the EES without delay and, where applicable, from the list of identified every appears persons 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 Article 11 shall be deleted without delay from the list 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 to which the request has been made, that he or she was forced to exceed the authorised duration of stay due to unforesceable and serious events, that he or she mas caquired a legal right to stay or in case of errors. The third country national shall have access to an effective judicial remedy to ensure the data is amended. | 1 | | | |
| necessary, amend or delete them from the EES without delay and, where applicable, from the list of identified overstayers referred to in Article 11.Member State responsible or understate to which the request has been made which shall, if necessary, amend or delete rectify, complete or erase them from the EES without delay and, where applicable, from the list of identified overstayers persons referred to in Article 11.from the list of identified persons referred to in Article 11 shall be deleted without delay from the list referred to in that Article and shall be complete or series of in the EES where the third country national provides evidence, in accordance with the national law of the Member State rosponsible or of the Member State rosponsible or <br< td=""><td></td><td>1 2</td><td></td><td></td></br<> | | 1 2 | | |
| from the EES without delay and, where applicable, from the list of identified overstayers referred to in Article 11.Member State to which the request has been made which shall, if necessary, amend or delete rectify, complete or erase them from the EES without delay and, where applicable, from the list of verstayers persons referred to in Article 11.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 Article 11 shall be deleted erased without delay from the list referred to in that Article and shall be corrected in the EES where the third outry 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 stay due to unforeseable and serious events, that he or she has acquired a legal right to stay or in case of errors. The third country national shall have access to an effective judicial remedy to ensure the data is amended.5. The data of identified persons referred to in Article 11 shall be deleted without delay from the Hational law of the Member State responsible or 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 and serious events, that he or she has acquired a legal right to stay or in case of errors | 1 | | • • • | |
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| and serious events, that he or she has acquired a legal right to stay or in case of errors. The third country national shall have access to an effective judicial remedy to ensure the data is amended. | was forced to exceed the authorised | request has been made, that he or she | · · | |
| and serious events, that he or she has acquired a legal right to stay or in case of errors. The third country national shall have access to an effective judicial remedy to ensure the data is amended.duration of stay due to unforeseeable and serious events, that he or she has acquired a legal right to stay or in case of errors. The third country national shall have access to an effective judicial remedy to ensure the data is amended rectified,unforeseeable and serious events, that he or she has acquired a legal right to short stay or in case of errors. The third country national shall have access to an | duration of stay due to unforeseeable | was forced to exceed the authorised | duration of authorised stay due to | |
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| the data is amended. effective judicial remedy to ensure the data is amended <i>rectified</i> , ensure the data is amended. | effective judicial remedy to ensure | 5 | | |
| the data is amended rectified, | 5 5 | | | |
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| 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 | 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 <i>without</i> | 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 <u>entry/exit</u> records linked to it in accordance with Articles 14 and 15 | |
|--|---|--|--|
| deleted without delay from the EES | delay and in any event no later than | <u>and refusal of entry records in</u> | |
| as well as, where applicable, from | 48 hours from the moment the | <u>accordance with Article 16</u> shall be | |
| the list of identified persons referred | relevant Member State becomes | deleted without delay from the EES | |
| to in Article 11: | aware of that fact, be deleted | as well as, where applicable, from | |
| | without delay from the EES as well as, where applicable, from the list of identified persons referred to in Article 11: | the list of identified persons referred to in Article 11: | |
| (a) by the Member State the | (a) by the Member State the | (a) by the Member State the | |
| nationality of which he or she has | nationality of which he or she has | nationality of which he or she has | |
| acquired, or | acquired, or | acquired, or | |
| (b) the Member State that issued the residence permit or card. | (b) the Member State that issued the residence permit or card. | (b) the Member State that issued the residence permit or card <u>or long</u> stay visa. | |
| Where a third country national has | Where a third country national has | Where a third country national has | |
| acquired the nationality of Andorra, | acquired the nationality of Andorra, | acquired the nationality of Andorra, | |
| Monaco or San Marino he or she | Monaco or San Marino he or she | Monaco, [] San Marino <u>or where</u> | |
| shall inform the competent | shall inform the competent | <u>the third country national is in a</u> | |
| authorities of the Member State he or | authorities of the Member State he or | <u>possession of a passport issued by</u> | |
| she next enters of this change. That | she next enters of this change. That | <u>the Vatican City State</u> he or she shall | |
| Member State shall delete their data | Member State shall delete their data | inform the competent authorities of | |
| without delay from the EES. The | without delay from the EES. The | the Member State he or she next | |
| individual shall have access to an | individual shall have access to an | enters of this change. That Member | |
| effective judicial remedy to ensure | effective judicial remedy to ensure | State shall delete their data without | |
| the data is deleted. | the data is deleted. | 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 | 7. The Central System shall | 7. The Central System shall | |
| immediately inform all Member | immediately inform all Member | immediately inform all Member | |
| States of the erasure of data from the | States of the erasure of data from the | States of the erasure of data from the | |
| EES and where applicable from the | EES and where applicable from the | EES and where applicable from the | |
| list of identified persons referred to | list of identified persons referred to | list of identified persons referred to | |
| in Article 11. | in Article 11. | in Article 11. | |
| | | <u>8.</u> 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 | CHAPTER VI | CHAPTER VI | |
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| Development, Operation and | Development, Operation and | Development, Operation and | |
| Responsibilities | Responsibilities | Responsibilities | |
| Article 33 | Article 33 | Article 33 | |
| Adoption of implementing measures | Adoption of implementing measures | Adoption of implementing measures | |
| by the Commission prior to | by the Commission prior to | by the Commission prior to | |
| development | development | development | |
| The Commission shall adopt the | The Commission shall adopt the | The Commission shall adopt the | Provisionally agreed: |
| following measures necessary for the | following measures necessary for the | following measures necessary for the | The Commission shall adopt the |
| development and technical | development and technical | development and technical | following measures necessary for the |
| implementation of the Central | implementation of the Central | implementation of the Central | development and technical |
| System, the National Uniform | System, the National Uniform | System, the National Uniform | implementation of the Central |
| Interfaces, and the Communication | Interfaces, and the secure and | Interfaces, and the Communication | System, the National Uniform |
| Infrastructure, in particular measures | encrypted Communication | Infrastructure, in particular measures | Interfaces, and the Communication |
| for: | Infrastructure, in particular measures | for: | Infrastructure, in particular measures |
| | for: | | for: |
| (a) the specifications for the | (a) the specifications for the | (a) the specifications for the | Provisionally: |
| resolution and use of fingerprints for | resolution and use of fingerprints for | <u>quality</u> , resolution and use of | a) the specifications for the |
| biometric verification and | biometric verification and | fingerprints for biometric verification | quality, resolution and use of |
| identification in the EES; | identification in the EES; | and identification in the EES; | fingerprints for biometric verification |
| | | | and identification in the EES; |
| | (aa) the quality standard and | | EP to revert (the facial image from |
| | specifications for the use of the | | the VIS cannot be used for biometric |
| | facial image including where | | matching) |
| | extracted electronically from the | | |
| | eMRTD or the VIS; | | |
| | | (a1) the specifications for the | Linked to outcome of (aa) |
| | | quality, resolution and use of facial | |
| | | image for biometric verification and | |
| | | identification in the EES; | |
| (b) entering the data in accordance | (b) entering the data in accordance | (b) entering the data in accordance | |
| with Article 14, 15, 16, 17 and 18; | with Article 14, 15, 16, 17 and 18; | with Article 14, 15, 16, 17 and 18; | |

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| advance deleting of data in accordance with Article 32; advance deleting of data in accordance with Article 32; (e) keeping and accessing the records in accordance with Article 41; (e) keeping and accessing the records in accordance with Article 41; (f) performance requirements; (f) performance requirements; (f) performance requirements; (f) performance requirements; (f) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the ES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, False Neg | | | | |
|--|--|---------------------------------------|--------------------------------------|--------------------------------------|
| (d) amending, deleting and advance deleting of data in accordance with Article 32; (d) amending, deleting and advance deleting of data in accordance with Article 32; (e) keeping and accessing the records in accordance with Article 32; (e) keeping and accessing the records in accordance with Article 32; (f) performance requirements; (f) performance requirements; (f) performance requirements; (f) performance requirements; (f) performance requirements; (f) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, and Failure to Enrol Rate; (g) the specifications and conditions for the web-service referred to in Article 12; (g) the specifications for the web-service referred to in Article 12, including provisions for the protection of the data where provided by or to carriers; (g) the specifications and conditions for the web-service referred to in Article 12, including provisions for the web-service referred to in Article 44(3); (i) the specifications and conditions for the web-service referred to in Article 44(3); (h) the common leaflet referred to in Article 44(3); (i) the specifications and conditions for the websile-referred to in Article 44(3); (i) the specifications and conditions for the websile-referred to in Article 44(3); | | | | |
| advance deleting of data in accordance with Article 32; advance deleting of data in accordance with Article 32; (c) keeping and accessing the records in accordance with Article 41; (c) keeping and accessing the records in accordance with Article 41; Provisionally agreed: (f) performance requirements; (f) performance requirements; (f) performance requirements; (f) performance requirements; including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification R | | · · · · · · · · · · · · · · · · · · · | | |
| accordance with Article 32; accordance with Article 32; accordance with Article 32; (e) keeping and accessing the records in accordance with Article 41; (f) performance requirements; (f) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, False Negative Identification Rate, False Negative Identification for the web-service referred to in Article 12; (g) the specifications and conditions for the web-service referred to in Article 12, including provisions for the protection of the data where provisided by or to carriers; (g) the specifications and conditions for the web-service referred to in Article 44(3); (i) the specifications and conditions for the web-service referred to in Article 44(3); (i) the specifications and conditions for the web-service referred to in Article 44(3); (i) the specifications and conditions for the web-service referred to in Article 44(3); (i) the specifications and conditions for the web-service referred to in Article 44(3); (i) the specifications and conditions for the web-service referred to in Article 44(3); See Art. 44(3) | | | | |
| (e) keeping and accessing the records in accordance with Article (e) keeping and accessing the records in accordance with Article (f) performance requirements; (f) performance requirements; (f) performance requirements, including minimal specifications for requirements on the biometric Provisionally agreed: (g) the specifications and conditions for the web-service referred to in Article 12; (g) the specifications and conditions for the web-service referred to in Article 12; (g) the specifications and conditions for the protection of the data where provisided by or to carriers; (g) the specifications and conditions for the web-service referred to in Article 44(3); (h) the common leaflet referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); (i) the specifications and conditions for the website referred to in Article 44(3); <t< td=""><td>advance deleting of data in</td><td>advance deleting of data in</td><td>advance deleting of data in</td><td></td></t<> | advance deleting of data in | advance deleting of data in | advance deleting of data in | |
| records in accordance with Article 41: (f) performance requirements; (f) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, False Positive Identification Rate, False Negative Identification Rate, False Negative Identification Rate, False Positive Identification Rate, False Positive Identification Rate, False Negative Identification Rate, False Positive Identification Rate, False Po | accordance with Article 32; | accordance with Article 32; | accordance with Article 32; | |
| 41: 41: 41: (f) performance requirements; (f) performance requirements; (f) performance requirements, including minimal specifications for technical equipment and requirements of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identifications and conditions for the web-service referred to in Article 12, including provisions for the provision of the data where provided by or to carriers; (h) the common leaflet referred to Article 44(3); (h) the specifications and conditions for the websile-referered to in Article 14(3); </td <td>(e) keeping and accessing the</td> <td>(e) keeping and accessing the</td> <td>(e) keeping and accessing the</td> <td></td> | (e) keeping and accessing the | (e) keeping and accessing the | (e) keeping and accessing the | |
| (f) performance requirements;(f) performance requirements; including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate and Failure to Enrol Rate;Provisionally agreed: (g) the specifications and conditions for the web-service referred to in Article 12, including specific provisions for the web-service referred to in Article 44(3);Provisional set on the biometric performance of the EES in particular in terms of the required False Negative Identification Rate, False Negative Identification Rate false (g) the specifications and conditions for the web-service referred to in Article 12, including specific provisions for the web-service referred to in Article 44(3); <td>records in accordance with Article</td> <td>records in accordance with Article</td> <td>records in accordance with Article</td> <td></td> | records in accordance with Article | records in accordance with Article | records in accordance with Article | |
| including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, False Negative Identification Rate and Failure to Enrol Rate;(f) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate and Failure to Enrol Rate;(f) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate and Failure to Enrol Rate;(g) the specifications and conditions for the web-service referred to in Article 12, <i>including provisions for the protection of the data where provided by or to carriers;</i> (g) the specifications and conditions for the web-service referred to Article 44(3);(g) the specifications and conditions for the website referred to in Article 44(3);Provisionally agreed: (g) the specifications and conditions for the website referred to in Article 44(3);(h) the common leaflet referred to in Article 44(3);(h) the common leaflet referred to conditions for the website referred to in Article 44(3);See Art. 44(3)(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the provision of information in writing, and inSee Art. 44(3) | 41; | 41; | 41; | |
| including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, False Negative Identification Rate and Failure to Enrol Rate;(f) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate and Failure to Enrol Rate;(f) performance requirements, including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate and Failure to Enrol Rate;(g) the specifications and conditions for the web-service referred to in Article 12, <i>including provisions for the protection of the data where provided by or to carriers;</i> (g) the specifications and conditions for the web-service referred to Article 44(3);(g) the specifications and conditions for the website referred to in Article 44(3);Provisionally agreed: (g) the specifications and conditions for the website referred to in Article 44(3);(h) the common leaflet referred to in Article 44(3);(h) the common leaflet referred to conditions for the website referred to in Article 44(3);See Art. 44(3)(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the provision of information in writing, and inSee Art. 44(3) | (f) performance requirements; | (f) performance requirements; | (f) performance requirements, | Provisionally agreed: |
| technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, False Negative Identification Rate, False Negative Identification Rate, and Failure to Enrol Rate;including minimal specifications for technical equipment and requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, False In A | | | | (f) performance requirements, |
| requirements on the biometric performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate, False | | | technical equipment and | including minimal specifications for |
| performance of the EES in particular in terms of the required False Positive Identification Rate, False Negative Identifications and conditions for the web-service referred to in Article 12, including specific provisions for the web-service referred to in Article 12, including specific provisions for the web-service referred to in Article 14(3);(h) the common leaflet referred to in Article 44(3);(i) the specifications and conditions fo | | | | e i |
| Positive Identification Rate, False Negative Identification Rate and Failure to Enrol Rate;in terms of the required False Positive Identification Rate and Failure to Enrol Rate;(g) the specifications and conditions for the web-service referred to in Article 12;(g) the specifications and conditions for the web-service referred to in Article 12, including provisions for the protection of the data where provided by or to carriers;(g) the specifications and conditions for the protection of the data where provided by or to carriers;(g) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);(h) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | | | performance of the EES in particular | · · |
| Positive Identification Rate, False Negative Identification Rate and Failure to Enrol Rate;in terms of the required False Positive Identification Rate and Failure to Enrol Rate;(g) the specifications and conditions for the web-service referred to in Article 12;(g) the specifications and conditions for the web-service referred to in Article 12, including provisions for the protection of the data where provided by or to carriers;(g) the specifications and conditions for the protection of the data where provided by or to carriers;(g) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);(h) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | | | in terms of the required False | performance of the EES in particular |
| Failure to Enrol Rate;Negative Identification Rate and Failure to Enrol Rate;(g) the specifications and conditions for the web-service referred to in Article 12;(g) the specifications and conditions for the web-service referred to in Article 12, <i>including</i> <i>provisions for the protection of the</i> <i>data where provided by or to</i> <i>carriers;</i> (g) the specifications and conditions for the web-service referred to in Article 12, <i>including</i> <i>provisions for the protection of the</i> <i>data where provided by or to</i> <i>carriers;</i> (g) the specifications and conditions for the web-service referred to in Article 12, <i>including</i> <i>provisions for the protection of the</i> <i>data where provided by or to</i> <i>carriers;</i> (g) the specifications and conditions for the web-service referred to Article 44(3);(h) the common leaflet referred to Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | | | Positive Identification Rate, False | in terms of the required False |
| Failure to Enrol Rate;Negative Identification Rate and Failure to Enrol Rate;(g) the specifications and conditions for the web-service referred to in Article 12;(g) the specifications and conditions for the web-service referred to in Article 12, <i>including</i> <i>provisions for the protection of the</i> <i>data where provided by or to</i> <i>carriers</i> ;(g) the specifications and conditions for the web-service referred to in Article 12, <i>including</i> <i>provisions for the protection of the</i> <i>data where provided by or to</i> <i>carriers</i> ;(g) the specifications and conditions for the web-service referred to in Article 12, <i>including</i> <i>provisions for the protection of the</i> <i>data where provided by or to</i> <i>carriers</i> ;(g) the specifications and conditions for the web-service referred to Article 44(3);(h) the common leaflet referred to Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | | | Negative Identification Rate and | Positive Identification Rate, False |
| (g) the specifications and conditions for the web-service referred to in Article 12;(g) the specifications and conditions for the web-service referred to in Article 12, including provisions for the protection of the data where provided by or to carriers;(g) the specifications and conditions for the web-service referred to in Article 12, including provisions for the protection of the data where provided by or to carriers;(g) the specifications and conditions for the web-service referred to in Article 12, including provisions for the protection of the data where provided by or to carriers;(g) the specifications and conditions for the web-service referred to article 44(3);Provisionally agreed: (g) the specifications and conditions for the web-service referred to Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(ii) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | | | Failure to Enrol Rate; | Negative Identification Rate and |
| conditions for the web-service referred to in Article 12;conditions for the web-service referred to in Article 12, including provisions for the protection of the data where provided by or to carriers;conditions for the web-service referred to in Article 12, including specific provisions for the protection of the data where provided by or to carriers;conditions for the web-service referred to in Article 12, including specific provisions for the protection of the data where provided by or to carriers;conditions for the web-service referred to in Article 12;(g) the specifications and conditions for the web-service referred to in Article 12;(h) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);See Art. 44(3)(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3); | | | | 0 |
| conditions for the web-service referred to in Article 12;conditions for the web-service referred to in Article 12, including provisions for the protection of the data where provided by or to carriers;conditions for the web-service referred to in Article 12, including specific provisions for the protection of the data where provided by or to carriers;conditions for the web-service referred to in Article 12, including specific provisions for the protection of the data where provided by or to carriers;conditions for the web-service referred to in Article 12;(g) the specifications and conditions for the web-service referred to in Article 12;(h) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);See Art. 44(3)(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3); | (g) the specifications and | (g) the specifications and | (g) the specifications and | Provisionally agreed: |
| referred to in Article 12;referred to in Article 12, including provisions for the protection of the data where provided by or to carriers;referred to in Article 12;conditions for the web-service referred to in Article 12, including specific provisions for the protection of the data where provided by or to carriers;(h) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | conditions for the web-service | | | |
| provisions for the protection of the data where provided by or to carriers;referred to in Article 12, including specific provisions for the protection of the data where provided by or to carriers;(h) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);See Art. 44(3)(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | referred to in Article 12: | | referred to in Article 12: | |
| data where provided by or to carriers;specific provisions for the protection of the data where provided by or to carriers;(h) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);See Art. 44(3)(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | | | , | |
| carriers;protection of the data where provided by or to carriers;(h) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);See Art. 44(3)(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);See Art. 44(3) | | | | |
| Image: constraint of the website referred to in Article 44(3);(h) the common leaflet referred to Article 44(3);provided by or to carriers;(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to information in writing, and inSee Art. 44(3) | | | | |
| (h) the common leaflet referred to Article 44(3);(h) the common leaflet referred to Article 44(3);See Art. 44(3)(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the provision of information in writing, and in | | | | - |
| Article 44(3);Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to information in writing, and inSee Art. 44(3) | (h) the common leaflet referred to | (h) the common leaflet referred to | | |
| (i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the website referred to in Article 44(3);(i) the specifications and conditions for the provision of information in writing, and inSee Art. 44(3) | | | | |
| conditions for the website referred to in Article 44(3);conditions for the website referred to in Article 44(3);conditions for the provision of information in writing, and in | | | (i) the specifications and | See Art. 44(3) |
| in Article 44(3); in Article 44(3); information in writing, and in | conditions for the website referred to | | | |
| | in Article 44(3); | | | |
| another effective way [] referred to [| | | another effective way [] referred to | |
| in Article 44(3); | | | • • • | |



| (j) the establishment and the high | (j) the establishment and the high | (j) the establishment and the high | |
|---------------------------------------|---------------------------------------|---|---|
| level design of the interoperability | level design of the interoperability | level design of the interoperability | |
| referred to in Article 7; | referred to in Article 7; | referred to in Article 7; | |
| (k) for the specifications and | (k) for the specifications and | (k) for the specifications and | |
| conditions for the central repository | conditions for the central repository | conditions for the central repository | |
| referred in Article 57 (2). | referred in Article 57 (2). | referred in Article 57 (2); | |
| | | (1) adopt a decision on the date | <i>EP to revert</i> |
| | | from which the EES is to start | |
| | | operations, after the conditions | Commission does not see the need |
| | | referred to in Article 60 are met; | for an implementing act, because |
| | | <u>.</u> | once conditions under Art. 60 are |
| | | | fulfilled, the EES should start |
| | | | operating. |
| | | (m) the establishment of the list | <i>EP to revert</i> |
| | | referred to in Article 11(2) and | Presidency suggests the following |
| | | procedure for distribution of the list | wording in line with wording used in |
| | | to Member States; | Art. 11(2): |
| | | to member states, | (m) the establishment of the list |
| | | | referred to in Article 11(2) and |
| | | | procedure to make the list available |
| | | | to Member States; |
| | | (n) the encodification for technical | Provisionally agreed: |
| | | (n) the specification for technical solutions to connect central access | |
| | | | (n) the specification for technical solutions to connect central access |
| | | points in accordance with Articles 28 | |
| | | and 29 and for a technical solution to | points in accordance with Articles 28 |
| | | collect the statistical data required in | and 29 and for a technical solution to |
| | | accordance with Article 64(8). | collect the statistical data required in |
| | | | accordance with Article 64(8). |
| Those implementing acts shall be | Those implementing acts shall be | Those implementing acts shall be | Accepted by delegations: |
| adopted in accordance with the | adopted in accordance with the | adopted as soon as possible in | Those implementing acts shall be |
| examination procedure referred to in | examination procedure referred to in | accordance with the examination | adopted in accordance with the |
| Article 61(2). | Article 61(2). | procedure referred to in Article | examination procedure referred to in |
| For the adoption of the measures set | For the adoption of the measures set | 61(2). | Article 61(2). |



| down for the establishment and the | down for the establishment and the | For the adoption of the measures set | For the adoption of the measures set |
|--|--|--|--|
| high level design of the | high level design of the | down for the establishment and the | down for the establishment and the |
| interoperability specified in point (j), | interoperability specified in point (j), | high level design of the | high level design of the |
| the Committee set up by Article 61 | the Committee set up by Article 61 | interoperability specified in point (j), | interoperability specified in point (j), |
| of this Regulation shall consult the | of this Regulation shall consult the | the Committee set up by Article 61 | the Committee set up by Article 61 |
| VIS Committee set up by Article 49 | VIS Committee set up by Article 49 | of this Regulation shall consult the | of this Regulation shall consult the |
| of Regulation (EC) 767/2008. | of Regulation (EC) 767/2008. | VIS Committee set up by Article 49 | VIS Committee set up by Article 49 |
| | | of Regulation (EC) 767/2008. | of Regulation (EC) 767/2008. |
| Article 34 | Article 34 | Article 34 | |
| Development and operational | Development and operational | Development and operational | |
| management | management | management | |
| 1. eu-LISA shall be responsible | eu-LISA shall be responsible for the | 1. eu-LISA shall be responsible | Provisionally agreed except text in [] |
| for the development of the Central | development of the Central System, | for the development of the Central | brackets: |
| System, the National Uniform | the National Uniform Interfaces, the | System, the National Uniform | 1. eu-LISA shall be responsible |
| Interfaces, the Communication | secure and encrypted | Interfaces, the Communication | for the development of the Central |
| Infrastructure and the Secure | Communication Infrastructure and | Infrastructure and the Secure | System, the National Uniform |
| Communication Channel between | the Secure Communication Channel | Communication Channel between | Interfaces, the Communication |
| the EES Central System and the VIS | between the EES Central System and | the EES Central System and the VIS | Infrastructure and the Secure |
| Central System. It shall also be | the VIS Central System. It shall also | Central System. It shall also be | Communication Channel between |
| responsible for the development of | be responsible for the development | responsible for the development of | the EES Central System and the VIS |
| the web service referred to in Article | of the web service referred to in | the web service referred to in Article | Central System. It shall also be |
| 12 in accordance with the | Article 12 in accordance with the | 12 in accordance with the | responsible for the development of |
| specifications and conditions adopted | specifications and conditions adopted | specifications and conditions adopted | the web service referred to in Article |
| in accordance with the examination | in accordance with the examination | in accordance with the examination | 12 and the data repository to in |
| procedure referred to in Article | procedure referred to in Article | procedure referred to in Article | Article 57(2) in accordance with the |
| 61(2). | 61(2). | 61(2). | specifications and conditions adopted |
| eu-LISA shall define the design of | eu-LISA shall define the design of | eu-LISA shall define the design of | in accordance with the examination |
| the physical architecture of the | the physical architecture of the | the physical architecture of the | procedure referred to in Article |
| system including its Communication | system including its secure and | system including its Communication | 61(2). |
| Infrastructure as well as the technical | encrypted Communication | Infrastructure as well as the technical | eu-LISA shall define the design of |
| specifications and their evolution as | Infrastructure as well as the technical | specifications and their evolution as | the physical architecture of the |
| regards the Central System, the | specifications and their evolution as | regards the Central System, the | system including its Communication |
| Uniform Interfaces, the Secure | regards the Central System, the | Uniform Interfaces, the Secure | Infrastructure as well as the technical |



| Communication Channel between | Uniform Interfaces, the Secure | Communication Channel between the | specifications and their evolution as |
|--|--|---------------------------------------|--|
| the EES Central System and the VIS | Communication Channel between | EES Central System and the VIS | regards the Central System, the |
| Central System and the | the EES Central System and the VIS | Central System and the | Uniform Interfaces, the Secure |
| Communication Infrastructure, | Central System and the <i>secure and</i> | Communication Infrastructure, which | Communication Channel between |
| which shall be adopted by the | encrypted Communication | shall be adopted by the Management | the EES Central System and the VIS |
| Management Board, subject to a | Infrastructure-, which shall be | Board, subject to a favourable | Central System and the |
| favourable opinion of the | adopted by the Management Board, | opinion of the Commission. eu-LISA | Communication Infrastructure, the |
| Commission. eu-LISA shall also | subject to a favourable opinion of the | shall also implement any necessary | web service referred to in Article 12 |
| implement any necessary adaptations | Commission. eu-LISA shall also | adaptations to the VIS deriving from | and the data repository referred to |
| to the VIS deriving from the | implement any necessary adaptations | the establishment of interoperability | Article 57(2), [which shall be |
| establishment of interoperability with | to the VIS deriving from the | with the EES as well as from the | adopted by the Management Board, |
| the EES as well as from the | establishment of interoperability with | implementation of the amendments | subject to a favourable opinion of the |
| implementation of the amendments | the EES as well as from the | to Regulation (EC) No 767/2008 | Commission.] eu-LISA shall also |
| to Regulation (EC) No 767/2008 | implementation of the amendments | referred to in Article 55. | implement any necessary adaptations |
| referred to in Article 55. | to Regulation (EC) No 767/2008 | eu-LISA shall develop and | to the VIS deriving from the |
| eu-LISA shall develop and | referred to in Article 55. | implement the Central System, the | establishment of interoperability with |
| implement the Central System, the | eu-LISA shall develop and | National Uniform Interfaces, the | the EES as well as from the |
| National Uniform Interfaces, the | implement the Central System, the | Secure Communication Channel | implementation of the amendments |
| Secure Communication Channel | National Uniform Interfaces, the | between the EES Central System and | to Regulation (EC) No 767/2008 |
| between the EES Central System and | Secure Communication Channel | the VIS Central System, and the | referred to in Article 55. |
| the VIS Central System, and the | between the EES Central System and | Communication Infrastructure as | eu-LISA shall develop and |
| Communication Infrastructure as | the VIS Central System, and the | soon as possible after the entry into | implement the Central System, the |
| soon as possible after the entry into | secure and encrypted | force of this Regulation and the | National Uniform Interfaces, the |
| force of this Regulation and the | Communication Infrastructure as | adoption by the Commission of the | Secure Communication Channel |
| adoption by the Commission of the | soon as possible after the entry into | measures provided for in Article 33. | between the EES Central System and |
| measures provided for in Article 33. | force of this Regulation and the | The development shall consist of the | the VIS Central System, and the |
| The development shall consist of the | adoption by the Commission of the | elaboration and implementation of | Communication Infrastructure, the |
| elaboration and implementation of | measures provided for in Article 33. | the technical specifications, testing | web service referred to in Article 12 |
| the technical specifications, testing | | and overall project coordination. | and the data repository referred to |
| and overall project coordination. | | | Article 57(2) as soon as possible |
| | | | after the entry into force of this |
| | | | Regulation and the adoption by the |



| - | leveloping and implementing | 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. <i>EP explained that this wording is</i> |
|------------------------------------|---|---|
| Unij Com the I VIS and | Central System, the National form Interfaces, the Secure munication Channel between EES Central System and the Central System, and the secure encrypted Communication astructure, eu –LISA shall: | taken from EDPS Opinion (points 46 and 47). LIBE compromise proposal: By developing and implementing 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, eu– LISA shall: |
| (a) part | perform a risk assessment as of the development of the EES; | LIBE compromise proposal: (a) perform a <i>security</i> risk assessment <i>prior to</i> as part of-the development of the EES; |
| duri | follow the principles of acy by design and by default ng the entire lifecycle of the em development; | LIBE compromise proposal: (b) follow the principles of privacy by design and by default during the entire lifecycle of the system development; |
| cont up b | update the risk assessment for VIS to take into account the new nection with the EES and follow y implementing any additional writy measures highlighted by | LIBE compromise proposal: (c) conduct a security risk assessment regarding the interoperability with the VIS referred to in Article 7 and assess |



| | <i>the updated risk assessment.</i> The development shall consist of the | | the required security measures needed for its implementation. update the risk assessment for the VIS to take into account the new connection with the EES and follow up by implementing any additional security measures highlighted by the updated risk assessment. |
|--------------------------------------|---|--|---|
| | elaboration and implementation of | | |
| | the technical specifications, testing | | |
| | and overall project coordination. | | |
| 2. During the designing and | 2. During the designing and | 2. During the designing and | Provisionally agreed: |
| development phase, a Programme | development phase, a Programme / | development phase, a Programme | 2. During the designing and |
| Management Board composed of a | Management Board composed of /a | Management Board composed of a | development phase, a Programme |
| maximum of 10 members shall be | maximum of 10 members shall be | maximum of 10 members shall be | Management Board composed of a |
| established. It shall be composed of | established. It shall be composed of | established. It shall be composed of | maximum of 10 members shall be |
| eight members appointed by eu- | eight members appointed by eu- | [] <u>seven</u> members appointed by | established. It shall be composed of |
| LISA's Management Board from | LISA's Management Board from | eu-LISA's Management Board from | seven members appointed by eu- |
| among its members, the Chair of the | among its members, the Chair of the | among its members or their | LISA's Management Board from |
| EES Advisory Group referred to in | EES Advisory Group referred to in | <u>alternates</u> , the Chair of the EES | among its members or their |
| Article 62 and one member | Article 62 and one member | Advisory Group referred to in Article | alternates, the Chair of the EES |
| appointed by the Commission. The | appointed by the Commission. The | 62, <u>a member representing eu-LISA</u> | Advisory Group referred to in Article |
| members appointed by eu-LISA's | members appointed by eu-LISA's | appointed by its Executive Director | 62, <u>a member representing eu-LISA</u> |
| Management Board shall be elected | Management Board shall be elected | and one member appointed by the | appointed by its Executive Director |
| only from those Member States | only from those Member States | Commission. The members | and one member appointed by the |
| which are fully bound under Union | which are fully bound under Union | appointed by eu-LISA's Management | Commission. The members |
| law by the legislative instruments | law by the legislative instruments | Board shall be elected only from | appointed by eu-LISA's Management |
| governing the development, | governing the development, | those Member States which are fully | Board shall be elected only from |
| establishment operation and use of | establishment operation and use of | bound under Union law by the | those Member States which are fully |
| all the large-scale IT systems | all the large-scale IT systems | legislative instruments governing the | bound under Union law by the |
| managed by eu-LISA and which will | managed by eu-LISA and which will | development, establishment | legislative instruments governing the |
| participate in the EES. | participate in the EES. | operation and use of all the large- | development, establishment |



| The Programme Management Board will meet once a month. It shall ensure the adequate management of | The Programme Management Board / will meet once a month. It shall ensure the adequate management of | scale IT systems managed by eu- LISA and which will participate in the EES. | operation and use of all the large- scale IT systems managed by eu- LISA and which will participate in |
|---|---|---|--|
| the design and development phase of | the design and development phase of | The Programme Management Board | the EES. |
| the EES and ensure the consistency | the EES and ensure the consistency | will meet regularly and at least three | The Programme Management Board |
| between central and national EES | between central and national/EES | times per quarter []. It shall ensure | will meet regularly and at least three |
| projects. The Programme | projects. The Programme | the adequate management of the | times per quarter. It shall ensure the |
| Management Board shall submit | Management Board shall/submit | design and development phase of the | adequate management of the design |
| written reports every month to the | written reports every month to the | EES and ensure the consistency | and development phase of the EES |
| Management Board on progress of | Management Board on progress of | between central and national EES | and ensure the consistency between |
| the project. It shall have no decision- | the project. It shall have no decision- | projects. The Programme | central and national EES projects. |
| making power nor any mandate to | making power nor/any mandate to | Management Board shall submit | The Programme Management Board |
| represent the members of the | represent the members of the | written reports every month to the | shall submit written reports every |
| Management Board. | Management Board. | Management Board on progress of | month to the Management Board on |
| The Management Board shall | The Management Board shall | the project. It shall have no decision- | progress of the project. It shall have |
| establish the rules of procedure of | establish the rules of procedure of | making power nor any mandate to | no decision-making power nor any |
| the Programme Management Board | the Programme Management Board | represent the members of the | mandate to represent the members of |
| which shall include in particular | which shall include in particular | Management Board. | the Management Board. |
| rules on: | rules on: | The Management Board shall | The Management Board shall |
| | | establish the rules of procedure of | establish the rules of procedure of |
| | | the Programme Management Board | the Programme Management Board |
| | | which shall include in particular | which shall include in particular |
| | | rules on: | rules on: |
| (a) chairmanship; | (a) chairmanship; | (a) chairmanship; | |
| (b) meeting venues; | (b) meeting venues; | (b) meeting venues; | |
| (c) preparation of meetings; | (c) preparation of meetings; | (c) preparation of meetings; | |
| (d) admission of experts to the | (d) admission of experts to the | (d) admission of experts to the | |
| meetings; | meetings; | meetings; | |
| (e) communication plans ensuring | (e) communication plans ensuring | (e) communication plans ensuring | |
| full information to non-participating | full information to non-participating | full information to non-participating | |
| Members of the Management Board. | Members of the Management Board. | Members of the Management Board. | |



| The chairmanship shall be held by | The chairmanship shall be held by / | The chairmanship shall be held by | Provisionally agreed: |
|---------------------------------------|---------------------------------------|--|--|
| the Member State holding the | the Member State holding the | [] a Member State which [] is | The chairmanship shall be held by a |
| Presidency, provided it is fully | Presidency, provided it is fully | fully bound under Union law by the | Member State which is fully bound |
| bound under Union law by the | bound under Union law by the | legislative instruments governing the | under Union law by the legislative |
| legislative instruments governing the | legislative instruments governing the | development, establishment | instruments governing the |
| development, establishment | development, establishment | operation and use of all the large- | development, establishment |
| operation and use of all the large- | operation and use of all the large- | scale IT systems managed by eu- | operation and use of all the large- |
| scale IT systems managed by eu- | scale IT systems managed by/eu- | LISA []. | scale IT systems managed by eu- |
| LISA or, if this requirement is not | LISA or, if this requirement/is not | All travel and subsistence expenses | LISA. |
| met, by the Member State which | met, by the Member State which | incurred by the members of the | All travel and subsistence expenses |
| shall next hold the Presidency and | shall next hold the Presidency and | Programme Management Board shall | incurred by the members of the |
| which meets that requirement. | which meets that requirement. | be paid by the Agency and Article 10 | Programme Management Board shall |
| All travel and subsistence expenses | All travel and subsistence expenses | of the eu-LISA Rules of Procedure | be paid by the Agency and Article 10 |
| incurred by the members of the | incurred by the members of the | shall apply mutatis mutandis. The | of the eu-LISA Rules of Procedure |
| Programme Management Board shall | Programme Management Board shall | Programme Management Board's | shall apply mutatis mutandis. The |
| be paid by the Agency and Article 10 | be paid by the Agency and Article 10 | secretariat shall be ensured by eu- | Programme Management Board's |
| of the eu-LISA Rules of Procedure | of the eu-LISA Rules of Procedure | LISA. | secretariat shall be ensured by eu- |
| shall apply mutatis mutandis. The | shall apply mutatis mutandis. The | During the designing and | LISA. |
| Programme Management Board's | Programme Management Board's | development phase, the EES | During the designing and |
| secretariat shall be ensured by eu- | secretariat shall be ensured by eu- | Advisory Group referred to in Article | development phase, the EES |
| LISA. | LISA. / | 62 shall be composed of the national | Advisory Group referred to in Article |
| During the designing and | During the designing and | EES project managers and chaired by | 62 shall be composed of the national |
| development phase, the EES | development phase, the EES | eu-LISA. It shall meet [] regularly | EES project managers and chaired by |
| Advisory Group referred to in Article | Advisory Group referred to in Article | and at least three times per quarter | eu-LISA. It shall meet regularly and |
| 62 shall be composed of the national | 62 shall be composed of the national | until the start of operations of the | at least three times per quarter until |
| EES project managers. It shall meet | EES prøject managers. It shall meet | EES. It shall report after each | the start of operations of the EES. It |
| at least once a month until the start | at least once a month until the start | meeting to the Programme | shall report after each meeting to the |
| of operations of the EES. It shall | of operations of the EES. It shall | Management Board. It shall provide | Programme Management Board. It |
| report after each meeting to the | report after each meeting to the | the technical expertise to support the | shall provide the technical expertise |
| Programme Management Board. It | Prøgramme Management Board. It | tasks of the Programme Management | to support the tasks of the |
| shall provide the technical expertise | shall provide the technical expertise | Board and shall follow-up on the | Programme Management Board and |
| to support the tasks of the | to support the tasks of the | state of preparation of the Member | shall follow-up on the state of |
| Programme Management Board and | /Programme Management Board and | States. | preparation of the Member States. |



| shall follow-up on the state of | shall follow-up on the state of | | |
|---|---|---|---|
| preparation of the Member States. | preparation of the Member States. | | |
| 3. eu-LISA shall be responsible | 3. eu-LISA shall be responsible | 3. eu-LISA shall be responsible | Provisionally agreed: |
| for the operational management of | for the operational management of | for the operational management of | |
| the Central System, the Secure | the Central System, the Secure | the Central System, the Secure | 3. eu-LISA shall be responsible |
| Communication Channel between | Communication Channel between | Communication Channel between | for the operational management of |
| the EES Central System and the VIS | the EES Central System and the VIS | the EES Central System and the VIS | the Central System, the Secure |
| Central System and the National | Central System and the National | Central System and the National | Communication Channel between |
| Uniform Interfaces. It shall ensure, in | Uniform Interfaces. It shall ensure, in | Uniform Interfaces. It shall ensure, in | the EES Central System and the VIS |
| cooperation with the Member States, | cooperation with the Member States, | cooperation with the Member States, | Central System and the National |
| at all times the best available | <i>that</i> at all times the best available | at all times the best available | Uniform Interfaces. It shall ensure, in |
| technology, subject to a cost-benefit | technology, subject to a cost-benefit | technology, subject to a cost-benefit | cooperation with the Member States, |
| analysis. eu-LISA shall also be | analysis, <i>is used for the Central</i> | analysis. eu-LISA shall also be | that at all times the best available |
| responsible for the operational | System, the Secure Communication | responsible for the operational | technology, subject to a cost-benefit |
| management of the Communication | Channel between the EES Central | management of the Communication | analysis, is used for the Central |
| Infrastructure between the Central | System and the VIS Central System | Infrastructure between the Central | System, the Secure |
| system and the National Uniform | and the National Uniform | system and the National Uniform | Communication Channel between |
| Interfaces and for the web-service | Interfaces. eu-LISA shall also be | Interfaces and for the web-service | the EES Central System and the |
| referred to in Article 12. | responsible for the operational | referred to in Article 12. | VIS Central System the National |
| Operational management of the EES | management of the secure and | Operational management of the EES | Uniform Interfaces, <u>the</u> |
| shall consist of all the tasks | encrypted Communication | shall consist of all the tasks | Communication Infrastructure |
| necessary to keep the EES | Infrastructure between the Central | necessary to keep the EES | between the Central system and the |
| functioning 24 hours a day, 7 days a | system and the National Uniform | functioning 24 hours a day, 7 days a | National Uniform Interfaces, the web |
| week in accordance with this | Interfaces and for the web-service | week in accordance with this | service referred to in Article 12 and |
| Regulation, in particular the | referred to in Article 12. | Regulation, in particular the | the data repository referred to Article |
| maintenance work and technical | Operational management of the EES | maintenance work and technical | 57(2). eu-LISA shall also be |
| developments necessary to ensure | shall consist of all the tasks | developments necessary to ensure | responsible for the operational |
| that the system functions at a | necessary to keep the EES | that the system functions at a | management of Communication |
| satisfactory level of operational | functioning 24 hours a day, 7 days a | satisfactory level of operational | Infrastructure between the Central |
| quality, in particular as regards the | week in accordance with this | quality, in particular as regards the | system and the National Uniform |
| response time for interrogation of the | Regulation, in particular the | response time for interrogation of the | Interfaces, for the web-service |
| central database by border crossing | maintenance work and technical | central database by border crossing | referred to in Article 12 and the data |
| points, in accordance with the | developments necessary to ensure | points, in accordance with the | repository referred to Article 57(2). |



| technical specifications. | 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. | technical specifications. | 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 | 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 antira staff required to work with | 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 antira staff required to work with | |
| 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. | 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. | 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. | |

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| Article 35 | Article 35 | Article 35 | Provisionally agreed: |
|---|---|---|---------------------------------------|
| Responsibilities of Member States | Responsibilities of Member States | Responsibilities of Member States | Article 35 |
| | | and Europol | Responsibilities of Member States |
| | | | and Europol |
| 1. Each Member State shall be | 1. Each Member State shall be | 1. Each Member State shall be | |
| responsible for: | responsible for: | responsible for: | |
| (a) the integration of the existing | (a) the integration of the existing | (a) the integration of the existing | Provisionally agreed: |
| national border infrastructure and the | national border infrastructure and the | national [] infrastructure <u>necessary</u> | (a) the integration of the existing |
| connection to the National Uniform | connection to the National Uniform | for border check and the connection | national infrastructure necessary for |
| Interface; | Interface; | to the National Uniform Interface; | border check and the connection to |
| | | | the National Uniform Interface; |
| (b) the organisation, management, | (b) the organisation, management, | (b) the organisation, management, | |
| operation and maintenance of its | operation and maintenance of its | operation and maintenance of its | |
| existing national border | existing national border | existing national [] infrastructure | |
| infrastructure and of its connection to | infrastructure and of its connection to | necessary for border check and of its | |
| the EES for the purpose of Article 5 | the EES for the purpose of Article 5 | connection to the EES for the | |
| excepted points (j), (k) and (l); | excepted points (j), (k) and (l) with | purpose of Article 5 excepted points | |
| | the exception of Article 5(1a); | (j), (k) and (l); | |
| (c) the organisation of central | (c) the organisation of central | (c) the organisation of central | |
| access points and their connection to | access points and their connection to | access points and their connection to | |
| the National Uniform Interface for | the National Uniform Interface for | the National Uniform Interface for | |
| the purpose of law enforcement; | the purpose of law enforcement; | the purpose of law enforcement; | |
| (d) the management and | (d) the management and | (d) the management and | |
| arrangements for access of duly | arrangements for access of duly | arrangements for access of duly | |
| authorised staff of the competent | authorised staff of the competent | authorised staff of the competent | |
| national authorities to the EES in | national authorities to the EES in | national authorities to the EES in | |
| accordance with this Regulation and | accordance with this Regulation and | accordance with this Regulation and | |
| to establish and regularly update a | to establish and regularly update a | to establish and regularly update a | |
| list of such staff and their profiles. | list of such staff and their profiles. | list of such staff and their profiles. | |
| 2. Each Member State shall | 2. Each Member State shall | 2. Each Member State shall | EP withdrew its amendment |
| designate a national authority, which | designate a an independent national | designate a national authority, which | Provisionally agreed: |
| shall provide the competent | supervisory authority, which shall | shall provide the competent | 2. Each Member State shall |
| authorities referred to in Article 8 | provide the competent authorities | authorities referred to in Article 8 | designate a national authority, which |

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| 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. | 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 | with access to the EES. Each Member State shall connect that national authority to the National Uniform Interface. Each Member State [] shall connect their respective central access points referred to in Article 26 [] to the National Uniform Interface. | 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 shall connect their respective central access points referred to in |
|--|--|--|--|
| | Interface. | | Article 26 to the National Uniform Interface. |
| 3. Each Member State shall use automated procedures for processing the data. | 3. Each Member State shall use automated procedures for processing the data. | 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. | 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. | 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. | |
| | 4a. Member States shall not process the data collected in or retrieved from the EES for purposes other than those laid down in this Regulation. | | Commission raised concerns on the use of the term "retrieved". Presidency compromise proposal accepted by delegations: Member States shall not process the data <u>recorded</u> in the EES for purposes other than those laid down in this Regulation. |
| | | 5. Europol shall assume the responsibilities foreseen under paragraphs 3 and 4. It shall connect its central access point referred to in | Provisionally agreed [subject to agreement on reference to paragraph 4a]: 5. Europol shall assume the |

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| | | Article 27 to the EES and shall be | responsibilities foreseen under |
|---------------------------------------|--|---------------------------------------|--|
| | | responsible for that connection. | paragraphs 3, 4 and 4a . It shall |
| | | - | connect its central access point |
| | | | referred to in Article 27 to the EES |
| | | | and shall be responsible for that |
| | | | connection. |
| Article 36 | Article 36 | Article 36 | Provisionally agreed: |
| Responsibility for the use of data | Responsibility for the use of data | Responsibility for the use of data | Article 36 |
| | processing | | Responsibility for data processing |
| 1. In relation to the processing of | In relation to the processing of | 1. In relation to the processing of | In accordance with the wording |
| personal data in the EES, each | personal data in the EES, each | personal data in the EES, each | under Article 35(4a), the reference to |
| Member State shall designate the | Member State shall designate the | Member State shall designate the | 'data collected and' should be |
| authority which is to be considered | authority which is to be considered | authority which is to be considered | deleted. Text supported by |
| as controller in accordance with | as controller in accordance with | as controller in accordance with | delegations: |
| Article 2(d) of Directive 95/46/EC | Article 2(d) 4(7) of Directive | Article 2(d) of Directive 95/46/EC | 1.In relation to the processing of |
| and which shall have central | 95/46/EC Regulation (EU) 2016/679 | and which shall have central | personal data in the EES, each |
| responsibility for the processing of | and which shall have central | responsibility for the processing of | Member State shall designate the |
| data by this Member State. Each | responsibility for the processing of | data by this Member State. Each | authority which is to be considered |
| Member State shall communicate the | data by this Member State. Each | Member State shall communicate the | as controller in accordance with |
| details of this authority to the | Member State shall communicate the | details of this authority to the | Article 4(7) of <i>Regulation (EU</i>) |
| Commission. | details of this authority to the | Commission. | 2016/679 and which shall have |
| Each Member State shall ensure that | Commission. | Each Member State shall ensure that | central responsibility for the |
| the data recorded in the EES is | Each Member State shall ensure that | the data recorded in the EES is | processing of data by this Member |
| processed lawfully, and in particular | the data <i>collected and</i> recorded in | processed lawfully, and in particular | State. Each Member State shall |
| that only duly authorised staff have | the EES is processed lawfully, and in | that only duly authorised staff have | communicate the details of this |
| access to the data for the | particular that only duly authorised | access to the data for the | authority to the Commission. |
| performance of their tasks. The | staff have access to the data for the | performance of their tasks. The | Each Member State shall ensure that |
| Member State responsible shall | performance of their tasks. The | Member State responsible shall | the data recorded in the EES is |
| ensure in particular that: | Member State responsible shall | ensure in particular that: | processed lawfully, and in particular |
| | ensure in particular that: | | 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 | (a) the data are collected lawfully | (a) the data are collected lawfully | |
| and in full respect of the human | and in full respect of the human | and in full respect of the human | |
| dignity of the third country national; | dignity of the third country national; | dignity of the third country national; | |
| (b) the data are registered lawfully into the EES; | (b) the data are registered lawfully into the EES; | (b) the data are registered lawfully into the EES; | |
| (c) the data are accurate and up-to- | (c) the data are accurate and up-to- | (c) the data are accurate and up-to- | |
| date when they are transmitted to the | date when they are transmitted to the | date when they are transmitted to the | |
| EES. | EES. | EES. | |
| 2. eu-LISA shall ensure that the | 2. eu-LISA shall ensure that the | 2. eu-LISA shall ensure that the | |
| EES is operated in accordance with | EES is operated in accordance with | EES is operated in accordance with | |
| this Regulation and the | this Regulation and the | this Regulation and the | |
| implementing acts referred to in | implementing acts referred to in | implementing acts referred to in | |
| Article 33. In particular, eu-LISA shall: | Article 33. In particular, eu-LISA shall: | 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 | (a) take the necessary measures to ensure the security of the Central System and the <i>secure and encrypted</i> 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 | (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 | Provisionally agreed: (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 | (b) ensure that only duly | (b) ensure that only duly | |
| authorised staff has access to data | authorised staff has access to data | authorised staff has access to data | |
| processed in the EES. | processed in the EES. | processed in the EES. | |
| 3. eu-LISA shall inform the | 3. eu-LISA shall inform the | 3. eu-LISA shall inform the | |
| European Parliament, the Council | European Parliament, the Council | European Parliament, the Council | |
| and the Commission as well as the | and the Commission as well as the | and the Commission as well as the | |
| European Data Protection Supervisor | European Data Protection Supervisor | European Data Protection Supervisor | |



| of the management it tales are and the | of the macauna it tales and the | of the measures it takes are set to | |
|--|--|--|---|
| of the measures it takes pursuant to | of the measures it takes pursuant to | of the measures it takes pursuant to | |
| paragraph 2 for the start of | paragraph 2 for the start of | paragraph 2 for the start of | |
| operations of the EES. | operations of the EES. | operations of the EES. | |
| Article 37 | Article 37 | Article 37 | |
| Keeping of data in national files and | Keeping of data in national files and | Keeping of data in national files and | |
| National Entry Exit systems | National Entry Exit systems | National Entry Exit systems | |
| 1. A Member State may keep the | 1. Data retrieved from the EES | 1. A Member State may keep the | <i>EP amendment reflects Art. 13(1) of</i> |
| alphanumeric data which that | may be kept in national files only | alphanumeric data which that | the VIS Decision. |
| Member State entered into the EES, | where necessary in an individual | Member State entered into the EES, | |
| in accordance with the purposes of | case, in accordance with the | in accordance with the purposes of | LIBE proposal: |
| the EES in its national files and | purpose of the EES and relevant | the EES in its national files or | 1. A Member State may keep the |
| national entry exit system in full | Union law, in particular on data | national entry and exit system in full | alphanumeric data which that |
| respect of Union Law. | protection, and for no longer than | respect of Union Law. | Member State entered into the EES, |
| | necessary in that individual case. A | | in accordance with the purposes of |
| | Member State may keep the | | the EES in its national files or |
| | alphanumeric data which that | | national entry / <u>and</u> exit system <i>or</i> |
| | Member State entered into the EES, | | equivalent national files in full |
| | in accordance with the purposes of | | respect of Union Law. Data |
| | the EES in its national files and | | retrieved from the EES for the |
| | | | ů ů |
| | national entry exit system in full | | purposes of the EES may be kept in |
| | respect of Union Law. | | national files only where necessary |
| | | | in an individual case, in accordance |
| | | | with the purpose of the EES and |
| | | | relevant Union law, in particular on |
| | | | data protection, and for no longer |
| | | | than necessary in that individual |
| | | | case. |
| 2. The data shall not be kept in | 2. The data shall not be kept in | 2. The data shall not be kept in | LIBE proposal: |
| the national files or national | the national files or national | [] national files or national | 2. The data shall not be kept in |
| entry/exit systems longer than it is | entry/exit systems <i>for</i> longer than | entry/exit systems longer than it is | the national files or national |
| kept in the EES. | strictly necessary for their | kept in the EES. | entry/exit systems, equivalent |
| | individual purposes and, in any | | national files or national files for |
| | event, for longer than they are kept | | longer than strictly necessary for |



| | in the EES. | | <i>their individual purposes and, in</i> <i>any event, for longer than they are</i> kept in the EES. |
|---|---|---|--|
| 3. Any use of data which does not | 3. Any use of data which does not | 3. Any use of data which does not | |
| comply with paragraph 1 shall be | comply with paragraph 1 shall be | comply with paragraph 1 shall be | |
| considered a misuse under the | considered a misuse under the | considered a misuse under the | |
| national law of each Member State | national law of each Member State | national law of each Member State | |
| as well as Union law. | as well as Union law. | as well as Union law. | |
| 4. This Article shall not be | 4. This Article shall not be | 4. This Article shall not be | |
| construed as requiring any technical | construed as requiring any technical | construed as requiring any technical | |
| adaptation of the EES. Member | adaptation of the EES. Member | adaptation of the EES. Member | |
| States may keep data in accordance | States may keep data in accordance | States may keep data in accordance | |
| with this Article at their own cost, | with this Article at their own cost, | with this Article at their own cost, | |
| risk and with their own technical | risk and with their own technical | risk and with their own technical | |
| means. | means. | means. | |
| Article 38 | Article 38 | Article 38 | Discussion on Article 38 & 38a-will |
| Communication of data to third | Communication of data to third | Communication of data to third | be taken up in COREPER of 24 |
| countries, international | countries, international | countries, international | May. |
| organisations and private parties | organisations and private parties | organisations and private parties | |
| 1. Data stored in the EES shall | 1. Data stored in the EES shall | 1. Data stored in the EES shall | |
| not be transferred or made available | not be transferred or made available | not be transferred or made available | |
| to a third country, to an international | to a third country, to an international | to a third country, to an international | |
| organisation or any private party. | organisation or any private party. | organisation or any private party. | |
| 2. By way of derogation from | 2. By way of derogation from | 2. By way of derogation from | |
| paragraph 1, the data referred to in | paragraph 1, the data referred to in | paragraph 1, the data referred to in | |
| Article 14(1)(a), (b) and (c) and | Article $14(1)(a)$, (b) and (c) and | Article 14(1)(a), (b), [] (c) and (f) | |
| Article 15(1) may be transferred or | Article 15(1) may be transferred or | and Article 15(1)(a), (b), and (c) may | |
| made available to a third country or | made available to a third country or | be transferred or made available by | |
| to an international organisation listed | to an international organisation listed | border check authorities or | |
| in the Annex in individual cases, if | in the Annex in individual cases, if | immigration authorities to a third | |
| necessary in order to prove the | necessary in order to prove the | country or to an international | |
| identity of third country nationals for | identity of third country nationals for | organisation listed in the Annex I in | |
| the purpose of return, only where the | the purpose of return, only where the | individual cases, if necessary in | |

| following conditions are satisfied: | following conditions are satisfied: | order to prove the identity of third | |
|--|--|--|--|
| Tono wing conditions are subside. | Tono wing conditions are subsided. | country nationals for the purpose of | |
| | | return, only where the following | |
| | | conditions are satisfied: | |
| (a) the Commission has adopted a | (a) the Commission has adopted a | (a) the Commission has adopted a | |
| decision on the adequate protection | decision on the adequate protection | decision on the adequate protection | |
| of personal data in that third country | of personal data in that third country | of personal data in that third country | |
| in accordance with Article 25(6) of | in accordance with Article $\frac{25(6)}{2}$ | in accordance with Article 25(6) of | |
| Directive 95/46/EC, or a readmission | 45(3) of Directive 95/46/EC | Directive 95/46/EC, or a readmission | |
| agreement is in force between the | <i>Regulation (EU) 2016/679</i> , or a | agreement or any other type of | |
| Community and that third country, or | readmission agreement is in force | similar arrangement is in force | |
| Article 26(1)(d) of Directive | between the Community Union and | between [] the European Union or | |
| | that third country, or Article 26(1)(d) | a Member State and that third | |
| 95/46/EC applies; | of Directive 95/46/EC applies; | $\frac{a \text{ Member State}}{country, or Article 26(1)(d) of}$ | |
| | or Directive 95/46/EC applies; | | |
| (h) the third constant of | | Directive 95/46/EC applies; | |
| (b) the third country or | (b) the third country or | (b) the Member State shall inform | |
| international organisation agrees to | international organisation <i>explicitly</i> | the third country or international | |
| use the data only for the purpose for | agrees to use the data <i>and is able to</i> | organisation of the obligation to use | |
| which they were provided; | guarantee that the data are used | the data only for purposes for which | |
| | only for the purpose for which they | they were provided; [] | |
| | were provided; | | |
| (c) the data are transferred or | (c) the data are transferred or | (c) the data are transferred or | |
| made available in accordance with | made available in accordance with | made available in accordance with | |
| the relevant provisions of Union law, | the relevant provisions of Union law, | the relevant provisions of Union law, | |
| in particular readmission agreements, | in particular <i>data protection and</i> | in particular readmission agreements | |
| and the national law of the Member | readmission agreements, and the | and transfer of personal data, and the | |
| State which transferred or made the | national law of the Member State | national law of the Member State | |
| data available, including the legal | which transferred or made the data | which transferred or made the data | |
| provisions relevant to data security | available, including the legal | available, including the legal | |
| and data protection; | provisions relevant to data security | provisions relevant to data security | |
| | and data protection; | and data protection; | |
| (d) the Member State which | (d) the Member State which | (d) [] | |
| entered the data in the EES has given | entered the data in the EES has given | | |



| its consent. | its consent and the individual | | |
|---|---|---|--|
| | concerned has been informed that | | |
| | his or her personal information may | | |
| | be shared with the authorities of a | | |
| | third country; and | | |
| | (da) a final decision ordering the | | |
| | return of the third-country national | | |
| | has been issued by the appropriate | | |
| | competent authority of the Member | | |
| | State in which the third-country | | |
| | national has been staying. | | |
| 3. Transfers of personal data to | 3. Transfers of personal data to | 3. Transfers of personal data to | |
| third countries or international | third countries or international | third countries or international | |
| | | | |
| organisations pursuant to paragraph | organisations pursuant to paragraph | organisations pursuant to paragraph | |
| 2 shall not prejudice the rights of | 2 shall not prejudice the rights of | 2 shall not prejudice the rights of | |
| applicants for and beneficiaries of | applicants for and beneficiaries of | applicants for and beneficiaries of | |
| international protection, in particular | international protection, in particular | international protection, in particular | |
| as regards non-refoulement. | as regards non-refoulement. | as regards non-refoulement. | |
| 4. Personal data obtained from | 4. Personal data obtained from | 4. Personal data obtained from | |
| the Central System by a Member | the Central System by a Member | the Central System by a Member | |
| State or by Europol for law | State or by Europol for law | State or by Europol for law | |
| enforcement purposes shall not be | enforcement purposes shall not be | enforcement purposes shall not be | |
| transferred or made available to any | transferred or made available to any | transferred or made available to any | |
| third country, international | third country, international | third country, international | |
| organisation or private entity | organisation or private entity | organisation or private entity | |
| established in or outside the Union. | established in or outside the Union. | established in or outside the Union. | |
| The prohibition shall also apply if | The prohibition shall also apply if | The prohibition shall also apply if | |
| those data are further processed at | those data are further processed at | those data are further processed at | |
| national level or between Member | national level or between Member | national level or between Member | |
| States within the meaning of Article | States within the meaning of Article | States within the meaning of Article | |
| 2(b) of Framework Decision | 2(b) of Framework Decision | 2(b) of Framework Decision | |
| 2008/977/JHA. | 2008/977/JHA pursuant to Directive | 2008/977/JHA. | |
| | (EU) 2016/680. | | |



| <u>4a.</u> <u>By way of derogation from</u> |
|---|
| paragraph 4, the data of third country |
| nationals subject to a visa |
| requirement referred to in Article |
| 14(1)(a), (b) and (c) $14(2)(a)$ and |
| (b), 14 (3) (a) and (b) and the data of |
| third country nationals exempt from |
| visa obligation referred to under |
| Articles $15(1)$ (a) $14(2)$ (a) and (b), |
| 14(3) (a) and (b) may be transferred |
| or made available by the designated |
| authority to a third country upon a |
| duly motivated request, only if the |
| following cumulative conditions are |
| met: |
| (a) in an exceptional case of |
| urgency, where there is an immediate |
| and serious threat of a terrorist |
| offence or other serious criminal |
| offences as defined respectively |
| under Article 3(1)(26) and (27) of |
| this Regulation, |
| (b) the transfer is carried out in |
| accordance with the applicable |
| conditions set under Framework |
| Decision 2008/977/JHA. |
| (c) the reciprocal provision of any |
| information on entry/exit records |
| held by the requesting third country |
| to the Member States operating the |
| EES is ensured. |
| Where a transfer is based on this |
| paragraph, such a transfer shall be |
| paragraph, such a transfer shan be |



| documented and the documentation |
|--|
| shall be made available to the |
| supervisory authority on request, |
| including the date and time of the |
| transfer, information about the |
| receiving competent authority, the |
| justification for the transfer and the |
| personal data transferred. |
| Article 38a |
| Conditions for communication of |
| data to designated authorities of a |
| Member State which does not yet |
| operate the EES and to designated |
| authorities of a Member State in |
| respect of which this Regulation does |
| not apply |
| 1. Article 38(4) and (4a) shall |
| apply <i>mutatis mutandis</i> to the |
| communication of data to the |
| designated authorities of a Member |
| State which does not yet operate the |
| EES and to the designated authorities |
| |
| of a Member State to which this |
| Regulation does not apply, upon a |
| duly motivated written or electronic |
| request, provided that the reciprocal |
| provision of any information on |
| entry/exit records held by the |
| requesting Member State to the |
| Member States operating the EES is |
| ensured. |

| Article 39 Data securityArticle 39 Data securityArticle 39 Data securityArticle 39 Data security1. 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.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.1. The Member State shall ensure the security of the data it receives from the EES.1. The Member State shall ensure the security of the data it receives from the EES.1. The Member State shall ensure the security of the data it receives from the EES.1. The Member State shall ensure the security of the data it receives from the EES.1. The 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:2. Each Member State shall, in relation to its national infrastructure necessary for border check, adopt the necessary measures, including a security plan and a business continuity and disaster recovery plan, in order to:Provisionally agreed: 2. Each Member State shall, in relation to its national infrastructure necessary for border check, adopt the necessary measures, including a security plan and a business continuity and disaster recovery plan, in order to: | | | | |
|---|---------------------------------------|--------------------------------------|---------------------------------------|--|
| Article 39 Data securityArticle 39 Data securityArticle 39 Data security1. 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.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.1. The Member State shall ensure the security of the data it receives from the EES.1. The 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: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:2. Each Member State shall, in relation to its national given the security plan and a business continuity and disaster recovery plan, in order to:2. Each Member State shall, in relation to its national given the security plan and a business continuity and disaster recovery plan, in order to:2. Each Member State shall, in relation to its national given the security plan and a business continuity and disaster recovery plan, in order to:2. Each Member State shall, in relation to its national given the security plan and a business | | | | |
| Article 39 Data securityArticle 39 Data securityArticle 39 Data security1. 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.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.1. The Member State responsible shall ensure the security of the data it receives from the EES.1. The 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: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:2. Each Member State shall, in relation to its national infrastructure necessary for border infrastructure adopt the necessary measures, including a security plan and a business continuity and disaster recovery plan, in order to: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:2. Each Member State shall, in relation to its national infrastructure including a security plan and a business | | | 1 1 | |
| Article 39 Data securityArticle 39 Data securityArticle 39 Data security1.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.1.The Member State shall ensure the security of the data it receives from the EES.1.The Member State shall ensure the security of the data it receives from the EES.1.The 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: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: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: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:Provisionally agreed. 2. | | | | |
| Article 39 Data securityArticle 39 Data securityArticle 39 Data security1. 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.1. The Member State responsible shall ensure the security of the data it receives from the EES.1. The Member State responsible shall ensure the security of the data it receives from the EES.1. The 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:2. Each Member State shall, in relation to its national border infrastructure adia a business continuity and disaster recovery plan, in order to:2. Each Member State shall, in relation to its national border infrastructure adia a business continuity and disaster recovery plan, in order to:2. Each Member State shall, in relation to its national border infrastructure necessary measures, including a security plan and a business2. Each Member State shall, in relation to its national border including a security plan and a business continuity and disaster recovery plan, in order to:2. Each Member to:2. Each Member State shall, in relation to its national [] infrastructure necessary measures, including a security plan and a business2. Each Member security plan and a business continuity and disaster2. Each Member security plan and a business | | | Article 39(1), Article 40(1) and (3), | |
| Article 39Article 39Article 39Data securityData securityData security1. 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.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.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.1. The Member State shall ensure the security of the data the Atta it receives from the EES.1. The Member State shall ensure the security of the data the Atta 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:2. Each Member State shall, in relation to its national border infrastructure necessary for border including a security plan and a business continuity and disaster recovery plan, in order to:Provisionally agreed: 2. Each Member State shall, in relation to its national infrastructure necessary for border including a security plan and a business | | | Article 43 and 52(4) shall apply | |
| Data securityData securityData security1. 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.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.1. The Member State 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.1. The Member State 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.1. The Member State 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.1. The 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:2. Each Member State shall, in relation to its national [] infrastructure necessary measures, including a security plan and a business continuity and disaster2. Each Member State shall, in relation to its national infrastructure necessary measures, including a security plan and a business continuity and disaster2. Each Member State shall, in <b< td=""><td></td><td></td><td>mutatis mutandis.</td><td></td></b<> | | | mutatis mutandis. | |
| 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.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.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.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.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.1.The Member State shall ensure the security of the data the National Uniform Interface. 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:1.The Member State responsible shall ensure the security of the data the National Uniform Interface. 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:1.The Member State responsib | Article 39 | Article <u>39</u> | Article 39 | |
| 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.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.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.shall ensure the security of the data the National Uniform Interface. Each Member State shall ensure the security of the data it receives from the EES.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: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: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:2.Each Member State shall, in relation to its national infrastructure necessary measures, including a security plan and a business continuity and disaster2.Each Member State shall, in relation to its national infrastructure necessary measures, including a security plan and a business continuity and disaster2.Each Member State | Data security | Data security | Data security | |
| 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.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.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.shall ensure the security of the data the National Uniform Interface. Each Member State shall ensure the security of the data it receives from the EES.shall ensure the security of the data it receives from the EES.shall ensure the security of the data it receives from the EES.shall ensure the security of the data it receives from the EES.shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES.Shall ensure the security of the data it receives from the EES. | 1. The Member State responsible | 1. The Member State responsible | 1. The Member State responsible | |
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| the EES.the EES.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: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:2. Each Member State shall, in relation to its national border infrastructure, adopt the necessary infrastructure, adopt the necessary measures, including a security plan and a business continuity and disaster recovery plan, in order to:2. Each Member State shall, in relation to its national [] infrastructure necessary for border including a security plan and a business continuity and disaster2. Each Member State shall, in relation to its national infrastructure necessary for border including a security plan and a business continuity and disaster | | | | |
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| measures, including a security plan and a business continuity and disaster recovery plan, in order to:measures, including a security plan and a business continuity and disaster recovery plan, in order to:check, adopt the necessary measures, including a security plan and a business continuity and disaster recovery plan, in order to:necessary for border check, adopt the necessary measures, business continuity and disaster | | | | |
| and a business continuity and disaster recovery plan, in order to:and a business continuity and disaster recovery plan, in order to:including a security plan and a business continuity and disasternecessary measures, including a security plan and a business | · • | | <i>y</i> | |
| disaster recovery plan, in order to: disaster recovery plan, in order to: business continuity and disaster security plan and a business | | · · · | | |
| | 5 | | C I | |
| $\Gamma = \Gamma =$ | disaster recovery plan, in order to. | disaster recovery plan, in order to. | • | |
| in order to: | | | recovery plan, in order to: | |
| | (a) abusically anota at data | (a) abusing the anote st data | (a) showing the state of data | III order to: |
| (a) physically protect data, including by making contingenery (a) physically protect data, | | | | |
| including by making contingency including by making contingency including by making contingency | | | | |
| plans for the protection of critical plans for the protection of critical plans for the protection of critical | 1 1 | | 1 1 | |
| infrastructure; infrastructure; infrastructure; | , | | , | |
| (b) deny unauthorised persons(b) deny unauthorised persons(b) deny unauthorised persons <i>Text supported by delegations:</i> | | · · · · · | · · | |
| access to national installations inaccess to data-processing equipmentaccess to national installations in(b)deny unauthorised persons | | | | |
| | | | | access to <i>data-processing equipment</i> |
| operations in accordance with the the Member State carries out operations in accordance with the <i>and</i> national installations in which | 1 | | 1 | |
| purposes of the EES; operations in accordance with the purposes of the EES; the Member State carries out | purposes of the EES; | 1 | purposes of the EES; | the Member State carries out |
| purposes of the EES; operations in accordance with the | | purposes of the EES: | | operations in accordance with the |



| | | | purposes of the EES; |
|--|--|--|--|
| (c) prevent the unauthorised reading, copying, modification or removal of data media; | (c) prevent the unauthorised reading, copying, modification or removal of data media; | (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; | (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data; | (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data; | |
| | (da) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment; | | <i>Text supported by delegations:</i> da) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment; |
| (e) prevent the unauthorised processing of data in the EES and any unauthorised modification or deletion of data processed in the EES; | (e) prevent the unauthorised processing of data in the EES and any unauthorised modification or deletion of data processed in the EES: | (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; | (f) ensure that persons authorised to access the EES have access only to the data covered by their access authorisation, by means of individual <i>and unique</i> user identities and confidential access modes only; | (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; | <i>Text supported by delegations:</i> f) ensure that persons authorised to access the EES have access only to the data covered by their access authorisation, by means of individual <i>and unique</i> 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 | (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 | (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 [] | Legal services of the institutions discussed the terminology regarding suvervisory authorities. Compromise proposal: (g) ensure that all authorities with a right of access to the EES create |

| supervisory authorities referred to in Article 49 and to the national supervisory authorities referred to in Article 52(2) without delay at their request; | supervisory authorities referred to in Article 49 and to the national supervisory authorities referred to in Article 52(2) without delay at their request; | supervisory authorities referred to in Article 49 and to the national supervisory authorities referred to in Article 52(2) without delay at their request; | profiles describing the functions and responsibilities of persons who are authorised to enter, amend, delete, consult and search the data and make their profiles available to the [] supervisory authorities 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; | (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment; | (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 | (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; (i) provent the unsutherized | (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 | |
| (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; | (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; | (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; | |
| | (ja) ensure that, in the event of an interruption, installed systems can be restored to normal operation; | | Aligned with EURODAC Proposal, new article 36. EP to revert back being that this paragraph refers to the Central System and therefore, it is not up to the MS to deal with. |



| | (jb) ensure reliability by making sure that any faults in the functioning of the EES are properly reported and that necessary technical measures are put in place to ensure that personal data can be restored in the event of corruption due to a malfunctioning of the system; | | Aligned with EURODAC Proposal, new article 36. However the sentence " and that necessary technical measures are put in place to ensure that personal data can be restored in the event of corruption due to a malfunctioning of the system" does not fit within the logic of this article because this is a task for eu-LISA and not for the MS. EP to revert. |
|---|--|--|--|
| (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. | (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. 2a. Member States shall inform eu-LISA of security incidents detected on their systems without prejudice to the notification and communication of a personal data breach pursuant to Article 33 of Regulation (EU) No 2016/679. eu-LISA shall inform the Member States in the event of a security incident on the EES Central System. Where a security incident leads to a personal data breach, the European Data Protection Supervisor shall also be informed. The Member States concerned, and | (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. | Delegations accepted to have a new article 39a on Security Incidents. New article inserted below. |

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| | eu-LISA shall collaborate in the | | |
|--|--|--|--|
| | event of a security incident. | | |
| 3. As regards the operation of the | 3. As regards the operation of the | 3. As regards the operation of the | |
| EES, eu-LISA shall take the | EES, eu-LISA shall take the | EES, eu-LISA shall take the | |
| necessary measures in order to | necessary measures in order to | necessary measures in order to | |
| achieve the objectives set out in | achieve the objectives set out in | achieve the objectives set out in | |
| paragraph 2 including the adoption | paragraph 2 including the adoption | paragraph 2 including the adoption | |
| of a security plan and a business | of a security plan and a business | of a security plan and a business | |
| continuity and disaster recovery plan. | continuity and disaster recovery plan. | continuity and disaster recovery plan. | |
| · · · · · | 3a. eu-LISA and the Member | · · · · · · · | Text accepted by delegations: |
| | States shall cooperate in order to | | 3a. eu-LISA and the Member States |
| | ensure a harmonised data security | | shall cooperate in order to ensure a |
| | approach based on a security risk | | harmonised data security approach |
| | management process encompassing | | based on a security risk management |
| | the entire EES as referred to in | | process encompassing the entire |
| | Article 6. | | EES. |
| | | | Text accepted by delegations: |
| | | | COM suggestion: new article 39a |
| | | | Article 39a |
| | | | Security incidents |
| | | | 1. Any event that has or may have |
| | | | an impact on the security of the EES |
| | | | and may cause damage or loss to |
| | | | EES data shall be considered to be a |
| | | | security incident, especially where |
| | | | <u>unauthorised</u> access to data may |
| | | | have occurred or where the |
| | | | availability, integrity and |
| | | | confidentiality of data has or may |
| | | | have been compromised. |
| | | | 2. Security incidents shall be |
| | | | managed to ensure a quick, effective |
| | | | and proper response. |
| L | 1 | 1 | min Freher response. |



| | 3. Without prejudice to the |
|--|--|
| | notification and communication of |
| | a personal data breach pursuant to |
| | Article 33 of Regulation (EU) No |
| | 2016/679 and/ or to Article 30 of |
| | Directive (EU) No 2016/680, |
| | Member States shall notify the |
| | Commission, eu-LISA and the |
| | European Data Protection Supervisor |
| | of security incidents. In the event of |
| | a security incident on the EES |
| | Central System, Eu-LISA shall |
| | notify the Commission and the |
| | European data Protection Supervisor. |
| | 4. Information regarding a |
| | security incident that has or may |
| | have an impact on the operation of |
| | the EES or on the availability, |
| | integrity and confidentiality of the |
| | data, shall be provided to the |
| | Member States and reported in |
| | compliance with the incident |
| | management plan to be provided by |
| | eu-LISA. |
| | 5. The Member States |
| | concerned and eu-LISA shall |
| | collaborate in the event of a |
| | security incident. |

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| Article 40 | Article 40 | Article 40 | |
|--|--|--|--|
| Liability | Liability | Liability | |
| 1. Any person or Member State | 1. Any person or Member State | 1. Any person or Member State | Text supported by delegations: |
| that has suffered damage as a result | that has suffered <i>material or</i> | that has suffered damage as a result | Any person or Member State that has |
| of an unlawful processing operation | <i>immaterial</i> damage as a result of an | of an unlawful processing operation | suffered material or immaterial |
| or any act incompatible with this | unlawful processing operation or any | or any act incompatible with this | damage as a result of an unlawful |
| Regulation shall be entitled to | act incompatible with this Regulation | Regulation shall be entitled to | processing operation or any act |
| receive compensation from the | shall be entitled to receive | receive compensation from the | incompatible with this Regulation |
| Member State which is responsible | compensation from the Member | Member State which is responsible | shall be entitled to receive |
| for the damage suffered. That | State which is responsible for the | for the damage suffered. That | compensation from the Member |
| Member State shall be exempted | damage suffered. That Member State | Member State shall be exempted | State which is responsible for the |
| from its liability, in whole or in part, | shall be exempted from its liability, | from its liability, in whole or in part, | damage suffered. That Member State |
| if it proves that it is not responsible | in whole or in part, if it proves that it | if it proves that it is not responsible | shall be exempted from its liability, |
| for the event which gave rise to the | is not <i>in any way</i> responsible for the | for the event which gave rise to the | in whole or in part, if it proves that it |
| damage. | event which gave rise to the damage. | damage. | is not <i>in any way</i> responsible for the |
| | | | event which gave rise to the damage. |
| 2. If any failure of a Member | 2. If any failure of a Member | 2. If any failure of a Member | |
| State to comply with its obligations | State to comply with its obligations | State to comply with its obligations | |
| under this Regulation causes damage | under this Regulation causes damage | under this Regulation causes damage | |
| to the EES, that Member State shall | to the EES, that Member State shall | to the EES, that Member State shall | |
| be held liable for such damage, | be held liable for such damage, | be held liable for such damage, | |
| unless and insofar as eu-LISA or | unless and insofar as eu-LISA or | unless and insofar as eu-LISA or | |
| another Member State participating | another Member State participating | another Member State participating | |
| in the EES failed to take reasonable | in the EES failed to take reasonable | in the EES failed to take reasonable | |
| measures to prevent the damage from | measures to prevent the damage from | measures to prevent the damage from | |
| occurring or to minimise its impact. | occurring or to minimise its impact. | occurring or to minimise its impact. | |
| 3. Claims for compensation | 3. Claims for compensation | 3. Claims for compensation | |
| against a Member State for the | against a Member State for the | against a Member State for the | |
| damage referred to in paragraphs 1 | damage referred to in paragraphs 1 | damage referred to in paragraphs 1 | |
| and 2 shall be governed by the | and 2 shall be governed by the | and 2 shall be governed by the | |
| provisions of national law of the | provisions of national law of the | provisions of national law of the | |
| defendant Member State. | defendant Member State. | defendant Member State. | |



| Article 41 | Article 41 | Article 41 | Provisionally agreed: |
|---|---|---|--|
| Keeping of records | Keeping of records | Keeping of records <u>by eu-LISA and</u> | Article 41 |
| | | <u>Member States</u> | Keeping of logs by eu-LISA and |
| | | | Member States |
| | | | (the use of the term "logs" vs the |
| | | | term "records" is being checked) |
| 1. eu-LISA shall keep records of | 1. eu-LISA shall keep records of | 1. eu-LISA shall keep records of | Provisionally agreed: |
| all data processing operations within | all data processing operations within | all data processing operations within | 1. eu-LISA shall keep logs of all |
| the EES. Those records shall show | the EES. Those records shall show | the EES. Those records shall show | data processing operations within the |
| the purpose of access referred to in | the purpose of access referred to in | the purpose of access referred to in | EES. Those logs shall show the |
| Article 8, the date and time, the data | Article 8, the date and time, the data | Article 8, the date and time, the data | purpose of access referred to in |
| transmitted as referred to in Article | transmitted as referred to in Article | transmitted as referred to in Article | Article 8, the date and time, the data |
| 14 to 17, the data used for | 14 to 17, the data used for | 14 to 17, the data used for | transmitted as referred to in Article |
| interrogation as referred to in | interrogation as referred to in | interrogation as referred to in | 14 to 17, the data used for |
| Articles 21 to 25 and the name of the | Articles 21 to 25 and the name of the | Articles 21 to 25 and the name of the | interrogation as referred to in |
| authority entering or retrieving the | authority entering or retrieving the | authority entering or retrieving the | Articles 21 to 25 and the name of the |
| data. In addition, each Member State | data. In addition, each Member State | data. [] | authority entering or retrieving the |
| shall keep records of the staff duly | shall keep records of the staff duly | | data. |
| authorised to enter or retrieve the | authorised to enter or retrieve the | | |
| data. 2. For the consultations listed in | Aata. 2. For the consultations listed in | 2. For the consultations listed in | |
| 2. For the consultations listed in Article 7, a record of each data | 2. For the consultations listed in Article 7, a record of each data | 2. For the consultations listed in Article 7, a record of each data | |
| processing operation carried out | processing operation carried out | processing operation carried out | |
| within the EES and the VIS shall be | within the EES and the VIS shall be | within the EES and the VIS shall be | |
| kept in accordance with this Article | kept in accordance with this Article | kept in accordance with this Article | |
| and Article 34 of Regulation (EC) | and Article 34 of Regulation (EC) | and Article 34 of Regulation (EC) | |
| 767/2008. eu-LISA shall ensure in | 767/2008. eu-LISA shall ensure in | 767/2008. eu-LISA shall ensure in | |
| particular that the relevant records of | particular that the relevant records of | particular that the relevant records of | |
| the concerned data processing | the concerned data processing | the concerned data processing | |
| operations are kept when the | operations are kept when the | operations are kept when the | |
| competent authorities launch a data | competent authorities launch a data | competent authorities launch a data | |
| processing operation directly from | processing operation directly from | processing operation directly from | |
| one system to the other. | one system to the other. | one system to the other. | |



| 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. | 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 <i>pursuant to Article 39</i> . 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, <i>if-unless</i> they are not -required for monitoring procedures which have already begun. | <u>2a.</u> In addition to paragraphs 1 and <u>2. each Member State shall keep</u> <u>records of the staff duly authorised to</u> <u>enter or retrieve the data.</u> 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. | <i>Text accepted by delegations:</i> 2a. In addition to paragraphs 1 and 2, each Member State shall keep logs of the staff duly authorised to process the data. <i>Text accepted by delegations:</i> Such records may be used only for the data protection monitoring of the admissibility of data processing as well as to ensure data security pursuant to Article 39 . 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-unless they are not-required for monitoring procedures which have already begun. |
|---|---|--|--|
| Article 42 Self-monitoring | Article 42 Self-monitoring | 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. | 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. | 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 <u>and</u> <u>national supervisory authority</u> . <u>Member States shall ensure that the</u> <u>technical performance of the border</u> <u>control infrastructure, availability,</u> <u>duration of the border checks and the</u> | The Presidency invites delegations to consider the deletion of the Council addition under this article as it is not in line with the logic of the article. The Council addition is not about data protection but is rather linked to SCHEVAL. Text supported by delegations: Member States shall ensure that each authority entitled to access EES data |

| | | data quality in algority maniton 1 to | tolves the measures recessory to |
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| | | data quality is closely monitored to | takes the measures necessary to |
| | | ensure that each Member State meets | comply with this Regulation and |
| | | the overall requirements for the | cooperates, where necessary, with |
| | | proper functioning of the EES and an | the supervisory authorities. - |
| | | efficient border check process. | |
| Article 43 | Article 43 | Article 43 | |
| Penalties | Penalties | Penalties | |
| Member States shall take the | Member States shall take the | Member States shall take the | In accordance with the General Data |
| necessary measures to ensure that | necessary measures to ensure that | necessary measures to ensure that | Protection Regulation, Member |
| any use of data entered in the EES in | any use of data entered in the EES in | any use of data entered in the EES in | States are obliged to have both |
| contravention of this Regulation is | contravention of this Regulation is | contravention of this Regulation is | aadministrative and criminal |
| punishable by penalties, including | punishable by penalties, including | punishable by penalties [] in | penalties. |
| administrative and criminal penalties | administrative and criminal penalties | accordance with national law, that | |
| in accordance with national law, that | in accordance with national law, that | are effective, proportionate and | |
| are effective, proportionate and | are effective, proportionate and | dissuasive. | |
| dissuasive. | dissuasive. | | |
| | Article 43a | | ED insists on installing this Astisla |
| | Data Protection | | <i>EP insists on including this Article,</i> |
| | | | which mirrors Art. 49 of the ETIAS |
| | | | proposal. |
| | | | The Presidency suggests accepting |
| | | | the EP addition; however, reference |
| | | | to Art. 5 should be replaced by |
| | | | reference to Art. 1(2) |
| | 1. Regulation (EC) No 45/2001 | | |
| | shall apply to the processing of | | |
| | personal data by eu-LISA on the | | |
| | basis of this Regulation. | | |
| | 2. Regulation (EU) 2016/679 | | |
| | shall apply to the processing of | | |
| | personal data by national | | |
| | authorities on the basis of this | | |
| | Regulation, with the exception of | | |



| | processing for the purposes referred to in points (j) to (l) of Article 5. 3. Directive (EU) 2016/680 shall apply to the processing of personal data by Member States' designated authorities on the basis of this Regulation for the purposes referred to in points (j) to (l) of Article 5. 4. Regulation (EU) 2016/794 shall apply to the processing of personal data by Europol on the | | |
|--|--|--|--|
| CHAPTER VII | basis of this Regulation. CHAPTER VII | CHAPTER VII | Delas stiens about durate durate most of |
| CHAPTER VII Rights and supervision on data | Rights and supervision on data | CHAPTER VII Rights and supervision on data | Delegations should note that most of the proposed changes under this |
| protection | protection | protection | Chapter are for the purpose of |
| | | | aligning the text with the General Data Protecton Regulation |
| Article 44 | Article 44 | Article 44 | |
| Right of information | Right of information | Right of information | |
| 1. Without prejudice to the right | 1. Without prejudice to the right | 1. Without prejudice to the right | Counter-proposal by LIBE |
| of information in Article 10 of | of information in Article 10-13 of | of information in Article 10 of | Committee: |
| Directive 95/46/EC, third country | Directive 95/46/EC Regulation (EU) | Directive 95/46/EC, third country | 1. Without prejudice to the right |
| nationals whose data are recorded in | 2016/679, third country nationals | nationals whose data are recorded in | of information in Article 13 of |
| the EES shall be informed by the | whose data are recorded in the EES | the EES shall be informed by the | Regulation (EU) 2016/679, third |
| Member State responsible in writing | shall be informed by the Member | Member State responsible in writing | country nationals whose data are to |
| of the following: | State responsible in writing <i>and in a concise, transparent, intelligible and</i> | or in another effective way of the following: | be recorded in the EES shall be informed by the Member State |
| | <i>easily accessible form</i> of the | lonowing. | responsible in writing and in a |
| | following: | | concise, transparent, intelligible and |
| | ionowing. | | easily accessible form of the |
| | | | following: |

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| ANNEX | | | |



| (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; | (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; | (a) an explanation using clear and plain language, of the fact that the EES may be <u>used for the purposes of</u> <u>border management</u> , as well as the <u>fact that it may be</u> accessed by the Member States and Europol for law enforcement purposes; | <i>Text accepted by delegations:</i> 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; | (b) the obligation on visa exempt third country nationals to have their fingerprints taken; | (b) the obligation on visa exempt third country nationals <u>and on</u> <u>holders of a Facilitated Transit</u> <u>Document (FTD) issued in</u> <u>accordance with Regulation (EC)</u> <u>693/2003</u> to have their fingerprints taken; | Provisionally agreed text: b) the obligation on visa exempt third country nationals and on holders of a Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003 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; | (c) the obligation on all third country nationals subject to registration in the EES to have their facial image recorded; | (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; | (d) that the collection of the data is mandatory for the examination of entry conditions; | (d) that the collection of the data is mandatory for the examination of entry conditions; | |
| | | (d1) <u>an explanation that entry shall</u> <u>be refused if a third country national</u> <u>refuses to provide the requested</u> <u>biometric data for registration,</u> <u>verification and/or identification in</u> <u>the EES;</u> | Provisionally agreed text: (d1) an explanation that entry shall be refused if a third country national refuses to provide the requested biometric data for registration, verification and/or identification in the EES; |



| | (d2) the right to ask border check | To revert back on it once a |
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| | authorities during border checks at | compromise on this issue under Art. |
| | entry about the maximum remaining | 10 is reached. |
| | number of days of his/her authorised | |
| | stay, | |
| | (d3) the fact that if the maximum | The Council amendments on this |
| | duration of authorised stay is | point are reflected on point (ea) of |
| | exceeded, he/she will be identified as | the EP text. Presidency encouarges |
| | an overstayer, as well as the | to accept the EP text under point |
| | consequences thereof, | (ea).Structure of this article accepted |
| | consequences mereor, | • |
| | | by the delegations. Deletion of $(d3)$ |
| | | accepted. |
| | (d4) the retention period for the | The Council amendments on this |
| | storage of data, | point are reflected on point (eb) of |
| | | the EP text. Presidency encourages |
| | | to accept the EP text under point |
| | | (eb). Structure of this article |
| | | accpeted by the delegations. Deletion |
| | | of (d4) accepted. |
| | | COM drafting suggestion linked with |
| | | art 38(2)(d) |
| | | (d5) an explanation of the fact that |
| | | personal data stored in the EES may |
| | | be transferred or made available to a |
| | | |
| | | third country or an international |
| | | organisation listed in Annex I for |
| | | the purposes of return |
| | | |

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| ANNEX | DG D 1 A | LIMITE | EN |

| (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. | (e) the <i>existence of the</i> right of <i>to</i> <i>request from the controller</i> access to data relating to them, the right to request that inaccurate data relating to them be corrected <i>rectified and</i> <i>that incomplete personal data</i> <i>relating to them be completed</i> or that unlawfully processed <i>personal</i> data <i>relating to concerning</i> them be deleted, including <i>erased or</i> <i>restricted, as well as</i> the right to receive information on the procedures for exercising those rights, and-including the contact details of the <i>controller and the</i> national supervisory authorities, or of the European Data Protection Supervisor if applicable, which shall hear claims-complaints concerning the protection of personal data. | (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 <u>supervisory authorities</u> , national supervisory authorities, or of the European Data Protection Supervisor if applicable, which shall hear claims concerning the protection of personal data. | The EP amendments reflect the General Data Protection Regulation. Presidency encourages to accept these changes. Provisionally agreed text: (e) the existence of the right of-to request from the controller access to data relating to them, the right to request that inaccurate data relating to them be rectified and that incomplete personal data relating to them be completed or that unlawfully processed personal data concerning them be erased or restricted, as well as the right to receive information on the procedures for exercising those rights, including the contact details of the controller and the national supervisory authorities, or of the European Data Protection Supervisor |
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| | the protection of personal data. | | if applicable, which shall hear complaints concerning the protection of personal data. |
| | (ea) an explanation of the fact that EES data shall be accessed for border management and facilitation purposes, specifying that overstays will automatically lead to the addition of the third-country national's data to a list, as well as the possible consequences of overstaying; | | <i>Provisionally agreed</i> : (ea) an explanation of the fact that EES data shall be accessed for border management and facilitation purposes, specifying that overstays will automatically lead to the addition of the third-country national's data to a list, as well as the possible consequences of overstaying; |



| | (eb) the data retention period set for entry and exit records and for individual files pursuant to Article 31; (ec) the right for overstayers to have their personal data erased where they provide evidence that they exceeded the authorised duration of stay due to | | <i>Provisionally agreed</i>: (eb) the data retention period set for entry and exit records and for individual files pursuant to Article 31; <i>Provisionally agreed text based on</i> <i>Art. 32(5)</i>: (ec) the right for overstayers to have their personal data erased from the list referred to in Article 11(2) and |
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| | unforeseeable and serious events; and (ed) the right to lodge a complaint to the supervisory authority. | | rectified on the EES, where they provide evidence that they exceeded the authorised duration of stay due to unforeseeable and serious events; <i>Provisionally agreed text:</i> (ed) the right to lodge a complaint |
| 2. The information provided in paragraph 1 of this Article shall be provided at the time when the individual file of the person concerned is being created in accordance with Articles 14, 15 or 16. | 2 The information provided in paragraph 1 of this Article shall be provided by means of the leaflet referred to in paragraph 3 or by any other appropriate means which ensure that the third-country national concerned is informed of his or her rights at the time when the individual file of that person concerned is being created in accordance with Articles 14, 15 or 16. | 2. The information provided in paragraph 1 of this Article shall be provided <u>in writing</u> , or <u>in another</u> <u>effective way</u> , at the time when the individual file of the person concerned is being created in accordance with Articles 14,15 or 16. | to the supervisory authority. <i>Counter-proposal by LIBE</i> <i>Committee:</i> The information provided in paragraph 1 of this Article shall be provided in <i>a concise, transparent,</i> <i>intelligible and easily accessible</i> <i>form in</i> writing, <i>by any appropriate</i> <i>means, which ensures that the third</i> <i>country national is informed of his</i> <i>or her rights,</i> at the time when the individual file of the person concerned is being created in accordance with Articles 14,15 or 16. |

| | | | referred to paragraph 1 of this Article. |
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| 3. A common leaflet and a website containing at least the 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). The leaflet and the content of the website shall be clear and simple and available in a linguistic version the person concerned understands or is reasonably supposed to understand. The 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. 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. | 3. A common leaflet and a website containing at least the 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). The leaflet and the content of the website shall be clear and simple, <i>drafted in</i> <i>a concise, transparent, intelligible</i> <i>and easily accessible form</i> and available in a linguistic version the person concerned understands or is reasonably supposed to understand. The 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. 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 <i>and of</i> <i>the data protection officer</i> and <i>the</i> mational-supervisory authorities. | 3. [] <u>The</u> 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) <u>and</u> [] the content [] shall be clear and [] <u>plain language</u> and available in a linguistic version the person concerned understands or is reasonably supposed to understand. <u>The Commission shall provide the common information in a template</u> . <u>This template could in particular take the form of a poster</u> . The <u>template</u> [] shall be established in such a manner as to enable Member States to complete them with additional Member State specific information shall include at least the rights of the data subject, the possibility of assistance by the [] supervisory authorities, as well as contact details of the office of the controller and [] supervisory authorities. | The second sub- paragraph of para 3 lays out the details of the form of the template and the specific information that it should contain. This wording is more fit to be in a recital. The recital should make a reference to the form the information will be given in (template, leaflet, etc.). Text accepted by delegations: The 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 content shall be clear and plain language and available in a linguistic version the person concerned understands or is reasonably supposed to understand. The Commission shall provide the common information in a template. The template shall be established in such a manner as to enable Member States to complete them with additional Member State specific information. 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 |



| information campaign informing the public about the objectives, the data stored, the authorities having access and the rights of persons.information campaign informing the public and, in particular, third country nationals about the objectives, the data stored, the authorities having access and the rights of persons. Such information campaigns shall be conducted regularly.information campaign informing the public and, in particular, third country nationals about the objectives, the data stored, the authorities having access and the rights of persons. Such information campaigns shall be conducted regularly.information campaign informing the public and, in particular, third country nationals about the objectives, the data stored, the authorities having access and the rights of persons. Such information campaigns shall be conducted regularly.information campaign informing the public and, in particular, third country nationals about the objectives, the data stored, the authorities having access and the rights of persons. Such information campaigns shall be conducted regularly.Article 46 Right of access, correction and deletionArticle 46 Right of access, correction and deletion and of restriction of the processing of personal dataArticle 46 Right of access, correction and deletionProvisionally agreed on the basis of the General Data Protection Regulation: Right of access to rectification, erasure and of restriction of the processing of personal data1.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 shall have the right to obtain the data relating to him or her recorded in the shall have the right | | | | well as contact details of the office of the controller <i>and of the data</i> <i>protection officer</i> and <i>the</i> supervisory authorities. |
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| 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.The Commission shall, in | Article 45 | Article 45 | Article 45 | |
| cooperation with the national supervisory authorities and the European Data Protectioncooperation with the national supervisory authorities and the European Data Protectioncooperation with the supervisory authorities and national supervisory authorities and national supervisor, accompany the EES operation with an information campaign informing the public abut the objectives, the data stored, the authorities having access and the rights of persons.cooperation with an information campaign informing the public abut the objectives, the data stored, the authorities having access and the rights of persons.Cooperation with an information campaign informing the public abut the objectives, the data stored, the authorities having access and the rights of persons.The Commission shall, in cooperation with an information campaign informing the public abut the objectives, the data stored, the authorities having access and the rights of persons.The Commission shall, in cooperation with an information campaign informing the public abut the objectives, the data stored, the authorities having access and the rights of persons.The Commission shall, in cooperation with an information campaign informing the public abut the objectives, the data stored, the authorities having access and the rights of persons.The Commission shall, in cooperation with an information campaign informing the public abut the objectives, the data stored, the authorities having access and the rights of access, correction and deletionThe commission shall, in cooperation with an information campaign informing the public abut the objectives, the data stored, the authorities having access and the rights of access, correction and deletionThe reasonal public authorities having | Information campaign | Information campaign | Information campaign | |
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| to obtain the data relating to him or her recorded in the EES and of the Member State which transmitted it to | | · · · | | |
| her recorded in the EES and of the Member State which transmitted it toshall have the right to obtain the data relating to him or her recorded in thecompetent authority of any Member State.MS has to reply to the request of the third country national. The | | 0 | | 0 |
| Member State which transmitted it to relating to him or her recorded in the State. third country national. The | e | 5 5 | | |
| | | e | | 1 0 1 0 |
| the EES | the EES. | EES and of the Member State which | state. | compromise proposal puts forward |



| | transmitted it to the EES and may request that data relating to him or her which are inaccurate be rectified or completed and that data recorded unlawfully be erased. The Member State responsible shall reply to such requests within two | | an overall time limit of 45 days (30 days for the authorities to check the accuracy of the data; 7 days for MS to which the request has been made to contact MS responsible; the remaining days to contact the third country national). |
|--------------------------------------|---|---|--|
| | months of receipt of the request. | | <i>Compromise text:</i> The requests of third country nationals related to the rights set out in Articles 15, 16, 17 and 18 of Regulation (EU) 2016/679 may be addressed to the competent authority of any Member State. The Member State responsible [or the Member State to whom the request has been made] shall reply to such requests within 45 days of receipt of the request. |
| 2. If a request for correction or | 2. If a request for correction or | 2. If a request [] is made to a | Presidency encourages to accept the |
| deletion is made to a Member State | deletion rectification, completion or | Member State other than the | new compromise timelimits which |
| other than the Member State | erasure of personal data or | Member State responsible, the | meet EP's and Council's positions: |
| responsible, the authorities of the | restriction of the processing of | authorities of the Member State to | 2. If a request for rectification or |
| Member State to which the request | <i>personal data</i> is made to a Member | which the request has been made | erasure of personal data or |
| has been made shall check the | State other than the Member State | shall check the accuracy of the data | restriction of the processing of |
| accuracy of the data and the | responsible, the authorities of the | and the lawfulness of the data | personal data is made to a Member |
| lawfulness of the data processing in | Member State to which the request | processing in the EES within a time | State other than the Member State |
| the EES within a time limit of one | has been made shall check the | limit of one month if that check can | responsible, the authorities of the |
| month if that check can be done | accuracy of the data and the | be done without consulting the | Member State to which the request has been made shall check the |
| without consulting the Member State | lawfulness of the data processing in the EES within a time limit of one | Member State responsible. Otherwise the Member State other | |
| responsible. Otherwise the Member | | | accuracy of the data and the |
| State other than the Member State | month 14 days if that check can be | than the Member State responsible | lawfulness of the data processing in |



| 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. | 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 <i>seven</i> 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 14 days. | 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. | the EES within a time limit of 1 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 7 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 1 month . |
| 3. In the event that data recorded | 3. In the event that data recorded | 3. In the event that data recorded | Provisionally agreed compromise |
| in the EES are factually inaccurate or | in the EES are factually inaccurate, | in the EES are factually inaccurate or | text: |
| have been recorded unlawfully, the | <i>incomplete</i> or have been recorded | have been recorded unlawfully, the | 3. In the event that data recorded |
| Member State responsible or, where | unlawfully, the Member State | Member State responsible or, where | in the EES are factually inaccurate, |
| applicable, the Member State to | responsible or, where applicable, the | applicable, the Member State to | incomplete or have been recorded |
| which the request has been made | Member State to which the request | which the request has been made | unlawfully, the Member State |
| shall correct or delete the data in | has been made shall <i>rectify</i> , | shall correct or delete the data in | responsible or, where applicable, the |
| accordance with Article 32. The | complete or erase the personal data | accordance with Article 32. The | Member State to which the request |
| Member State responsible or, where | or restrict the processing of personal | Member State responsible or, where | has been made shall rectify or erase |
| applicable, the Member State to | correct or delete the data in | applicable, the Member State to | the personal data or restrict the |
| which the request has been made | accordance with Article 32. The | which the request has been made | processing of personal data in |
| shall confirm in writing to the person | Member State responsible or, where | shall confirm in writing to the person | accordance with Article 32. The |
| concerned without delay that it has | applicable, the Member State to | concerned without delay that it has | Member State responsible or, where |
| taken action to correct or delete data | which the request has been made | taken action to correct or delete data | applicable, the Member State to |
| relating to him. | shall confirm in writing to the person | relating to him. | which the request has been made |
| In the event that visa-related data | concerned without delay that it has | In the event that visa-related data | shall confirm in writing to the person |
| recorded in the EES are factually | taken action to correct or delete | recorded in the EES are factually | concerned without delay that it has |
| incorrect or have been recorded | rectify, complete or erase the | incorrect or have been recorded | taken action to rectify or erase the |
| unlawfully, the Member State | personal data concerning relating to | unlawfully, the Member State | personal data concerning him or |
| responsible or, where applicable, the | him or her or to restrict the | responsible or, where applicable, the | her or to restrict the processing of |



| Mambar State to which the request | processing of such personal data | Mombar state to which the request | such norsonal date |
|--|--|--|--|
| Member State to which the request has been made shall first check the | <i>processing of such personal data</i> . In the event that visa-related data | Member state to which the request has been made shall first check the | such personal data. In the event that visa-related data |
| | | | |
| accuracy of these data against the | recorded in the EES are factually | accuracy of these data against the | recorded in the EES are factually |
| VIS and if necessary will amend | incorrect, <i>incomplete</i> or have been | VIS and if necessary will amend | incorrect, incomplete or have been |
| them in the EES. Should the data | recorded unlawfully, the Member | them in the EES. Should the data | recorded unlawfully, the Member |
| recorded in the VIS be the same as in | State responsible or, where | recorded in the VIS be the same as in | State responsible or, where |
| the EES, the Member State | applicable, the Member State to | the EES, the Member State | applicable, the Member State to |
| responsible or the Member State to | which the request has been made | responsible or, where applicable, the | which the request has been made |
| which the request was made, shall | shall first check the accuracy of these | Member state to which the request | shall first check the accuracy of these |
| contact the authorities of the Member | data against the VIS and if necessary | [] <u>has been</u> made, shall contact the | data against the VIS and if necessary |
| State responsible for entering these | will amend them in the EES. Should | authorities of the Member State | will amend them in the EES. Should |
| data in the VIS within a time limit of | the data recorded in the VIS be the | responsible for entering these data in | the data recorded in the VIS be the |
| 14 days. The Member State | same as in the EES, the Member | the VIS within a time limit of 14 | same as in the EES, the Member |
| responsible for entering the data in | State responsible or the Member | days. The Member State responsible | State responsible or, where |
| the VIS shall check the accuracy of | State to which the request was made, | for entering the data in the VIS shall | applicable, the Member State to |
| the visa related data and the | shall contact the authorities of the | check the accuracy of the visa related | which the request has been made, |
| lawfulness of its processing in the | Member State responsible for | data and the lawfulness of its | shall contact the authorities of the |
| EES within a time limit of one month | entering these data in the VIS within | processing in the EES within a time | Member State responsible for |
| and inform the Member State | a time limit of 14 seven days. The | limit of one month and inform the | entering these data in the VIS within |
| responsible or the Member State to | Member State responsible for | Member State <u>concerned</u> [] which | a time limit of seven days. The |
| which the request has been made | entering the data in the VIS shall | shall, if necessary, amend or erase | Member State responsible for |
| which shall, if necessary, amend or | check the accuracy of the visa related | them without delay from the EES | entering the data in the VIS shall |
| erase them without delay from the | data and the lawfulness of its | and, where applicable, from the list | check the accuracy of the visa related |
| EES and, where applicable, from the | processing in the EES within a time | of persons referred to in Article | data and the lawfulness of its |
| list of persons referred to in Article | limit of one month and inform the | 11(2). | processing in the EES within a time |
| 11(2). | Member State responsible or the | | limit of one month and inform the |
| | Member State to which the request | | Member State concerned which |
| | has been made which shall, if | | shall, if necessary, rectify, complete |
| | necessary, amend or rectify, | | or erase the personal data |
| | <i>complete or</i> erase them the personal | | concerning him or her or restrict |
| | data concerning him or her or | | the processing of such data without |
| | restrict the processing of such data | | delay from the EES and, where |
| | without delay from the EES and, | | applicable, from the list of persons |
| | manout dotay from the EES and, | | application, from the list of persons |



| | where applicable, from the list of persons referred to in Article 11(2). | | referred to in Article 11(2). |
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| 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. | 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, <i>incomplete</i> 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 rectify, complete <i>or erase the personal</i> data relating to him <i>or her or restrict the processing</i> | 4. If [] 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. | Provisionally agreed : 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 rectify, complete or erase the personal data relating to him or heror restrict the |
| 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. This shall include information on how to bring an action or a complaint before the competent authorities or courts of | of such data. 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 | 5. The Member State <u>which has</u> <u>adopted the administrative decision</u> <u>pursuant to paragraph 4</u> [] shall also provide the person concerned with information explaining the steps which he can take if he does not accept the explanation. [] 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 | processing of such data. Provisionally agreed: 5. The Member State which has adopted the administrative decision pursuant to paragraph 4 shall also provide the person concerned with information explaining the steps which he can take if he does not accept the explanation. 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 |



| 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. | 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. | supervisory authorities, that is available in accordance with the laws, regulations and procedures of that Member State. | assistance, including from the supervisory authorities <i>established in</i> <i>accordance with Article 51(1) of</i> <i>Regulation (EU) 2016/679.</i> , that is available in accordance with the laws, regulations and procedures of that Member State. |
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| 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 t the exercise of the rights referred to in paragraphs 1 and 2 and shall be erased immediately afterwards. | 6. Any request made pursuant to paragraphs 1 and 2 shall contain the necessary minimum information necessary to identify the person concerned., including fingerprints. Fingerprints may be requested for this purpose only in duly justified cases where there are substantive doubts as to the identity of the applicant. 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. | 6. Any request made pursuant to paragraphs 1 and 2 shall contain the necessary information to identify the person concerned []. 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. | Presidency encourages delegations to accept the compromise text: ³⁰ Any request made pursuant to paragraphs 1 and 2 shall contain the minimum information necessary to identify the person concerned. Fingerprints may be requested for this purpose only in duly justified cases where there are substantive doubts as to the identity of the applicant. 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 | 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 | 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 [] supervisory | Provisionally agreed compromise text (subject to clarification on the competent authority of which MS): 7. Whenever a person, made a request in accordance with paragraph 1, the competent authority shall keep a record in the form of a written document that such a request was made and how it was |

³⁰ Reserve: AT, HU.



| authorities without delay. | authorities without delay. within seven days. A copy of that document shall also be issued to the person concerned. | authorities without delay. | addressed and by which authority and shall make that document available to the supervisory authorities authority established in accordance with Article 51(1) of Regulation (EU) 2016/679, within seven days. |
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| Article 47 Cooperation to ensure the rights on data protection | Article 47 Cooperation to ensure the rights on data protection | 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). | 1. The competent authorities of the Member States shall cooperate actively to enforce the rights laid down in Article $46(3)$, (4) and (5). | 1. The competent authorities of the Member States shall cooperate actively to enforce the rights laid down in Article 46(3), (4) and (5). | <i>Provisionally agreed:</i> 1. The competent authorities of the Member States shall cooperate actively to enforce the rights laid down in Article 46. |
| 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. | 2. In each Member State, the supervisory authority shall, upon request, assist and advise the person concerned data subject in exercising his or her right to correct or delete rectify, complete or erase personal data relating to him or her or to restrict such data in accordance with Article 28(4) of Directive 95/46/EC Regulation (EU) 2016/679. 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. | 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. | The text is aligned with the General Data Protection Regulation. Provisionally agreed: 2. In each Member State, the supervisory authority established in accordance with Article 51(1) of Regulation (EU) 2016/679, shall, upon request, assist and advise the data subject in exercising his or her right to rectify, complete or erase personal data relating to him or her or to restrict such data in accordance with Regulation (EU) 2016/679. In order to achieve those aims, the supervisory authority of the Member State responsible which transmitted the data and the supervisory |

| Article 48 | Article 48 | Article 48 | authority of the Member State to which the request has been made shall cooperate with each other. |
|---|--|---|---|
| Remedies | Remedies | Remedies | |
| 1. In each Member State any | 1. In Without prejudice to | 1. In each Member State any | The inclusion of ' judicial action' |
| person shall have the right to bring | Articles 77 to 82 of Regulation (EU) | person shall have the right to bring | is in line with compromise text under |
| an action or a complaint before the | 2016/679, in each Member State any | an action or a complaint [] in the | article 32(5). Presidency encouraged |
| competent authorities or courts of | person shall have the right to bring | Member State which refused the | delegations to accept the following |
| that Member State which refused the | an action or a complaint before the | right of access to or the right of | compromise proposal: |
| right of access to or the right of | competent authorities or courts of | correction or deletion of data relating | 1. In each Member State any |
| correction or deletion of data relating | that Member State which refused the | to him, provided for in Article 46 | person shall have the right to bring |
| to him, provided for in Article 46. | right of access to or the right of | <u>and 47(2).</u> | an action, including a judicial |
| | rectification, completion or erasure | | action, or a complaint, in the |
| | correction or deletion of data relating | | Member State which refused the |
| | to him, provided for in Article 46. | | right of access to or the right of |
| | The right to bring such an action or | | correction or deletion of data relating |
| | complaint shall also apply in cases | | to him, provided for in Article 46 |
| | where requests for access, | | and 47(2). The right to bring such |
| | correction or deletion were not | | an action or complaint shall also |
| | answered within the deadlines | | apply in cases where requests for |
| | provided for in Article 46 or were | | access, correction or deletion were not answered within the deadlines |
| | never dealt with by the data controller. | | |
| | controuer. | | provided for in Article 46 or were never dealt with by the data |
| | | | controller. |
| 2. The assistance of the | 2. The assistance of the | 2. The assistance of the | The assistance of the supervisory |
| supervisory authorities shall remain | supervisory authorities shall remain | supervisory authorities shall remain | <i>authority</i> established in accordance |
| available throughout the | available throughout the | available throughout the | with Article 51(1) of Regulation |
| proceedings. | proceedings. | proceedings. | (EU) 2016/679 shall remain |
| | | | available throughout the proceedings |

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| Article 49 | Article 49 | Article 49 | Provisionally agreed: |
|--|--|--|--|
| Supervision by the national | Supervision by the national | Supervision by the [] supervisory | Article 49 |
| supervisory authority | supervisory authority | authority | Supervision by the 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. | 1. Each Member State shall ensure that the national supervisory authority or authorities designated pursuant to Article 28(1) 51(1) of Directive 95/46/EC Regulation (EU) 2016/679 shall independently monitor the lawfulness of the processing of personal data referred to in Chapters II, III and V of this Regulation Articles 13 to 19 by the Member State concerned, including their transmission to and from the EES. | 1. Each Member State shall ensure that the [] 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. | Provisionally agreed compromise text except text in [] brackets: 1. Each Member State shall ensure that the national supervisory authority established in accordance with Article 51(1) of Regulation (EU) 2016/679 or authorities designated pursuant to 51(1) of Regulation (EU) 2016/679 shall independently monitor the lawfulness of the processing of personal data referred to in Chapters II, III, V and VI of this Regulation |
| 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. | 2. The supervisory authority <i>or</i> <i>authorities</i> shall ensure that an audit of the data processing operations in the National System <i>national border</i> <i>infrastructure</i> is carried out in accordance with relevant international auditing standards at least every four <i>two</i> years. | 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 <u>EES</u> . | by the Member State concerned, including their transmission to and from the EES. The reference to 'National System' should read 'national border infrastructure' because there is no national system on which the auditing of the data processing operations will be done. The EP insist that the auditing should be done within a shorter timelimit, namely 2 years. Could delegations agree with the following compromise text: 2. The supervisory authority [or authorities] The supervisory |

| 3. Member States shall ensure that their supervisory authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation. | 3. Member States shall ensure that their <i>independent</i> supervisory authority <i>or authorities have</i> sufficient resources to fulfil the tasks entrusted to <i>them</i> under this Regulation. | 3. Member States shall ensure that their supervisory authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation. | authority <i>referred to in paragraph 1</i> shall ensure that an audit of the data processing operations in the national border infrastructure is carried out in accordance with relevant international auditing standards at least every two years <u>from the start</u> of operations of the EES. <i>Delegations want to stick to 4 years</i> . <i>This paragraph has been merged</i> <i>with EP para (5a). Provisionally</i> <i>agreed compromise text:</i> 3. Member States shall ensure that their supervisory authority [or authorities] have referred to in <i>paragraph 1 has</i> sufficient resources to fulfil the tasks entrusted to them under this Regulation <u>and has access</u> <u>to advice from persons with</u> <u>sufficient knowledge of biometric</u> data. |
|---|--|---|--|
| 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 | deleted | 4. [] | Deletion provisionally agreed. |

| Commission. | | | |
|---|---|--|---|
| 5. Each Member State shall | 5. Each Member State shall | 5. Each Member State shall | Provisionally agreed: |
| supply any information requested by | supply any information requested by | supply any information requested by | 5. Each Member State shall |
| the supervisory authorities and shall, | the supervisory authorities and shall, | the supervisory authorities and shall, | supply any information requested by |
| in particular, provide them with | in particular, provide them with | in particular, provide them with | the supervisory authority referred to |
| information on the activities carried | information on the activities carried | information on the activities carried | <i>in paragraph 1</i> and shall, in |
| out in accordance with Articles 35, | out in accordance with Articles 35, | out in accordance with Articles 35, | particular, provide them with |
| 36(1) and 39. Each Member State | 36(1) and 39. Each Member State | 36(1) and 39. Each Member State | information on the activities carried |
| shall grant the supervisory | shall grant the supervisory | shall grant the supervisory | out in accordance with Articles 35, |
| authorities access to their records | authorities access to their records | authorities access to their records | 36(1) and 39. Each Member State |
| pursuant to Article 30 and allow | pursuant to Article 41 and allow | pursuant to Article $[\dots] \underline{41}$ and allow | shall grant the supervisory |
| them access at all times to all their | them access at all times to all their | them access at all times to all their | authorities authority access to their |
| EES related premises. | EES related premises. | EES related premises. | records pursuant to Article 41 and |
| | | | allow them access at all times to all |
| | | | their EES related premises. |
| | 5a. Each Member State shall | | Merged with paragraph (3) above. |
| | ensure that its supervisory authority | | |
| | or authorities have access to advice | | |
| | from persons with sufficient | | |
| | knowledge of biometric data. | | |
| Article 50 | Article 50 | Article 50 | Provisionally agreed: |
| Supervision by the European Data | Supervision by the European Data | Supervision by the European Data | Article 50 |
| Protection Supervisor | Protection Supervisor | Protection Supervisor | Supervision by the European Data |
| | | | Protection Supervisor |
| 1. The European Data Protection | 1. The European Data Protection | 1. The European Data Protection | Text accepted by delegations: |
| Supervisor shall ensure that the | Supervisor shall ensure that be | Supervisor shall ensure that the | 1. The European Data Protection |
| personal data processing activities of | <i>responsible for monitoring</i> that the | personal data processing activities of | Supervisor shall be responsible for |
| eu-LISA concerning the EES are carried out in accordance with this | personal data processing activities of | eu-LISA concerning the EES are carried out in accordance with this | monitoring the personal data |
| Regulation. | eu-LISA concerning the EES <i>and for ensuring that such activities</i> are | | processing activities of eu-LISA concerning the EES and for |
| Kegulation. | carried out in accordance with this | Regulation. | ensuring that such activities are |
| | Regulation (<i>EC</i>) No 45/2001 and | | carried out in accordance with |
| | with this Regulation. | | Regulation (EC) No 45/2001 and |
| | wini inis Reguinion. | | Regulation (12C) 110 45/2001 and |

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| | | | with this Regulation. |
|---|---|---|--|
| 2. The European Data Protection Supervisor shall ensure that an audit | 2. The European Data Protection Supervisor shall ensure that an audit | 2. The European Data Protection Supervisor shall ensure that an audit | In line with the comments made under article 49(2), the EP said that |
| of the Agency's personal data | of the Agency's <i>eu-LISA</i> 's personal | of the Agency's personal data | the auditing should be done every 2 |
| processing activities is carried out in | data processing activities is carried | processing activities is carried out in | years. Also, the EP said that there |
| accordance with relevant | out in accordance with relevant | accordance with relevant | should be a reference to 'eu-LISA' |
| international auditing standards at | international auditing standards at | international auditing standards at | and not 'the Agency' as we should |
| least every four years. A report of | least every four two years. A report | least every four years. A report of | refer to this Agency with its name. |
| that audit shall be sent to the | of that audit shall be sent to the | that audit shall be sent to the | Provisionally agreed except text in [] |
| European Parliament, the Council, eu-LISA, the Commission and the | European Parliament, the Council, | European Parliament, the Council, | brackets and subject to agreement on |
| national supervisory authorities. eu- | eu-LISA, the Commission, <i>eu-LISA</i> and the national supervisory | eu-LISA, the Commission, [] the supervisory authorities and "the" | Article 49(2) with regard to the 2 years: |
| LISA shall be given an opportunity | authorities. eu-LISA shall be given | national supervisory authorities. eu- | 2. The European Data Protection |
| to make comments before the report | an opportunity to make comments | LISA shall be given an opportunity | Supervisor shall ensure that an audit |
| is adopted. | before the report is adopted. | to make comments before the report | of eu-LISA 's personal data |
| - | | is adopted. | processing activities is carried out in |
| | | | accordance with relevant |
| | | | international auditing standards at |
| | | | least every two years. A report of |
| | | | that audit shall be sent to the |
| | | | European Parliament, the Council, , the Commission, eu-LISA and the |
| | | | supervisory authorities. eu-LISA |
| | | | shall be given an opportunity to |
| | | | make comments before the report is |
| | | | adopted. |
| 3. eu-LISA shall supply | 3. eu-LISA shall supply | 3. eu-LISA shall supply | |
| information requested by the | information requested by the | information requested by the | |
| European Data Protection | European Data Protection | European Data Protection | |
| Supervisor, give him access to all | Supervisor, give him access to all | Supervisor, give him access to all | |
| documents and to its records referred | documents and to its records referred | documents and to its records referred | |
| to in Article 41 and allow him access | to in Article 41 and allow him access | to in Article 41 and allow him access | |
| to all its premises at any time. | to all its premises at any time. | to all its premises at any time. | |



| Article 51 | Article 51 | Article 51 | To revert back on Supervisory |
|---|--|--|--|
| Cooperation between national | Cooperation between national | Cooperation <u>among</u> [] <u>supervisory</u> | Authority |
| supervisory authorities and the | supervisory authorities and the | authorities, national supervisory | Article 51 |
| European Data Protection | European Data Protection | authorities and the European Data | Cooperation between supervisory |
| Supervisor | Supervisor | Protection Supervisor | authorities and the European Data |
| | | - | Protection Supervisor |
| 1. The national supervisory | 1. The national supervisory | 1. The <u>supervisory authorities</u> , | Provisionally agreed: |
| authorities and the European Data | authorities and the European Data | national supervisory authorities and | 1. The supervisory authorities |
| Protection Supervisor shall actively | Protection Supervisor shall, each | the European Data Protection | referred to in Article 49, the |
| cooperate within the framework of | acting within the scope of their | Supervisor shall actively cooperate | Supervisory authorities referred to in |
| their responsibilities and shall ensure | respective competences, cooperate | within the framework of their | Article 52(2), national supervisory |
| coordinated supervision of the EES | actively cooperate within in the | responsibilities and shall ensure | authorities and the European Data |
| and the National Systems. | framework of their responsibilities | coordinated supervision of the EES | Protection Supervisor shall, each |
| | and shall ensure coordinated | and the National Systems. | acting within the scope of their |
| | supervision of the EES and the | | respective competences, cooperate |
| | National Systems national border | | actively in the framework of their |
| | infrastructures. | | responsibilities and shall ensure |
| | (Horizontal change to change | | coordinated supervision of the EES |
| | "national systems" to "national | | and the national border |
| | border infrastructures" with the | | infrastructures. |
| | exception of Article 58.) | | |
| 2. They shall exchange relevant | 2. They shall exchange relevant | 2. They shall exchange relevant | Provisionally agreed text: |
| information, assist each other in | information, assist each other in | information, assist each other in | 2. They shall exchange relevant |
| carrying out audits and inspections, | carrying out audits and inspections, | carrying out audits and inspections, | information, assist each other in |
| examine difficulties over the | examine difficulties over the | examine difficulties over the | carrying out audits and inspections, |
| interpretation or application of this | interpretation or application of this | interpretation or application of this | examine difficulties over the |
| Regulation, assess problems in the | Regulation, assess problems in the | Regulation, assess problems in the | interpretation or application of this |
| exercise of independent supervision | exercise of independent supervision | exercise of independent supervision | Regulation, assess problems in the |
| or the exercise of the rights of the | or <i>in</i> the exercise of the rights of the | or the exercise of the rights of the | exercise of independent supervision |
| data subject, draw up harmonised | data subject, draw up harmonised | data subject, draw up harmonised | or <i>in</i> the exercise of the rights of the |
| proposals for joint solutions to any | proposals for joint solutions to any | proposals for joint solutions to any | data subject, draw up harmonised |
| problems and promote awareness of | problems and promote awareness of | problems and promote awareness of | proposals for joint solutions to any |
| data protection rights, as necessary. | data protection rights, as necessary. | data protection rights, as necessary. | 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. | 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. | 3. The supervisory authorities, <u>national supervisory authorities</u> 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. | 'European Data Protection Supervisor' should be changed to 'European Data Protection Board' Commission proposal: 3. The supervisory authorities and the European Data Protection Supervisor shall meet for that purpose at least twice a year within the framework of the European Data Protection Board established by Regulation (EU) 2016/679. The costs and servicing of these meetings shall be borne by the Board established by Regulation (EU) 2016/679. 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. | 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. | 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 <u>and national</u> <u>supervisory authority</u> of that Member State. | <i>Commission proposal:</i> A joint report of activities shall be sent by <i>the European Data</i> <i>Protection Board established by</i> <i>Regulation (EU) 2016/679 to</i> 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 authorities of that Member State. |

| Article 52 | Article 52 | Article 52 | Compromise text: |
|---|--|---|---|
| Protection of personal data for law | Protection of personal data for law | Protection of personal data for law | Article 52 |
| enforcement access | enforcement access | enforcement access | Protection of personal data <i>accessed</i> |
| , , | | 5 | in accordance with Chapter IV |
| 1. Each Member State shall ensure that the provisions adopted under national law implementing | 1. Each Member State shall ensure that the provisions adopted under national law implementing | 1. Each Member State shall ensure that the provisions adopted under national law implementing | Provisionally agreed1.Each Member State shallensure that the provisions adopted |
| Framework Decision 2008/977/JHA | Framework Decision 2008/977/JHA | Framework Decision 2008/977/JHA | under national law implementing |
| are also applicable to the access to | <i>Directive (EU) 2016/680</i> are also | are also applicable to the access to | Directive (EU) 2016/680 are also |
| EES by its national authorities in line with Article 1(2). | applicable to the access to EES by its national authorities in line with Article 1(2). | EES by its national authorities in line with Article 1(2). | 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. | 2. The monitoring of the lawfulness of the access to personal data by the Member States for the purposes listed in Article 1(2) 5(1a) 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 Directive (EU) 2016/680. | 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. | Provisionally agreed compromise text: 2. The monitoring of the lawfulness of the access to personal data by the Member States in accordance with Chapter IV of this Regulation, including their transmission to and from the EES, shall be carried out by the national supervisory authorities designated pursuant to Directive (EU) 2016/680 authority established in accordance with Article 41(1) of Directive (EU) 2016/680. Article 49(3) and (5) applies accordingly. |
| 3. The processing of personal | 3. The processing of personal | 3. The processing of personal | Provisionally agreed: |
| data by Europol shall be carried out | data by Europol pursuant to this | data by Europol shall be carried out | 3. The processing of personal |
| in accordance with Decision | <i>Regulation</i> shall be carried out in | in accordance with Decision | data by Europol pursuant to this |
| 2009/371/JHA and shall be | accordance with Decision | 2009/371/JHA and shall be | Regulation shall be carried out in |
| supervised by an independent | 2009/371/JHA Regulation (EU) | supervised by an independent | accordance with Regulation (EU) |

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| 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. | 2016/794 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 the European Data Protection Supervisor. | 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. | 2016/794 and shall be supervised by the European Data Protection Supervisor. |
|---|---|---|---|
| 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. | 4. Personal data accessed in the EES for the purposes laid down in Article $\frac{1(2)}{5(1a)}$ 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. | 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. | Provisionally agreed compromise text: 4. Personal data accessed in the EES in accordance with Chapter IV 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 | 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, <i>including for the</i> <i>purpose of maintaining records in</i> | 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 | EP withdrew its amendment. |



| 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. | order to prepare the annual reports referred to in Article 64(8). 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 | 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. | |
|---|--|---|--|
| | requested by a Member State or by | | |
| Article 53 | Europol. | Article 53 | |
| Article 53 Logging and documentation | Article <u>53</u> Logging and documentation | Article 53 Logging and documentation | |
| Logging and documentation 1. Each Member State and | 1. Each Member State and | 1. Each Member State and | Provisionally agreed: |
| Europol shall ensure that all data | Europol shall ensure that all data | Europol shall ensure that all data | 1. Each Member State and |
| processing operations resulting from | processing operations resulting from | processing operations resulting from | Europol shall ensure that all data |
| requests to access to EES data for the | requests to access to EES data for the | requests to access to EES data for the | processing operations resulting from |
| purposes laid down in Article 1(2) | purposes laid down in Article $\frac{1}{2}$ | purposes laid down in Article 1(2) | requests to access to EES data in |
| are logged or documented for the | 5(1a) are logged or documented for | are logged or documented for the | accordance with Chapter IV are |
| purposes of checking the | the purposes of checking the | purposes of checking the | logged or documented for the |
| admissibility of the request, | admissibility of the request, | admissibility of the request, | purposes of checking the |
| monitoring the lawfulness of the data | monitoring the lawfulness of the data | monitoring the lawfulness of the data | admissibility of the request, |
| processing and data integrity and | processing and data integrity and | processing and data integrity and | monitoring the lawfulness of the data |
| security, and self-monitoring. | security, and self-monitoring. | security, and self-monitoring. | processing and data integrity and security, and self-monitoring. |
| 2. The log or documentation shall | 2. The log or documentation shall | 2. The log or documentation shall | Provisionally agreed: |
| show: | show, <i>in all cases</i> : | show: | 2. The log or documentation shall |
| | | | show, in all cases: |
| (a) the exact purpose of the | (a) the exact purpose of the | (a) the exact purpose of the | |
| request for access to EES data, | request for access to EES data, | request for access to EES data, | |
| including the terrorist offence or | including the terrorist offence or | including the terrorist offence or | |
| other serious criminal offence | other serious criminal offence | other serious criminal offence | |

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| <u>entral</u> |
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| EU) |
| nark of the |
| e search |
| ered the |
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| 3. Logs and documentation shall | 3. Logs and documentation shall | 3. Logs and documentation shall | Provisionally agreed: |
|--|---------------------------------------|--|---------------------------------------|
| be used only for monitoring the | be used only for monitoring the | be used only for monitoring the | 3. Logs and documentation shall |
| lawfulness of data processing and for | lawfulness of data processing and for | lawfulness of data processing and for | be used only for monitoring the |
| ensuring data integrity and security. | ensuring data integrity and security. | ensuring data integrity and security. | lawfulness of data processing and for |
| Only logs containing non-personal | Only logs containing non-personal | Only logs containing non-personal | ensuring data integrity and security. |
| data may be used for the monitoring | which do not contain personal data | data may be used for the monitoring | Only logs which do not contain |
| and evaluation referred to in Article | may be used for the monitoring and | and evaluation referred to in Article | personal data may be used for the |
| 64. The competent national | evaluation referred to in Article 64. | 64. The competent national | monitoring and evaluation referred to |
| supervisory authorities responsible | The competent national supervisory | supervisory authorities responsible | in Article 64. The competent |
| for checking the admissibility of the | authorities responsible for checking | for checking the admissibility of the | national supervisory authorities |
| request and monitoring the | the admissibility of the request and | request and monitoring the | The supervisory authority is |
| lawfulness of the data processing and | monitoring the lawfulness of the data | lawfulness of the data processing and | responsible for checking the |
| data integrity and security shall have | processing and data integrity and | data integrity and security shall have | admissibility of the request and |
| access to those logs at their request | security shall have access to those | access to those logs at their request | monitoring the lawfulness of the data |
| for the purpose of fulfilling their | these logs at their request for the | for the purpose of fulfilling their | processing and data integrity and |
| duties. | purpose of fulfilling their duties. | duties. | security shall have access to these |
| | | | logs at their request for the purpose |
| | | | of fulfilling their duties. |



| CHAPTER VIII | CHAPTER VIII | CHAPTER VIII | |
|---------------------------------------|---------------------------------------|--|--------------------------------------|
| Amendments to other Union | Amendments to other Union | Amendments to other Union | |
| instruments | instruments | instruments | |
| Article 54 | Article 54 | Article 54 | |
| Amendment to the Convention | Amendment to the Convention | Amendment to the Convention | |
| implementing the Schengen | implementing the Schengen | implementing the Schengen | |
| Agreement | Agreement | Agreement | |
| In Article 20, of the Convention | In Article 20, of the Convention | In Article 20, of the Convention | |
| implementing the Schengen | implementing the Schengen | implementing the Schengen | |
| Agreement, paragraph 2 is replaced | Agreement, paragraph 2 is replaced | Agreement, paragraph 2 is replaced | |
| by the following: | by the following: | by the following: | |
| '2. Paragraph 1 shall not affect each | '2. Paragraph 1 shall not affect each | "2. Paragraph 1 shall not affect each | Bilateral agreements will be tackled |
| Contracting Party's right to extend | Contracting Party's right to extend | Contracting Party's right to extend | at Political Trilogue. |
| beyond 90 days an alien's stay in its | beyond 90 days an alien's stay in its | beyond 90 days <u>in any 180-day</u> | |
| territory in exceptional | territory in exceptional | period an alien's stay in its territory | |
| circumstances'. | circumstances'. | | |
| | | <u>a)</u> in exceptional circumstances <u>or</u> | |
| | | b) in accordance with a bilateral | |
| | | agreement concluded before the | |
| | | entry into force of this Convention | |
| | | and notified to the Commission in | |
| | | accordance with the last | |
| | | subparagraph of this paragraph. | |
| | | <u>2a.</u> <u>The stay of an alien in the</u> | |
| | | territory of a Contracting Party may | |
| | | be extended in accordance with a | |
| | | bilateral agreement pursuant to | |
| | | paragraph 2(b), upon request of the | |
| | | alien and lodged with the competent | |
| | | authorities of that Contracting Party | |
| | | upon entry or during the stay of the | |
| | | alien at the latest on the last working | |
| | | day of his/her 90-day stay in any | |



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| <u>180-day period.</u> |
|---|
| In case the alien has not lodged a |
| request during the 90-day stay in any |
| 180-day period, his/her stay may be |
| extended based on a bilateral |
| agreement concluded by a |
| Contracting Party and his/her stay |
| beyond the 90-day stay in any 180- |
| day period preceding that extension |
| may be presumed lawful by the |
| competent authorities of that |
| Contracting Party provided that that |
| alien presents credible evidence |
| which proves that during that time |
| he/she has stayed only at the territory |
| of that Contracting party. |
| 2b. In case where the stay is |
| extended pursuant to paragraph 2, |
| the competent authorities of that |
| Contracting Party shall enter the data |
| related to the extension in the latest |
| relevant entry/exit record in |
| accordance with Article 17 of the |
| Regulation establishing the |
| Entry/Exit system. |
| 2c. The alien shall be authorised to |
| stay only in the territory of that |
| Contracting Party and exit at the |
| external borders of that Contracting |
| party. |
| The competent authority that has |
| extended the stay shall inform the |
| • |
| alien concerned that the extension of |



| | | stay is authorised only in the territory | |
|--------------------------------|--------------------------------|--|-------------------------------------|
| | | of that Contracting party and he/she | |
| | | shall exit at the external border of | |
| | | that Contracting party. | |
| | | 2d. The Contracting Parties shall | |
| | | notify to the Commission within | |
| | | three months after entry into force of | |
| | | the Regulation establishing the | |
| | | Entry/Exit System the text of their | |
| | | relevant applicable bilateral | |
| | | agreements pursuant to paragraph | |
| | | 2(b). If the Contracting party ceases | |
| | | to apply any of those bilateral | |
| | | agreements it shall notify the | |
| | | Commission thereof. The | |
| | | Commission shall publish the | |
| | | information in the Official Journal of | |
| | | the European Union." | |
| Article 55 | Article 55 | Article 55 | |
| Amendments to Regulation (EC) | Amendments to Regulation (EC) | Amendments to Regulation (EC) | |
| 767/2008 concerning the Visa | 767/2008 concerning the Visa | 767/2008 concerning the Visa | |
| Information System | | Information System | |
| <u>v</u> v | Information System | | |
| Regulation (EU) No 767/2008 is | Regulation (EU) No 767/2008 is | Regulation (EU) No 767/2008 is | |
| amended as follows: | amended as follows: | amended as follows: | |
| | | (0) In Article 10(1) the following | Provisionally agreed: |
| | | indents are [] added: | (0) In Article 10(1) the following |
| | | | indents are added: |
| | | (dd) if applicable, the information | Provisionally agreed: |
| | | indicating that the visa has been | (dd) if applicable, the information |
| | | issued with limited territorial | indicating that the visa has been |
| | | validity, on the basis of Article | issued with limited territorial |
| | | 25(1)(b) of the Regulation (EC) | validity, on the basis of Article |
| | | <u>810/2009.</u> | 25(1)(b) of the Regulation (EC) |



| | | | 810/2009. |
|---|--|---|---|
| | | (1) if applicable, the status of the person indicating that the third country national is member of the family of a Union citizen to whom the Directive 2004/38/EC applies or of a third country national enjoying the right of free movement under Union law. | Provisionally agreed: (1) if applicable, the status of the person indicating that the third country national is member of the family of a Union citizen to whom the Directive 2004/38/EC applies or of a third country national enjoying the right of free movement under |
| (1) In Article 13 the following paragraph is added: | In Article 13 the following paragraph is added: | (1) In Article 13 the following paragraph is added: | Union law. |
| "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 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 | "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 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 | "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 <u>automatically</u> 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 <u>and refusal of entry data of third</u> 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] *." | Provisionally agreed : 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 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 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] *. |
| establishing an Entry/Exit System | establishing an Entry/Exit System | * Regulation No XXX of the | * Regulation No XXX of the |





| (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] | (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] | Euopean Parliament and the Council establishing an Entry/Exit System (EES) to register entry and exit data <u>and refusal of entry data</u> 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] | European Parliament and the Council establishing an Entry/Exit System (EES) to register entry and exit data <u>and refusal of entry data</u> 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: | (2) In Article 14 the following paragraph is added: | (2) In Article 14 the following paragraph is added: | |
| "3. The visa authority which has | "3. The visa authority which has | "3. The visa authority which has | |
| taken a decision to extend the period | taken a decision to extend the period | taken a decision to extend the period | |
| of validity and/or the duration of stay of an issued visa shall immediately | of validity and/or the duration of stay | of validity and/or the duration of stay of an issued visa shall immediately | |
| retrieve and export from the VIS into | of an issued visa shall immediately retrieve and export from the VIS into | retrieve and export from the VIS into | |
| the EES the data listed under | the EES the data listed under | the EES the data listed under | |
| paragraph 1 of Article 17 of | paragraph 1 of Article 17 of | paragraph 1 of Article 17 of | |
| [Regulation establishing an | [Regulation establishing an | [Regulation establishing an | |
| Entry/Exit System (EES)]." | Entry/Exit System (EES)]." | Entry/Exit System (EES)]." | |
| (3) Article 15 is amended as | (3) Article 15 is amended as | (3) Article 15 is amended as | |
| follows: | follows: | follows: | |
| (a) points (b) and (c) of paragraph | (a) points (b) and (c) of paragraph | (a) points (b) and (c) of paragraph | |
| 2 are replaced by the following: | 2 are replaced by the following: | 2 are replaced by the following: | |
| "(b) surname (family name), first | "(b) surname (family name), first | "(b) surname (family name), first | |
| name(s) (given names); date of birth, | name(s) (given names); date of birth, | name(s) (given names); date of birth, | |
| nationality; sex; | nationality; sex; | nationality; sex; | |
| (c) type and number of the travel | (c) type and number of the travel | (c) type and number of the travel | |
| document; three letter code of the | document; three letter code of the | document; three letter code of the | |
| issuing country of the travel | issuing country of the travel | issuing country of the travel | |

| document, and the date of expiry of | document, and the date of expiry of | document, and the date of expiry of | |
|--|---|--|--|
| the validity of the travel document;" | the validity of the travel document;" | the validity of the travel document;" | |
| (b) the following paragraphs are | (b) the following paragraphs are | (b) the following paragraphs are | |
| added: | added: | added: | |
| "4. For the purposes of carrying out | "4. For the purposes of carrying out | "4. For the purposes of carrying out | |
| the consultation of the EES for | the consultation of the EES for | the consultation of the EES for | |
| examining and deciding on visa | examining and deciding on visa | examining and deciding on visa | |
| applications in accordance with | applications in accordance with | applications in accordance with | |
| Article 22 of [Regulation | Article 22 of [Regulation | Article 22 of [Regulation | |
| establishing an Entry/Exit System | establishing an Entry/Exit System | establishing an Entry/Exit System | |
| (EES)], the competent visa authority | (EES)], the competent visa authority | (EES)], the competent visa authority | |
| shall be given access to search the | shall be given access to search the | shall be given access to search the | |
| EES directly from the VIS with one | EES directly from the VIS with one | EES directly from the VIS with one | |
| or several of the data referred to in | or several of the data referred to in | or several of the data referred to in | |
| that Article. | that Article. | that Article. | |
| 5. In circumstances where the search | 5. In circumstances where the search | 5. In circumstances where the search | |
| with the data referred to in paragraph | with the data referred to in paragraph | with the data referred to in paragraph | |
| 2 indicates that data on the third | 2 indicates that data on the third | 2 indicates that data on the third | |
| country national are not recorded in | country national are not recorded in | country national are not recorded in | |
| the VIS or where there are doubts as | the VIS or where there are doubts as | the VIS or where there are doubts as | |
| to the identity of the third country | to the identity of the third country | to the identity of the third country | |
| national, the competent visa | national, the competent visa | national, the competent visa | |
| authority shall have access to data | authority shall have access to data | authority shall have access to data | |
| for identification in accordance with | for identification in accordance with | for identification in accordance with | |
| Article 20." | Article 20." | Article 20." | |
| (4) In Chapter III a new Article | (4) In Chapter III <u>a new Article</u> | (4) In Chapter III a new Article | |
| 17a is added: | 17a is added: | 17a is added: | |

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| "Article 17a | "Article 17a | "Article 17a | |
|--|---------------------------------------|--|---------------------------------------|
| Interoperability with the EES | Interoperability with the EES | Interoperability with the EES | |
| 1 From the start of operations of | 1. From the start of operations of | 1. From the start of operations of | EP amendment to be moved to the |
| the EES referred to in Article $60(1)$ | the EES referred to in Article 60(1) | the EES referred to in Article $60(1)$ | Recitals. Provisionally agreed: |
| of [Regulation establishing an | of [Regulation establishing an | of [Regulation establishing an | (1) From the start of operations of |
| Entry/Exit System (EES)], | Entry/Exit System (EES)], | Entry/Exit System (EES)], | the EES referred to in Article 60(1) |
| interoperability between the EES and | interoperability between the EES and | interoperability between the EES and | of [Regulation establishing an |
| the VIS is established to ensure more | the VIS is established to ensure more | the VIS is established to ensure more | Entry/Exit System (EES)], |
| efficiency and rapidity of border | efficiency and rapidity of border | efficiency and rapidity of border | interoperability between the EES and |
| checks. To this effect eu-LISA shall | checks with due respect for the | checks. To this effect eu-LISA shall | the VIS is established to ensure more |
| establish a Secure Communication | purpose limitation principle. To this | establish a Secure Communication | efficiency and rapidity of border |
| Channel between the EES Central | effect eu-LISA shall establish a | Channel between the EES Central | checks. To this effect eu-LISA shall |
| System and the VIS Central System | Secure Communication Channel | System and the VIS Central System | establish a Secure Communication |
| to enable interoperability between | between the EES Central System and | to enable interoperability between | Channel between the EES Central |
| the EES and the VIS. Direct | the VIS Central System to enable | the EES and the VIS. Direct | System and the VIS Central System |
| consultation between the systems | interoperability between the EES and | consultation between the systems | to enable interoperability between |
| shall only be possible if both this | the VIS. Direct consultation between | shall only be possible if both this | the EES and the VIS. Direct |
| Regulation and Regulation (EC) No | the systems shall only be possible if | Regulation and [Regulation | consultation between the systems |
| $767/2008^{31}$ provide for it. | both this Regulation and Regulation | establishing an Entry/Exit System | shall only be possible if both this |
| | (EC) No 767/2008 provide for it. | (EES)] [] provide for it. | Regulation and [Regulation |
| | | | establishing an Entry/Exit System |
| | | | (EES) provide for it. Retrieval, |
| | | | exportation and importation of |
| | | | visa related data directly from the |
| | | | VIS into the EES shall be an |
| | | | automated process, once the |
| | | | operation in question is launched |
| | | | by the authority concerned. |



| 2. The interoperability | 2. The interoperability | 2. The interoperability | <i>Provisionally agreed</i>: 2. The interoperability shall enable the visa authorities using the VIS to consult the EES from the VIS in order to: |
|--|--|--|--|
| requirement shall enable the visa | requirement shall enable the visa | requirement shall enable the visa | |
| authorities using the VIS to consult | authorities using the VIS to consult | authorities using the VIS to consult | |
| the EES from the VIS in order to: | the EES from the VIS in order to: | 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; | (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; | (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 the visa | (b) to retrieve and export the visa | (b) to retrieve and export | Provisionally agreed: b) to retrieve and export 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; |
| related data directly from the VIS | related data directly from the VI8 | <u>automatically</u> the visa related data | |
| into the EES in case a visa is | into the EES in case a visa is | directly from the VIS into the EES in | |
| annulled, revoked or extended in | annulled, revoked or extended in | case a visa is annulled, revoked or | |
| accordance with Article 17 of | accordance with Article 17 of | extended in accordance with Article | |
| [Regulation establishing an | [Regulation establishing an | 17 of [Regulation establishing an | |
| Entry/Exit System (EES)] and | Entry/Exit System (EES)] and | Entry/Exit System (EES)] and | |
| Articles 13 and 14 of this | Articles 13 and 14 of this | Articles 13 and 14 of this | |
| Regulation; | Regulation; | Regulation; | |
| 3. The interoperability requirement shall enable the border authorities using the EES to consult the VIS from the EES in order to: | 3. The interoperability requirement shall enable the border authorities using the EES to consult the VIS from the EES in order to: | 3. The interoperability requirement shall enable the <u>competent</u> [] authorities <u>for</u> <u>carrying out checks at borders at</u> which the EES is operated in <u>accordance with Regulation (EU)</u> <u>XXX (EES)</u> [] to consult the VIS from the EES in order to: | Provisionally agreed 3. The interoperability shall enable the border authorities using the EES to consult the VIS from the EES in order to: |
| (a) retrieve and import the visarelated data directly from the VIS tothe EES in order to create or updatethe individual file of a visa holder in | (a) retrieve and import the visa | (a) retrieve and import | Pending EP's concern on the |
| | related data directly from the VIS to | <u>automatically</u> the visa related data | extraction of the facial image from |
| | the EES in order to create or update | directly from the VIS to the EES in | the VIS, the following is the |
| | the individual file of a visa holder in | order to create or update the | provisionally agreed: |



| the EES in accordance with Articles 13, 14 and 16 of [Regulation establishing an Entry/Exit System (EES)] and Article 18a of this Regulation; | the EES in accordance with Articles 13, 14 and 16 of [Regulation establishing an Entry/Exit System (EES)] and Article 18a of this Regulation; | entry/exit record or refusal of entry record [] of a visa holder in the EES in accordance with Articles 13, 14 and 16 [Regulation establishing an Entry/Exit System (EES)] and Article 18a of this Regulation; | (a) retrieve and import the visa related data directly from the VIS to the EES in order to create or update [<i>the individual file or</i>] the entry/exit record or refusal of entry record of a visa holder in the EES in accordance with Articles 13, 14 and 16 [Regulation establishing an Entry/Exit System (EES)] and Article 18a of this Regulation; |
|---|---|--|--|
| (b) retrieve and import 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; | (b) retrieve and import 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; | (b) retrieve and import <u>automatically</u> 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; | Provisionally agreed: (b) retrieve and import 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 | (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 | (c) verify [] 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 [] 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 | Provisionally agreed: (c)verify 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; Provisionally agreed: (d) check 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 |



| with Article 21 of [Regulation | with Article 21 of [Regulation | [Regulation establishing an | in accordance with Article 21 of |
|--|--|--|--|
| establishing an Entry/Exit System | establishing an Entry/Exit System | Entry/Exit System (EES)] and | [Regulation establishing an |
| (EES)] and Article 19a of this | (EES)] and Article 19a of this | Article 19a of this Regulation; | Entry/Exit System (EES)] and |
| Regulation; | Regulation; | | Article 19a of this Regulation; |
| (e) where the identity of a visa | (e) where the identity of a visa | (e) where the identity of a visa | Provisionally agreed: |
| holder cannot be verified against the | holder cannot be verified against the | holder cannot be verified against the | (e) where the identity of a visa |
| EES, verify at the external borders | EES, verify at the external borders | EES, verify [] the identity of a visa | holder cannot be verified against the |
| the identity of a visa holder with | the identity of a visa holder with | holder with fingerprints against the | EES, verify the identity of a visa |
| fingerprints against the VIS in | fingerprints against the VIS in | VIS in accordance with Articles | holder with fingerprints against the |
| accordance with Articles 21(2) and | accordance with Articles 21(2) and | 21(2) and 21(4) of [Regulation | VIS in accordance with Articles |
| 21(4) of [Regulation establishing an | 21(4) of [Regulation establishing an | establishing an Entry/Exit System | 21(2) and 21(4) of [Regulation |
| Entry/Exit System (EES)] and 18(6) | Entry/Exit System (EES)] and 18(6) | (EES)] and 18(6) of this Regulation. | establishing an Entry/Exit System |
| of this Regulation. | of this Regulation. | | (EES)] and 18(6) of this Regulation. |
| 4. In accordance with Article 33 | 4. In accordance with Article 33 | 4. In accordance with Article 33 | Provisionally agreed: |
| of the [Regulation establishing an | of the [Regulation establishing an | of the [Regulation establishing an | 4. In accordance with Article 33 |
| Entry/Exit System (EES)], the | Entry/Exit System (EES)], the | Entry/Exit System (EES)], the | of the [Regulation establishing an |
| Commission shall adopt the | Commission shall adopt the | Commission shall adopt the | Entry/Exit System (EES)], the |
| measures necessary for the | measures necessary for the | measures necessary for the | Commission shall adopt the |
| establishment and the high level | establishment and the high level | establishment and the high level | measures necessary for the |
| design of the interoperability in | design of the interoperability in | design of the interoperability in | establishment and the high level |
| accordance with Article 34 of the | accordance with Article 34 of the | accordance with Article 34 of the | design of the interoperability in |
| [Regulation establishing an | [Regulation establishing an | [Regulation establishing an | accordance with Article 34 of the |
| Entry/Exit System (EES)]. In order | Entry/Exit System (EES)]. In order | Entry/Exit System (EES)]. In order | [Regulation establishing an |
| to establish the interoperability with | to establish the interoperability with | to establish the interoperability with | Entry/Exit System (EES)]. In order |
| the EES, the Management Authority | the EES, the Management Authority | the EES, the Management Authority | to establish the interoperability with |
| shall develop the required evolutions | eu- <i>LISA</i> shall develop the required | shall develop the required evolutions | the EES, the Management Authority |
| and/or adaptations of the Central | evolutions and/or adaptations of the | and/or adaptations of the Central | shall develop the required evolutions |
| Visa Information System, the | Central Visa Information System, the | Visa Information System, the | and/or adaptations of the Central |
| National Interface in each Member | National Interface in each Member | National Interface in each Member | Visa Information System, the |
| State, and the communication | State, and the communication | State, and the communication | National Interface in each Member |
| infrastructure between the Central | infrastructure between the Central | infrastructure between the Central | State, and the communication |
| Visa Information System and the | Visa Information System and the | Visa Information System and the | infrastructure between the Central |
| National Interfaces. The national | National Interfaces. The national | National Interfaces. The national | Visa Information System and the |

| infrastructures shall be adapted and/or developed by the Member States. | infrastructures shall be adapted and/or developed by the Member States. | infrastructures shall be adapted and/or developed by the Member States. | National Interfaces. The national infrastructures shall be adapted and/or developed by the Member States. |
|---|---|---|---|
| | | | Commission drafting suggestion NEW amendment to the VIS in view of the changes introduced under Article 12 on Web Service. Provisionally agreed: 3a For the operation of the EES Web Service referred to in Article 12 of [Regulation establishing an Entry/Exit System (EES)], the VIS shall on a daily basis update the separate read-only database referred to in Article 12(2aa) of [Regulation establishing an Entry/Exit System (EES)] via a one-way extraction of the minimum necessary subset of VIS data. |
| (5) Article 18 is replaced by the following: | (5) Article 18 is replaced by the following: | (5) Article 18 is replaced by the following: | |
| "Article 18 Access to data for verification at external border crossing points | "Article 18 Access to data for verification at external border crossing points | "Article 18 Access to data for verification at [] borders at which the EES is operated | |
| 1. 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 the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are | 1. 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 the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are | 1. 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 the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are | Council to revert back. |



| fulfilled, the competent authorities | fulfilled, the competent authorities | fulfilled, the competent authorities | |
|--|--|---|---------------------------------------|
| for carrying out checks at external | for carrying out checks at external | for carrying out checks at [] | |
| border crossing points in accordance | border crossing points in accordance | borders at which the EES is operated | |
| with Regulation (EU) 2016/399 shall | with Regulation (EU) 2016/399 shall | shall have access to search using the | |
| have access to search using the | have access to search using the | following data: | |
| following data: | føllowing data: | | |
| (a) surname (family name), first | (a) surname (family name), first | (a) surname (family name), first | |
| name(s) (given names); date of birth, | name(s) (given names); date of birth, | name(s) (given names); date of birth, | |
| nationality; sex; type and number of | nationality; sex; type and number of | nationality; sex; type and number of | |
| the travel document; three letter code | the travel document; three letter code | the travel document; three letter code | |
| of the issuing country of the travel | of the issuing country of the travel | of the issuing country of the travel | |
| document, and the date of expiry of | document, and the date of expiry of | document, and the date of expiry of | |
| the validity of the travel document; | the validity of the travel document; | the validity of the travel document; | |
| (b) or the number of the visa | (b) or the number of the visa | (b)or the number of the visa sticker. | |
| sticker. | sticker. | | |
| 2. Solely for the purposes referred | 2. Solely for the purposes referred | 2. Solely for the purposes referred | NB: In the EES text, "may" has been |
| to in paragraph 1, where a search is | to in paragraph 1, where a search is | to in paragraph 1, where a search is | replaced by "shall": ensure |
| launched in the EES pursuant to | launched in the EES pursuant to | launched in the EES pursuant to | consistency here! |
| Article 21(2) or Article 21(4) of | Article 21(2) or Article 21(4) of | Article 21(2) or Article 21(4) of | Horizontal issue |
| [Regulation establishing an | [Regulation establishing an | [Regulation establishing an | |
| Entry/Exit System (EES)], the | Entry/Exit System (EES)], the | Entry/Exit System (EES)], the | |
| competent border authority may | competent border authority may | competent [] authority for carrying | |
| launch a search in the VIS directly | launch a search in the VIS directly | out checks at borders at which the | |
| from the EES using the data referred | from the EES using the data referred | EES is operated may launch a search | |
| to in point (a) of paragraph 1. | to in point (a) of paragraph 1. | 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 | 3. If the search with the data | 3. If the search with the data | EP withdrew its amendment. |
| listed in paragraph 1 indicates that | listed in paragraph 1 indicates that | listed in paragraph 1 indicates that | Provisionally agreed text except text |
| the VIS stores data on one or more | data on the visa holder are recorded | the VIS stores data on one or more | in [] brackets: |
| issued or extended visa(s)), which | <i>in</i> the VIS, stores data on one or | issued or extended visa(s)), which | 3. If the search with the data |
| are under their validity period and | more issued or extended visa(s)), | are under their validity period and | listed in paragraph 1 indicates that |
| are territorially valid for the border | which are under their validity period | are <u>under their territorial</u> [] | the VIS stores data on one or more |
| | * * | | |



| crossing, the competent border | and are territorially valid for the | validity for the border crossing, the | issued or extended visa(s), which are |
|---|--|---|--|
| control authority shall be given | border crossing, the competent | competent [] authority for carrying | under their validity period and are |
| access to consult the following data | border control authority shall be | out checks at borders at which the | under their territorial validity for the |
| of the concerned application file as | given access to consult the following | EES is operated shall be given access | border crossing, [the competent |
| well as of linked application file(s) | data of the concerned application file | to consult the following data of the | authority for carrying out checks at |
| pursuant to Article 8(4), solely for | as well as of linked application | concerned application file as well as | borders at which the EES is |
| the purposes referred to in | file(s) pursuant to Article 8(4), solely | of linked application file(s) pursuant | operated] shall be given access to |
| paragraph 1: | for the purposes referred to in | to Article $8(4)$, solely for the | consult the following data of the |
| | paragraph 1: | purposes referred to in paragraph 1: | 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 | (a) the status information and the | |
| | data taken from the application form, | data taken from the application form, | |
| | referred to in Article 9(2) and (4); | referred to in Article 9(2) and (4); | |
| (b) photographs; | (b) photographs; | (b) photographs; | |
| (c) the data entered in respect of | (c) the data entered in respect of | (c) the data entered in respect of | |
| the visa(s) issued, annulled, revoked | the visa(s) issued, annulled, revoked | the visa(s) issued, annulled, revoked | |
| or whose validity is extended | or whose validity is extended | or whose validity is extended | |
| • | · · | referred to in Articles 10, 13 and 14. | |
| referred to in Articles 10, 13 and 14. | referred to in Articles 10, 13 and 14. | , | |
| In addition, for those visa holders for | In addition, for those visa holders for | In addition, for those visa holders for | Provisionally agreed text except text |
| whom certain data are not required to | whom certain data are not required to | whom certain data are not required to | in [] brackets: |
| be provided for legal reasons or | be provided for legal reasons or | be provided for legal reasons or | In addition, for those visa holders for |
| factually cannot be provided, the | factually cannot be provided, the | factually cannot be provided, the | whom certain data are not required to |
| competent border control authority | competent border control authority | competent [] authority for carrying | be provided for legal reasons or |
| shall receive a notification related to | shall receive a notification related to | out checks at borders at which the | factually cannot be provided, the |
| the specific data field(s) concerned | the specific data field(s) concerned | EES is operated shall receive a | competent authority [for carrying out |
| which shall be marked as 'not | which shall be marked as 'not | notification related to the specific | checks at borders at which the EES is |
| applicable'. | applicable'. | data field(s) concerned which shall | operated] shall receive a notification |
| | | be marked as 'not applicable'. | related to the specific data field(s) |
| | | | concerned which shall be marked as |
| | | | 'not applicable'. |



| 4. If the search with the data | deleted | 4. If the search with the data | |
|---|---|---|--|
| listed in paragraph 1 indicates that | | listed in paragraph 1 indicates that | |
| data on the person are recorded in the | | data on the person are recorded in the | |
| VIS but that the visa(s) recorded are | | VIS but that the visa(s) recorded are | |
| not valid, the competent border | | not valid, the competent [] | |
| authority shall be given access to | | authority for carrying out checks at | |
| consult the data of the application | | borders at which the EES is operated | |
| file(s) as well as of the linked | | shall be given access to consult the | |
| application file(s) pursuant to | | following data of the application | |
| Article 8(4), solely for the purposes | | file(s) as well as of the linked | |
| referred to in paragraph 1: | | application file(s) pursuant to | |
| | | Article 8(4), solely for the purposes | |
| | | referred to in paragraph 1: | |
| (a) the status information and the | deleted | (a) the status information and the | |
| data taken from the application form, | | data taken from the application form, | |
| referred to in Article 9(2) and (4); | | referred to in Article 9(2) and (4); | |
| (b) photographs; | deleted | (b) photographs; | |
| (c) the data entered in respect of | deleted | (c) the data entered in respect of | |
| the visa(s) issued, annulled, revoked | | the visa(s) issued, annulled, revoked | |
| or whose validity is extended, | | or whose validity is extended, | |
| referred to in Articles 10, 13 and 14. | | referred to in Articles 10, 13 and 14. | |
| 5. In addition to the consultation | 5. In addition to the consultation | 5. In addition to the consultation | Text accepted by delegations: |
| carried out under paragraph 1, the | carried out under paragraph 1, the | carried out under paragraph 1, and | 5. In addition to the consultation |
| competent border authority shall | competent border authority shall | prior to consulting the data in | carried out under paragraph 1, the |
| verify the identity of a person against | verify the identity of a person against | accordance with paragraphs 3 or 4, | competent authority [for carrying out |
| the VIS if the search with the data | the VIS if the search with the data | the competent [] authority for | checks at borders at which the EES is |
| listed in paragraph 1 indicates that | listed in paragraph 1 indicates that | carrying out checks at borders at | operated] shall verify the identity of |
| data on the person are recorded in the | data on the person are recorded in the | which the EES is operated shall | a person against the VIS if the search |
| VIS and one of the following | VIS and one of the following | verify the identity of a person against | with the data listed in paragraph 1 |
| conditions is met: | conditions is met: | the VIS if the search with the data | indicates that data on the person are |
| | | listed in paragraph 1 indicates that | recorded in the VIS and one of the |
| | | data on the person are recorded in the | following conditions is met: |
| | | VIS and one of the following | |



| | | conditions is met: | |
|--|---|--|--|
| (a) the identity of the person | (a) the identity of the person cannot | (a) the identity of the person | |
| cannot be verified against the EES in | be verified against the EES in | cannot be verified against the EES in | |
| accordance with Article 21(2) of | accordance with Article 21(2) of | accordance with Article 21(2) of | |
| [Regulation establishing an | [Regulation establishing an | [Regulation establishing an | |
| Entry/Exit System (EES)], when: | Entry/Exit System (EES)], when: | Entry/Exit System (EES)], when: | |
| (i) the visa holder is not yet | (i) the visa holder is not yet | (i) the visa holder is not yet | |
| registered into the EES; | registered into the EES; | registered into the EES; | |
| (ii) the technology is not available | (ii) the technology is <i>temporarily</i> | (ii) the technology is not available | Provisionally agreed by delegations: |
| at the border crossing point for the | not available at the border crossing | at the border crossing point for the | ii) the technology is temporarily |
| use of live facial image and therefore | point for the use of live facial image | use of live facial image and therefore | not available at the border crossing |
| the identity of the visa holder cannot | and therefore the identity of the visa | the identity of the visa holder cannot | point for the use of live facial image |
| be verified against the EES; | holder cannot be verified against the | be verified against the EES; | and therefore the identity of the visa |
| | EES; | | holder cannot be verified against the |
| | | | EES; |
| (iii) there are doubts as to the | (iii) there are doubts as to the | (iii) there are doubts as to the | |
| identity of the visa holder; | identity of the visa holder; | identity of the visa holder; | |
| (iv) for any other reason, the | (iv) for any other reason, the | (iv) for any other reason, the | |
| identity of the visa holder cannot be | identity of the visa holder cannot be | identity of the visa holder cannot be | |
| verified against the EES; | verified against the EES; | verified against the EES; | |
| (b) the identity of the person can | (b) the identity of the person can | (b) the identity of the person can | |
| be verified against the EES but, for | be verified against the EES but, for | be verified against the EES but, for | |
| the first time after the creation of the | the first time after the creation of the | the first time after the creation of the | |
| individual file, that person intends to | individual file, that person intends to | individual file, that person intends to | |
| cross the external borders of a | cross the external borders of a | cross [] <u>a border of a Member</u> | |
| Member State in which this | Member State in which this | State in which this Regulation is | |
| Regulation is applicable. | Regulation is applicable. | applicable and at which the EES is | |
| | | operated. | |
| The border authorities shall verify | The border authorities shall verify | The <u>competent</u> [] authorities <u>for</u> | |
| the fingerprints of the visa holder | the fingerprints of the visa holder | carrying out checks at borders at | |
| against the fingerprints recorded in | against the fingerprints recorded in | which the EES is operated shall | |
| the VIS. For visa holders whose | the VIS. For visa holders whose | verify the fingerprints of the visa | |



| | | 1 | 1 |
|--|--|--|--|
| fingerprints cannot be used, the | fingerprints cannot be used, the | holder against the fingerprints | |
| search mentioned under paragraph 1 | search mentioned under paragraph 1 | recorded in the VIS. For visa holders | |
| shall be carried out only with the | shall be carried out only with the | whose fingerprints cannot be used, | |
| alphanumeric data foreseen under | alphanumeric data foreseen under | the search mentioned under | |
| paragraph 1 of this Article. | paragraph 1 of this Article. | 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 | 6. For the purpose of a verifying | 6. For the purpose of a verifying | |
| the fingerprints against the VIS as | the fingerprints against the VIS as | the fingerprints against the VIS as | |
| laid down under paragraph 5, the | laid down under paragraph 5, the | laid down under paragraph 5, the | |
| competent authority may launch a | competent authority may launch a | competent authority may launch a | |
| search from the EES to the VIS. | search from the EES to the VIS. | search from the EES to the VIS. | |
| 7. In circumstances where | 7. In circumstances where | 7. In circumstances where | |
| verification of the visa holder or of | verification of the visa holder or of | verification of the visa holder or of | |
| the visa fails or where there are | the visa fails or where there are | the visa fails or where there are | |
| doubts as to the identity of the visa | doubts as to the identity of the visa | doubts as to the identity of the visa | |
| 5 | <u> </u> | 2 | |
| holder, the authenticity of the visa | holder, the authenticity of the visa | holder, the authenticity of the visa | |
| and/or the travel document, the duly | and/or the travel document, the duly | and/or the travel document, the duly | |
| authorised staff of those competent | authorised staff of those competent | authorised staff of those competent | |
| authorities shall have access to data | authorities shall have access to data | authorities shall have access to data | |
| in accordance with Article 20(1) and | in accordance with Article 20(1) and | in accordance with Article 20(1) and | |
| (2)." | (2)." | (2)." | |
| (6) The following Article 18a is | (6) The following Article 18a is | (6) The following Article 18a is | |
| inserted: | inserted: | inserted: | |
| "Article 18a | "Article 18a | "Article 18a | Provisionally agreed except text in [] |
| Retrieval of VIS data for creating or | Retrieval of VIS data for creating or | Retrieval of VIS data for creating or | brackets: |
| updating the individual file of a visa | updating the individual file of a visa | updating [] <u>entry/exit record or</u> | Article 18a |
| holder into the EES | holder into the EES | <u>refusal of entry record of a visa</u> | Retrieval of VIS data for creating or |
| | | holder into the EES | updating [the individual file or the] |
| | | | entry/exit record or the refusal of |
| | | | entry record of a visa holder into the |
| | | | EES |
| 1. Solely for the purpose of | 1. Solely for the purpose of | 1. [] <u>When</u> creating or updating | Provisionally agreed compromise |



| creating or updating the individual file 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 to the EES, the data stored in the VIS and listed in Article 14(1)(d), (e) and (g) of [Regulation establishing an Entry/Exit System (EES)]. | creating or updating the individual file 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 to the EES, the data stored in the VIS and listed in Article 14(1)(d), (e) and (g) of [Regulation establishing an Entry/Exit System (EES)]. | the [] <u>entry/exit record or refusal</u> of entry record of a visa holder in the EES in accordance with Article 13(2) and Article 14 and 16 of [Regulation establishing an Entry/Exit System (EES)], the competent [] authority for carrying out checks at borders at which the EES is operated shall be given access to retrieve in the VIS and import <u>automatically</u> to the EES, the data stored in the VIS and listed in Article 14([]2) (c), (d), (e), (f) and (g) of [Regulation establishing an Entry/Exit System (EES)]. | proposal except for text in [] brackets: 1. Solely for the purpose of creating or updating the entry/exit record or refusal of entry record of a visa holder in the EES in accordance with Article 13(2) and Article 14 and 16 of [Regulation establishing an Entry/Exit System (EES)], [the competent authority for carrying out checks at borders at which the EES is operated] 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) (c), (d), (e), (f) and (g) of [Regulation establishing an Entry/Exit System (EES)]. |
|---|---|--|---|
| (7) The following Article 19a is inserted: | (7) The following Article 19a is inserted: | (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 of [Regulation establishing an Entry/Exit System (EES)] | 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 of [Regulation establishing an Entry/Exit System (EES)] | "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 [] <u>21</u> of [Regulation establishing an Entry/Exit System (EES)] | Provisionally agreed: 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 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 | 1. For the purpose of checking whether a person has been previously registered in the VIS, the competent authorities for carrying out checks at | 1. For the purpose of checking whether a person has been previously registered in the VIS, the competent authorities for carrying out checks at | |

EN

| external border crossing points in | external border crossing points in | external border crossing points in | |
|---------------------------------------|---------------------------------------|---------------------------------------|--|
| accordance with Regulation (EU) | accordance with Regulation (EU) | accordance with Regulation (EU) | |
| 2016/399 shall consult the VIS: | 2016/399 shall consult the VIS: | 2016/399 shall consult the VIS | |
| (a) before creating in the EES the | (a) before creating in the EES the | [] before creating in the EES the | Linked to the territorial scope of the |
| individual file of third country | individual file of third country | individual file of third country | EES Regulation |
| nationals exempt from the visa | nationals exempt from the visa | nationals exempt from the visa | |
| obligation as laid down in Article 15 | obligation as laid down in Article 15 | obligation as laid down in Article 15 | |
| of [Regulation establishing an | of [Regulation establishing an | of [Regulation establishing an | |
| Entry/Exit System (EES)]; | Entry/Exit System (EES)]; | Entry/Exit System (EES)]; | |
| (b) for third country nationals | (b) for third country nationals | []. | Linked to the territorial scope of the |
| exempt from the visa obligation who | exempt from the visa obligation who | | EES Regulation. |
| had their individual file created in | had their individual file created in | | |
| the EES by a Member State in which | the EES by a Member State in which | | |
| this Regulation is not applicable, | this Regulation is not applicable, | | |
| when, for the first time after the | when, for the first time after the | | |
| creation of the individual file, the | creation of the individual file, the | | |
| person intends to cross the external | person intends to cross the external | | |
| borders of a Member State in which | borders of a Member State in which | | |
| this Regulation is applicable. | this Regulation is applicable. | | |
| 2. For the purpose of paragraph 1, | 2. For the purpose of paragraph 1, | 2. For the purpose of paragraph 1, | Provisionally agreed except text in [] |
| where Article 21(4) of [Regulation | where Article 21(4) of [Regulation | where Article 21(4) of [Regulation | brackets: |
| establishing an Entry/Exit System | establishing an Entry/Exit System | establishing an Entry/Exit System | 2. For the purpose of paragraph 1, |
| (EES)] applies and the search | (EES)] applies and the search | (EES)] applies and the search | where Article 21(4) of [Regulation |
| referred to in Article 25 of that | referred to in Article 25 of that | referred to in Article 25 of that | establishing an Entry/Exit System |
| Regulation indicates that data on a | Regulation indicates that data on a | Regulation indicates that data on a | (EES)] applies and the search |
| person are not recorded in the EES or | person are not recorded in the EES or | person are not recorded in the EES or | referred to in Article 25 of that |
| where Article 21(5) of [Regulation | where Article 21(5) of [Regulation | where Article 21(5) of [Regulation | Regulation indicates that data on a |
| establishing an Entry/Exit System | establishing an Entry/Exit System | establishing an Entry/Exit System | person are not recorded in the EES or |
| (EES)] applies, the competent border | (EES)] applies, the competent border | (EES)] applies, the competent [] | where Article 21(5) of [Regulation |
| authority shall have access to search | authority shall have access to search | authority for carrying out checks at | establishing an Entry/Exit System |
| using the following data: surname | using the following data: surname | borders at which the EES is operated | (EES)] applies, the competent [] |
| (family name), first name(s) (given | (family name), first name(s) (given | shall have access to search using the | authority [for carrying out checks at |
| names); date of birth, nationality; | names); date of birth, nationality; | following data: surname (family | borders at which the EES is |



| 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. | 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. | 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. | operated] 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 |
|---|---|--|--|
| 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. | 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. | 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 [] authority <u>for</u> <u>carrying out checks at borders at</u> <u>which the EES is operated</u> may launch a search in the VIS directly from the EES using the alphanumeric data foreseen under paragraph 2. | the validity of the travel document. Provisionally agreed except text in [] brackets: 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 [] authority [for carrying out checks at borders at which the EES is operated] may launch a search in the VIS directly from the EES using the alphanumeric |
| | | 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 authority for carrying out checks at borders at which the EES is operated shall verify the fingerprints of the person against the fingerprints | data foreseen under paragraph 2.Provisionally agreed: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 authority for carrying out checks at borders at which the EES is operated shall verify the fingerprints of the |



| 4. 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 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: | 4. 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 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: | recorded in the VIS. That 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. 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 [] authority for carrying out checks at borders at which the EES is operated 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: | person against the fingerprints recorded in the VIS. That 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. <i>Provisionally agreed text except for</i> <i>text in [] brackets:</i> <u>5.</u> 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 authority for carrying out checks at borders at which the EES is operated] 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, | (a) the status information and the data taken from the application form, | (a) the status information and the data taken from the application form, | |
| referred to in Article 9(2) and (4); | referred to in Article 9(2) and (4); | referred to in Article 9(2) and (4); | |
| (b) photographs; | (b) photographs; | (b) photographs; | |
| (c) the data entered in respect of | (c) the data entered in respect of | (c) the data entered in respect of | |
| the visa(s) issued, annulled, revoked | the visa(s) issued, annulled, revoked | the visa(s) issued, annulled, revoked | |
| or whose validity is extended | or whose validity is extended | or whose validity is extended | |
| referred to in Articles 10, 13 and 14. | referred to in Articles 10, 13 and 14. | referred to in Articles 10, 13 and 14. | |
| 5. In addition, if the search with | 5. In addition, if the search with | 5. [] | EP accepted Council amendment to |
| the data listed in paragraph 2 | the data listed in paragraph 2 | | shift this paragraph into para 4 |



| 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 | 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 | | above. |
|--|--|---|---|
| the EES. For persons whose | the EES. For persons whose | | |
| fingerprints cannot be used, the | fingerprints cannot be used, the | | |
| search shall be carried out only with | search shall be carried out only with | | |
| the alphanumeric data foreseen under | the alphanumeric data foreseen under | | |
| paragraph 2 of this Article. | paragraph 2 of this Article. | | |
| 6. In circumstances where the | 6. In circumstances where the | 6. In circumstances where the | Provisionally agreed text except text |
| verification provided under | verification provided under | verification provided under | in [] brackets: |
| paragraphs 2 and/or 5 fails or where | paragraphs 2 and/or 5 fails or where | paragraphs 2 and/or 5 fails or where | 6. In circumstances where the |
| there are doubts as to the identity of | there are doubts as to the identity of | there are doubts as to the identity of | verification provided under |
| the person or the authenticity of the | the person or the authenticity of the | the person or the authenticity of the | paragraphs 2 and/or 5 fails or where |
| travel document, the duly authorised | travel document, the duly authorised | travel document, the duly authorised | there are doubts as to the identity of |
| staff of those competent authorities shall have access to data in | staff of those competent authorities shall have access to data in | staff of those competent authorities shall have access to data in | the person or the authenticity of the |
| accordance with Article 20(1) and | accordance with Article 20(1) and | accordance with Article 20(1) and | travel document, the duly authorised staff of those competent authorities |
| (2). The competent border authority | (2). The competent border authority | (2). The competent [] authority for | shall have access to data in |
| may launch from the EES the | may launch from the EES the | carrying out checks at borders at | accordance with Article 20(1) and |
| identification referred to in Article | identification referred to in Article | which the EES is operated may | (2). [The competent authority for |
| 20 of this Regulation." | 20 of this Regulation." | launch from the EES the | carrying out checks at borders at |
| 20 01 010 100 8000000 | | identification referred to in Article | which the EES is operated] may |
| | | 20 of this Regulation." | launch from the EES the |
| | | | identification referred to in Article |
| | | | 20 of this Regulation. |
| (8) In Article 20, paragraph 1 is | (8) In Article 20, <i>the first</i> | (8) In Article 20, paragraph 1 is | Provisionally agreed text: |
| replaced by the following: | subparagraph of paragraph 1 is | replaced by the following: | (8) In Article 20, the first |
| | replaced by the following: | | subparagraph of paragraph 1 is |
| | | | replaced by the following: |



| "1. Solely for the purposes of the | "1. Solely for the purposes of the / | "1. The authorities competent for | Provisionally agreed text except text |
|--|--|---|--|
| identification of any person who may | identification of any person who may | carrying out checks at borders at | in [] brackets: |
| have been registered previously in | have been registered previously in | which the EES is operated or within | 1. Solely for the purposes of the |
| the VIS or who may not, or may no | the VIS or who may not, or may no | the territory of the Member States as | identification of any person who may |
| longer, fulfil the conditions for the | longer, fulfil the conditions for the | to whether the conditions for entry | have been registered previously in |
| entry to, stay or residence on the | entry to, stay or residence on the | to, stay or residence on the territory | the VIS or who may not, or may no |
| territory of the Member States, the | territory of the Member States, the | of the Member States are fulfilled, | longer, fulfil the conditions for the |
| authorities competent for carrying | authorities competent for carrying | shall have access to search with the | entry to, stay or residence on the |
| out checks at external border | out checks at external border | fingerprints of that person [] for | territory of the Member States, [the |
| crossing points in accordance with | crossing points in accordance with | the sole purposes of the identification | authorities competent for carrying |
| Regulation (EU) 2016/399 or within | Regulation (EU) $2016/399$ or within | of any person who may have been | out checks at external border |
| the territory of the Member States as | the territory of the Member States as | registered previously in the VIS or | crossing points in accordance with |
| to whether the conditions for entry | to whether the conditions for entry | who may not, or may no longer, | Regulation (EU) 2016/399 or within |
| to, stay or residence on the territory | to, stay or residence on the territory | fulfil the conditions for the entry to, | the territory of the Member States] as |
| of the Member States are fulfilled, | of the Member States are fulfilled, | stay or residence on the territory of | to whether the conditions for entry |
| shall have access to search with the | shall have access to search with the | the Member States []." | to, stay or residence on the territory |
| fingerprints of that person." | fingerprints of that person." | | of the Member States are fulfilled, |
| | | | shall have access to search with the |
| | / | | fingerprints of that person. |
| (9) In Article 26 the following | (9) In Article 26 the following | (9) In Article 26 the following | |
| paragraph is inserted: | paragraph is inserted: | paragraph is inserted: | |
| "3a. [Six months after the entry into | 3a. [Six months after the entry into | "3a. [Six months after the entry into | Provisionally agreed: |
| force of Regulation establishing an | force of Regulation establishing an | force of Regulation establishing an | 3a. [Six months after the entry into |
| <i>Entry/Exit System (EES)</i>], the | Entry/Exit System (EES)], the | Entry/Exit System (EES)], the | force of Regulation establishing an |
| Management Authority shall be | Management Authority eu-LISA | Management Authority shall be | Entry/Exit System (EES)], the |
| responsible for the tasks referred to | shall be responsible for the tasks | responsible for the tasks referred to | Management Authority shall be |
| in paragraph 3 of this Article." | referred to in paragraph 3 of this | in paragraph 3 of this Article." | responsible for the tasks referred to |
| | Article. | | in paragraph 3 of this Article. |
| (10) In Article 34, paragraph 1 is | (10) In Article 34, paragraph 1 is | (10) In Article 34, paragraph 1 is | |
| replaced by the following: | replaced by the following: | replaced by the following: | |
| "1. Each Member State and the | 1. Each Member State and the | "1. Each Member State and the | Provisionally agreed: |
| Management Authority shall keep | Management Authority eu-LISA | Management Authority shall keep | 1. Each Member State and the |
| records of all data processing | shall keep records of all data | records of all data processing | Management Authority shall keep |



| operations within the VIS. These | processing operations within the | operations within the VIS. These | records of all data processing |
|---|--|--|--|
| records shall show the purpose of | VIS. These records shall show the | records shall show the purpose of | operations within the VIS. These |
| | purpose of access referred to in | access referred to in Article 6(1) and | records shall show the purpose of |
| in Articles 15 to 22, the date and | Article 6(1) and in Articles 15 to 22, | in Articles 15 to 22, the date and | access referred to in Article 6(1) and |
| | the date and time, the type of data | time, the type of data transmitted as | in Articles 15 to 22, the date and |
| • | transmitted as referred to in | referred to in Articles 9 to 14, the | time, the type of data transmitted as |
| type of data used for interrogation as | Articles 9 to 14, the type of data used | type of data used for interrogation as | referred to in Articles 9 to 14, the |
| referred to in Articles 15(2), 17, | for interrogation as referred to in | referred to in Articles 15(2), 17, | type of data used for interrogation as |
| 18(1), 18 (5), 19(1), 19a(2), 19a(5), | Articles 15(2), 17, 18(1), 18 (5), | 18(1), 18(5), 19(1), 19a(2), 19a(5), | referred to in Articles 15(2), 17, |
| | | | |
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| 1 | * | - | · · · · · · · · · · · · · · · · · · · |
| - | | • | - |
| | | the data. | • |
| | · · · · · · · · · · · · · · · · · · · | | the data. |
| ÷ | 1 | - | |
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| | | | |
| - | | - | |
| | | and Article 41 of the [Regulation | |
| establishing an Entry/Exit System | establishing an Entry/Exit System | establishing an Entry/Exit System | |
| (EES)]." | (EÉS)]." | (EES)]." | |
| Article 56 | Article 56 | Article 56 | |
| Amendments to Regulation (EU) No | Amendments to Regulation (EU) No | Amendments to Regulation (EU) No | |
| 1077/2011 | 1077/2011 | 1077/2011 | |
| Regulation (EU) No 1077/2011 is | Regulation (EU) No 1077/2011 is | Regulation (EU) No 1077/2011 is | |
| | amended as follows: | amended as follows: | |
| (1) In Article 1, paragraph 2 is | (1) In Article 1, paragraph 2 is | (1) In Article 1, paragraph 2 is | |
| | | | |
| | | | |
| | for the operational management of | for the operational management of | |
| 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 | 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 | 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 | 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 retrievin the data. In addition, each Member State shall keep records of the staff duly authorised to enter or retrieve the data. |



| | | 1 | |
|---------------------------------------|---------------------------------------|---------------------------------------|--|
| the second generation Schengen | the second generation Schengen | the second generation Schengen | |
| Information System (SIS II), the | Information System (SISTI), the | Information System (SIS II), the | |
| Visa Information System, Eurodac | Visa Information System, Eurodac | Visa Information System, Eurodac | |
| and the Entry/Exit System (EES). | and the Entry/Exit System (EES). | and the Entry/Exit System (EES). | |
| (2) A new Article 5a is added after | (2) A new Article 5a is added after | (2) A new Article 5a is added after | |
| Article 5: | Article 5: | Article 5: | |
| "Article 5a | "Article 5a | "Article 5a | |
| Tasks relating to the EES | Tasks relating to the EES | Tasks relating to the EES | |
| In relation to the EES, the Agency | In relation to the EES, the Agency | In relation to the EES, the Agency | |
| shall perform: | shall perform: | shall perform: | |
| (a) the tasks conferred on it by | (a) the tasks conferred on it by | (a) the tasks conferred on it by | |
| Regulation (EU) No XXX/20XX of | Regulation (EU) No XXX/20XX of | Regulation (EU) No XXX/20XX of | |
| the European Parliament and of the | the European Parliament and of the | the European Parliament and of the | |
| Council of X.X.X establishing an | Council of X.X.X establishing an | Council of X.X.X establishing an | |
| Entry/Exit System to register entry | Entry/Exit System to register entry | Entry/Exit System to register entry | |
| and exit data and refusal of entry | and exit data and refusal of entry | and exit data and refusal of entry | |
| data of third country nationals | data of third country nationals | data of third country nationals | |
| crossing the external borders of the | crossing the external borders of the | crossing the external borders of the | |
| Member States of the European | Member States of the European | Member States of the European | |
| Union and determining the | Union and determining the | Union and determining the | |
| conditions for access to the EES for | conditions for access to the EES for | conditions for access to the EES for | |
| law enforcement purposes; | Yaw enforcement purposes; | law enforcement purposes; | |
| (b) tasks relating to training on the | (b) tasks relating to training on the | (b) tasks relating to training on the | |
| technical use of the EES." | technical use of the EES." | technical use of the EES." | |
| (3) Article 7 is amended as | (3) Article 7 is amended as | (3) Article 7 is amended as | |
| follows: | follows: | follows: | |
| (a) paragraphs 5 and 6 are | (a) paragraphs 5 and 6 are | (a) paragraphs 5 and 6 are | |
| replaced by the following: | replaced by the following: | replaced by the following: | |
| "5. Tasks related to the operational | "5. Tasks related to the operational | "5. Tasks related to the operational | |
| management of the communication | management of the communication | management of the communication | |
| infrastructure may be entrusted to | infrastructure may be entrusted to | infrastructure may be entrusted to | |
| external private-sector entities or | external private-sector entities or | external private-sector entities or | |



| | | 1 | |
|---|---|---|--|
| bodies in accordance with | bodies in accordance with | bodies in accordance with | |
| Regulation (EC, | Regulation (EC, | Regulation (EC, | |
| Euratom)1605/2002. In such a case, | Euratom)1605/2002. In such a case, | Euratom)1605/2002. In such a case, | |
| the network provider shall be bound | the network provider shall be bound | the network provider shall be bound | |
| by the security measures referred to | by the security measures referred to | by the security measures referred to | |
| in paragraph 4 and shall have no | in paragraph 4 and shall have no | in paragraph 4 and shall have no | |
| access to SIS II, VIS, Eurodac or | access to SIS II, VIS, Eurodac or | access to SIS II, VIS, Eurodac or | |
| EES operational data, or to the SIS | EES operational data, or to the SIS | EES operational data, or to the SIS | |
| II-related SIRENE exchange, by any | II-related SIRENE exchange, by any | II-related SIRENE exchange, by any | |
| means. | means. | means. | |
| 6. Without prejudice to the existing | 6. Without prejudice to the existing | 6. Without prejudice to the existing | |
| contracts on the network of SIS II, | contracts on the network of SIS II, | contracts on the network of SIS II, | |
| VIS, Eurodac and EES, the | VIS, Eurodac and EES, the | VIS, Eurodac and EES, the | |
| management of encryption keys shall | management of encryption keys shall | management of encryption keys shall | |
| remain within the comptence of the | remain within the comptence of the | remain within the competence of the | |
| Agency and shall not be outsourced | Agency and shall not be outsourced | Agency and shall not be outsourced | |
| to any external private-sector entity." | to any external private-sector entity." | to any external private-sector entity." | |
| (4) In Article 8, paragraph 1 is | (4) In Article 8, paragraph 1 is | (4) In Article 8, paragraph 1 is | |
| replaced by the following: | replaced by the following: | replaced by the following: | |
| "1. The Agency shall monitor the | "1. The Agency shall monitor the | "1. The Agency shall monitor the | |
| developments in research relevant | developments in research relevant | developments in research relevant | |
| for the operational management of | for the operational management of | for the operational management of | |
| SIS II, VIS, Eurodac, EES and other | SIS II, VIS, Eurodac, EES and other | SIS II, VIS, Eurodac, EES and other | |
| large-scale information systems". | large-scale information systems". | large-scale information systems". | |
| (5) In Article 12, paragraph 1 is | (5) In Article 12, paragraph 1 is | (5) In Article 12, paragraph 1 is | |
| amended as follows: | amended as follows: | amended as follows: | |
| (a) a new point (sa) is added after | (a) a new point (sa) is added after | (a) a new point (sa) is added after | |
| point (s): | point (s): | point (s): | |
| "(sa) adopt the reports on the | "(sa) adopt the reports on the | "(sa) adopt the reports on the | |
| development of the EES pursuant to | development of the EES pursuant to | development of the EES pursuant to | |
| Article 64(2) of Regulation (EU) | Article 64(2) of Regulation (EU) | Article 64(2) of Regulation (EU) | |
| XX/XX of XXX". | XX/XX of XXX". | XX/XX of XXX". | |

| (a) point (t) is replaced by the | (a) point (t) is replaced by the | (a) point (t) is replaced by the | |
|---|---|---|--|
| following: | following: | following: | |
| "(t) adopt the reports on the technical | "(t) adopt the reports on the technical | "(t) adopt the reports on the technical | |
| functioning of SIS II pursuant to | functioning of SIS II pursuant to | functioning of SIS II pursuant to | |
| Article 50(4) of Regulation (EC) No | Article 50(4) of Regulation (EC) No | Article 50(4) of Regulation (EC) No | |
| 1987/2006 and Article 66(4) of | 1987/2006 and Article 66(4) of | 1987/2006 and Article 66(4) of | |
| | Decision 2007/533/JHA respectively, | | |
| Decision 2007/533/JHA respectively, | | Decision 2007/533/JHA respectively, | |
| of VIS pursuant to Article 50(3) of | of VIS pursuant to Article 50(3) of | of VIS pursuant to Article 50(3) of | |
| Regulation (EC) No 767/2008 and | Regulation (EC) No 767/2008 and | Regulation (EC) No 767/2008 and | |
| Article 17(3) of Decision | Article 17(3) of Decision | Article 17(3) of Decision | |
| 2008/633/JHA and of EES pursuant | 2008/633/JHA and of EES pursuant | 2008/633/JHA and of EES pursuant | |
| to Article 64(4) of Regulation (EU) | to Article 64(4) of Regulation (EU) | to Article 64(4) of Regulation (EU) | |
| XX/XX of XXX." | XX/XX of XXX." | XX/XX of XXX." | |
| (b) point (v) is replaced by the | (b) point (v) is replaced by the | (b) point (v) is replaced by the | |
| following: | following: | following: | |
| "(v) make comments on the | "(v) make comments on the | "(v) make comments on the | |
| European Data Protection | European Data Protection | European Data Protection | |
| Supervisor's reports on the audits | Supervisor's reports on the audits | Supervisor's reports on the audits | |
| pursuant to Article 45(2) of | pursuant to Article 45(2) of | pursuant to Article 45(2) of | |
| Regulation (EC) No 1987/2006, | Regulation (EC) No 1987/2006, | Regulation (EC) No 1987/2006, | |
| Article 42(2) of Regulation (EC) | Article 42(2) of Regulation (EC) | Article 42(2) of Regulation (EC) | |
| No 767/2008, Article 31(2) of | No 767/2008, Article 31(2) of | No 767/2008, Article 31(2) of | |
| Regulation (EU) No 603/2013 and | Regulation (EU) No 603/2013 and | Regulation (EU) No 603/2013 and | |
| Article 50(2) of Regulation (EU) | Article 50(2) of Regulation (EU) | Article 50(2) of Regulation (EU) | |
| XX/XX of XXX and ensure | XX/XX of XXX and ensure | XX/XX of XXX and ensure | |
| appropriate follow-up of those | appropriate follow-up of those | appropriate follow-up of those | |
| audits". | audits". | audits". | |

| (b) a new point (xa) is inserted after | (b) a new point (xa) is inserted after | (b) a new point (xa) is inserted after | |
|---|---|---|--|
| point x: | point x: | point x: | |
| "(xa) publish statistics related to EES | "(xa) publish statistics related to EES | "(xa) publish statistics related to EES | |
| pursuant to Article 57 of Regulation | pursuant to Article 57 of Regulation | pursuant to Article 57 of Regulation | |
| (EU) No XXXX/XX. | (EU) No XXXX/XX. | (EU) No XXXX/XX. | |
| (c) a new point (za) is added to point | (c) a new point (za) is added to point | (c) a new point (za) is added to point | |
| z: | (c) a new point (za) is added to point | z: | |
| "(za) ensure annual publication of | "(za) ensure annual publication of | "(za) ensure annual publication of | |
| the list of competent authorities | the list of competent authorities | the list of competent authorities | |
| pursuant to Article 8(2) of | pursuant to Article 8(2) of | pursuant to Article 8(2) of | |
| 1 | 1 | 1 | |
| Regulation (EU) No XXXX/XX. | Regulation (EU) No XXXX/XX. | Regulation (EU) No XXXX/XX. | |
| (6) In Article 15, paragraph 4 is | (6) In Article 15, paragraph 4 is | (6) In Article 15, paragraph 4 is | |
| replaced by the following: | replaced by the following: | replaced by the following: | |
| "4. Europol and Eurojust may attend | "4. Europol and Eurojust may attend | "4. Europol and Eurojust may attend | |
| the meetings of the Management | the meetings of the Management | the meetings of the Management | |
| Board as observers when a question | Board as observers when a question | Board as observers when a question | |
| concerning SIS II, in relation to the | concerning SIS II, in relation to the | concerning SIS II, in relation to the | |
| application of Decision | application of Decision | application of Decision | |
| 2007/533/JHA, is on the agenda. | 2007/533/JHA, is on the agenda. | 2007/533/JHA, is on the agenda. | |
| Europol may also attend the | Europol may also attend the | Europol may also attend the | |
| meetings of the Management Board | meetings of the Management Board | meetings of the Management Board | |
| as observer when a question | as observer when a question | as observer when a question | |
| concerning VIS, in relation to the | concerning VIS, in relation to the | concerning VIS, in relation to the | |
| application of Decision | application of Decision | application of Decision | |
| 2008/633/JHA, or a question | 2008/633/JHA, or a question | 2008/633/JHA, or a question | |
| concerning Eurodac, in relation to | concerning Eurodac, in relation to | concerning Eurodac, in relation to | |
| the application of Regulation (EU) | the application of Regulation (EU) | the application of Regulation (EU) | |
| No 603/2013, or a question | No 603/2013, or a question | No 603/2013, or a question | |
| concerning EES in relation to the | concerning EES in relation to the | concerning EES in relation to the | |
| application of Regulation (EU) | application of Regulation (EU) | application of Regulation (EU) | |
| XX/XX of XXX is on the agenda". | XX/XX of XXX is on the agenda". | XX/XX of XXX is on the agenda". | |

| (7) In Article 17 paragraph 5, point | | (7) In Article 17 paragraph 5, point | |
|--|--|--|--|
| (g) is replaced by the following: | (g) is replaced by the following: | (g) is replaced by the following: | |
| "(g) without prejudice to Article 17 | "(g) without prejudice to Article 17/ | "(g) without prejudice to Article 17 | |
| of the Staff Regulations, establish | of the Staff Regulations, establish | of the Staff Regulations, establish | |
| confidentiality requirements in order | confidentiality requirements in order | confidentiality requirements in order | |
| to comply with Article 17 of | to comply with Article 17 of | to comply with Article 17 of | |
| Regulation (EC) No 1987/2006, | Regulation (EC) No 1987/2006, | Regulation (EC) No 1987/2006, | |
| Article 17 of Decision | Article 17 of Decision | Article 17 of Decision | |
| 2007/533/JHA, Article 26(9) of | 2007/533/JHA, Article 26(9) of | 2007/533/JHA, Article 26(9) of | |
| Regulation (EC) No 767/2008, | Regulation (EC) No 767/2008, | Regulation (EC) No 767/2008, | |
| Article 4(4) of Regulation (EU) | Article 4(4) of Regulation (EU) | Article 4(4) of Regulation (EU) | |
| No 603/2013 and Article 34(4) of | No 603/2013 and Article 34(4) of | No 603/2013 and Article 34(4) of | |
| [Regulation (EU) XX/XX of XXX.]" | [Regulation (EU) XX/XX of XXX.]" | [Regulation (EU) XX/XX of XXX.]" | |
| (8) Article 19 is amended as | (8) Article 19 is amended as | (8) Article 19 is amended as | |
| follows: | follows: | follows: | |
| (a) paragraph 1 is replaced by the | (a) paragraph 1 is replaced by the | (a) paragraph 1 is replaced by the | |
| following: | following: | following: | |
| "1. The following Advisory Groups | "1. The following Advisory Groups | "1. The following Advisory Groups | |
| shall provide the Management Board | shall provide the Management Board | shall provide the Management Board | |
| with expertise relating to large-scale | with expertise relating to large-scale | with expertise relating to large-scale | |
| IT systems and, in particular, in the | IT systems and, in particular, in the | IT systems and, in particular, in the | |
| context of the preparation of the | context of the preparation of the | context of the preparation of the | |
| annual work programme and the | annual work programme and the | annual work programme and the | |
| annual activity report: | annual activity report: | annual activity report: | |
| (a) SIS II Advisory Group; | (a) SIS II Advisory Group; | (a) SIS II Advisory Group; | |
| (b) VIS Advisory Group; | (b) VIS Advisory Group; | (b) VIS Advisory Group; | |
| (c) Eurodac Advisory Group; | (c) Eurodac Advisory Group; | (c) Eurodac Advisory Group; | |
| (d) EES Advisory Group." | (d) EES Advisory Group." | (d) EES Advisory Group." | |

| (b) paragraph (3) is replaced by | (b) paragraph (3) is replaced by | (b) paragraph (3) is replaced by | |
|--|--|--|--|
| the following: | the following: | the following: | |
| "Europol and Eurojust may each | "Europol and Eurojust may each | "Europol and Eurojust may each | |
| appoint a representative to the SIS II | appoint a representative to the SIS II | appoint a representative to the SIS II | |
| Advisory Group. Europol may also | Advisory Group Europol may also | Advisory Group. Europol may also | |
| appoint a representative to the VIS, | appoint a representative to the VIS, | appoint a representative to the VIS, | |
| Eurodac and EES Advisory Groups". | Eurodac and EES Advisory Groups". | Eurodac and EES Advisory Groups". | |



| CHAPTER IX | CHAPTER IX | CHAPTER IX | |
|--|---|--------------------------------------|---|
| Final provisions | Final provisions | Final provisions | |
| Article 57 | Article 57 | Article 57 | |
| Use of data for reporting and | Use of data f or reporting and | Use of data for reporting and | |
| statistics | statistics | statistics | |
| 1. The duly authorised staff of the | 1. The duly authorised staff of the | 1. The duly authorised staff of the | Presidency encourages delegations |
| competent authorities of Member | competent authorities of Member | competent authorities of Member | to accept the following text: ³² |
| States, the Commission, eu-LISA | States, the Commission. eu-LISA | States, the Commission, eu-LISA | 1. The duly authorised staff of the |
| and Frontex shall have access to | and Frontex and eu-LISA, shall have | and the European Border and Coast | competent authorities of Member |
| consult the following data, solely for | access to consult the following data, | Guard Agency established by | States, the Commission, eu-LISA |
| the purposes of reporting and | solely for the purposes of reporting | <u>Regulation (EU) 2016/1624 []</u> | shall have access to consult the |
| statistics without allowing for | and statistics without allowing for | shall have access to consult the | following data, solely for the |
| individual identification: | individual identification or profiling | following data, solely for the | purposes of reporting and statistics |
| | and the duly authorised staff of the | purposes of reporting and statistics | without allowing for individual |
| | European Border and Coast Guard | without allowing for individual | identification while ensuring non- |
| | Agency shall have access to consult | identification: | discrimination in accordance with |
| | the following data for the purpose | | Article 9 of this Regulation and the |
| | of carrying out risk analyses and | | European Border and Coast Guard |
| | vulnerability assessments as | | Agency established by Regulation |
| | referred to in Articles 11 and 13 of | | (EU) 2016/1624 shall have access to |
| | <i>Regulation (EU) 2016/1624</i> : | | consult the following data for the |
| | | | purpose of carrying out risk |
| | | | analyses and vulnerability assessments as referred to in |
| | | | |
| | | | Articles 11 and 13 of Regulation (EU) 2016/1624: |
| (a) status information; | (a) status information; | (a) status information; | |
| (b) nationality, gender and date of | (b) nationality, gender and date | (b) nationality, gender and date of | Provisionally agreed: |
| birth of the third country national; | <i>year</i> of birth of the third country | birth of the third country national; | b) nationality, gender and year of |
| | national; | | birth of the third country national; |

³² Reserve: NL



| (c) date and border crossing point | (c) date and border crossing point | (c) date and border crossing point | |
|--|--|--|--------------------------------------|
| of the entry to a Member State and | of the entry to a Member State and | of the entry to a Member State and | |
| date and border crossing point of the | date and border crossing point of the | date and border crossing point of the | |
| exit from a Member State; | exit from a Member State; | exit from a Member State; | |
| (d) the type of the travel document | (d) the type of the travel document | (d) the type of the travel document | |
| and three letter code of the issuing | and three letter code of the issuing | and three letter code of the issuing | |
| country; | country; | country; | |
| (e) number of overstayers referred | (e) number of overstayers referred | (e) number of overstayers referred | |
| to in Article 11, nationalities and | to in Article 11, nationalities and | to in Article 11, nationalities and | |
| border crossing point of entry; | border crossing point of entry; | border crossing point of entry; | |
| (f) the data entered in respect of | (f) the data entered in respect of | (f) the data entered in respect of | |
| any stay revoked or whose validity is | any stay revoked or whose validity is | any stay revoked or whose validity is | |
| extended: | extended; | extended; | |
| (g) the three letter code of the | (g) the three letter code of the | (g) the three letter code of the | Provisionally agreed: |
| Member State that issued the short | Member State that issued the short | Member State that issued the [] | (g) the three letter code of the |
| stay visa, {or the touring visa} if | stay visa, {or the touring visa} if | visa, [] if applicable; | Member State that issued the visa, |
| applicable; | applicable; | | [or the touring visa] if applicable; |
| (h) the number of persons exempt | (h) the number of persons exempt | (h) the number of persons exempt | [or the touring visa] it applicable; |
| | | from the requirement to give | |
| from the requirement to give | from the requirement to give | | |
| fingerprints pursuant to Article 15(2) | fingerprints pursuant to Article 15(2) | fingerprints pursuant to Article $15(2)$ | |
| and (3); | and (3); | and (3); | |
| (i) the number of third country | (i) the number of third country | (i) the number of third country | Provisionally agreed: |
| nationals refused entry, the | nationals refused entry, the | nationals refused entry, the | (i) the number of third country |
| nationalities of third country | nationalities of third country | nationalities of third country | nationals refused entry, the |
| nationals refused entry and the type | nationals refused entry and the type | nationals refused entry and the type | nationalities of third country |
| of border (land, air or sea) and the | of border (land, air or sea) and the | of border (land, air or sea), [] the | nationals refused entry and the type |
| border crossing point at which entry | border crossing point at which entry | border crossing point at which entry | of border (land, air or sea), the |
| was refused. | was refused. | was refused and the grounds on | border crossing point at which entry |
| | | which entry has been refused. | was refused and the grounds |
| | | | mentioned under article 16(2)(d) of |
| | | | this Regulation. |



| 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 | 2. For the purpose of paragraph 1, eu-LISA shall establish, implement and host a central repository at a central level 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 | 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 | In order to have language which is as clear as possible, rather than referring to the 'Central Repositry', we refer to the 'repositary at a central level'. The wording under article 6 has also been aligned to reflect this change. Also, the EP argued that there should not be another reference to the assessment of the risk of overstay being that this is already covered in the paragraph. Could delegations accept the deletion of 'assessment of the risk of overstay': 2. For the purpose of paragraph 1, eu-LISA shall establish, implement |
|---|--|---|---|
| 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). | 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. | 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). | eu-LISA shall establish, implement and host a repository at a central level 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 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. |
|---|---|--|---|
| 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. | 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 pronitoring. | 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. | 4. Every quarter, eu-LISA shall publish statistics on the EES showing in particular the number, nationality, <i>age</i> , <i>gender</i> , <i>duration of stay</i> 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. | 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. | EP explained that their addition is to align with the data that are mentioned under para 1. Presidency encourages delegations to accept the text: 4. Every quarter, eu-LISA shall publish statistics on the EES showing in particular the number, nationality, age, gender, duration of stay 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 | 5. At the end of each year, statistical data shall be compiled in | 5. At the end of each year, statistical data shall be compiled in | <i>EP explained that at the end of the year, the quarterly statistics would</i> |
|---|---|---|---|
| - | - | - | · · · · |
| the form of quarterly statistics for | an annual report for that year. The | the form of quarterly statistics for | be compiled into one report i.e. the |
| that year. The statistics shall contain | statistics shall contain a breakdown | that year. The statistics shall contain | reference of the EP amendment to an |
| a breakdown of data for each | of data for each Member State. The | a breakdown of data for each | 'annual report'. |
| Member State. | report shall be published and | Member State. | The EP pointed out that the current |
| | transmitted to the European | | article did not foresee to whom the |
| | Parliament, to the Council, to the | | statistical data would be given once |
| | Commission, to the European Data | | compiled. EP provided for this |
| | Protection Supervisor and to the | | through their addition at the end of |
| | national supervisory authorities. | | the paragraph. It was also suggested |
| | | | that the annual report is transmitted |
| | | | to Frontex. |
| | | | Could delegations accept the |
| | | | following text: |
| | | | 5. At the end of each year, |
| | | | statistical data shall be compiled in |
| | | | an annual report for that year. The |
| | | | statistics shall contain a breakdown |
| | | | of data for each Member State. The |
| | | | report shall be published and |
| | | | transmitted to the European |
| | | | Parliament, to the Council, to the |
| | | | Commission, <u>to Frontex</u> , to the |
| | | | European Data Protection |
| | | | Supervisor and to the national |
| | | | supervisory authorities. |
| | | | supervisory authornes. |

| 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. | 6. At the request of the Commission <i>and the European</i> <i>Parliament</i> , eu-LISA shall provide <i>them</i> with statistics on specific aspects related to the implementation of this Regulation as well as the statistics pursuant to paragraph 3. | 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. | <i>EP withdrew their amendments.</i> <i>Provisionally agreed text:</i> 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. |
|---|---|---|--|
| Article 58 Costs | Article 58 Costs | 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. | 1. The costs incurred in connection with the establishment and operation of the Central System, the <i>secure and encrypted</i> Communication Infrastructure and the National Uniform Interface shall be borne by the general budget of the Union. | 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. | <i>Provisionally agreed</i> : 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. | 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. | 2 Costs incurred by the integration of the existing national [] infrastructure <u>necessary for</u> <u>border check</u> 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. | Provisionally agreed: 2 Costs incurred by the integration of the existing national infrastructure necessary for border check 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); | The following costs shall be excluded: (a) Member States' project management office (meetings, missions, offices); | The following costs shall be excluded: (a) Member States' project management office (meetings, missions, offices); | |

| (b) hosting of national systems (space, implementation, electricity, cooling); | (b) hosting of national systems <i>and border infrastructures</i> (space, implementation, electricity, cooling); | (b) hosting of national systems (space, implementation, electricity, cooling); | Provisionally agreed: (b) hosting of national IT systems (space, implementation, electricity, |
|--|--|--|---|
| (c) operation of national systems | (c) operation of national | (c) operation of national systems | cooling); <i>Provisionally agreed</i> : |
| (operators and support contracts); | systems <i>and border infrastructures</i> (operators and support contracts); | (operators and support contracts); | (c) operation of national IT systems (operators and support contracts); |
| (d) customisation of existing border control and policing systems for national entry-exit systems; | (d) customisation of existing border control and policing systems for national entry-exit systems; | (d) customisation of existing border <u>check</u> [] and policing systems for national entry-exit systems; | Provisionally agreed: (d) customisation of existing border check_and policing systems for national entry-exit systems; |
| (e) project management of national entry-exit systems; | (e) project management of national entry-exit systems; | (e) project management of national entry-exit systems; | |
| (f) design, development, implementation, operation and maintenance of national communication networks; | (f) design, development, implementation, operation and maintenance of national communication networks; | (f) design, development, implementation, operation and maintenance of national communication networks; | |
| (g) Automatic Border Control systems, self-service systems and e-gates. | (g) Automatic Border Control systems, self-service systems and e- gates. | (g) Automatic Border Control systems, self-service systems and e-gates. | |
| 3. The costs incurred by the central access points and the costs for their connection to the National Uniform Interface shall be borne by each Member State. | 3. The costs incurred by the central access points and the costs for their connection to the National Uniform Interface shall be borne by each Member State. | 3. The costs incurred by the central access points <u>as referred to in</u> <u>article 26 and 27 shall be borne by</u> <u>each Member State and Europol,</u> <u>respectively.</u> [] <u>The costs for</u> the[] connection <u>of these central</u> <u>access points</u> to the National Uniform Interface <u>and to the EES</u> shall be borne by each Member State <u>and Europol, respectively.</u> | <i>Provisionally agreed</i>: 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. The costs for the 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. |

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|---------|----------|
| ANNEX | DG D 1 A |

| 4. Each Member State and | 4. Each Member State and | 4. Each Member State and | Provisionally agreed compromise text: 4. Each Member State and Europol shall set up and maintain at their expense the technical infrastructure necessary to implement the conditions in accordance with Chapter IV and shall be responsible for bearing the costs resulting from access to the |
|---|---|---|---|
| Europol shall set up and maintain at | Europol shall set up and maintain at | Europol shall set up and maintain at | |
| their expense the technical | their expense the technical | their expense the technical | |
| infrastructure necessary to | infrastructure necessary to | infrastructure necessary to | |
| implement Article 5(2) and shall be | implement Article 5(2) and shall be | implement Article [] <u>1(2)</u> and shall | |
| responsible for bearing the costs | responsible for bearing the costs | be responsible for bearing the costs | |
| resulting from access to the EES for | resulting from access to the EES for | resulting from access to the EES for | |
| that purpose. | that purpose. | that purpose. | |
| | | | EES for that purpose. |
| Article 59 | Article 59 | Article 59 | |
| Notifications | Notifications | Notifications | |
| 1. Member States shall notify the | 1. Member States shall notify the | 1. Member States shall notify the | |
| Commission of the authority which | Commission of the authority which | Commission of the authority which | |
| is to be considered as controller | is to be considered as controller | is to be considered as controller | |
| referred to in Article 49. | referred to in Article 49. | 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. | 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. | 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. | Provisionally agreed: 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 and shall notify without delay any amendment thereto. |
| 3. Member States shall notify the | 3. Member States shall notify the | 3. Member States shall notify the | Provisionally agreed text: 3. Member States shall notify the |
| Commission of their designated | Commission of their designated | Commission <u>and eu-LISA</u> of their | Commission and eu-LISA of their |
| authorities and of their central access | authorities and of their central access | designated authorities and of their | designated authorities and of their |
| points referred to in Article 26 and | points referred to in Article 26 and | central access points referred to in | central access points referred to in |
| shall notify without delay any | shall notify without delay any | Article 26 and shall notify without | Article 26 and shall notify without |
| amendments thereto. | amendments thereto. | delay any amendments thereto. | delay any amendments thereto. |



| 4. Europol shall notify the | 4. Europol shall notify the | 4. Europol shall notify the | Provisionally agreed text: 4. Europol shall notify the |
|---|---|---|---|
| Commission of its designated | Commission of its designated | Commission <u>and eu-LISA</u> of its | Commission and eu-LISA of its |
| authority and its central access point | authority and its central access point | designated authority and its central | designated authority and its central |
| referred to in Article 27 and shall | referred to in Article 27 and shall | access point referred to in Article 27 | access point referred to in Article 27 |
| notify without delay any | notify without delay any | and shall notify without delay any | and shall notify without delay any |
| amendments thereto. | amendments thereto. | amendments thereto. | 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. | 5. eu-LISA shall notify the Commission of the successful completion of the test referred to in Article 60(1)(b). 6. The Commission shall make publish the information notified pursuant referred to paragraph in paragraphs 1 to 4 in the Official Journal of the European Union. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated version of this information. The Commission shall maintain available to the Member States and the public by a constantly updated public website containing this information. | 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. | To be consistent throughout the text, notifications should be put under Article 59. Therefore, the notification mentioned under article 8(2) second sub-para, is moved here. Text in [] brackets: [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. 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.] |

| | | 6a. The Commission shall publish | Deletion provisionally agreed. |
|--|--|--|--------------------------------|
| | | the information referred to in | Detetion provisionally agreed. |
| | | 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 | Article 60 | Article 60 | |
| Start of operations | Start of operations | Start of operations | |
| 1. The Commission shall | 1. The Commission shall | 1. The Commission shall | |
| determine the date from which the | determine the date from which the | determine the date from which the | |
| EES is to start operations, after the | EES is to start operations, after the | EES is to start operations, after the | |
| following conditions are met: | following conditions are met: | following conditions are met: | |
| (a) the measures referred to in | (a) the measures referred to in | (a) the measures referred to in | |
| Article 33 have been adopted; | Article 33 have been adopted; | Article 33 have been adopted; | |
| (b) eu-LISA has declared the | (b) eu-LISA has declared the | (b) eu-LISA has declared the | |
| successful completion of a | successful completion of a | successful completion of a | |
| comprehensive test of the EES, | comprehensive test of the EES, | comprehensive test of the EES, | |
| which shall be conducted by eu- | which shall be conducted by eu- | which shall be conducted by eu- | |
| LISA in cooperation with the | LISA in cooperation with the | LISA in cooperation with the | |
| Member States; | Member States: | Member States; | |
| (c) the Member States have | (c) the Member States have | (c) the Member States have | |
| validated the technical and legal | validated the technical and legal | validated the technical and legal | |
| arrangements to collect and transmit | arrangements to collect and transmit | arrangements to collect and transmit | |
| the data referred to in Articles 14 to | the data referred to in Articles 14 to | the data referred to in Articles 14 to | |
| 18 to the EES and have notified them | 18 to the EES and have notified them | 18 to the EES and have notified them | |
| to the Commission; | to the Commission; | to the Commission; | |
| (d) the Member States have | (d) the Member States have | (d) the Member States have | |
| completed the notifications to the | completed the notifications to the | completed the notifications to the | |
| Commission referred to in Article 59 | Commission referred to in Article 59 | Commission referred to in Article 59 | |
| (1) and (3). | (1) and (3). | (1) and (3). | |

| <u>1a.</u> <u>The EES shall be operated by:</u> |
|---|
| a) the Member States which apply |
| Schengen acquis in full, and |
| b) the Member States which do |
| not yet apply Schengen acquis in |
| full, but for which all the following |
| conditions are met: |
| (i) the verification in accordance |
| with applicable Schengen evaluation |
| procedures has been successfully |
| completed, |
| (ii) the provisions of the Schengen |
| acquis relating to the Schengen |
| Information System have been put |
| into effect in accordance with the |
| relevant Accession Treaty, and |
| (iii) the relevant provisions of the |
| Schengen acquis relating to the Visa |
| information system which are |
| |
| necessary for the operation of the |
| EES as defined in this Regulation |
| have been put into effect in |
| accordance with the relevant |
| Accession Treaty. |
| <u>1b.</u> <u>A Member State which is not</u> |
| covered by paragraph 1a, shall be |
| connected to the EES as soon as the |
| conditions referred to in paragraph |
| <u>1(b), (c), (d) and paragraph 1a(b) are</u> |
| met. The Commission shall |
| determine the date from which the |
| EES is to start the operations in that |
| Member State. |



| 2 The Commission shall inform | 2 The Commission shall inform | |
|-------------------------------------|---|--|
| | | |
| 1 | ± | |
| | | |
| | | |
| | * * * | |
| 3. The Commission decision | | |
| referred to in paragraph 1 shall be | referred to in paragraph 1 and 1b | |
| published in the Official Journal. | shall be published in the Official | |
| | Journal. | |
| 4. The Member States and | 4. The Member States and | |
| Europol shall start using the EES | Europol shall start using the EES | |
| 1 0/ | 1 0 | |
| Commission in accordance with | Commission in accordance with | |
| paragraph 1. | paragraph 1 or where applicable with | |
| | paragraph 1b. | |
| Article 61 | Article 61 | |
| Committee procedure | Committee procedure | |
| 1. The Commission shall be | 1. The Commission shall be | |
| assisted by a committee. That | assisted by a committee. That | |
| committee shall be a committee | committee shall be a committee | |
| within the meaning of Regulation | within the meaning of Regulation | |
| | 0 0 | |
| | | |
| | | |
| | 1 0 1 | |
| | - | |
| | 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. <u>Article 61</u> <u>Committee procedure</u> 1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. | the European Parliament and the Council of the results of the test carried out pursuant to point (b) of paragraph 1.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.3. The Commission decision referred to in paragraph 1 and 1b 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 1.4. The Member States and Europol shall start using the EES from the date determined by the Commission in accordance with paragraph 1.4. The Member States and Europol shall start using the EES from the date determined by the Commission in accordance with paragraph 1.Article 61Article 61 Committee procedure1. The Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011.1. The Commission shall be assisted by a committee |

| Article 62 | Article 62 | Article 62 | |
|--|--|--|--|
| Advisory group | Advisory group | Advisory group | |
| An Advisory Group shall be | An Advisory Group shall be | An Advisory Group shall be | Provisionally agreed: |
| established by eu-LISA and provide | established by eu-LISA and provide | established by eu-LISA and provide | An Advisory Group shall be |
| it with the expertise related to the | it with the expertise related to the | it with the expertise related to the | established by eu-LISA and provide |
| EES in particular in the context of | EES in particular in the context of | EES in particular in the context of | it with the expertise related to the |
| the preparation of its annual work | the preparation of its annual work | the preparation of its annual work | EES in particular in the context of |
| programme and its annual activity | programme and its annual activity | programme and its annual activity | the preparation of its annual work |
| report. | report. | report. During the design and | programme and its annual activity |
| Teport. | report. | development phase, Article 34(2) | report. During the design and |
| | | applies. | development phase, Article 34(2) |
| | | <u>appres.</u> | applies. |
| Article 63 | Article 63 | Article 63 | applies. |
| Training | Training | Training | |
| eu-LISA shall perform tasks related | eu-LISA shall perform tasks related | eu-LISA shall perform tasks related | Provisionally agreed: |
| to providing training on the technical | to providing training on the technical | to providing training on the technical | eu-LISA shall perform tasks related |
| use of the EES. | use of the EES. | use of the EES in accordance with | to providing training on the technical |
| use of the EES. | use of the LED. | the relevant provisions in Regulation | use of the EES in accordance with |
| | | 1077/2011. | the relevant provisions in Regulation |
| | | <u>10///2011</u> . | 1077/2011. |
| | | Article 63a | Provisionally agreed : |
| | | Practical Handbook | Article 63a |
| | | | Practical Handbook |
| | | The Commission shall, in close | Provisionally agreed: |
| | | cooperation with the Member States, | The Commission shall, in close |
| | | eu-LISA and other relevant agencies, | cooperation with the Member States, |
| | | make available a practical handbook | eu-LISA and other relevant agencies, |
| | | for the implementation and | make available a practical handbook |
| | | management of the EES. The | for the implementation and |
| | | Handbook shall provide technical | management of the EES. The |
| | | and operational guidelines, | Handbook shall provide technical |
| | | recommendations and best practices. | and operational guidelines, |
| | | The Commission shall adopt the | recommendations and best practices. |

EN

| | | Handbook in the form of a | The Commission shall adopt the |
|---|---|---|-------------------------------------|
| | | recommendation. | Handbook in the form of a |
| | | | recommendation. |
| Article 64 | Article 64 | Article 64 | |
| Monitoring and evaluation | Monitoring and evaluation | Monitoring and evaluation | |
| 1. eu-LISA shall ensure that | 1. eu-LISA shall ensure that | 1. eu-LISA shall ensure that | |
| procedures are in place to monitor | procedures are in place to monitor | procedures are in place to monitor | |
| the development of the EES in light | the development of the EES in light | the development of the EES in light | |
| of objectives relating to planning and | of objectives relating to planning and | of objectives relating to planning and | |
| costs and to monitor the functioning | costs and to monitor the functioning | costs and to monitor the functioning | |
| of the EES in light of objectives | of the EES in hight of objectives | of the EES in light of objectives | |
| relating to the technical output, cost- | relating to the technical output, cost- | relating to the technical output, cost- | |
| effectiveness, security and quality of | effectiveness, security and quality of | effectiveness, security and quality of | |
| service. | service. | service. | |
| 2. By [Six months after the entry | 2. By [Six months after the entry | 2. By [Six months after the entry | LIBE suggestion |
| into force of this Regulation – | into force of this Regulation – | into force of this Regulation – | 2. By [Six months after the entry |
| OPOCE, please replace with the | OPOCE, please replace with the | OPOCE, please replace with the | into force of this Regulation – |
| actual date] and every six months | actual date] and every six months | actual date] and every six months | OPOCE, please replace with the |
| thereafter during the development | thereafter during the development | thereafter during the development | actual date] and every six months |
| phase of the EES, eu-LISA shall | phase of the EES, eu-LISA shall | phase of the EES, eu-LISA shall | thereafter during the development |
| submit a report to the European | submit a report to the European | submit a report to the European | phase of the EES, eu-LISA shall |
| Parliament and the Council on the | Parliament and the Council on the | Parliament and the Council on the | submit a report to the European |
| state of play of the development of | state of play of the development of | state of play of the development of | Parliament and the Council on the |
| the Central System, the Uniform | the Central System, the Uniform | the Central System, the Uniform | state of play of the development of |
| Interfaces and the Communication | Interfaces and the secure and | Interfaces and the Communication | the Central System, the Uniform |
| Infrastructure between the Central | encrypted Communication | Infrastructure between the Central | Interfaces and the Communication |
| System and the Uniform Interfaces. | Infrastructure between the Central | System and the Uniform Interfaces. | Infrastructure between the Central |
| Once the development is finalised, a | System and the Uniform Interfaces. | Once the development is finalised, a | System and the Uniform Interfaces. |
| report shall be submitted to the | This report shall contain detailed | report shall be submitted to the | This report shall contain detailed |
| European Parliament and the Council | information about the costs | European Parliament and the Council | information about the costs |
| explaining in detail how the | incurred and information as to any | explaining in detail how the | incurred and information as to any |
| objectives, in particular relating to | risks which may impact on the | objectives, in particular relating to | risks which may impact on the |
| planning and costs, were achieved as | overall costs of the system. Once the | planning and costs, were achieved as | overall costs of the system to be |

| well as justifying any divergences. | 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. | well as justifying any divergences. | borne by the general budget of the Union in accordance with Article 58(1) and (2) first subparagraph. 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 | 3. For the purposes of technical | 3. For the purposes of technical | |
| maintenance, eu-LISA shall have | maintenance, eu-LISA shall have | maintenance, eu-LISA shall have | |
| access to the necessary information | access to the necessary information | access to the necessary information | |
| relating to the data processing | relating to the data processing | relating to the data processing | |
| operations performed in the EES. | operations performed in the EES. | operations performed in the EES. | |
| 4. Two years after the start of | 4. Two years after the start of | 4. Two years after the start of | |
| operations of the EES and every two | operations of the EES and every two | operations of the EES and every two | |
| years thereafter, eu-LISA shall | years thereafter, eu-LISA shall | years thereafter, eu-LISA shall | |
| submit to the European Parliament, | submit to the European Parliament, | submit to the European Parliament, | |
| the Council and the Commission a | the Council and the Commission a | the Council and the Commission a | |
| report on the technical functioning of | report on the technical functioning of | report on the technical functioning of | |
| EES, including the security thereof. | EES, including the security thereof. | EES, including the security thereof. | |
| 5. Three years after the start of | 5. Three years after the start of | 5. Three years after the start of | Text is [] brackets is still open to |
| operations of the EES and every four | operations of the EES and every four | operations of the EES and every four | discussion with the EP. Presidency |
| years thereafter, the Commission | years thereafter, the Commission | years thereafter, the Commission | encourages delegations to accept the |
| shall produce an overall evaluation | shall produce an overall evaluation | shall produce an overall evaluation | following compromise text: |
| of the EES. This overall evaluation | of the EES. This overall evaluation | of the EES. This overall evaluation | 5. Three years after the start of |
| shall include an examination of | shall include an examination of | shall include an assessment of the | operations of the EES and every four |
| results achieved against objectives | results achieved against objectives | application of the Regulation; an | years thereafter, the Commission |
| and the impact on fundamental | and the impact on fundamental | examination of results achieved | shall produce an overall evaluation |
| rights, and assessing the continuing | rights, and assessing the continuing | against objectives and the impact on | of the EES. This overall evaluation |
| validity of the underlying rationale, | validity of the underlying rationale, | fundamental rights [] <u>;</u> [] <u>an</u> | shall include an assessment of the |
| the application of the Regulation, the | the application of the Regulation, the | assessment of the continuing validity | application of the Regulation; an |

| security of the EES and any implications on future operations, and shall make any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament and the Council. | security of the EES and any implications <i>including those with a</i> <i>budgetary impact</i> on future operations, and shall make any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament, and the the Council, <i>the</i> <i>European Data Protection</i> <i>Supervisor and the European</i> <i>Agency for Fundamental Rights</i> . | of the underlying rationale, <u>of the</u> <u>adequacy of the biometric data</u> <u>required for the proper functioning of</u> <u>the EES, of the use of stamps in the</u> <u>exceptional circumstances referred to</u> <u>under Article 19(2), of the practical</u> <u>implications of the application of</u> <u>Article 54, [] of the security of the</u> <u>EES and <u>of</u> any implications on future operations. <u>The evaluation</u> [] shall <u>include []</u> any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament and the Council.</u> | examination of results achieved against objectives and the impact on fundamental rights; an assessment of the continuing validity of the underlying rationale, of the adequacy of the biometric data <u>used</u> for the proper functioning of the EES, [of the use of stamps in the exceptional circumstances referred to under Article 19(2), of the practical implications of the application of Article 54,] of the security of the EES and of any implications including those with a Union budgetary impact on future operations. The evaluation shall include any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament, the Council, the European Data Protection Supervisor and the European Agency for Fundamental Rights. |
|--|--|---|---|
| 6. The Member States and | 6. The Member States and | 6. The Member States and | |
| Europol shall provide eu-LISA and | Europol shall provide eu-LISA and | Europol shall provide eu-LISA and | |
| the Commission with the information | the Commission with the information | the Commission with the information | |
| necessary to draft the reports referred | necessary to draft the reports referred | necessary to draft the reports referred | |
| to in paragraphs 4 and 5 according to | to in paragraphs 4 and 5 according to | to in paragraphs 4 and 5 according to | |
| the quantitative indicators predefined | the quantitative indicators predefined | the quantitative indicators predefined | |
| by the Commission and/or eu-LISA. | by the Commission and/or eu-LISA. | by the Commission and/or eu-LISA. | |
| This information shall not jeopardise | This information shall not jeopardise | This information shall not jeopardise | |
| working methods or include | working methods or include | working methods or include | |



| | | 1 | |
|--|--|--|---------------------------------------|
| information that reveals sources, | information that reveals sources, | information that reveals sources, | |
| staff members or investigations of | staff members or investigations of | staff members or investigations of | |
| the designated authorities. | the designated authorities. | the designated authorities. | |
| 7. eu-LISA shall provide the | 7. eu-LISA shall provide the | 7. eu-LISA shall provide the | |
| Commission with the information | Commission with the information | Commission with the information | |
| necessary to produce the overall | necessary to produce the overall | necessary to produce the overall | |
| evaluations referred to in | evaluations referred to in | evaluations referred to in paragraph | |
| paragraph 5. | paragraph 5. | 5. | |
| 8. While respecting the | 8. While respecting the | 8. While respecting the | Presidency encourages delegations |
| provisions of national law on the | provisions of national law on the | provisions of national law on the | to accept the following text: |
| publication of sensitive information, | publication of sensitive information, | publication of sensitive information, | 8. While respecting the |
| each Member State and Europol shall | each Member State and Europol shall | each Member State and Europol shall | provisions of national law on the |
| prepare annual reports on the | prepare annual reports on the | prepare annual reports on the | publication of sensitive information, |
| effectiveness of access to EES data | effectiveness of access to EES data | effectiveness of access to EES data | each Member State and Europol shall |
| for law enforcement purposes | for law enforcement purposes | for law enforcement purposes | prepare annual reports on the |
| containing information and statistics | containing information and statistics | containing [] statistics on: | effectiveness of access to EES data |
| on: | on: | | for law enforcement purposes |
| | | | containing information and |
| | | | statistics on: |
| (a) - the exact purpose of the | (a) - the exact purpose of the | (a) []whether <u>the consultation</u> | Provisionally agreed : |
| consultation (whether for | consultation (whether for | was made for the purpose of | (a) whether the consultation was |
| identification or for entry/exit | identification or for entry/exit | identification or for entry/exit | made for the purpose of |
| records) including the type of | records) including the type of | records, <u>and []</u> the type of terrorist | identification or for entry/exit |
| terrorist or serious criminal offence; | terrorist or serious criminal offence; | or serious criminal offence; | records, and the type of terrorist or |
| | | | serious criminal offence; |
| (b) - reasonable grounds given for | (b) - reasonable grounds given for | (b) [] <u>the</u> grounds given <u>to</u> [] | Provisionally agreed: |
| the substantiated suspicion that the | the substantiated suspicion that the | substantiate the suspicion that the | (b) the grounds given to |
| suspect, perpetrator or victim is | suspect, perpetrator or victim is | [] <u>person concerned</u> is covered by | substantiate the suspicion that the |
| covered by this Regulation; | covered by this Regulation; | this Regulation; | person concerned is covered by this |
| | | | Regulation; |

| 9465/17 |
|---------|
| ANNEX |



| (c) - the reasonable grounds given | (c) - the reasonable grounds given | (c) the [] grounds given not to | Provisionally agreed: |
|--|--|--|---|
| not to conduct consultation of other | not to conduct consultation of other | [] launch the consultation of other | c) the grounds given not to launch |
| Member States' automated | Member States' automated | Member States' automated | the consultation of other Member |
| fingerprint identification systems | fingerprint identification systems | fingerprint identification systems | States' automated fingerprint |
| under Decision 2008/615/JHA in | under Decision 2008/615/JHA in | under Decision 2008/615/JHA in | identification systems under |
| accordance with Article 29(2)(b); | accordance with Article 29(2)(b); | accordance with Article 29(2)(b); | Decision 2008/615/JHA in |
| | | | accordance with Article 29(2)(b); |
| (d) - the number of requests for | (d) - the number of requests for | (d) the number of requests for | |
| access to the EES for law | access to the EES for law | access to the EES for law | |
| enforcement purposes; | enforcement purposes; | enforcement purposes; | |
| (e) - the number and type of cases | (e) - the number and type of cases | (e) the number and type of cases <u>in</u> | Provisionally agreed: |
| which have ended in successful | which have ended in successful | which access to the EES for law | (e) the number and type of cases in |
| identifications; | identifications; | enforcement purposes led to [] | which access to the EES for law |
| | | successful identifications; | enforcement purposes led to |
| | | | successful identifications; |
| (f) - the need and use made of the | (f) - the need and use made of the | (f) the [] <u>number and type of</u> | Provisionally agreed: |
| exceptional case of urgency | exceptional case of urgency | cases in which the urgency procedure | (f) the number and type of cases in |
| including those cases where that | including those cases where that | was used, including those cases | which the urgency procedure was |
| urgency was not accepted by the ex | urgency was not accepted by the ex | where that urgency was not accepted | used, including those cases where |
| post verification carried out by the | post verification carried out by the | by the ex post verification carried out | that urgency was not accepted by the |
| central access point. | central access point. | by the central access point. | ex post verification carried out by the |
| | | | central access point. |
| | (fa) the number of requests for | | This provision is better placed either |
| | corrections of data, the action | | under article 49(2) or article 51(4). |
| | subsequently taken and the number | | To revert back. |
| | of corrections made in response to | | |
| | requests by the persons concerned | | |
| Member States' and Europol's | Member States' and Europol's | eu-LISA shall draw up templates to | Provisionally agreed: |
| annual reports shall be transmitted to | annual reports shall be transmitted to | facilitate collection of the | eu-LISA shall draw up templates to |
| the Commission by 30 June of the | the Commission by 30 June of the | information in this paragraph. These | facilitate collection of the |
| subsequent year. | subsequent year. | templates shall be available to the | information in this paragraph. These |
| | | Member States. | templates shall be available to the |
| | | Member States' and Europol's | Member States. |



| 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. | 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 apply from the date determined by the Commission in accordance with Article 60, with the exception of Articles 4, 33, 34, 35, 56, 58, 59, 60 and 61, which shall apply from the date of entry into force of this Regulation. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties. | annual reports shall be transmitted to the Commission by 30 June of the subsequent year. <u>Article 65</u> <u>Entry into force and applicability</u> 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. | Member States' and Europol's annual reports shall be transmitted to the Commission by 30 June of the subsequent year. <i>The EP amendment aims to</i> <i>differentiate between those</i> <i>provisions that will be applicable as</i> <i>from the date of entry into force of</i> <i>the Regulation and other provisions</i> <i>that will apply from when the EES</i> <i>starts operating.</i> <i>Provisionally agreed text pending</i> <i>verification of the listed articles:</i> 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 apply from the date determined by the Commission in accordance with Article 60, with the exception of Articles [4, 33, 34, 35, 56, 58, 59, 60 and 61,] which shall apply from the date of entry into force of this Regulation. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties. |
|--|---|--|---|
| Done at Brussels, | Done at Brussels, | Done at Brussels, | |
| For the EPFor the CouncilThe PresidentThe President | For the EPFor the CouncilThe PresidentThe President | For the EPFor the CouncilThe PresidentThe President | |





| ANNEX I | ANNEX I | ANNEX I | |
|---|---|---|---|
| List of international organisations referred to in Article 38(2) | List of international organisations referred to in Article 38(2) | [] <u>I</u> nternational organisations[] authorised to request data under Article 38(2) | Provisionally agreed: List of international organisations referred to in Article 38(2) |
| 1. UN organisations (such as UNHCR); | 1. UN organisations (such as UNHCR); | 1. UN organisations (such as UNHCR); | |
| 2. International Organization for Migration (IOM); | 2. International Organization for Migration (IOM); | 2. International Organization for Migration (IOM); | |
| 3. The International Committee of the Red Cross. | 3. The International Committee of the Red Cross. | 3. The International Committee of the Red Cross. | |
| | | <u>ANNEX II</u> | All of the Annex provisionally agreed by the EP |
| | | <u>The specific provisions for third</u> <u>country nationals who perform their</u> <u>border crossing on the basis of a</u> <u>valid Facilitated Transit Document</u> | Provisionally agreed text: The specific provisions for third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document |
| | | (1) By way of derogation from Article 14(1) to (3) of this Regulation, for third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003, the border check authorities shall: | Provisionally agreed text: (1) By way of derogation from Article 14(1) to (3) of this Regulation, for third country nationals who perform their border crossing on the basis of a valid Facilitated Transit Document (FTD) issued in accordance with Regulation (EC) 693/2003, the border authorities shall: |
| | | a) <u>create/update their individual</u> <u>file which shall contain the data</u> <u>foreseen under Article 15(1) (a), (b)</u> <u>and (c) of this Regulation. In</u> <u>addition, their individual file shall</u> | Provisionally agreed text: a) create/update their individual file which shall contain the data foreseen under Article 15(1) (a), (b) and (c) of this Regulation. In |

| indicate that the person holds a | addition, their individual file shall |
|--|--|
| Facilitated Transit Document (FTD). | indicate that the person holds a |
| That indication shall automatically | Facilitated Transit Document (FTD). |
| result in the multiple entry | That indication shall automatically |
| characteristic of the FTD to be added | result in the multiple entry |
| to the entry/exit record, | characteristic of the FTD to be added |
| | to the entry/exit record, |
| b) enter in an entry/exit record for | Provisionally agreed: |
| each of their entries performed on the | b) enter in an entry/exit record for |
| basis of a valid Facilitated Transit | each of their entries performed on the |
| Document (FTD), the data listed | basis of a valid Facilitated Transit |
| under Articles 14(2)(a) to (c) of this | Document (FTD), the data listed |
| Regulation as well as the indication | under Articles 14(2)(a) to (c) of this |
| that the entry was performed on the | Regulation as well as the indication |
| basis of an FTD. | that the entry was performed on the |
| In order to calculate the maximum | basis of an FTD. |
| duration of the transit, the date and | In order to calculate the maximum |
| time of entry shall be considered as | duration of the transit, the date and |
| the starting point of that duration. | time of entry shall be considered as |
| The date and time of expiry of the | the starting point of that duration. |
| authorised transit shall be calculated | The date and time of expiry of the |
| automatically by the system in | authorised transit shall be calculated |
| accordance with Article 3(2) of | automatically by the system in |
| Regulation (EC) 693/2003. | accordance with Article 3(2) of |
| | Regulation (EC) 693/2003. |
| (2) In addition, at the first entry on | Provisionally agreed: |
| the basis of an FTD, the date of | 2) In addition, at the first entry on |
| expiry of the validity of the FTD | the basis of an FTD, the date of |
| shall be entered into the entry/exit | expiry of the validity of the FTD |
| record. | shall be entered into the entry/exit |
| | record. |
| | |



| | (3) Article 14(3) and (4) of this | Provisionally agreed: |
|--|---|---|
| | Regulation shall be applicable | (3) Article $14(3)$ and (4) of this |
| | mutatis mutandis to third country | Regulation shall be applicable |
| | nationals holding a Facilitated | mutatis mutandis to third country |
| | Transit Document (FTD) issued in | nationals holding a Facilitated |
| | accordance with Regulation (EC) | Transit Document (FTD) issued in |
| | 693/2003. | accordance with Regulation (EC) |
| | | 693/2003. |
| | (4) For verification at a border at | Provisionally agreed: |
| | which the EES is operated and within | (4) For verification at a border at |
| | the territories of the Member States, | which the EES is operated and within |
| | third country nationals who perform | the territories of the Member States, |
| | their border crossing on the basis of a | third country nationals who perform |
| | valid Facilitated Transit Document | their border crossing on the basis of a |
| | (FTD) shall be subject mutatis | valid Facilitated Transit Document |
| | mutandis to the verifications and | (FTD) shall be subject mutatis |
| | identifications provided under | mutandis to the verifications and |
| | Articles 21 and 24 of this Regulation | identifications provided under |
| | and Articles 18 and 19a of | Articles 21 and 24 of this Regulation |
| | Regulation (EC) No 767/2008 that | and Articles 18 and 19a of |
| | are applicable to third country | Regulation (EC) No 767/2008 that |
| | nationals who are not subject to a | are applicable to third country |
| | visa requirement. | nationals who are not subject to a |
| | | visa requirement. |

| | (5) The provisions of paragraph 1 | Provisionally agreed: |
|--|---------------------------------------|---------------------------------------|
| | to 4 shall not apply to third country | (5) The provisions of paragraph 1 |
| | nationals who perform their border | to 4 shall not apply to third country |
| | crossing on the basis of a valid | nationals who perform their border |
| | Facilitated Transit Document (FTD) | crossing on the basis of a valid |
| | issued in accordance with Regulation | Facilitated Transit Document (FTD) |
| | (EC) 693/2003 provided that the | issued in accordance with Regulation |
| | following cumulative conditions are | (EC) 693/2003 provided that the |
| | met: | following cumulative conditions are |
| | | met: |
| | (a) they perform their transit by | Provisionally agreed: |
| | <u>train:</u> | (a) they perform their transit by |
| | | train; |
| | (b) they do not disembark in the | Provisionally agreed: |
| | territory of a Member State. | (b) they do not disembark in the |
| | | territory of a Member State. |