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#### **'I' ITEM NOTE**

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From:	Presidency
To:	Permanent Representatives Committee (Part 2)
Subject:	EES exemptions: holders of diplomatic, official or service passports and NATO personnel - Approval of lines to take

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#### **Background**

1. The main aims of Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing the Entry/Exit System (EES) are faster, more efficient border checks, better control of legal stays and increased internal security for the Schengen Area. This will be accomplished by automating entry/exit records for non-EU nationals and replacing passport stamps with biometric data (fingerprints, facial images) to track overstays, prevent document fraud and aid law enforcement.

2. In the past months, several third countries have enquired about the impact of the introduction of the EES on the exemption of certain categories of travellers. More specifically, the United States has requested the Commission to issue guidance to Member States exempting several categories of travellers and has subsequently asked Member States to ensure that those exemptions are operationalised. In its latest *démarche* to Member States, the United States notably asks that Member States grant exemption from EES fingerprinting for US diplomatic and official passport holders and exemption from EES registration for US defence personnel, and indicates that if this request is not complied with by 30 January 2026, Member State diplomatic and official travellers must appear in person at a US embassy or consulate for fingerprinting before entering the United States.

### **Coordinated approach of Member States**

3. In September 2025, the Commission provided guidance to Member States on the implementation of the EES with regard to exemptions for specific categories of travellers. It did so on the EES website, in the 'EES Handbook' and through a letter from Commissioner Brunner to the Ministers of Interior of Schengen States.
4. This topic was also discussed in various Council preparatory bodies over recent months, including in the Frontiers Working Party in November 2025, when several delegations asked the Commission to develop a harmonised approach towards granting exemptions. The Commission subsequently issued a questionnaire to Member States to map existing practices with regard to the registration of specific categories of travellers (holders of diplomatic, official or service passports and NATO personnel). The results of this questionnaire were discussed in the Smart Borders Committee on 16 January 2026. These results showed that, whereas there is convergence on certain practices across Member States, differences remain in other areas, in particular with regard to short stays, diplomats accredited outside the EU/Schengen states travelling into the Schengen area for official purposes and the so-called special circumstances that can be invoked by Member States when granting exemptions.
5. The application of, or exemption from, EES registration should be based on clear legal grounds, in line with Union law, including the Schengen Borders Code and the EES Regulation, and applicable international agreements, including the NATO Status of Forces Agreement (SOFA).

6. Ideally, exemptions from the EES should be interpreted strictly and applied in a consistent manner at all external borders. However, given the different practices that currently exist across Member States, the full harmonisation of practices is not possible before the deadline provided in the US démarche. The Presidency however agrees with many Member States that harmonisation should remain the goal for the EU, and will therefore invite the Commission to come forward with a suggestion for such a harmonisation of practices as a matter of urgency, and in time to reach an agreement among Member States before the full implementation of the EES in April.
7. In response to the US démarche that is currently on the table, the Presidency decided to coordinate Member States' responses by agreeing on general lines to take based on the Commission's guidance. Member States may use these non-binding lines to take at their discretion in their replies to the United States.
8. The lines to take were agreed by silence procedure on 27 January 2026 following a JHA Counsellors meeting on 26 January 2026.

## Conclusions

9. The **Permanent Representatives Committee** is therefore invited to confirm agreement on the lines to take as set out in Annex to this note, for Member States to use at their discretion when replying to the recent US démarche on the practices for registration in the Entry/Exit System.

**Lines to take in response to the United States *démarche* on the Entry/Exit System**

The text in square brackets indicates the areas where Member States or Schengen Associated Countries should tailor the language to their specific national practices.

*The concerns of the US authorities are noted and largely addressed under the existing EU legal framework. Heads of state and government, as well as members of government are already exempt from EES registration based on the Schengen Borders Code. In accordance with the Commission's guidance on the application of the Entry/Exit System (EES), members of the US diplomatic and consular missions who hold diplomatic, official, or service passports, and who have been appointed to a mission located on the territory of [Member State], hold a residence permit or a legitimization card or official proof of assignment to a mission within the territory of a Schengen State. For this reason, they are exempted from registration into the EES, including the requirement to collect their biometric data. If registration is necessary upon first entry, [Member State] will delete the EES record, including biometric data, upon receipt of the appropriate documentation.*

*Registration in the EES is the general rule for short stays in [Member State] not exceeding 90 days in any 180-day period. [Nevertheless, [Member State] considers that there are special circumstances and, in order not to impede the movement of members of the US diplomatic and consular missions travelling on a short stay to [Member State] necessary for the exercise of their duties, has decided to make use of the flexibility under the Guidance issued by the Commission on the application of the Entry/Exit System in order to abstain from registering them into the EES.]*

*In line with your démarche, US military personnel holding a military ID and individual or collective movement orders are covered under the NATO Status of Forces Agreements (SOFA) and, therefore, fall outside the scope and requirements of the EES and European Travel Information and Authorisation System (ETIAS) regulations. Non-military personnel (namely the civilian component, including contractors, and dependents) on a short stay are as a rule subject to the requirements of the EES and ETIAS. [Nevertheless, for the purpose of the efficient deployment of NATO personnel, [Member State] has decided to make use of the flexibility under the Guidance issued by the Commission on the application of the Entry/Exit in order to abstain from registering US non-military personnel in the EES and ETIAS]. Military and non-military personnel travelling to Europe for private purposes fall outside the scope of the SOFA and cannot therefore be exempted from the requirements of the EES and ETIAS [unless a bilateral agreement that entered into force before the Schengen Acquis regulates otherwise].*

*It is noted that, while the Guidance issued by the Commission on the application of the Entry/Exit System confirms the exemption of accredited diplomats from registration in the EES, the United States registers all non-US nationals, including EU accredited diplomats, in its entry/exit program. This particularly includes the registration of their facial image.*

*[Member State] and the EU /or [Schengen Associated Country] fully respect the sovereign right of the United States to determine the entry requirements to its territory. We welcome the opportunity for ongoing dialogue and cooperation on this issue, and we are open to exploring long-term solutions on a reciprocal basis.*