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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on temporary derogations from certain provisions of Regulations (EU) 2017/2226 and (EU) 2016/399 as regards the progressive start of operations of the Entry/Exit System

REGULATION (EU) 2025/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**on temporary derogations from certain provisions
of Regulations (EU) 2017/2226 and (EU) 2016/399
as regards the progressive start of operations of the Entry/Exit System**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2), points (b) and (d), and Article 87(2), point (a), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 8 July 2025 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) Article 66(1) of Regulation (EU) 2017/2226 of the European Parliament and of the Council², establishing the Entry/Exit System (EES), provides that the Commission is to decide the date from which the EES is to start operations, provided that certain conditions are met.
- (2) The Commission has not received all notifications pursuant to Article 66(1), point (c), of Regulation (EU) 2017/2226, which is one of the conditions for deciding on the start of operations of the EES.
- (3) Regulation (EU) 2017/2226 only allows for a full start of operations, requiring all Member States to start using the EES fully for all third-country nationals subject to registration in the EES and to use the EES simultaneously at all their border crossing points. However, a full start of operations of all EES functionalities simultaneously at all border crossing points constitutes a risk for the resilience of the EES as a whole and for passenger flows at the external borders.

² Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 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 and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20, ELI: <http://data.europa.eu/eli/reg/2017/2226/oj>).

- (4) In order to ensure a smooth launch of the EES, to facilitate its timely roll-out in all Member States, to provide Member States with the necessary flexibility to start using the EES within a clearly defined period and to facilitate technical and operational adjustments when starting to operate the EES, it is necessary to lay down rules for the progressive start of operations of the EES, during which Member States should be able to choose a phased roll-out of the EES. To ensure that those adjustments take account of potential travel flows and seasonal peaks, while taking into consideration that the progressive start of operations of the EES could also have some impact for the Member States in terms of increased workload at border crossing points, such a progressive start of operations should have a limited duration of 180 days.
- (5) To enable the progressive start of operations of the EES, it is necessary to derogate temporarily from certain provisions of Regulation (EU) 2017/2226 and of Regulation (EU) 2016/399 of the European Parliament and of the Council³. Other rules set out in Regulation (EU) 2017/2226 that are not affected by this Regulation apply as provided for in that Regulation. In particular, the rules set out in Regulation (EU) 2017/2226 apply to the data recorded in the EES throughout the progressive start of operations of the EES and those data are therefore considered reliable and accurate. In addition, this Regulation does not affect the validity of the notifications already made by Member States pursuant to Article 66(1), point (c), of Regulation (EU) 2017/2226.

³ 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, ELI: <http://data.europa.eu/eli/reg/2016/399/oj>).

- (6) Member States that do not intend to use the EES fully from the beginning of the progressive start of operations of the EES should start operating the EES progressively to record, on entry and exit, the data of third-country nationals subject to registration in the EES at one or more border crossing points, or at one or more lanes of such border crossing points. If possible and applicable, Member States should include a combination of air, land and sea border crossing points. To ensure the controlled launch of the EES and to better manage and avoid potential long waiting times at the borders, where relevant, and if necessary, Member States should deploy all the functionalities of the EES progressively and record the data of all third-country nationals subject to registration in the EES gradually. To ensure the full use of the EES at all border crossing points in the Union, where Member States choose to start operating the EES progressively, it should be implemented in phases, which should set the minimum requirements to be reached by Member States. It should be possible for Member States to accelerate implementation at national level or start operating the EES fully from the start of operations of the EES. The gradual processing of data in the EES should be carried out while fully respecting the rights of data subjects as set out in Regulation (EU) 2016/679 of the European Parliament and of the Council⁴ and should not lead, directly or indirectly, to any form of discrimination or profiling within the meaning of that Regulation. Where necessary, the Commission, in consultation with the European Data Protection Supervisor, should provide further practical guidance on the processing of personal data in the EES during the progressive start of operations.

⁴ Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/679/oj>).

- (7) To facilitate the smooth deployment of the EES, the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council⁵, should develop a high-level roll-out plan to provide guidance to Member States and Europol on planning and executing the deployment of the EES during the progressive start of operations (the ‘eu-LISA high-level roll-out plan’). eu-LISA should provide the European Parliament, the Council, the Commission, Member States and Europol with that plan. That plan should confirm performance and availability targets of the EES Central System as well as the strategy regarding potential functional minor, major and blocking defects, should indicate contingency procedures and should provide guidance for the functioning of the EES Central System to the Member States and Europol. That plan should be adopted by eu-LISA’s Management Board. Member States’ decisions to start or accelerate operations should take into account the eu-LISA high-level roll-out plan.

⁵ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99, ELI: <http://data.europa.eu/eli/reg/2018/1726/oj>).

- (8) To facilitate the smooth deployment of the EES, each Member State should develop a national roll-out plan in consultation with the Commission and eu-LISA and transmit that plan to the Commission. For each phase of the progressive start of operations of the EES, national roll-out plans should include the information on the set thresholds and requirements, in particular: (i) the expected date from which the EES will operate at border crossing points; (ii) the expected percentage of the estimated number of border crossings to be registered in the EES out of the total number of third-country nationals subject to registration in the EES; and (iii) where applicable, the biometric functionalities expected to be operated at border crossing points. eu-LISA should consider whether the national roll-out plans are technically consistent with the eu-LISA high-level roll-out plan and should confirm that they do not contain any technical deficiencies which could further delay the start of operations of the EES. The Commission should consider the overall coherence of all national roll-out plans and whether each national roll-out plan is compliant with the thresholds and requirements set out in this Regulation. When preparing their national roll-out plans, Member States are encouraged to coordinate, as appropriate, with the operators of infrastructure where border crossing points are located. Where a Member State plans to start operating the EES or to use the biometric functionalities of the EES at a specific border crossing point, that Member State should inform the operators of infrastructure hosting that border crossing point thereof. To monitor compliance with the progressive start of operations of the EES, Member States should provide the European Parliament, the Council, the Commission and eu-LISA with monthly reports on the implementation of their national roll-out plans. Such monthly reports should identify deviations and corrective measures where such were necessary to comply with the thresholds and requirements set out in this Regulation. The Commission should facilitate the provision of concise national roll-out plans and monthly reports by the Member States.

- (9) Considering that the data recorded in the EES during the progressive start of operations of the EES might be incomplete, the travel documents of third-country nationals should be stamped systematically on entry and exit during that period. National authorities should take into account the possible incompleteness of entry/exit records or of refusal of entry records. In the event that there are no relevant EES data, national authorities should consider stamps to prevail. In the event that a stamp is missing, national authorities should consider the data recorded in the EES to prevail. In the event of a discrepancy between the individual file containing biometric data and the stamp, national authorities should consider the EES data to prevail. In the event of a discrepancy between the individual file without biometric data and the stamp or in the cases referred to in Article 16(4) of Regulation (EU) 2017/2226, national authorities should decide, on a case-by-case basis, whether the stamp or the EES data prevail.
- (10) Considering that the data recorded in the EES during the progressive start of operations of the EES might be incomplete, national authorities should not take into account the results provided by the automated calculator on the maximum remaining duration of the authorised stay of third-country nationals registered in the EES. Similarly, when carrying out their tasks, national authorities should not take into account the automated mechanism to identify or flag the lack of exit records following the date of expiry of an authorised stay or the records for which the maximum duration of authorised stay was exceeded, or the generated lists of persons identified as overstayers.

- (11) To provide Member States with the necessary time to adjust to the start of operations of the EES, during the first 60 days of the progressive start of operations of the EES, the use of biometric functionalities at border crossing points should not be mandatory. However, Member States are encouraged to make use of those functionalities during that period in order to support a smooth operational transition and to enable the timely detection and resolution of any implementation issues. By the 90th day from the first day of the progressive start of operations of the EES, Member States should operate the EES with biometric functionalities at at least half of their border crossing points. Providing biometric data should not be an entry condition for third-country nationals subject to registration in the EES at border crossing points where the EES is operated without biometric functionalities.
- (12) To accommodate the need to progressively deploy the EES with biometric functionalities at border crossing points, the biometric verification of third-country nationals subject to registration in the EES should only be carried out at the border crossing points at which the EES is operated with biometric functionalities.
- (13) To ensure coherence of the operations of the interoperability between the Visa Information System (VIS), as established by Council Decision 2004/512/EC⁶, and the EES, the VIS should be accessed directly only at border crossing points at which the EES is not operated. At border crossing points at which the EES is operated, border authorities should make use of the interoperability between the EES and the VIS.

⁶ Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p. 5, ELI: <http://data.europa.eu/eli/dec/2004/512/oj>).

- (14) Third-country nationals whose data are to be recorded in the EES should be informed about their rights and obligations regarding the processing of their data in the form of a template as provided for in Article 50(5) of Regulation (EU) 2017/2226. The information to be provided to those third-country nationals should refer to the progressive start of operations of the EES. Those third-country nationals should be informed in the template of their obligation to provide biometric data at border crossing points where that obligation constitutes an entry condition, of the consequences of not providing biometric data, that it will not be possible for them to verify the remaining duration of the authorised stay by automated means, and of the possibility to use the short stay calculator tool available on the Commission website.
- (15) To reflect the progressive start of operations of the EES, the Commission should review the information on the EES website regularly, and adapt it when necessary.
- (16) The Commission, involving the European Data Protection Supervisor, should adapt its information materials developed in the context of Article 51 of Regulation (EU) 2017/2226, to carry out the information campaign accompanying the progressive start of operations of the EES.
- (17) During the progressive start of operations of the EES, the web service referred to in Article 13(1) of Regulation (EU) 2017/2226 will not enable third-country nationals to verify the exact duration of their authorised stay electronically.

- (18) This Regulation does not affect the obligations of air carriers, sea carriers and international carriers transporting groups overland by coach as set out in Article 26(1) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders⁷ (the ‘Convention implementing the Schengen Agreement’) and Council Directive 2001/51/EC⁸. In that respect, carriers should verify the stamps affixed in travel documents. To ensure effective communication with carriers about the differentiated application of the EES at the border crossing points, ultimately benefiting travellers, it is crucial for Member States to be transparent about the deployment of the EES at their border crossing points.
- (19) Article 22 of Regulation (EU) 2017/2226 and Article 12a of Regulation (EU) 2016/399 provide for a transitional period and transitional measures for the start of operations of the EES. To enable a progressive start of operations of the EES, it is necessary to derogate from those Articles to ensure that the transitional period and the transitional measures apply only after the end of the progressive start of operations of the EES. That derogation should cease to apply 5 years and 180 days from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.

⁷ OJ L 239, 22.9.2000, p. 19, ELI: <http://data.europa.eu/eli/convention/2000/922/oj>.

⁸ Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, p. 45, ELI: <http://data.europa.eu/eli/dir/2001/51/oj>).

- (20) To ensure that national authorities and Union agencies, in the performance of their tasks, do not take decisions that are based exclusively on data recorded in the EES, they should take into account that individual files registered in the EES might contain incomplete sets of data. That derogation should cease to apply 5 years and 180 days from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226 to reflect the 5-year retention period for sets of data for which the exit record is missing as set out in Article 34(3) of that Regulation. Entry and exit records created during the progressive start of operations of the EES should not be used for automated reporting, nor for automated processes, including automated consultation from the European Travel Information and Authorisation System (ETIAS), as established by Regulation (EU) 2018/1240 of the European Parliament and of the Council⁹.
- (21) When ensuring compliance with the provisions of Regulation (EU) 2017/2226 on the amendment of data and advance data erasure, Member States should complete the incomplete data to the extent permitted by the limited availability of the sets of data recorded in the EES during the progressive start of operations of the EES.

⁹ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1240/oj>).

- (22) The European Border and Coast Guard Agency, as established by Regulation (EU) 2019/1896 of the European Parliament and of the Council¹⁰, should not access data recorded in the EES during the progressive start of operations of the EES for carrying out risk analyses and vulnerability assessments, as the incompleteness of the data could lead to misleading risk analyses and vulnerability assessments.
- (23) To ensure effective management of the external borders during the progressive start of operations of the EES, the following rules should apply. At the border crossing points at which the EES is not operated, border checks should be carried out in accordance with Regulation (EU) 2016/399, as applicable on the day before the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226. At the border crossing points at which the EES is operated, border checks should be carried out in accordance with Regulations (EU) 2017/2226 and (EU) 2016/399 as well as the specific derogations from those Regulations provided for in this Regulation with regard to the verification at the border crossing points at which the EES is operated without biometric functionalities to enable the progressive start of operations of the EES. Those border checks should be carried out without prejudice to verifications of visa holders by using fingerprints, in accordance with Regulation (EC) No 767/2008 of the European Parliament and of the Council¹¹.

¹⁰ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1, ELI: <http://data.europa.eu/eli/reg/2019/1896/oj>).

¹¹ 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, ELI: <http://data.europa.eu/eli/reg/2008/767/oj>).

- (24) To enable the effective adjustment of technical and organisational arrangements during the progressive start of operations of the EES in each Member State and to address cases of failure of the EES Central System, of national systems or of communication infrastructure that significantly disrupt the operation of the EES, or to address exceptional circumstances that lead to traffic of such intensity that the waiting time at a border crossing point becomes excessive, all Member States, regardless of whether they start using the EES fully or progressively, should have the possibility to suspend the operations of the EES at certain border crossing points, fully or partially, during the progressive start of operations of the EES. Member States should use that possibility only when such suspension is strictly necessary and for the shortest period possible. In the case of partial suspension, the registration of biometric data in the EES should be suspended. In the case of full suspension, no data should be recorded in the EES. Such suspension should not affect obligations as regards the timeline for the progressive start of operations of the EES, but it could temporarily affect the registration thresholds.

- (25) To mitigate additional risks related to the deployment of the EES with biometric functionalities, all Member States should have the possibility, in exceptional circumstances that lead to traffic of such intensity that the waiting time at a border crossing point becomes excessive, to suspend the registration of biometric data in the EES after the end of the progressive start of operations of the EES. Such a suspension should be possible during a limited period of 90 days after the end of the progressive start of operations of the EES. That period should be automatically extended by 60 days if less than 80 % of the individual files registered in the EES during the progressive start of operations of the EES contain biometric data.
- (26) eu-LISA should issue reports on the statistics on the use of the EES, which should serve to evaluate the performance of the EES, assess Member States' compliance with the eu-LISA high-level roll-out plan and with the national roll-out plans, identify areas for improvement, monitor compliance with the requirements of this Regulation on the progressive start of operations of the EES, and support decision-making relating to the further development and optimisation of the EES. In addition, in line with Article 63(4) of Regulation (EU) 2017/2226, eu-LISA is to publish statistics on the use of the EES during the progressive start of operations. Furthermore, eu-LISA should continue its regular reporting to eu-LISA's Management Board. The Programme Management Board of eu-LISA should monitor the progressive start of operations.

- (27) The preparatory work related to the eu-LISA high-level roll-out plan and to the national roll-out plans should be triggered by the date of the entry into force of this Regulation. The eu-LISA high-level roll-out plan and the national roll-out plans should take into account the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226. All conditions listed in that Article are to be fulfilled in due time to enable the Commission to adopt the decision setting the date from which the EES is to start operations before the start of that preparatory work, and taking into account the Interoperability Roadmap endorsed by the Council on 5 March 2025. In particular, all notifications pursuant to Article 66(1), point (c), of that Regulation are to be received by the Commission in due time. The progressive start of operations of the EES should start, and the derogations provided for in this Regulation should apply, from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226. As this Regulation provides for temporary derogations, it should cease to apply 180 days from that date. However, the provisions providing for derogations from the application of the transitional period and the transitional measures provided for in Regulation (EU) 2017/2226 from the access to EES data and from the verification by the carriers of stamps affixed in the travel documents, as well as the provisions on the suspension of the EES, should apply during a limited period after the end of the progressive start of operations of the EES.

- (28) Since the objective of this Regulation, namely to lay down rules on the progressive start of operations of the EES and on derogations from Regulations (EU) 2017/2226 and (EU) 2016/399, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (29) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (30) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹². Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

¹² 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, ELI: <http://data.europa.eu/eli/dec/2002/192/oj>).

- (31) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*¹³ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC¹⁴.
- (32) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning 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*¹⁵ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁶.

¹³ OJ L 176, 10.7.1999, p. 36, ELI: [http://data.europa.eu/eli/agree_international/1999/439\(1\)/oj](http://data.europa.eu/eli/agree_international/1999/439(1)/oj).

¹⁴ 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, ELI: <http://data.europa.eu/eli/dec/1999/437/oj>).

¹⁵ OJ L 53, 27.2.2008, p. 52.

¹⁶ 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, ELI: <http://data.europa.eu/eli/dec/2008/146/oj>).

- (33) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning 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*¹⁷ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁸.
- (34) As regards Cyprus, the provisions of this Regulation relating to the VIS constitute provisions building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession. The operation of the EES requires the granting of passive access to the VIS. As the EES is only to be operated by those Member States that fulfil the conditions related to VIS at the start of the operations of the EES, Cyprus will not operate the EES from the start of operations. Cyprus is to be connected to the EES as soon as the conditions of the procedure referred to in Regulation (EU) 2017/2226 are met.

¹⁷ OJ L 160, 18.6.2011, p. 21.

¹⁸ 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, ELI: <http://data.europa.eu/eli/dec/2011/350/oj>).

- (35) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁹ and delivered its opinion on 10 March 2025.
- (36) This Regulation establishes strict rules concerning access to the EES, as well as the necessary safeguards for such access during the progressive start of operations of the EES and during a specified period after the end of the progressive start of operations of the EES. It also maintains individuals' rights of access, rectification, completion, erasure and redress, in particular the right to a judicial remedy and the supervision of processing operations of EES data by public independent authorities. This Regulation therefore respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to human dignity, the prohibition of slavery and forced labour, the right to liberty and security, respect for private and family life, the protection of personal data, the right to non-discrimination, the rights of the child, the rights of the elderly, the integration of persons with disabilities and the right to an effective remedy and to a fair trial.

¹⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>).

- (37) This Regulation is without prejudice to the obligations deriving from the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967,

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation lays down rules on the progressive start of operations of the Entry/Exit System (EES), established under Regulation (EU) 2017/2226, at the borders of the Member States at which the EES is operated in accordance with Article 4 of that Regulation and on temporary derogations from certain provisions of Regulations (EU) 2017/2226 and (EU) 2016/399.

Article 2
Definitions

For the purposes of this Regulation, the definitions in Article 3(1) of Regulation (EU) 2017/2226 apply.

In addition, the following definitions apply:

- (1) ‘progressive start of operations of the EES’ means the period of 180 days starting from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226;
- (2) ‘national authorities’ means the authorities referred to in Article 9 of Regulation (EU) 2017/2226;

- (3) ‘estimated number of border crossings’ means a Member State’s estimate of the number of border crossings by third-country nationals referred to in Article 2(1) and (2) of Regulation (EU) 2017/2226 for that Member State based on the yearly average of the total number of border crossings at the borders referred to in Article 4 of Regulation (EU) 2017/2226 by third-country nationals travelling to that Member State for a short stay, calculated for the 2 calendar years preceding the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.

Article 3

Roll-out plans and reporting

1. By ... [30 days from the date of entry into force of this Regulation], the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) shall provide the European Parliament, the Council, the Commission and the Member States, as well as Europol, with a high-level roll-out plan for the progressive start of operations of the EES (the ‘eu-LISA high-level roll-out plan’), taking into account the thresholds and requirements set out in Article 4(2) to (5). That plan shall support the effective and continuous operation of the EES Central System by confirming performance and availability targets of the EES Central System, as well as the strategy regarding potential functional minor, major and blocking defects, shall indicate contingency procedures and shall provide guidance on the functioning of the EES Central System to the Member States and Europol.

The eu-LISA high-level roll-out plan shall be adopted by eu-LISA's Management Board.

2. By ... [60 days from the date of entry into force of this Regulation], in consultation with the Commission and eu-LISA, each Member State shall develop a national roll-out plan for the progressive start of operations of the EES (the 'national roll-out plan'), taking into account the eu-LISA high-level roll-out plan, and transmit that plan to the Commission. Where a Member State does not start operating the EES fully from the beginning of the progressive start of operations of the EES, its national roll-out plan shall specify how the thresholds and requirements set out in Article 4 are to be complied with.

eu-LISA shall consider whether the national roll-out plans are technically consistent with the eu-LISA high-level roll-out plan and shall confirm that they do not contain any technical deficiencies which could further delay the start of operations of the EES. The Commission shall consider the overall coherence of all national roll-out plans and whether each national roll-out plan is compliant with the thresholds and requirements set out in Article 4.

Where a Member State plans to start operating the EES or to use the biometric functionalities of the EES at a specific border crossing point, that Member State shall inform the operators of infrastructure hosting that border crossing point thereof.

3. From the 30th day from the first day of the progressive start of operations of the EES, Member States shall provide monthly reports to the European Parliament, the Council, the Commission and eu-LISA confirming the implementation of their national roll-out plans or identifying deviations and corrective measures where such were necessary to comply with the thresholds and requirements set out in Article 4.
4. The Commission shall facilitate the provision of concise national roll-out plans and monthly reports by the Member States.
5. At the request of the Commission, eu-LISA shall provide the Commission with the statistics necessary for the Commission to monitor the implementation of the eu-LISA high-level roll-out plan and the national roll-out plans, in accordance with Article 63(6) of Regulation (EU) 2017/2226.
6. Where necessary, the Commission shall, in consultation with the European Data Protection Supervisor, provide further practical guidance on the processing of personal data in the EES during the progressive start of operations of the EES.

Article 4

Progressive start of operations of the EES

1. By way of derogation from Article 66(6) of Regulation (EU) 2017/2226, during the progressive start of operations of the EES, the Member States shall use the EES as set out in paragraphs 2 to 6 of this Article.
2. From the first day of the progressive start of operations of the EES, each Member State shall start using the EES on entry and exit at one or more border crossing points with, if possible and applicable, a combination of air, land and sea border crossing points, to record and store data of third-country nationals referred to in Article 2(1) and (2) of Regulation (EU) 2017/2226. By the 30th day from the first day of the progressive start of operations of the EES, each Member State shall register in the EES at least 10 % of the estimated number of border crossings for that Member State.

During the first 60 days of the progressive start of operations of the EES, Member States may operate the EES without biometric functionalities, and national authorities may create or update individual files without biometric data.

3. By the 90th day from the first day of the progressive start of operations of the EES, each Member State shall operate the EES with biometric functionalities at at least half of its border crossing points. Each Member State shall register in the EES at least 35 % of the estimated number of border crossings for that Member State. The individual files of third-country nationals referred to in Article 2(1) and (2) of Regulation (EU) 2017/2226 that are registered in the EES shall contain biometric data.
4. By the 150th day from the first day of the progressive start of operations of the EES, each Member State shall operate the EES with biometric functionalities at all its border crossing points and shall register in the EES at least 50 % of the estimated number of border crossings for that Member State.
5. By the 170th day from the first day of the progressive start of operations of the EES, each Member State shall operate the EES with biometric functionalities at all its border crossing points and shall register in the EES all third-country nationals referred to in Article 2(1) and (2) of Regulation (EU) 2017/2226.
6. Refusals of entry that are decided at a border crossing point at which the EES is operated shall be recorded in the EES in accordance with Article 18 of Regulation (EU) 2017/2226.

For the purpose of this paragraph, where the EES is operated with biometric functionalities, refusals of entry shall be recorded with biometric data. and, where the EES is operated without biometric functionalities, refusals of entry shall be recorded without biometric data.

7. From the first day of the progressive start of operations of the EES, Europol shall use the EES as provided for in Regulation (EU) 2017/2226.

Article 5

Other derogations from Regulations (EU) 2017/2226 and (EU) 2016/399

1. In addition to the rules set out in Article 4, the rules set out in this Article shall apply during the progressive start of operations of the EES irrespective of the way in which the Member States choose to start operating the EES.
2. Border authorities shall systematically stamp the travel documents of third-country nationals referred to in Article 2(1) and (2) of Regulation (EU) 2017/2226 on entry and exit.

The stamping obligations referred to in Article 42a(1), second subparagraph, and Article 42a(2), (5) and (6) of Regulation (EU) 2016/399 shall apply *mutatis mutandis* in the Member States operating the EES.

3. For entering, amending, erasing and consulting the data in the EES, national authorities that are competent for the purposes laid down in Articles 23 to 29, 31, 32, 34 and 35 of Regulation (EU) 2017/2226 shall:
- (a) consider stamps to prevail where there are no relevant EES data;
 - (b) consider EES data to prevail:
 - (i) where there is a discrepancy between the individual file containing biometric data and the stamp; or
 - (ii) where a stamp is missing;
 - (c) decide on a case-by-case basis whether the stamp or the EES data prevail:
 - (i) where there is a discrepancy between the individual file without biometric data and the stamp affixed in accordance with paragraph 2 of this Article; or
 - (ii) in cases referred to in Article 16(4) of Regulation (EU) 2017/2226.

National authorities and Europol shall not take decisions adversely affecting individuals solely on the basis of there being no registration of the alleged entry or exit in the EES.

4. In the absence of a stamp affixed in the travel document and of an individual file created in the EES for a third-country national present on the territory of a Member State, national authorities may presume that the third-country national does not fulfil, or no longer fulfils, the conditions relating to entry or stay in the Member States.

The presumption referred to in the first subparagraph shall not apply to third-country nationals who provide, by any means, credible evidence that they enjoy the right of free movement under Union law, or that they hold a residence permit or a long-stay visa.

The presumption referred to in the first subparagraph may be rebutted where the third-country nationals provide, by any means, credible evidence, such as transport tickets or proof of presence outside the territory of the Member States or of the date of expiry of a previous residence permit or long-stay visa, that they have respected the conditions relating to the duration of a short stay.

Where the presumption referred to in the first subparagraph is rebutted, national authorities using the EES shall perform one or more of the following tasks, to the extent allowed by this Regulation:

- (a) create an individual file for that third-country national in the EES, if necessary;
- (b) update the latest entry/exit record for that third-country national by entering the missing data;

- (c) erase an existing individual file for that third-country national where Article 35 of Regulation (EU) 2017/2226 provides for such erasure.
- 5. Border authorities shall make use of the interoperability between the EES and the VIS referred to in Article 8(2) of Regulation (EU) 2017/2226 only at the border crossing points at which the EES is operated. Border authorities shall continue to access the VIS directly:
 - (a) at the border crossing points at which the EES is not operated;
 - (b) where the EES is suspended pursuant to Article 7 of this Regulation.
- 6. National authorities and Europol shall disregard the following:
 - (a) the results of the automated calculator that provides information on the maximum duration of the authorised stay referred to in Article 11 of Regulation (EU) 2017/2226;
 - (b) the automatically generated list of overstayers and its consequences, in particular as referred to in Article 6(1), points (c) and (h), Article 12(3), Article 16(4), Article 34(3), Article 50(1), points (i) and (k), and Article 63(1), point (e), of Regulation (EU) 2017/2226.

7. For the purposes of Articles 45 and 48 of Regulation (EU) 2017/2226, EES data processing operations carried out by Member States pursuant to this Regulation shall not be considered as unlawful or as not compliant with Regulation (EU) 2017/2226.
8. Verification of the identity and previous registration of third-country nationals pursuant to Article 23 of Regulation (EU) 2017/2226 shall be carried out on the third-country nationals referred to in Article 2(1) and (2) of that Regulation at the border crossing points at which the EES is operated with biometric functionalities, including through self-service systems, where available.

9. In addition to the specific information referred to in Article 50(5) of Regulation (EU) 2017/2226 that is to be added by the Member States in the template to provide information to third-country nationals referred to in Article 2(1) and (2) of that Regulation about the processing of their personal data in the EES, Member States shall supplement that template at the time the individual file of the person concerned is being created with the following information:

‘Please note that the Entry/Exit System is being progressively rolled out. During this period [from ...], your personal data, including your biometric data, might not be collected for the purposes of the Entry/Exit System at all Member States’ external borders. If the collection of that information is mandatory and you choose not to provide it, you will be refused entry. During the progressive roll-out, your data will not automatically be added to a list of overstayers. In addition, you will not be able to check how much longer you are authorised to stay using the EES website or equipment available at border crossing points. You can verify the duration of your authorised stay by using the short stay calculator tool available on the European Commission website at https://home-affairs.ec.europa.eu/policies/schengen/border-crossing/short-stay-calculator_en.

After the progressive roll-out of the Entry/Exit System, your personal data will be processed as otherwise set out in this form.’.

10. The information on the EES website referred to in Article 50(3) of Regulation (EU) 2017/2226 shall be adapted by the Commission to reflect the progressive start of operations of the EES.
11. The information campaign referred to in Article 51 of Regulation (EU) 2017/2226 accompanying the start of operations of the EES shall reflect the specific conditions at the border crossing points. That information campaign shall ensure that the relevant information is communicated to those affected and shall take into account the thresholds and requirements set out in Article 4 of this Regulation. The Commission, involving the European Data Protection Supervisor, shall adapt the materials for that information campaign in a reasonable timeframe, prior to the progressive start of operations of the EES. Furthermore, the Commission shall continue to support Member States in their preparation of those materials.
12. The application of Article 11(3), Article 12(1) and (2), Article 13(1) and (2), Article 20 and Article 21 of Regulation (EU) 2017/2226, as well as the application of Article 8(9) of Regulation (EU) 2016/399, shall be suspended.
13. By way of derogation from Article 22 of Regulation (EU) 2017/2226 and Article 12a of Regulation (EU) 2016/399, the transitional period and the transitional measures set out in those Articles shall apply from the first day after the end of the progressive start of operations of the EES.

14. At the border crossing points at which the EES is not operated, border checks shall be carried out in accordance with Regulation (EU) 2016/399 as applicable on the day before the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.

At the border crossing points at which the EES is operated, border checks shall be carried out in accordance with Regulations (EU) 2017/2226 and (EU) 2016/399.

By way of derogation from the second subparagraph of this paragraph, at the border crossing points where the EES is operated without biometric functionalities, Article 6(1), point (f)(i), of Regulation (EU) 2016/399, and, solely for the purposes of the EES, the provisions on the verification of third-country nationals based on biometric data referred to in Article 6(1), point (f)(ii), and Article 8(3), points (a) and (g), of that Regulation, shall not apply.

For the purposes of this Regulation, the application of Article 9(3) and Article 12 of Regulation (EU) 2016/399 shall be suspended.

15. By way of derogation from Article 37 of Regulation (EU) 2017/2226, the Programme Management Board of eu-LISA shall continue its activities until the end of the progressive start of operations of the EES. In particular, the Programme Management Board of eu-LISA shall monitor the progressive start of operations of the EES, including the stability of the EES Central System, and recommend additional actions where appropriate.

Article 6

Access to the EES data

1. The possible incompleteness of the EES data recorded during the progressive start of operations of the EES, due to the variable operations of the EES in each Member State during that period, shall be taken into account as follows:
 - (a) by national authorities and Europol, when accessing the entry and exit records registered in the EES in the performance of their tasks;
 - (b) by national authorities, when communicating the EES data in accordance with Articles 41 and 42 of Regulation (EU) 2017/2226;
 - (c) by the ETIAS Central Unit, for the purpose of a verification as referred to in Article 25a(2) of Regulation (EU) 2017/2226;
 - (d) by the competent authorities, the Commission and relevant Union agencies, for the purpose of reporting and statistics in accordance with Article 63 of Regulation (EU) 2017/2226.

2. Carriers shall verify the stamps affixed in the travel documents with a view to fulfilling their obligations under Article 26(1) of the Convention implementing the Schengen Agreement and under Directive 2001/51/EC for the duration of the progressive start of operations of the EES. By way of derogation from Article 13(3) of Regulation (EU) 2017/2226, carriers may start using the web service referred to in that Article from the 90th day from the first day of the progressive start of operations of the EES.

During a period of 180 days after the end of the progressive start of operations of the EES, carriers shall, in addition to using the web service pursuant to Article 13(3) of Regulation (EU) 2017/2226, continue verifying the stamps affixed in travel documents with a view to fulfilling their obligations under Article 26(1) of the Convention implementing the Schengen Agreement and under Directive 2001/51/EC.

3. When fulfilling the obligations referred to in Articles 35 and 52 of Regulation (EU) 2017/2226 in relation to the completion of personal data recorded in the EES, Member States shall complete the relevant personal data only to the extent possible taking into account the limited availability of the sets of data collected during the progressive start of operations of the EES. Where applicable, the administrative decision referred to in Article 52(4) of that Regulation shall refer to the thresholds and requirements set out in Article 4(2) to (4) of this Regulation that allow for the registration of incomplete files.

4. By way of derogation from Article 63(1), second subparagraph, of Regulation (EU) 2017/2226, the duly authorised staff of the European Border and Coast Guard Agency shall not have access to consult the data recorded in the EES during the progressive start of operations of the EES for the purpose of carrying out risk analyses or vulnerability assessments.

Article 7

Suspension of the EES

1. During the progressive start of operations of the EES, Member States may fully or partially suspend the operations of the EES at certain border crossing points in the case of failure of the EES Central System, of national systems or of communication infrastructure that significantly disrupts the operations of the EES, or in exceptional circumstances that lead to traffic of such intensity that the waiting time at a border crossing point becomes excessive.

In the case of partial suspension, Member States shall collect the data referred to in Articles 16 to 20 of Regulation (EU) 2017/2226, with the exception of biometric data.

In the case of full suspension, Member States shall completely suspend the operations of the EES and shall not collect any of the data referred to in Articles 16 to 20 of that Regulation.

In both cases, Member States shall promptly, and in any event no later than 6 hours from the start of the suspension of the operations of the EES, notify the Commission and eu-LISA of the reason for the partial or full suspension of the EES and the expected or actual duration of that suspension. If relevant given the local circumstances of the border crossing points, Member States shall inform the operators of infrastructure hosting the border crossing points and carriers of the suspension.

Once the situation that led to the suspension has come to an end, Member States shall promptly notify the Commission and eu-LISA. In cases where they had informed the operators of infrastructure hosting the border crossings points and carriers of the suspension, Member States shall inform them that the situation that led to the suspension has come to an end.

2. In the event of failure of the EES Central System, eu-LISA shall promptly notify the Commission and the Member States of the reason for such failure and of its expected duration. eu-LISA shall also promptly notify the Commission and the Member States when the failure is resolved. All Member States shall promptly confirm the restarting of operations of the EES to the Commission and eu-LISA.

3. During a period of 90 days after the end of the progressive start of operations of the EES, Member States may partially suspend the operations of the EES as referred to in paragraph 1, second subparagraph, at a certain border crossing point for a maximum of 6 hours in exceptional circumstances that lead to traffic of such intensity that the waiting time at a border crossing point becomes excessive. During such a partial suspension, Member States shall be exempt from their obligation set out in Article 21(1) of Regulation (EU) 2017/2226 as regards the registration of biometric data. Member States shall promptly, and in any event no later than 6 hours from the start of the partial suspension, notify the Commission and eu-LISA of the reason for the suspension and of its expected or actual duration.
4. If less than 80 % of the individual files registered in the EES during the progressive start of operations of the EES contain biometric data, the period of 90 days referred to in paragraph 3 shall be automatically extended by 60 days.
5. By the 10th day after the end of the progressive start of operations of the EES, eu-LISA shall provide the Commission with statistics allowing the Commission to verify whether the percentage referred to in paragraph 4 has been reached. By the 30th day after the end of the progressive start of operations of the EES, the Commission shall inform the Member States of the outcome of its verification.

Article 8

Entry into force and application

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

It shall apply from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.

However, Article 3 of this Regulation shall apply from ... [the date of entry into force of this Regulation].

2. This Regulation shall cease to apply 180 days from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) Regulation (EU) 2017/2226. However:
 - (a) Article 5(13) and Article 6(1), (3) and (4) shall cease to apply 5 years and 180 days from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226;
 - (b) Article 6(2), second subparagraph, shall cease to apply 360 days from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226;

- (c) Article 7(3) and (4) shall cease to apply 330 days from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226;
- (d) Article 7(5) shall cease to apply 210 days from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.

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

Done at ..., ...

For the European Parliament
The President

For the Council
The President
