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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	16639/24; 6792/25
Subject:	Proposal for a Regulation of the European Parliament and of the Council on a temporary derogation from certain provisions of Regulation (EU) 2017/2226 and Regulation (EU) 2016/399 as regards a progressive start of operations of the Entry/Exit System - Confirmation of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 4 December 2024, the Commission presented a proposal for a Regulation of the European Parliament and of the Council on a temporary derogation from certain provisions of Regulation (EU) 2017/2226 and Regulation (EU) 2016/399 as regards a progressive start of operations of the Entry/Exit System ('the proposed Regulation')[1].

[1] 16639/24

2. This initiative laid the ground for a progressive start of the EES operations, derogating temporarily from certain provisions of Regulation (EU) 2017/2226 ('EES Regulation')[2] and Regulation (EU) 2016/399 ('Schengen Borders Code')[3]. This derogation is necessary since these Regulations require all Member States to use the EES fully, from day one (the so-called "big bang" approach).

3. The general objective of the proposal is to facilitate the operationalisation of the EES Regulation, thereby enabling Member States to achieve the EES's objectives set out in the EES Regulation in a timely and efficient manner.

4. On 5 December 2025, the proposed Regulation was presented to the Working Party on JHA Information Exchange (IXIM), under Hungarian Presidency. Discussions continued in JHA Counsellors (IXIM, Frontiers) format, including under Polish Presidency. The Council reached a general approach on the proposal at its meeting on 6 March 2025.

5. In the European Parliament, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) was designated as the competent Committee, with Ms Assita Kanko (ECR, BE) appointed Rapporteur for the file. The LIBE Committee adopted its report on 23 April 2025, and the European Parliament formally endorsed the Rapporteur's report and confirmed the decision to enter inter-institutional negotiations on 7 May 2025.

6. The first trilogue took place on 12 May 2025, still under the Polish Presidency. A number of technical and informal meetings took place before the second, and concluding, trilogue that took place on 19 May 2025.

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[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. 20–82).

[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 (OJ L 77, 23.3.2016, p. 1–52).

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7. In the context of interinstitutional negotiations, the Presidency consulted Member States in meetings of JHA Counsellors (IXIM, Frontiers) before and after the first trilogue, and prepared and/or debriefed on the two trilogues at the COREPER meetings of 7, 14 and 21 May 2025.

8. During the second, and concluding, trilogue of 19 May 2025, the co-legislators reached a provisional agreement on the compromise text, as set out in Annex to this note.

9. The main elements of this compromise text are set out in section II below. The Presidency considers that the overall compromise reached with the European Parliament is balanced and respects the mandate it had received.

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II. MAIN ELEMENTS OF THE COMPROMISE TEXT

10. The compromise text, agreed provisionally with the Parliament, includes the following key aspects:

- **An understanding that the delay in applying the EES in full should be as limited as possible.** The compromise text clarifies that the declarations of readiness already submitted remain valid, while emphasising that Commission should receive all declarations of readiness in due time. It keeps the period for the progressive start of operations of the EES limited to 180 days.

- **Measures to support the effective and continuous operation of the EES central system.** The text foresees that eu-LISA's high-level roll-out plan should confirm performance and availability targets of the EES central system, and should contain the strategy regarding eventual functional defects, and indicate contingency procedures. It foresees that the eu-LISA's Programme Management Board should continue its activities during the progressive start of operations, notably to monitor the stability of the EES central system and recommend actions if needed. The text includes a notification system in case of failure of the EES central system.

– **A solid mechanism to cater for exceptional circumstances**. The compromise text allows Member States to suspend the use of the EES, or the registration of biometric data, during the 180-day period of progressive start of operations of the EES. Member States will continue to be able to suspend the registration of biometric data in the EES after the end of the progressive start of operations for a limited period of 90 days (+60 days in certain circumstances). Suspensions can last for 6h, renewable if needed, with the understanding that the EES should be suspended only when strictly necessary and with the shortest time possible.

– **Flexibility in applying the EES, with minimum thresholds.** While confirming that Member States wishing to apply the EES fully from the first day of the period of progressive start of operations can do so, the text foresees minimum common milestones to ensure the EES is rolled out steadily and exponentially during the 180 days.

– **Measures to mitigate the additional burden on Member States created by the progressive approach.** The text foresees that the Commission should facilitate the provision of concise national roll-out plans and monthly reports by the Member States. It also simplifies Member States' reporting obligations by enabling them to focus on deviations from their roll-out plan in case issues are identified. The text also clarifies the interplay between stamps affixed on the travel documents and EES individual files.

– **Greater transparency about the new approach to the start of operations**. The text ensures that third country nationals are informed of the possibility to use the short stay calculator tool available on the Commission's website during the progressive start of operations. The text foresees that Member States should inform relevant operators of infrastructure hosting border crossing points where and how they plan to start operating the EES. Member States should also inform operators and carriers when the EES is suspended, if relevant according to the local circumstances.

– **More guidance as regards data protection**. The text foresees that, 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 of the EES.

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III. CONCLUSION

11. The Permanent Representatives Committee is invited to:

(a) confirm agreement on the final compromise text as set out in the annex to this note with a view to reaching an agreement at first reading with the European Parliament;

(b) authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) that, should the European Parliament adopt its position at first reading on the text of the proposal in the exact form as set out in the annex to this note, and subject to revision of that text by the lawyer-linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.

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ANNEX

2024/0315 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

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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 procedure[4],

[4] [placeholder] Position of the European Parliament of [date to be added after agreement] and decision of the Council of [date to be added after agreement].

Whereas:

(1) Article 66(1) of Regulation (EU) 2017/2226 of the European Parliament and of the Council[5], establishing the Entry/Exit System (***the*** '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) However, 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 at all border crossing points simultaneously constitutes a risk for the resilience of the EES as a whole and for passenger flows at the external borders.***

[5] Regulation 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 and facilitate its timely roll-out in all Member States,***to provide Member States with the necessary flexibility to start using the EES ~~according to their level of readiness and~~***within a clearly defined period of time and to*** facilitate technical and operational adjustments when starting to operate the EES, it is necessary to lay down rules for a 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 these adjustments ~~reflect~~***take account of*** potential travel flows and seasonal peaks, ***while considering that the progressive start of operations may also have some impact for the Member States in terms of increased workload at the border crossing points,*** such a progressive start ***of operations of the EES*** should have a ***limited*** duration of 180 calendar days.

(5) To enable a progressive start of operations of the EES it is therefore necessary to derogate ***temporarily*** from certain provisions of Regulation (EU) 2017/2226 and Regulation (EU) 2016/399 of the European Parliament and of the Council[6] ('Schengen Borders Code'). 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 ~~follow the rules set out in Regulation (EU) 2017/2226 and are~~***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 provided by Member States under Article 66(1) of Regulation (EU) 2017/2226.***

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6 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 period of progressive start of operations,*** should progressively start operating the EES 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 a 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 register the data of all third-country nationals subject to registration in the EES gradually. To ensure ~~a coordinated approach, the~~***the full use of the EES at all border crossing points in the Union, where Member States choose a*** progressive start of operations ***it*** should be implemented in phases, which should set the minimum requirements to be reached by Member States. Member States will ~~have~~***retain*** the possibility to accelerate implementation at national level or start operating the EES fully from the ~~beginning of~~***start of operations of the EES. The gradual processing of data in the EES should be carried out in full respect of the rights of data subjects as set out in Regulation (EU) 2016/679 of the European Parliament and of the Council 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 guidance on the processing of personal data in the EES during the progressive start of operations.*** ~~the progressive approach.~~

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(7) To facilitate a 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) should develop a high-level roll-out plan to provide guidance to Member States and Union agencies on planning and executing the ~~EES~~ deployment ***of the EES*** during its progressive start of operations ***(the 'eu-LISA high-level roll-out plan')*** and should submit it to the Commission***, the European Parliament, the Council***, Member States and Union agencies. This plan should ~~include the capacity limits~~***confirm performance and availability targets*** of the ***EES*** central system as ~~specified by eu-LISA for each phase of deployment~~***well as the strategy regarding eventual functional minor, major and blocking defects and indicate contingency procedures and provide guidance for the functioning of the EES Central System to the Member States and Europol. It should be adopted by the eu-LISA Management Board***. Member States' decisions to start or advance operations should take into account the ~~capacity of the Central System as outlined in the~~***eu-LISA*** high-level roll-out plan.

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(8) To facilitate a smooth deployment of the EES, ***each*** Member ~~States~~***State*** should develop ***a*** national roll-out ~~plans~~***plan*** in consultation with the Commission and eu-LISA ***and transmit that plan to the Commission***. For each of the phases of the progressive start of ~~the EES~~ operations ***of the EES***, the 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 ~~each~~ border crossing ~~point~~***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 ~~each selected~~ border crossing ~~point.~~ ***points. eu-LISA should consider whether the national roll-out plans are technically consistent with the high-level roll-out plan and should confirm that they do not contain any technical deficiencies which could further delay the entry into operation of the EES. The Commission should consider the overall coherence of all roll-out plans and whether the national roll-out plans are individually compliant with the obligations.*** When preparing their respective national roll-out plans, Member States are encouraged to appropriately coordinate with the operators of infrastructure where border crossing points are located. ***Member States should inform relevant operators of infrastructure hosting border crossing points where they plan to start operating the EES and of their planned use of the biometric functionalities of the EES.*** 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 include corrective measures, where necessary, to ensure compliance with the progressive start of operations. ***The Commission should facilitate the provision of concise national roll-out plans and monthly reports by the Member States.***

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(9) ~~Due to the progressive start of operations of the EES and~~***Considering the*** possible incompleteness of the data recorded in ***the EES during the progressive start of operations of*** the EES, travel documents of third-country nationals should be systematically stamped on entry and exit during the progressive start of operations of the EES. National authorities should take into account the possible incompleteness of entry/exit records or of refusal of entry records***. In case there is no relevant EES data, they*** ~~and~~ should consider stamps as prevailing ~~over the information registered in the EES. In addition, when providing information to third-country nationals about the maximum remaining duration of their authorised stay, national authorities~~***. In case a stamp is missing, they*** should ~~base their assessment on the stamps affixed in the travel documents.~~***consider*** the data recorded in the EES ~~should prevail~~***as prevailing.*** In case ***of a discrepancy between the individual file containing biometric data and the stamp, they should consider the EES data as prevailing. In case of a discrepancy between the individual file without biometric data and the*** ~~a~~ stamp ***or in cases referred to in Article 16(4) of Regulation (EU) 2017/2226, they should decide, on a case by case basis, whether the stamp or the EES data is prevailing*** ~~is missing~~.

(10) Considering that the data registered 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, ~~generating~~***as well as 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, ~~for~~***during*** the first 60 calendar 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 potential implementation issues.*** No later than the 90th calendar day ~~after~~***from the first day of*** the progressive start of operations ***of the EES***, Member States should operate the EES with biometric functionalities at least at 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 the 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 some 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) established by Regulation (EC) No 767/2008 of the European Parliament and of the Council[7] and the EES, the VIS should only be accessed directly at those border crossing points at which the EES is not operated. At the border crossing points at which the EES is operated, border authorities should make use of the interoperability between the EES and the VIS.

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[7] 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).

(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 in Article 50(5) of Regulation (EU) 2017/2226. The information to be provided to ***those*** third-country nationals subject to the EES registration should refer to the progressive start of operations of the EES. Third-country nationals should be informed in the template of their obligation to provide biometric data at border crossing points where it constitutes an entry condition. They should be made aware in the template of the consequences of not providing biometric data. They should be informed in the template that it will not be possible for them to verify the remaining duration of the authorised stay by automated means. ***They should be informed of the possibility to use the short stay calculator tool available on the Commission's website.***

(15) To reflect the progressive start of operations of the EES, the Commission should ~~introduce relevant updates on~~***review*** the EES website ***regularly, and update it as needed***.

(16) The ~~aim of raising awareness among third-country nationals on their specific rights and obligations would be best achieved if Member States customise the implementation of the campaign based on how the EES will operate at their borders at which the EES is operated in accordance with Article 4 of Regulation (EU) 2017/2226. The~~***Commission, involving the European Data Protection Supervisor, should adapt its*** information materials developed ~~by the Commission with the support of Member States~~ in the context of Article 51 of Regulation (EU) 2017/2226 ~~should therefore be adapted~~**,** 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 electronically verify the exact duration of their authorised stay.

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(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[8] and Council Directive 2001/51/EC.[9] In this respect, carriers should verify the stamps affixed in travel documents. To ensure effective communication with carriers about the distinct application of the EES at the border crossing points, ultimately benefiting travellers, it is crucial that Member States are 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 referring to 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 ~~as of~~***after*** the end of the progressive start of operations ***of the EES***. That derogation should cease to apply 5 years and 180 calendar days after the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.

(20) To ensure that national authorities and ~~EU~~***Union*** agencies, in the performance of their tasks, avoid taking decisions exclusively based on data registered in the EES, they should take into account that individual files registered in the EES may contain incomplete data sets. That derogation should cease to apply 5 years after the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226 to reflect the 5-year retention period for data sets 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 should not be used for automated reporting, nor for automated processes, including automated consultation from ETIAS.***

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[8] 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 borders ('the Convention implementing the Schengen Agreement') (OJ L 239, 22.9.2000, p. 19, ELI: http://data.europa.eu/eli/convention/2000/922/oj).

[9] 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).

(21) When ensuring compliance with the provisions ~~in~~***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 registered in the EES during the progressive start of operations.

(22) The European Border and Coast Guard Agency should ~~refrain from using~~***not access*** data registered in the EES during the progressive start of operations for carrying out risk analyses and vulnerability assessments due to the incompleteness of the data that could lead to misleading risk 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 ~~[~~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 ~~Regulation~~***Regulations*** (EU) 2017/2226 and ~~the Schengen Borders Code. However,~~***(EU) 2016/399 with*** specific derogations from these Regulations ~~should apply~~***established under this Regulation to be applied*** with regards 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***. This should happen without prejudice to verifications of visa holders by using fingerprints, in accordance with Regulation (EC) ~~787/2008~~***767/2008***.

(24) To enable an effective adjustment of technical and organisational arrangements during the progressive start of operations of the EES in each Member State and to address ~~exceptional circumstances~~***cases*** of failure of the EES Central System, national systems or communication infrastructure ***that significantly disrupt the operation of the EES, or exceptional circumstances leading to***~~, or~~ excessive waiting times at their borders, ***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***. Member States should use the possibility to suspend the operations of the EES only when it is strictly necessary and for the shortest period possible***. In case of partial suspension, the registration of biometric data in the EES should be suspended. In case of full suspension, no data should be registered in the EES. ~~To mitigate additional risks related to the deployment~~***The use*** of the ~~EES with biometric functionalities, Member States~~***suspension mechanism*** should ~~have the possibility, in exceptional circumstances leading to traffic of such intensity that the waiting times at borders become excessive, to suspend the registration of biometric data in the EES after the end of~~***not affect obligations as regards the timeline for*** the progressive start of operations~~. Such a suspension should be possible for a limited period of 60 days after the end of the progressive start of operations of the EES, and should be 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.~~***, but it could temporarily affect the envisaged percentages.***

(24a) To mitigate additional risks related to the deployment of the EES with biometric functionalities, all Member States should have the possibility, in exceptional circumstances leading to traffic of such intensity that the waiting times at borders become 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. This period should be 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.

(25) eu-LISA should issue reports on the statistics on the use of the ***EES*** system, which should serve to evaluate the system's performance, assess Member States compliance with the ***eu-LISA high-level roll-out and the national*** roll-out plans, identify areas for improvement, monitor compliance with the progressive start of operations of the EES, and support decision-making relating to the system's further development and optimisation. ***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 of the EES. Furthermore, eu-LISA should continue its regular reporting to its Management Board. The Programme Management Board of eu-LISA should monitor the progressive start of EES operations.***

(26) The preparatory work related to the ***eu-LISA high-level roll-out and the national*** roll-out plans should be triggered by the date of the entry into force of this Regulation. The ~~progressive start of operations~~***roll-out plans*** should ~~apply from~~***take into account*** the date ***for the EES entry into operation*** decided by the Commission in accordance with Article 66(1) of ***Regulation (EU) 2017/2226. All conditions listed in that article should be fulfilled in due time to enable the adoption of the decision on the date for the EES entry into operation before the start of the roll-out plans preparation, and taking into account the Interoperability Roadmap endorsed on the 5th of March 2025 by the Council. In particular, the Commission should have received all notifications of readiness to start using the EES. The progressive start of operations of the EES should start and the derogations established by this*** ~~EES~~ Regulation ***should apply from the date decided for the EES entry into operation***. As this Regulation provides for temporary derogations, it should cease to apply 180 calendar days after the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.– However, the derogatory rules on the application of ***the*** transitional period and ***the*** transitional measures ***provided for in Regulation (EU) 2017/2226***, ***on the*** access to EES data, ***on the*** verification by the carriers of stamps affixed in the travel documents and ***on*** the suspension of the EES should apply for a limited period after the end of the progressive start of operations ***of the EES***.

(27) ***Since*** the objective of this Regulation, ***namely*** authorising derogations from ~~Regulation~~***Regulations*** (EU) 2017/2226 and ~~Regulation (EU) 2016/299~~***(EU) 2016/399*** to provide for a progressive start of operations of the EES, cannot be sufficiently achieved by ***the*** Member States but can rather, by reason of the scale and ~~impact~~***effects*** of the action, be better achieved at Union level~~. Therefore~~, 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 ~~those objectives~~***that objective***.

(28) 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***~~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.

(29) This Regulation ~~does not constitute~~***constitutes*** a development of the provisions of the Schengen ***acquis*** ~~acquis~~ in which Ireland ~~takes~~***does not take*** part in accordance with Council Decision 2002/192/EC. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(30) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen ***acquis*** ~~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 ~~those states~~***the latters'*** association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC.

(31) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen ***acquis*** ~~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, 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/EC.

(32) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen ***acquis*** ~~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*** ~~acquis~~ 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/EU.

(33) As regards Cyprus, the provisions of this Regulation relating to the VIS constitute provisions building upon, or otherwise relating to, the Schengen ***acquis*** ~~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 operation 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.

(34) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered its opinion on [xx].

PUBLIC

(35) 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 for a certain period after the end of the progressive start of operations of the EES***. It also ~~sets out~~***maintains*** the 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.

(36) 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.

PUBLIC

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

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

(a) 'progressive start of operations of the EES' means the period of 180 calendar days starting from the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226;

(b) 'national authorities' means the authorities referred to in Article 9 of Regulation (EU) 2017/2226;

(c) 'estimated number of border crossings' means a Member State's estimate of the number of border crossings of third-country nationals ***as*** referred to in Article 2(1) and (2) of Regulation (EU) 2017/2226 in each Member State based on the yearly average of the total number of border crossings of third-country nationals travelling ~~for a short stay in~~***to*** that Member State ~~–~~ ***for a short stay*** calculated for the ***2 calendar years*** preceding ~~3 years from~~ the date of application ~~–~~ referred to in Article 8(1), second subparagraph, of this Regulation. ***Estimations shall be determined based on the border crossings at the borders referred to in Article 4 of Regulation (EU) 2017/2226.***

PUBLIC

Article 3

Roll-out plans *and reporting*

1. ***1. By [OJ office: 30*~~By [the 30th~~ calendar ~~day after~~*days from* the 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, Member States, as well as Europol, with a high-level roll-out plan ***(the 'eu-LISA high-level roll-out plan')*** on the progressive start of operations of the EES, taking into account the phases set out in ***paragraphs 2 to 5 of*** Article 4. That roll-out plan shall ~~include guidance on the use of the EES to Member States and Europol, including capacity limits~~***support the effective and continuous operation*** of the EES Central System***, by confirming performance and availability targets of the central system, as well as the strategy regarding eventual functional minor, major and blocking defects, and indicate contingency procedures and provide guidance for the functioning of the EES Central System to the Member States and Europol***.

2. By [the 60th calendar day after the entry into force of this Regulation], in consultation with the Commission and eu-LISA, ***each*** Member ~~States~~***State*** shall develop a national roll-out plan on the progressive start of operations of the EES, 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, the national roll-out plan shall specify how the thresholds and requirements set out in Article 4 shall be met. eu-LISA shall consider whether the national roll-out plans are technically consistent with the*** high-level roll-out plan ~~referred to in paragraph 1 of this Article~~ and ***shall confirm that they do not contain any technical deficiencies which could further delay the entry into operation of the EES. The Commission shall consider the overall coherence of all roll-out plans and whether the national roll-out plans are individually compliant with the obligations*** ~~the phases~~ set out in Article 4. ***Member States shall inform relevant operators of infrastructure hosting border crossing points where they plan to start operating the EES and of their planned use of the biometric functionalities of the EES.***

PUBLIC

~~3. For each of the phases set out in Article 4, the national roll-out plans shall include the information on the thresholds and requirements set out in that Article.~~

4. From the 30th calendar day after the ~~progressive~~***date from which the EES is to*** start ~~of~~ operations ~~of the EES~~***as decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226***, Member States shall provide monthly reports to the ***European Parliament, the Council, the*** Commission and eu-LISA ~~on~~***confirming*** the implementation of their national roll-out plans, ~~including~~***or identifying deviations and*** corrective measures***,*** where necessary***,*** to comply with the obligations set out in Article 4.

5. At the request of the Commission, eu-LISA shall provide the Commission with the statistics necessary for the ~~monitoring of~~***Commission to monitor the implementation of the high-level roll-out plan and*** the national roll-out plans, in accordance with Article 63(6) of Regulation (EU) 2017/2226.

5a. The eu-LISA Management Board shall adopt the eu-LISA high-level roll-out plan referred to in paragraph 1 of this Article.

5b. The Commission shall facilitate the provision of concise national roll-out plans and monthly reports by the Member States.

5c. Where necessary, the Commission, in consultation with the European Data Protection Supervisor, shall 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

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.

PUBLIC

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 calendar day from the first day of the progressive start of operations of the EES,*** Member States shall register in the EES at least 10% of the estimated number of border crossings in that Member State.

~~For~~***During*** the first 60 calendar 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. ~~No later than~~***By*** the 90th calendar day ~~after~~***from the first day of*** the progressive start of operations of the EES, Member States shall operate the EES with biometric functionalities at least at half of their border crossing points. Member States shall register ***in the EES*** at least ~~50%~~***35%*** of the estimated number of border crossings in 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. ~~No later than~~***By*** the 150th calendar day ~~after~~***from the first day of*** the progressive start of operations of the EES, Member States shall operate the EES with biometric functionalities at all their border crossing points and shall ~~continue registering~~***register*** in the EES at least 50% of the estimated number of border crossings in that Member State.

5. ~~No later than~~***By*** the 170th calendar ~~days after~~***day from the first day of*** the progressive start of operations of the EES, Member States shall operate the EES with biometric functionalities at all their 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.

PUBLIC

6. Refusals of entry, decided at a border crossing point at which the EES is operated, shall be recorded in the EES, ~~as set out~~ 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 Regulation (EU) 2017/2226 and Regulation (EU) 2016/399

1. In addition to the rules of 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.

PUBLIC

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 35 of Regulation (EU) 2017/2226 shall ~~consider stamps as prevailing over the EES data, including in cases of discrepancy or in cases referred to in Article 16(4) of that Regulation. The data recorded in the EES shall prevail in case a stamp is missing.~~***:***

(a) consider stamps affixed as prevailing where there is no relevant EES data,

(b) consider EES data as prevailing:

(i) where there is discrepancy between the individual file containing biometric data and the stamp affixed, or

(ii) where a stamp is missing;

(c) decide on a case-by-case basis whether the stamp or the EES data is prevailing:

(i) where there is a discrepancy between the individual file without biometric data and the stamp affixed according to paragraph 2; 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 that a registration of an alleged entry or exit is absent 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 in the territory of ~~the~~***a*** Member ~~States~~***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.

~~This~~***The*** presumption ***referred to in the first subparagraph*** shall not apply to third-country nationals who can provide, by any means, credible evidence that they enjoy the right of free movement under Union law, ~~have a right of residence in a host Member State under the EU–UK Withdrawal Agreement,~~ or that they hold a residence permit or a long-stay visa.

~~This~~***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 is rebutted, national authorities ***using the EES*** shall perform one or more of the following tasks ~~at the border crossing points at which the EES is operated~~, 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 by entering the missing data;

(c) erase an existing file 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 accessing the VIS directly:

(a) at the border crossing points at which the EES is not operated;

(b) where the EES is suspended ~~in accordance with~~***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), Article 63(1), point (e) of that Regulation.

PUBLIC

7. ***For the purposes of Articles 45 and 48 of Regulation (EU) 2017/2226,*** processing operations ***of EES data*** by Member States ~~that comply with~~***pursuant to*** this Regulation shall not be considered as unlawful or ***as*** not compliant with Regulation (EU) 2017/2226 ~~for the purposes of Articles 45 and 48 of that Regulation~~.

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 ~~accompany~~***complement*** the template to be ~~handed over to~~***provided to those*** third-country nationals at the time the individual file of the person concerned is being created– with the following information:

'The Entry/Exit System is being progressively rolled out. During ***the period of this progressive***~~this~~ roll-out ~~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 we need to mandatorily collect this information and you choose not to provide it, you will be refused entry. During this period of the progressive roll-out your data will not be automatically 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 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's website Short-stay Calculator - European Commission***

Please note that when the progressive roll-out of the EES is completed, your personal data will be processed according to the information provided in the document accompanying 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, ensuring that the relevant information is communicated to those affected, and taking into account the phases set out in Article 4 of this Regulation. The Commission***, involving the European Data Protection Supervisor,*** shall ~~support Member States in preparing the adapted~~***adapt the materials for the information campaign in a reasonable timeframe, prior to the start of operations. Furthermore, the Commission shall continue to support Member States in their preparation of the materials.*** ~~materials of the information campaign.~~

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 ~~has ended~~.

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) Regulation (EU) 2017/2226.

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

PUBLIC

By way of derogation from the second subparagraph, 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 the provisions on the verification of third-country nationals based on biometric data, solely for the purposes of the EES, referred to in Articles ~~*66(1)*~~, point (f) (ii) and Article 8 (3), points (a) and (g) of ***that*** Regulation ~~(EU) 2016/399~~ shall not apply.

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

14a. By way of derogation to Article 37 of Regulation (EU) 2017/2226, the Programme Management Board shall continue its activities until the end of the progressive start of operations of the EES. In particular the Programme Management Board shall monitor such progressive start, including the stability of the EES Central System, and recommend additional actions where appropriate.

Article 6

Access to the EES data

1. When accessing the entry and exit records registered in the EES during the progressive start of operations of the EES in the performance of their tasks:

(a) national authorities and Europol shall take into account that, due to the variable operations of the EES in each Member State during the progressive start of operations of the EES, the data could be incomplete;

[Deleted]

(b) national authorities shall take into account that the data could be incomplete when communicating data in accordance with Articles 41 and 42 of Regulation (EU) 2017/2226;

PUBLIC

(c) the ETIAS Central Unit shall take into account that the entry and exit records registered in the EES during the progressive start of operations of the EES could include incomplete sets of data for the purpose of verification in accordance with Article 25a(2) of Regulation (EU) 2017/2226.

2. Competent authorities, the Commission and relevant Union agencies shall take into account that the data registered in the EES during the progressive start of operations of the EES ~~may~~***could*** be incomplete when accessing data for ***the purpose of*** reporting and statistics ~~as referred~~ in ***accordance with*** Article 63 of Regulation EU 2017/2226.

3. ~~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 calendar day of the progressive start of operations of the EES.~~ 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 Council 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 calendar day of the progressive start of operations of the EES.***

~~For a period of~~***During*** 180 calendar days after the end of the progressive start of operations of the EES, carriers shall, in addition to using the web service ~~as referred to in~~***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*** Council Directive 2001/51/EC.

4. When fulfilling the obligations referred 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 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 Regulation (EU) 2017/2226 shall refer to the conditions set out in Article 4 of this Regulation that allow for the registration of incomplete files.

5. 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 access the data registered in the EES during the progressive start of operations of the EES for the purpose of carrying out risk analyses and 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 operating the EES at certain border crossing points in ~~exceptional circumstances~~***case*** of failure of the EES Central System, national systems or communication infrastructure ***that significantly disrupts the operation of the EES, or in exceptional circumstances***~~, or events~~ leading to traffic of such intensity that the waiting time at a border crossing point becomes excessive.

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

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

In both cases, Member States shall promptly and no later than 6 hours after the start of the suspension notify to the Commission and eu-LISA the reason for the partial or full suspension and its expected ***or actual*** duration and ~~ensure that~~***, if relevant according to the local circumstances of the border crossing points, shall inform*** the operators of infrastructure hosting border crossing points and carriers ~~are duly informed~~ of such suspension. Once the exceptional circumstances that led to the suspension cease, Member States shall promptly notify the Commission and eu-LISA***, and, in cases where they had been informed of the suspension, shall inform the operators of infrastructure hosting border crossings points and carriers, thereof***.

PUBLIC

1a. ***In case of failure of EES Central System, eu-LISA shall promptly notify the Commission and Member States of the reason and its expected duration. Eu-LISA shall also promptly notify them when the failure is remedied. All Member States shall promptly confirm restart of operations to eu-LISA and the Commission.***

2. ~~For~~***During*** a period of ~~60~~***90*** calendar days after the end of the progressive start of operations of the EES, Member States may partially suspend operating the EES as referred to in paragraph 1, second subparagraph, at a certain border crossing point for a limited time of maximum 6 hours and only in exceptional circumstances leading 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 relieved of their obligation set out in ***that*** Article 21(1) of Regulation (EU) 2017/2226 as regards ***the registration of*** biometric data. In those cases, Member States shall promptly and no later than 6 hours after the start of ***the partial*** suspension notify the reason for the suspension and its expected ***or actual*** duration to the Commission and eu-LISA.

3. 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 calendar days*** set out in paragraph 2 ~~of this Article~~ shall be automatically extended by 60 calendar days.

4. ~~At the latest~~ By the 10th calendar 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 if this percentage ***referred to in paragraph 3*** has been reached. No later than by the 30th calendar 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 ~~fourth~~***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 ***[OJ Office: the date of***~~the~~ entry into force of this Regulation***]***.

2. This Regulation shall cease to apply 180 calendar 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) shall cease to apply 5 years and 180 calendar days after 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(1), (2), (4) and (5) shall cease to apply 5 years and 180 calendar days after 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 6(3), second subparagraph, shall cease to apply 360 calendar days after 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(2) and (3) shall cease to apply ~~300~~***330*** calendar days after 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;

   (e) Article 7(4) shall cease to apply 210 calendar days after 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.

PUBLIC

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

PUBLIC