



Council of the European Union
General Secretariat

**Interinstitutional files:
2024/0315 (COD)**

Brussels, 31 January 2025

WK 1348/2025 INIT

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CODEC

**DOCUMENT PARTIALLY
ACCESSIBLE TO THE
PUBLIC (01.04.2025)**

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WORKING DOCUMENT

From: General Secretariat of the Council
To: Delegations

N° prev. doc.: 16639/24; WK 16156/24 + ADD 1; WK 972/2025

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 - draft Presidency compromise text

Following the 16 January 2025 JHA Counsellors meeting and based on the comments we received, the Presidency has prepared, in consultation with the Commission and the Council Legal Service, a first compromise text for your examination. We will discuss this first proposal during the next JHA Counsellors (IXIM + Frontiers) meeting, next Thursday (6th February), starting at 14:30.

The Presidency would like to stress that the interoperability architecture, with the EES System as first component, will contribute to greater internal security and a more effective border management, which is one of our Presidency's priorities.

It is particularly important to ensure that the EES starts operating as soon as possible. The Presidency is aware that the implementation of a large-scale IT system like the EES is a complex operation, and delays can never be completely excluded. Nevertheless, the Presidency considers that this legislative change allowing for a progressive entry into operation of EES is the best way forward for swift progress. We think that a period of 180 days is enough for MS to have the flexibility to start progressively, while having

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to meet minimum milestones as to the percentages of BCPs and passengers registered in EES as well as the use of biometrics, and this in a progressive manner.

The compromise proposal includes many changes requested by the Member States, including provisions to address the concerns of Member States about the readiness and stability of the system. Changes have been introduced to allow for testing in the first phase of the progressive approach without a percentage threshold and on only one border crossing lane for the first 30 days of the progressive approach. The suspension mechanism has also been extended - from 60 plus 60 days to 90 plus 60 days. Changes have been made regarding the monitoring of the progressive approach by the eu-LISA Management Board. The issue of data collected during the progressive approach and the issue of stamping passports during it have also been clarified. The Presidency hopes that the attached compromise text will be acceptable to delegations and that it can satisfy both the MS who want to start in full, as well as those who will start with a minimal application of the EES.

It is important to underline again that this legislative proposal, allowing for a progressive start of the EES, does not change the existing legislation (EES Regulation and the Schengen Borders Code), but only provides for a temporary derogation of a limited number of articles of the existing acts, allowing the Member States to progressively implement the EES over a period of 180 days. This temporary derogation will apply in full to all MS during the foreseen period, regardless of whether they start using the EES in full, or only partially.

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

2024/0315(COD)

Non-versioned [LATEST TEXT]

31-01-2025 at 16h59

	Text proposals by MS	Comments by MS	First compromise text proposal
Formula			
1	2024/0315 (COD)		2024/0315 (COD)
Document Stage			
2	Proposal for a		Proposal for a
Document Type			
3	REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL		REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
Document Purpose			
4	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	<p>██████████ ██ ██ ██ ██ ██████████</p> <p>NL: <i>General comments</i></p> <ul style="list-style-type: none"> We welcome the proposal that has been presented and strongly support a progressive approach, in order to gradually implement the EES, and address potential challenges along the way. We wish to thank the Commission for the provided answers and the Presidency for bringing this file further in a swiftly manner. 	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

	Text proposals by MS	Comments by MS	First compromise text proposal
		<ul style="list-style-type: none"> · As a general point, we wish to highlight that the progressive approach of the EES should not start at peak times, such as the summer/holiday period or major events (NATO summit) within the Member State or even before fall 2025. · The progressive approach of EES should start when the stability of the Central EES is ensured. NL has proposed additional texts in this regard (see below, working with the French and German text proposals), including extending the authority of the eu-LISA Management Board to include monitoring during and at the end of the progressive start. It would be welcomed if the Agency provides monthly reports in line with MS's reports, and the EES PMB must be maintained throughout the progressive period. · In order to guarantee for a smooth start the Netherlands support the growth towards 10% EES registrations by the end of the first period. · The Netherlands attaches importance to an automated administrative closure of incomplete EES files after the progressive rollout to prevent false hits, while ensuring the data remains available for law enforcement purposes. · Lastly the Netherlands understands from the explanation by the Commission on the 10th of December that a border crossing point can be interpreted as an individual lane (filter) on a specific border crossing point. NL would like to suggest to add a recital on this (see below). <p>SE: <i>General comments</i> The Entry Exit System should be implemented in a legally secure and efficient manner as soon as possible, and under those conditions with the</p>	

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		<p>least possible disruption at border crossing points. We believe it is highly important that biometrics are registered in the EES to the greatest extent possible during the progressive start and that the progressive start will not be prolonged. It is crucial that the test environment is fully functioning.</p> <p>Given the above, the results of our ongoing analysis of the legislative proposal are preliminary and subject to further comments and review.</p> <p>We do not support any proposal to extend the 180-day period as proposed by some of the other delegations.</p> <p>As previously communicated, SE needs long lead times from the Commission's decision on the date for EiO to the actual start date. If new adjustments to our national legislation is necessary, it will likely lead to delays.</p> <p><i>Clarification regarding Member states that will fully implement EES from day one.</i></p> <p>SE would like to see a clarification in the regulation regarding the Member States that will start operating the EES fully from day one. It should be clarified what applies to those Member States, and which provisions are relevant for the Member states that fully implement the EES. For example, it is unclear whether the derogations and suspension measures (article 7) apply to Member States opting to fully implement the EES in its entirety and it is also unclear if Member States that fully implement EES should develop national roll out plans (article 3). We are still awaiting response from the EC and the CLS whether article 7 is also applicable to Member states that fully</p>	

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		<p>implement EES from day one? If so, that should be clarified in a recital or in the article.</p> <p>CZ General comment: · <i>The idea of phased entry into operation seems beneficial per se, although changing the rules so late in the process puts the EES and the whole interoperability project at yet new risks. Special attention should be paid to the fact that the new EES proposal does not eliminate dependence on remaining declarations of readiness. This increases the risk that we will face similar critical moment later in the process again. Therefore, Czechia retains its preference for the possibility of launching the EES in full as soon as possible as per the existing Regulation given also the financial and reputational implications of a further postponement.</i></p> <p>· <i>It should be stressed that the postponement of the EES EiO has a serious negative impact on the relationship with the national system supplier and on the contractual relationship. Due to the rather substantial shift of the project schedule, the suspension of the project and the disbanding of the project teams on the contractor side are being very seriously considered.</i></p> <p>SE NL CZ FR</p>	
Formula			
5	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Citation 1			
6	Having regard to the Treaty on the Functioning of the European Union, and in particular Article		Having regard to the Treaty on the Functioning of the European Union, and in particular Article


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	77(2) points (b) and (d) and Article 87(2) point (a), thereof,		77(2) points (b) and (d) and Article 87(2) point (a), thereof,
Citation 2			
7	Having regard to the proposal from the European Commission,		Having regard to the proposal from the European Commission,
Citation 3			
8	After transmission of the draft legislative act to the national parliaments,		After transmission of the draft legislative act to the national parliaments,
Citation 4			
9	Acting in accordance with the ordinary legislative procedure ¹ , 1. [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].		Acting in accordance with the ordinary legislative procedure ¹ , 1. [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].
Formula			
10	Whereas:	FR: As a preliminary point, we would like to recall that the recitals need to better explain the rationale of the Regulation. Indeed, this proposal allowing for a gradual launch of the system should facilitate the implementation of EES for both Member States and the Central System. In view of the above, France proposes the following amendments to recitals 2 and 4 in order to refocus the rationale of the Regulation on the need to reduce the risks inherent to a <i>big bang</i> approach, both technically and operationally. FR	Whereas:
Recital 1			
11	(1) Article 66(1) of Regulation (EU) 2017/2226 of the European Parliament and of the Council ¹ ,		(1) Article 66(1) of Regulation (EU) 2017/2226 of the European Parliament and of the Council ¹ ,

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	<p>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.</p> <p>1. 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).</p>		<p>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.</p> <p>1. 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).</p>
Recital 2			
12	<p>(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. <u>Moreover, a full start of operations overnight constitutes a risk factor for the resilience of the system as a whole.</u> (FR)</p> <p>FR</p>		<p>(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. <u>Moreover, a full start of operations overnight could constitute a risk factor for the resilience of the system as a whole.</u></p>
Recital 3			
13	<p>(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.</p>		<p>(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.</p>
Recital 4			
14	<p>(4) To provide Member States with the necessary flexibility to start using the EES</p>		<p>(4) To provide Member States with the necessary flexibility to start using the EES</p>

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	<p>according to their level of readiness, <u>and to (FR) and facilitate technical and operational adjustments when starting to operate the EES, and taking into account the risk factor for the resilience of the system implied by a full start of operations overnight, (FR)</u> it is necessary to lay down rules for a progressive start of operations of the EES. To ensure these adjustments reflect potential travel flows and seasonal peaks, such a progressive start should have a duration of 180 calendar days.</p> <p>FR</p>		<p>according to their level of readiness and <u>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. To ensure these adjustments reflect 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,</u> such a progressive start should have a <u>limited</u> duration of 180 calendar days.</p>
Recital 4a			
14a	<p><u>(4a) Considering, that the progressive start of operations may also have some negative impact for the Member States in terms of increased workload at the border crossing points, especially for those Member States who start operations fully from day one. (DK)</u></p> <p>DK</p>		
Recital 5			
15	<p>(5) To enable a progressive start of operations of the EES it is therefore necessary to derogate from certain provisions of Regulation (EU) 2017/2226 and Regulation (EU) 2016/399 of the European Parliament and of the Council¹ ('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 data recorded in the EES throughout the progressive start of operations follow the rules set out in</p>		<p>(5) To enable a progressive start of operations of the EES it is therefore necessary to derogate from certain provisions of Regulation (EU) 2017/2226 and Regulation (EU) 2016/399 of the European Parliament and of the Council¹ ('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 data recorded in the EES throughout the progressive start of operations follow the rules set out in Regulation (EU) 2017/2226 and are considered</p>

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	<p>Regulation (EU) 2017/2226 and are considered reliable and accurate.</p> <p>1. 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).</p>		<p>reliable and accurate. <u>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.</u></p> <p>1. 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).</p>
Recital 6			
16	<p>(6) Member States 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. <u>Member States may progressively start operating the EES at an individual lane (filter) on a specific border crossing point. (NL)</u> 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, 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 progressive start of operations should be implemented in phases, which should set the minimum requirements to be reached by Member States. Member States will have the possibility to accelerate <u>or slow down (ES)</u> implementation at national level or start operating the EES fully from the beginning of the progressive approach.</p>		<p>(6) Member States 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 <u>border crossing points, and at one or more lanes of such</u> 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, 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 progressive start of operations should be implemented in phases, which should set the minimum requirements to be reached by Member States. Member States will have the possibility to accelerate implementation at national level or start operating the EES fully from the beginning of the progressive approach.</p>

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	ES		
Recital 7			
17	<p>(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 during its progressive start of operations and should submit it to the Commission, Member States and Union agencies <u>after a series of rehearsals allowing to test functional and non-functional aspects of the central system (FR, NL)</u>. This plan <u>should be adopted by the Management Board of eu-LISA (FR, similar to NL)</u>. It should include the capacity limits of the Central System as specified by eu-LISA for each phase of deployment <u>set performance and availability targets of the central system and set the strategy regarding eventual functional minor, major and blocking defects (FR, NL)</u>. <u>This plan should be approved and assessed for its technical readiness for the progressive start of the EES by the eu-LISA Management Board (NL)</u>. Member States' decisions to start or advance operations should take into account the capacity of the Central System as outlined in the high-level roll-out plan.</p> <p>NL FR</p>	<p>(7) FR: France would also like to express its willingness to detail the dimensions to be included in eu-LISA's roll-out plan, as already done in recital 8 for the Member States' roll-out plan. We stress the need to include in this roll-out plan technical guarantees on the functioning of the central system.</p> <p>NL: Similar position to FRA. For that reason we support the FRA text proposal.</p> <p>NL FR</p>	<p>(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 during its progressive start of operations and should submit it to the Commission, Member States and Union agencies. This plan should include the capacity limits of the Central System as specified by eu-LISA for each phase of deployment <u>be adopted by the eu-LISA Management Board</u>. Member States' decisions to start or advance operations should take into account the capacity of the Central System as outlined in the high-level roll-out plan.</p>
Recital 8			


	Text proposals by MS	Comments by MS	First compromise text proposal
18	<p>(8) To facilitate a smooth deployment of the EES, Member States should develop national roll-out plans in consultation with the Commission and eu-LISA. For each of the phases of the progressive start of the EES operations, the national roll-out plans should include the information on the set thresholds and requirements, in particular (ES): (i) the <u>expected (ES)</u> date from which the EES will operate at each border crossing point; (ii) the <u>expected (ES)</u> percentage of the estimated number of (ES) 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 <u>expected (ES)</u> biometric functionalities to be operated at each selected border crossing point. 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. To monitor compliance with the progressive start of operations, Member States should provide the Commission and eu-LISA monthly (ES) reports on the implementation of their roll-out plans <u>every two months. Such (ES)</u>. Such monthly reports should include corrective measures, where necessary, to ensure compliance with the progressive start of operations.</p> <p>ES</p>		<p>(8) To facilitate a smooth deployment of the EES, Member States should develop national roll-out plans in consultation with the Commission and eu-LISA. For each of the phases of the progressive start of the EES operations, the national roll-out plans should include the information on the set thresholds and requirements, in particular: (i) <u>the date from which the EES will operate at, for</u> each border crossing point; <u>(i) the date when the EES will be activated;</u> (ii) the percentage of date when the EES will be operated with biometric functionalities; <u>and (iii) the estimated number/percentage</u> of border crossings to be registered in the EES out of the total number of third-country nationals subject to registration in <u>by the end of each applied phase. In case Member States decide to start</u> the EES; and (iii) where applicable, the biometric functionalities to be operated at each selected border crossing point <u>fully from the beginning of the progressive period, the roll-out plan should only mention that decision.</u> 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. To monitor compliance with the progressive start of operations, Member States should provide the Commission and eu-LISA monthly reports on the implementation of their roll-out plans. Such monthly reports should include corrective measures, where necessary, to ensure compliance with the progressive start of operations.</p>
Recital 9			

	Text proposals by MS	Comments by MS	First compromise text proposal
19	<p>(9) Due to the progressive start of operations of the EES and possible incompleteness of the data recorded in 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 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 should base their assessment on the stamps affixed in the travel documents. The data recorded in the EES should prevail in case a stamp is missing.</p>		<p>(9) Due to the progressive start of operations of the EES and <u>Considering the</u> possible incompleteness of the data recorded in <u>the EES during the progressive start of operations of</u> 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. <u>In case there is no relevant EES data, they</u> 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. <u>In case a stamp is missing, they</u> should base their assessment on the stamps affixed in the travel documents. <u>consider</u> the data recorded in the EES should prevail <u>as prevailing</u>. In case <u>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</u> stamp <u>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</u> is missing.</p>
Recital 10			
20	<p>(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</p>		<p>(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</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	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 lists of persons identified as overstayers.		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 lists of persons identified as overstayers.
Recital 11			
21	(11) To provide Member States with the necessary time to adjust to the start of the EES, for the first 60 calendar days of the progressive start of operations, the use of biometric functionalities at border crossing points should not be mandatory. No later than the 90 th calendar day after the progressive start of operations, 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.		(11) To provide Member States with the necessary time to adjust to the start of the EES, for the first 60 calendar days of the progressive start of operations, the use of biometric functionalities at border crossing points should not be mandatory. No later than the 90 th calendar day after the progressive start of operations, 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.
Recital 12			
22	(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.		(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.
Recital 13			

	Text proposals by MS	Comments by MS	First compromise text proposal
23	<p>(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 Council¹ 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.</p> <p>¹ 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).</p>		<p>(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 Council¹ 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.</p> <p>¹ 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).</p>
Recital 14			
24	<p>(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 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</p>		<p>(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 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</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	duration of the authorised stay by automated means.		duration of the authorised stay by automated means.
Recital 15			
25	(15) To reflect the progressive start of operations of the EES, the Commission should introduce relevant updates on the EES website.		(15) To reflect the progressive start of operations of the EES, the Commission should introduce relevant updates on the EES website.
Recital 16			
26	<p>(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 (EUES) 2017/2226. The 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 (ES) be adapted <u>by the Commission in close cooperation with the Member States (NL)</u> to carry out the information campaign accompanying the progressive start of operations.</p> <p>NL</p>		<p>(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 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 <u>by the Commission</u> to carry out the information campaign accompanying the progressive start of operations, <u>with the support of Member States</u>.</p>
Recital 17			
27	(17) During the progressive start of operations of the EES, the web service will not enable third-country nationals to electronically verify the exact duration of their authorised stay.		(17) During the progressive start of operations of the EES, the web service will not enable third-country nationals to electronically verify the exact duration of their authorised stay.
Recital 18			
28	(18) This Regulation does not affect the obligations of air carriers, sea carriers and		(18) This Regulation does not affect the obligations of air carriers, sea carriers and

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	<p>international carriers transporting groups overland by coach as set out in Article 26(1) of the Convention implementing the Schengen Agreement¹ and Council Directive 2001/51/EC.² 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.</p> <p>1. 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).</p> <p>2. 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).</p>		<p>international carriers transporting groups overland by coach as set out in Article 26(1) of the Convention implementing the Schengen Agreement¹ and Council Directive 2001/51/EC.² 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.</p> <p>1. 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).</p> <p>2. 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).</p>
Recital 19			
29	<p>(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. It is necessary to derogate from those Articles to ensure that the transitional period and the transitional measures apply only as of the end of the progressive start of operations. That derogation should cease to apply 5 years and 180 calendar days after the date decided by the</p>		<p>(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. It is necessary to derogate from those Articles to ensure that the transitional period and the transitional measures apply only as of the end of the progressive start of operations. That derogation should cease to apply 5 years and 180 calendar days after the date decided by the</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.		Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.
Recital 20			
30	(20) To ensure that national authorities and EU 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.	(20) NL: (in conjunction with recital 5, 9, 10 and 17). NL attaches importance to the administrative closure of incomplete EES data after the progressive start. NL would like to suggest to include the possible adjustment in recital 20. To ensure that national authorities and EU agencies, in the performance of their tasks, avoid taking decisions exclusively based on incomplete data registered in the EES, records with missing exit registrations will be automated administratively closed at the end of the progressive approach. A further explanation can be found in art. 6 sub 6. NL	(20) To ensure that national authorities and EU 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. <u>Entry and exit records created during the progressive phase should not be used for automated reporting.</u>
Recital 21			
31	(21) When ensuring compliance with the provisions in 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.		(21) When ensuring compliance with the provisions in 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.
Recital 22			
32	(22) The European Border and Coast Guard Agency should refrain from using data registered in the EES during the progressive start of operations for carrying out risk analyses and vulnerability assessments due to the		(22) The European Border and Coast Guard Agency should refrain from using data registered in the EES during the progressive start of operations for carrying out risk analyses and vulnerability assessments due to the

	Text proposals by MS	Comments by MS	First compromise text proposal
	incompleteness of the data that could lead to misleading risk and vulnerability assessments.		incompleteness of the data that could lead to misleading risk and vulnerability assessments.
Recital 23			
33	(23) To ensure effective management of the external borders during the progressive start of operations of the EES, 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 (EU) 2017/2226 and the Schengen Borders Code. However, specific derogations from these Regulations should apply 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. This should happen without prejudice to verifications of visa holders by using fingerprints, in accordance with Regulation (EC) 787/2008.		(23) To ensure effective management of the external borders during the progressive start of operations of the EES, 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 (EU) 2017/2226 and the Schengen Borders Code. However, specific derogations from these Regulations should apply 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. This should happen without prejudice to verifications of visa holders by using fingerprints, in accordance with Regulation (EC) 787/2008 <u>767/2008</u> .
Recital 24			
34	(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 of failure of the EES Central System, national systems or communication infrastructure, or excessive waiting times at their borders, Member States should have the possibility to suspend the		(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 of failure of the EES Central System, national systems or communication infrastructure, or excessive waiting times at their borders, <u>all</u> Member States, <u>regardless of whether they start using</u>

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	<p>operations of the EES at certain border crossing points, fully or partially. 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 of the EES with biometric functionalities, 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. 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.</p>		<p><u>the EES fully or progressively</u>, should have the possibility to suspend the operations of the EES at certain border crossing points, fully or partially. 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. <u>The use of the suspension mechanism does not affect obligations as regards the timeline for the progressive start of operations, but it may temporarily affect the envisaged percentages.</u></p> <p>To mitigate additional risks related to the deployment of the EES with biometric functionalities, <u>all</u> 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. Such a suspension should be possible for a limited period of 60<u>90</u> 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.</p>
Recital 25			
35	<p>(25) eu-LISA should issue reports on the statistics on the use of the system, which should serve to evaluate the system's performance, assess Member States compliance with the 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.</p>		<p>(25) eu-LISA should issue reports on the statistics on the use of the system, which should serve to evaluate the system's performance, assess Member States compliance with the 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. <u>In addition, eu-</u></p>

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			<u>LISA should continue its usual reporting to its Management Board. The Management Board of eu-LISA should monitor the progressive start of EES operations.</u>
Recital 26			
36	(26) The preparatory work related to the roll-out plans should be triggered by the date of the entry into force of this Regulation. The progressive start of operations should apply from the date decided by the Commission in accordance with Article 66(1) of EES Regulation. 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 transitional period and transitional measures, access to EES data, verification by the carriers of stamps affixed in the travel documents and the suspension of the EES should apply for a limited period after the end of the progressive start of operations.		(26) The preparatory work related to the roll-out plans should be triggered by the date of the entry into force of this Regulation. The progressive start of operations should apply from the date decided by the Commission in accordance with Article 66(1) of EES Regulation. 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 transitional period and transitional measures, access to EES data, verification by the carriers of stamps affixed in the travel documents and the suspension of the EES should apply for a limited period after the end of the progressive start of operations.
Recital 27			
37	(27) The objective of this Regulation, authorising derogations from Regulation (EU) 2017/2226 and Regulation (EU) 2016/299 to provide for a progressive start of operations of the EES, cannot be sufficiently achieved by Member States but can rather, by reason of the scale and impact 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. In accordance		(27) The objective of this Regulation, authorising derogations from Regulation (EU) 2017/2226 and Regulation (EU) 2016/299 <u>2016/399</u> to provide for a progressive start of operations of the EES, cannot be sufficiently achieved by Member States but can rather, by reason of the scale and impact 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

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	with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.		Union. 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.
Recital 28			
38	(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, 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.		(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 ^{aequis} , 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.
Recital 29			
39	(29) This Regulation does not constitute a development of the provisions of the Schengen acquis in which Ireland takes 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.	(29) Reference is not correct (IRL) - <i>awaiting assessment Commission Legal Service</i>	(29) This Regulation does not constitute a development of the provisions of the Schengen acquis ^{aequis} in which Ireland takes 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.
Recital 30			
40	(30) 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 those states association with the implementation, application and		(30) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis ^{aequis} 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 latter} ' association with the implementation, application

	Text proposals by MS	Comments by MS	First compromise text proposal
	development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC.		and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC.
Recital 31			
41	(31) 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, 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.		(31) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis aequis 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.
Recital 32			
42	(32) 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 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.		(32) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis aequis 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 aequis 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.
Recital 33			

	Text proposals by MS	Comments by MS	First compromise text proposal
43	(33) As regards Cyprus, the provisions of this Regulation relating to the VIS constitute provisions building upon, or otherwise relating to, the Schengen <i>acquis</i> 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.		(33) As regards Cyprus, the provisions of this Regulation relating to the VIS constitute provisions building upon, or otherwise relating to, the Schengen <i>acquis</i> <i>aequis</i> 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.
Recital 34			
44	(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].		(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].
Recital 35			
45	(35) This Regulation establishes strict rules concerning access to the EES, as well as the necessary safeguards for such access. It also sets out the individuals' rights of access, rectification, completion, erasure and redress, in particular the right to a judicial remedy and the supervision of processing operations 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,		(35) This Regulation establishes strict rules concerning access to the EES, as well as the necessary safeguards for such access. It also sets out the individuals' rights of access, rectification, completion, erasure and redress, in particular the right to a judicial remedy and the supervision of processing operations 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,

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	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.		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.
Recital 36			
46	(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.		(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.
Formula			
47	HAVE ADOPTED THIS REGULATION:		HAVE ADOPTED THIS REGULATION:
Article 1			
48	Article 1 Subject matter		Article 1 Subject matter
Article 1, first paragraph			
49	This Regulation lays down rules on a progressive start of operations of the Entry/Exit System (EES) at the borders of the Member States at which the EES is operated in accordance with Article 4 of Regulation (EU) 2017/2226 and temporary derogations from Regulation (EU) 2017/2226 and Regulation (EU) 2016/399.	BE: suggests to provide greater clarity in the text regarding the provisions applicable to Member States opting for a progressive entry into operations in accordance with article 4 of the proposal and those that apply to Member States that are opting for a full entry into operations. Perhaps a re-structuring of the text in two chapters with provisions linked to the progressive start in particular and those that are applicable to all Member States. BE	This Regulation lays down rules on a progressive start of operations of the Entry/Exit System (EES) at the borders of the Member States at which the EES is operated in accordance with Article 4 of Regulation (EU) 2017/2226 and temporary derogations from Regulation (EU) 2017/2226 and Regulation (EU) 2016/399.
Article 2			
50	Article 2 Definitions		Article 2 Definitions
Article 2, first paragraph			

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51	For the purposes of this Regulation, the definitions in Article 3(1) of Regulation (EU) 2017/2226 apply. In addition, the following definitions apply:		For the purposes of this Regulation, the definitions in Article 3(1) of Regulation (EU) 2017/2226 apply. In addition, the following definitions apply:
Article 2, first paragraph, point (a)			
52	<p>(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, <u>renewable once (LU) taking into account that the declarations of readiness already sent by the Member States at the moment of the entering into force of this Regulation should remain valid (ES)</u>;</p> <p>LU ES</p>	<p>(a) <i>In favor of extension beyond 180 days (AT, LU, IT)</i></p> <p><i>AT</i>: wants to include possibility to extend the 180 days.</p> <p><i>LU</i>: wants 180 days renewable once. The text proposes an ambitious progression towards full deployment over 6 months without an assessment of the system before the transition to full deployment, respectively between the different stages of the progressive roll-out (as laid out in article 4), and therefore without the possibility of extending the progressive approach (or extending or even rolling back certain stages) if the operational and technical situation would so require. LU understands the importance of a rapid start of operations, but it would be unfortunate to lay the legal basis for a progressive start and not take full advantage of it to ensure a state-of-the-art full deployment.</p> <p><i>IT</i>: Italy intends to reiterate the need to extend the progressive phase from six months to one year, in order not to make the definitive entry into operation of EES coincide with the two major national events (the Jubilee and the Milan-Cortina 2026 Winter Olympics). For these events, tourist flows are expected to increase by an estimated 15 per cent compared to last year, which has already recorded strong growth (10 per cent) at all major national airports.</p>	<p>(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;</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p><i>Against:</i> SE, CZ, FR, DK: We do not support any proposal to extend the 180-day period.</p> <p><i>Nuanced:</i> NL: The Netherlands supports the progressive rollout of 180 days. However, NL emphasizes the importance of considering an extension of the transitional measures, such as the partial suspension of EES after the end of the progressive start, if deemed necessary. Following the German way of thinking, if the performance targets or prerequisites are not met, the eu-LISA Management Board could approve an extension of the phased deployment for a period to be determined to ensure the required system stability and achievement of the performance targets. This should only be possible in exceptional circumstances.</p> <p><i>On the declarations of readiness:</i> ES: As the COM was clarifying during the last IXIM meeting, it is also our understanding that the declarations of readiness already sent by the MS should remain valid and do not need to be sent again. We believe this should be clearly stated in the new Regulation, and for that, we propose to amend the definition of ‘progressive start of operations of the EES’. As an alternative, we could also consider including this as a recital.</p> <p>AT SE NL LU CZ FR IT DK ES</p>	
Article 2, first paragraph, point (b)			

	Text proposals by MS	Comments by MS	First compromise text proposal
53	(b) 'national authorities' means the authorities referred to in Article 9 of Regulation (EU) 2017/2226;		(b) 'national authorities' means the authorities referred to in Article 9 of Regulation (EU) 2017/2226;
Article 2, first paragraph, point (c)			
54	(c) 'estimated number of border crossings' means a Member State's estimate of the number of border crossings of third-country nationals referred to in Article 2(1) and (2) of Regulation (EU) 2017/2226 in each Member State (FR) based on the yearly average of the total number of border crossings of third-country nationals travelling for a short stay in that Member State (FR) calculated for the preceding 3 years from the date of application referred to in Article 8(1), second subparagraph, of this Regulation. FR	FR: thanks the Commission for confirming that the estimate of the ' <i>estimated number of border crossings</i> ' will be understood in a flexible manner. To reflect this interpretation, we suggest to adjust the wording. FR	(c) 'estimated number of border crossings' means a Member State's estimate of the number of border crossings of third-country nationals 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 that Member State calculated for the preceding 3 years from the date of application referred to in Article 8(1), second subparagraph, of this Regulation. <u>Estimations shall be determined based on the border crossings at the borders referred to in Article 4 of Regulation (EU) 2017/2226.</u>
Article 2, first paragraph, point (d)			
54a	<u>(d) "processing area" means a single lane or box within a Border Crossing Point. (BE)</u> BE	BE: Given that the proposal aims to ensure there is sufficient flexibility, it should be clarified that starting with "at least one Border Crossing Point" also includes starting in one single box or lane at the given Border Crossing Point. Therefore, a paragraph (d) has been added in the form of an amendment. See also the suggested amendment made in article 4, below. COM: will be done in recital BE	
Article 3			
55	Article 3 Roll-out plans <u>Notification and Monitoring (BE)</u>	Article 3 <i>In favor of eu-LISA's plan before MS' (CZ, NL, FR, SI)</i>	Article 3 Roll-out plans <u>and reporting</u>

	Text proposals by MS	Comments by MS	First compromise text proposal
	BE	<p>CZ: agrees with the proposed sequencing of roll-out plans, and would like to support the call for the template of the roll-out plan to be provided. CZ also appreciates the assurance that reporting requirements will take into account the need to avoid adding excessive administrative burden.</p> <p>In favor of MS' plans before eu-LISA's (HU, BE if plans are kept)</p> <p>CZ NL FR SI BE HU</p>	
Article 3(1)			
56	<p>1. <u><i>(BE proposes to delete the whole paragraph)</i></u> By [the 30th calendar day after 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 Commission, Member States, as well as Europol, with a high-level roll-out plan on the progressive start of operations of the EES, taking into account the phases set out in Article 4. That <u><i>The roll-out plan should include performance indicators, and these must be established and approved by the eu-LISA MB* (NL). The roll-out plan shall be adopted by the eu-LISA Management Board and (NL, similar to FR)</i></u> include guidance on the use of the EES to Member States and Europol, including capacity limits (DK) OK. Roll-out plan shall also include guidance on expected time of training for EES users (SI) NO. It is adopted by the management board of eu-LISA which assesses the capability of the EES Central</p>	<p>1.BE: 1. The text includes amendments to allow for a greater focus on the monitoring aspect rather than the development of roll-out plans as it is our understanding that Article 4 already serves as a framework for all Member States and outlines the primary phases and different milestones for the system's implementation. Moreover, Member States retain the flexibility to accelerate their implementation of the system at any given moment. This ability to speed up implementation further diminishes the need for rigid roll-out plans, as these plans could quickly become outdated if Member States opt to implement the system more rapidly than initially planned. Furthermore, since no specific template or standardized specifications are foreseen for these national roll-out plans, it could lead to inconsistency or inefficiencies in the way different Member States approach the implementation. The variety of approaches does not only increase the administrative burden but could create unnecessary complexity in the</p>	<p>1.By [the 30th calendar day after 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 Commission, Member States, as well as Europol, with a high-level roll-out plan on the progressive start of operations of the EES, taking into account the phases set out in Article 4. That roll-out plan shall include guidance on the use of the EES to Member States and Europol, including capacity limits of the EES Central System.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p>System <u>to be put into operation in a progressive way. (FR, similar to NL).</u></p> <p><u>(HU proposes to replace as follows)</u> <u>By [the 30th calendar day after the entry into force of this Regulation], Member States shall develop a national roll-out plan on the progressive start of the operations of EES. 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.</u></p> <p>BE SI NL FR DK HU</p>	<p>reporting and monitoring processes as well. 2. Alternatively, should the requirement of a roll-out plan on both sides (Member States and eu-LISA) be maintained, the overall logic must be reversed. Member States should provide the Commission and eu-LISA with their choice for the implementation of the EES. 3. Should this provision be maintained. How must we define or assess “high-level”? 3. What is meant by capacity limits? Shouldn’t the Central System be sufficiently robust to handle both a big bang approach as well as a progressive start since the obligation in article 66 (b) of Regulation (EU) 2017/2226 has been met (eu-LISA’s declaration of successful completion of a comprehensive test of the EES, which is to be conducted by eu-LISA in cooperation with the Member States.) In addition, should eu-LISA perform a new comprehensive test of the EES taking into account the changed scenario of a progressive approach?</p> <p>DK: As we understood from the counselors meeting 16 January, the capacity of C-EES will not put any restrictions on MS operating EES fully, and there is therefore no need for this part of the sentence.</p> <p><i>On MB's role</i> NL: NL considers it of utmost importance that the high-level roll-out plan by eu-LISA will be approved by the MS and COM. This can be done in the eu-LISA MB, for example. Secondly, the eu-LISA MB should assess the technical readiness of the EES Central system. Therefore, NL would like to suggest to add the following in art. 3 (1) and (2) partially building</p>	

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>upon the German text proposals, (but deleting the sentence in the middle on the content of the performance targets).</p> <p>*The indicators do not need to be included in the regulation, but they should be part of the rollout plans. Examples include the availability of the (production) environments, the system's response times, and the speed of action and resolution of disruptions.</p> <p>FR: As proposed by the Netherlands, France would also like eu-LISA's roll-out plan to be adopted by its Management Board and for it to assess the capacity of the Central System to be launched in a progressive way.</p> <p>SI: Trained personnel is vital in smooth functioning of EES.</p> <p>LU: "Capacity" is lacking definition in this context. We propose to link capacity clearly with the number of EES files that can be successfully created in the system. The progressive requirements in terms of the number of EES records to be created (Article 4) thus need to be fully matched or even exceeded by the capacity limits of the central system. Whether this correspondance between Article 4 requirements and the capacity of the EES CS has been achieved, ought to be at the core of a continuous evaluation process whereby the next stage of the progressive EiO should be 'unlocked' only once this correspondance has clearly been established (see text suggestions below). Just like 'capacity', 'capacity limits' lack definition and indicators here. To make 'capacity limits' measurable, we would like to propose to establish a link to the availability and</p>	


	Text proposals by MS	Comments by MS	First compromise text proposal
		responsiveness indicators set out in CID (2019) 1260 final. BE SI NL LU FR DK	
Article 3(2)			
57	<p>2. By the 60th <u>the 30th (BE)/at least the 60th (NL)</u> calendar day after the entry into force of this Regulation], in consultation with the Commission and eu-LISA, Member States shall develop a national <u>notify the Commission and eu-LISA whether they shall apply (BE) the progressive start of operations of the EES, in line with Article 4 or operate a full entry into operations. (BE)</u></p> <p><u>Alternative proposal: From the 60th calendar day after 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 Commission, Member States, as well as Europol, with a notification on the readiness of the Central System for the progressive start of operations of the EES, after running a comprehensive test of the EES in cooperation with the Member states (BE), taking into account the phases set out in Article 4.</u></p> <p><u>(HU proposes to replace as follows):</u> <u>By [the 60th calendar day after the entry into force of this Regulation], in consultation with the Commission, eu-LISA, shall provide the Commission, Member States, a well as Europol with a commulated</u> roll-out plan on the progressive start of operations of the EES, taking into account the high level roll-out plan</p>	<p>2.AT: 1. must be clear that this is a light reporting which can be adjusted in case of significant changes in circumstances. 2. proposes to include "performance indicators" in the eu-LISA implementation (<i>they probably mean the high -level roll-out plan</i>) to be monitored by the eu-LISA MB.</p> <p>BE: 1. Referring to our previous comment regarding putting a greater focus on monitoring (ex post) rather than developing ex ante roll-out plans, it is suggested to rather limit this phase to notifying the Commission and eu-LISA of the choice made by the Member State in following the progressive approach or an entry into operation in full. 2. Last sentence removed since the logic should be reversed. 3. Propose to renew Declaration of Readiness instead of issuing notification. 4. Following the logic of article 66 (b) of Regulation (EU) 2017/2226 it is suggested that eu-LISA, rather than developing a roll-out plan, should run a comprehensive test of the EES in cooperation with the Member States or at least provide the necessary information regarding the readiness of the Central System taking into account the new scenario of a progressive entry into operations. Ideally, the ‘comprehensive test’ should entail a proper testing phase during which the Central System can run for a pre-defined period of time, and preferably with real data.</p>	<p>2. By [the 60th calendar day after the entry into force of this Regulation], in consultation with the Commission and eu-LISA, Member States shall develop a national roll-out plan on the progressive start of operations of the EES, taking into account the high-level roll-out plan referred to in paragraph 1 of this Article and the phases set out in Article 4.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p><i>referred to in paragraph 1 of this Article and the phases set out in Article 4.</i></p> <p>BE NL HU</p>	<p>SE: Should a Member State that fully implement the EES from day one develop national roll-out plans and provide monthly reports? On page 6 in the explanatory memorandum that accompanies the proposal for a regulation, it states” In case Member States decide to start operating the EES fully, the roll out plan would only explain that choice”, this should also be highlighted in article 3 or in the recital.</p> <p>AT BE SE</p>	
Article 3(3)			
58	<p>3. <u>BE, ES and HU propose to delete.</u> 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.</p> <p>BE HU ES</p>	<p>3.BE: Following the logic in our earlier comments, that the requirement of a national roll-out plan should be removed from the text, this paragraph should be deleted accordingly. ES: <i>We have some doubts and concerns about the national roll-out plans. We understand that flexibility is one of the key features of the new model for the implementation of the EES, which is based on a "progressive" approach. This is confirmed in the Regulation itself, through the different options available to Member States to adapt to different circumstances and situations: to speed up the introduction of the system (recital 6), but also to slow it down (recital 24 and Article 7 on full and partial suspension of the EES). To be consistent with this, national roll-out plans cannot be more than a simple "declaration of intent" on whether the MS is willing to follow the phases laid down in Article 4 or to opt for a "big bang" start. We believe that Article 4 already contains a sufficient level of detail and</i></p>	<p>3.For each <i>of the phases set out in Article 4</i> border crossing point, the national roll-out plans <u>plan</u> shall include the information on the thresholds and requirements set out in that Article.:</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>would feel more comfortable if paragraph 3 of Article 3 could be removed from the text.</p> <p>Besides that, also for the sake of flexibility, we believe that the monthly obligation to report to the COM, included in paragraph 4 of this very same article, might be too burdensome for the MS. We would prefer instead to report every other month.</p> <p>BE ES</p>	
Article 3(3), point (a)			
58a			<u>(a) The date when the EES will be activated;</u>
Article 3(3), point (b)			
58b			<u>(b) The date when the EES will be operated with biometric functionalities;</u>
Article 3(3), point (c)			
58c			<u>(c) The estimated percentage of border crossings to be registered in the EES by the end of each phase.</u>
Article 3(4)			
59	<p>4. From the 30th calendar day after the progressive start of operations of the EES, Member States shall provide monthly reports to the Commission and eu-LISA on the implementation of their <u>at</u> national roll-out plans <u>level, (BE)</u> including corrective <u>remedial (BE)</u> measures where necessary to comply with the obligations set out in Article 4.</p> <p>BE</p>	<p>4. AT: welcomes willingness COM to compromise on the frequency of reporting obligations.</p> <p>BE: 1. Preferably, the elements for monthly reporting should be determined in close consultation with the Commission and eu-LISA.</p> <p>2. What is meant by corrective measures? We suggest using the wording ‘remedial’ instead.</p> <p>AT BE</p>	<p>4. From the 30th calendar day after the progressive start of operations of the EES, Member States shall provide monthly reports to the Commission and eu-LISA on the <u>implementation of identifying any deviation compared to</u> their national roll-out plans, including corrective measures where necessary to comply with the obligations set out in Article 4.</p>
Article 3(4a)			

	Text proposals by MS	Comments by MS	First compromise text proposal
59a	<p><u>4a. (LU) From the 30th calendar day after the progressive start of operations of the EES, eu-LISA shall provide monthly reports to the Commission and Member States on the implementation of the high-level roll-out plan on the progressive start of operations of the EES, including corrective measures where necessary, taking into account the capacity limits of the central system as measured by its availability and response times according to the targets laid out in the Commission Implementing Decision of 25.2.2019 laying down performance requirements of the Entry/Exit System (EES).</u></p> <p>LU</p>		
Article 3(4b)			
59b	<p><u>4b. From the 30th calendar day after the progressive start of operations of the EES, eu-LISA shall provide monthly reports to the Commission and the Member States on the implementation at Union level to monitor the development and the functioning of the EES. (BE)</u></p> <p>BE</p>	<p>4a. BE: Following the reasoning described in our earlier comments, a reporting obligation for eu-LISA should be included to maintain a better view on the development and functioning of the EES and the Central System.</p> <p>BE</p>	
Article 3(5)			
60	<p>5. At the request of the Commission, eu-LISA shall provide the Commission with the statistics necessary for the monitoring of the <u>eu-LISA high-level roll-out plan and national roll-out plans (LU)/ the implementation of the EES (BE)</u>, in accordance with Article 63(6) of Regulation (EU) 2017/2226 <u>and Commission Implementing Decision of 25.2.2019 laying</u></p>		<p>5. At the request of the Commission, eu-LISA shall provide the Commission with the statistics necessary for the monitoring of the <u>eu-LISA high-level roll-out plan and the national roll-out plans</u>, in accordance with Article 63(6) of Regulation (EU) 2017/2226.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p><u>down performance requirements of the Entry/Exit System (EES) (LU).</u></p> <p>BE LU</p>		
Article 3(5a)			
60a			<p><u>5a. The eu-LISA Management Board shall adopt the eu-LISA high-level roll-out plan referred to in paragraph 1 of this Article. The eu-LISA Management Board shall also monitor the development of the EES Central System in accordance with Article 19 of Regulation (EU) 2018/1726, in particular as regards the progressive start of operations.</u></p>
Article 3(5b)			
60b	<p><u>5a. NL: The Programme Management Board mentioned at Article 37 (2) of Regulation (EU) 2017/2226 shall monitor the progressive start of operations of the EES. It shall ensure adequate management of the progressive start and consistency between central and national EES systems (FR, NL) and shall report the Management Board (NL). With reference to paragraph of this article, the Management Board will assess whether the progressive start of EES can end (NL).</u></p> <p>NL FR</p>	<p>5a. FR: We would also like to supplement this article by adding a paragraph 6 in order to maintain the existence of eu-LISA's PMB during the phased entry into operation.</p> <p>NL: Support to FR proposal. NL supports the French comment about the continued existence of the PMB: We would also like to supplement this article by adding a paragraph 6 in order to maintain the existence of eu-LISA's PMB during the phased start of the operations.</p> <p>NL FR</p>	
Article 4			
61	<p>Article 4 Progressive start of operations</p>	<p>Article 4 <i>Rather disagree with thresholds as proposed LU: would like to stress the specific situation of Luxembourg with only one BCP. For LU, Article 4 constitutes de facto our 'roll-out plan',</i></p>	<p>Article 4 Progressive start of operations</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>meaning that there is much less room for maneuver when it comes to phasing in operations. We would therefore like to ask for additional flexibility and time with respect to the progressions in recording EES files with biometric data.</p> <p><i>IT:</i> suggests to adopt a more flexible approach to the collection of biometric data, leaving Member States the discretion, during this transitional period, to decide whether or not to collect biometric data, also based on risk assessments.</p> <p><i>Rather agree with thresholds as proposed</i></p> <p><i>CZ:</i> does not agree with too much relaxation and too much flexibility, in particular with regard to the obligation to register a minimum of 10% from day one. The less complete data in the EES, the greater the rate of incomplete files and the problems that incomplete data will cause in all MS.</p> <p><i>FR:</i> The thresholds currently provided for in the proposal are acceptable since the Commission has been able to confirm the room for manoeuvre available to the Member States in their application, as well as the flexibility of its interpretation.</p> <p></p>	
Article 4(1)			
62	1.By way of derogation from Article 66(6) of Regulation (EU) 2017/2226 during the progressive start of operations of the EES, the		1.By way of derogation from Article 66(6) of Regulation (EU) 2017/2226 during the progressive start of operations of the EES, the

	Text proposals by MS	Comments by MS	First compromise text proposal
	Member States shall use the EES as set out in this Article.		Member States shall use the EES as set out in this Article.
Article 4(2), first subparagraph			
63	<p>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 <u>least in (BE) one processing area within a (BE) one or more border crossing points with, if possible and applicable, a combination of air, land and sea border crossing points</u> <u>point (BE)</u>, to record and store data of third-country nationals referred to in Article 2(1) and (2) of Regulation (EU) 2017/2226. <u>Where possible, (NL) No later than the 30th calendar day after the progressive start of operations of the EES (DE)</u> Member States shall register in the EES at least 10% of the estimated number of border crossings in that Member State.</p> <p>NL BE DE</p>	<p>2. AT: 1. must be clear that EES can be operated on individual lanes. 2. welcomes willingness COM to compromise on flexibility in the percentages for the individual phases.</p> <p>BE: 1. Given that the proposal aims to ensure there is sufficient flexibility, it should be clarified that starting at at least one BCP includes starting in 1 box or lane. Therefore, the text in Article 4 Paragraph 2 has been amended. See also the suggested amendment made in article 2 - Definitions.</p> <p>2. This would be more fitting in a Recital since it does not constitute a binding obligation but rather seems to underline the reasoning behind this paragraph.</p> <p>DE: [REDACTED] [REDACTED] [REDACTED] [REDACTED] Any potential unavailability of the EU system should not have to be borne solely by the Member States.</p> <p>2. At least at the start of the phased implementation of the EES in Germany, the EES process should be stabilized at one airport and at specific workstations only before being applied to 10% of travelers at one or more border crossing points (airports).</p> <p>NL: would like to suggest that the initial target of minimum 10% data collection should be a</p>	<p>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. <u>No later than the 30th calendar day after the progressive start of operations of the EES</u>, Member States shall register in the EES at least 10% of the estimated number of border crossings in that Member State.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>softer approach that works toward 10% data collection by the end of the period. For this reason we are in favour of the GER text proposal (adjustment of the last sentence), as proposed during the IXIM/Frontiers meeting of 16/1 (as included in the text).</p> <p>LU: LU only has one BCP. In other words, the quantitative requirements imposed by Article 4 will be impossible to split between different BCPs and each progression will in essence require 100% compliance. We would therefore like to ask for additional time and flexibility in terms of % of files to be created with BM data.</p> <p>AT NL BE SE DE</p>	
Article 4(2), second subparagraph			
64	<p><u><i>(SE proposes deleting the paragraph).</i></u> For 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.</p> <p>SE</p>	<p>SE: Using the EES without biometrics would significantly undermine its purpose and negatively affect the EES as a tool for immigration authorities and for law enforcement, especially in the identification of TCNs. It would also result in incomplete and incorrect personal files which would overburden the MS that operate the EES fully during the progressive period. Furthermore, it would have a negative impact on the future use of Etias and IO.</p> <p>HR: (JHA Counsellors notes this is a technical issue, not for the legislative proposal). In order for EES to be able to register the fact that biometric data was not collected because of the progressive start of operations of the EES and the previously mentioned paragraph, we suggest that eu-LISA adds a new reason for not</p>	<p>For 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.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>collecting biometric data into the code system under CT503 – FP REASONS and CT507 – FI REASONS (defined in the EES ICD). This reason should be labelled as “PROGRESSIVE START OF OPERATIONS OF THE EES – BIOMETRIC DATA NOT COLLECTED”. In that case, if someone would search for data in EES, they would know the real reason why fingerprints or facial images were not collected. If this change is not included by eu-LISA into the system and if Croatia decides not to register biometric data in the first 60 days and instead creates personal EES files without this information, the shift leader on duty will select the reasons for not entering biometric data under “TECHNICAL IMPOSSIBILITY TO PROVIDE VALID NIST FILE” (which eu-LISA already included in the system), when applying the previous paragraph during the first 60 days of the start of operations of the EES. On the other hand, Member States can immediately start collecting biometric data on all border crossing points where they have the necessary technical and operational capabilities.</p> <p>SE HR</p>	
Article 4(3)			
65	<p>3.No later than the 90th calendar day after 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. <u>Where possible, (NL)</u> Member States shall register at least 50% 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</p>	<p>3.AT: the number of BCPs is not relevant since in some MS, one BCP can count for 50% of traffic.</p> <p>LU: For biometrics: We cannot accept 100% here since this would be much too steep a progression, as only one BCP.</p> <p>AT LU</p>	<p>3.No later than the 90th calendar day after 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 at least 50% 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</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p>(2) of Regulation (EU) 2017/2226 that are registered in the EES shall contain biometric data.</p> <p>NL</p>		<p>(EU) 2017/2226 that are registered in the EES shall contain biometric data.</p>
Article 4(4)			
66	<p>4.No later than the 150th calendar day after 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 in the EES at least 50% of the estimated number of border crossings in that Member State.</p> <p>LU</p>	<p>4.LU: For MS with only one BCP, this step is already achieved with the previous one and the progression is thus much steeper.</p> <p>LU</p>	<p>4.No later than the 150th calendar day after 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 in the EES at least 50% of the estimated number of border crossings in that Member State.</p>
Article 4(5)			
67	<p>5.No later than the 170th <u>180th</u> (BE) calendar days after 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.</p> <p>BE</p>	<p>5.BE: The progressive entry into operations lasts 180 days. Hence, it should be made possible that Member States can fluctuate between the last milestone and the end goal of 100% Border Crossings at All BCPs. If a buffer needs to be created, it would be advisable to insert another milestone between the paragraph 4 and 5. DE: Reliable forecasts regarding the resilience of the central EES system and the national systems are not possible before the start of the progressive rollout. Additionally, there is a high risk of failures or errors that could impair the availability of the system and jeopardize the desired system stability. To counteract these risks, a coordinated and flexible approach is essential. The threshold in Art. 4 para 5 anticipate maximum data loads only by the end of the transition phase. If the processing capacity of the CS is insufficient, this issue could not be resolved in time before</p>	<p>5.No later than the 170th calendar days after 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.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>transitioning to full operational capability without the option of a one-time extension of the transition phase (2 months).</p> <p>BE DE</p>	
Article 4(5a)			
67a	<p><u>5a. Member States shall maintain the phases set out in this Article, except where partial or full suspensions pursuant to Article 7 apply. (BE)</u></p> <p>BE</p>	<p>5a. BE: The progressive entry into operations lasts 180 days. Hence, it should be made possible that Member States can fluctuate between the last milestone and the end goal of 100% Border Crossings at All BCPs. If a buffer needs to be created, it would be advisable to insert another milestone between the paragraph 4 and 5.</p> <p>BE</p>	
Article 4(5b)			
67b	<p><u>5b. The eu-LISA Management Board referred to in Article 11 (1a) of Regulation (EU) 1077/2011 shall monitor the progressive start of operations of the EES. It shall ensure effective management of the progressive rollout and alignment between the central and national EES Systems. (DE)</u></p> <p>DE</p>		
Article 4(5c)			
67c	<p><u>5c. The Council makes the final assessment on whether the transition to full operational capability can take place. If the prerequisites for the transition to full operational capability are not met, it may extend the transitional phase once for a period of two months.</u></p>		

	Text proposals by MS	Comments by MS	First compromise text proposal
	<u>immediately followed by start into operation.</u> <u>(DE)</u> DE		
Article 4(5d)			
67d	<u>5d. The progress between each stage of the progressive start of operations will be subject to an evaluation of the availability and responsiveness targets of the central system.</u> <u>(LU)</u> LU		
Article 4(6)			
68	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 Article 18 of Regulation (EU) 2017/2226. Where the EES is operated with biometric functionalities, refusals of entry shall be recorded with biometric data. Where the EES is operated without biometric functionalities, refusals of entry shall be recorded without biometric data, <u>except where the biometric data are available in the VIS.</u> <u>(CZ)</u> CZ	6.CZ: suggests to clarify a situation where a Member State operates EES without biometrics, however the biometric data are available in the VIS. In such situation, based on the presumption that the interoperability shall be used (according to the Article 5 para 5), such refusals of entry should be recorded with the biometrics CZ	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 Article 18 of Regulation (EU) 2017/2226. Where the EES is operated with biometric functionalities, refusals of entry shall be recorded with biometric data. Where the EES is operated without biometric functionalities, refusals of entry shall be recorded without biometric data, <u>except where the biometric data are available in the VIS.</u>
Article 4(7)			
69	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.		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 4a			
69a	<u>Article 4a</u>		

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p><u>Extension of the progressive start of operations (LU)</u></p> <p>LU</p>		
Article 4a, first paragraph			
69b	<p><u>xx days before the end of progressive start of operations, the Commission and eu-LISA will evaluate the implementation of the eu-LISA high-level roll-out plan and the national roll-out plans and the corrective measures undertaken at both levels (LU)</u></p>		
Article 4a, second paragraph			
69c	<p><u>Should the availability and responsiveness targets at central level not have been met, the Commission may adopt a delegated act to extend the progressive start of operation for a maximum of additional six months. (LU)</u></p>		
Article 5			
70	<p>Article 5 Other derogations from Regulation (EU) 2017/2226 and Regulation (EU) 2016/399</p>		<p>Article 5 Other derogations from Regulation (EU) 2017/2226 and Regulation (EU) 2016/399</p>
Article 5(1)			
71	<p>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.</p>		<p>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.</p>
Article 5(2), first subparagraph			
72	<p>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.</p>		<p>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.</p>
Article 5(2), second subparagraph			

	Text proposals by MS	Comments by MS	First compromise text proposal
73	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.	CZ: Article 42a (1) and (2) is mentioned in the second paragraph of 5(2). According to our reading the scope of the travel documents that are to be stamped is already set by the reference to the Article (1) and (2) of the EES regulation. Article 42a (1) and (2) was designed for a specific situation of MSs not yet operating the EES and for this reason the list of the travel documents that shall or shall not be stamped are also specific. The situation of MSs not yet operating the EES and the situation in which the MSs will found themselves during the progressive period in not the same. For these reasons CZ would like to ask for reassurance that this article is mentioned correctly or ask for an explanation as to why this is the case. CZ	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.
Article 5(3)			
74	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.	3.SE: We don't understand why stamp information take precedence over information that has been collected through the EES. The biometric data in the EES should be more reliable. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] February 16th the Commission agreed with Sweden that the text in article 5.3 needed to be adjusted in order to avoid unintentional consequences. SE	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.
Article 5(3), point (1)			

	Text proposals by MS	Comments by MS	First compromise text proposal
74a			<u>(a) consider stamps affixed as prevailing where there is no relevant EES data,</u>
Article 5(3), point (2), first subparagraph			
74b			<u>(b) consider EES data as prevailing:</u>
Article 5(3), point (2), second subparagraph			
74c			<u>(i) where there is discrepancy between the individual file containing biometric data and the stamp affixed, or</u>
Article 5(3), point (2), third subparagraph			
74d			<u>(ii) where a stamp is missing;</u>
Article 5(3), point (3), first subparagraph			
74e			<u>(3) decide on a case-by-case basis whether the stamp or the EES data is prevailing:</u>
Article 5(3), point (3), second subparagraph			
74f			<u>(i) where there is a discrepancy between the individual file without biometric data and the stamp affixed according to paragraph 2; or</u>
Article 5(3), point (3), third subparagraph			
74g			<u>(ii) in cases referred to in Article 16(4) of Regulation (EU) 2017/2226.</u>
Article 5(4), first subparagraph			
75	4. <u>(a) (BE)</u> 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 Member States, 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.	4.AT: 1. Although this provision corresponds to Article 20 EES Regulation and Article 12 Schengen Border Code (SBC), it is shorter (no consequences are mentioned as in Article 12 SBC regarding returns). This would be an important point to clarify, as this provision specifically concerns such consequences. Without this clarification, only a legal basis for an assumption or indicator remains. Therefore,	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 Member States, 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.

	Text proposals by MS	Comments by MS	First compromise text proposal
	BE	<p>an alignment with Article 12 SBC or shortening of the provision by referencing Article 12 SBC is recommended. 2. The use of the word "and" renders the points (b) and (c) redundant since there is no record to update, nor a file to erase.</p> <p>BE: suggests to align the text with Article 12 of Regulation (EU) 2016/399.</p> <p>CZ : would like to clarify whether it is applicable solely to the cases on the territory of the Member State.</p> <p>FR: supports the current wording of paragraph 4.</p> <p>DK: Further clarification is needed in relation to article 5 (4). On the one hand, the first subparagraph refers to third-country nationals present in the territory of the Member States and on the other hand the fourth subparagraph describe that national authorities shall perform one or more tasks at the border crossing points at which the EES is operated related to the rebuttal of the presumption, that the third country national has no legal stay. Could you please elaborate what this distinction entails?</p>	
	Article 5(4), second subparagraph		
76	<p><i>This(b) The presumption referred to in paragraph 4(a) of this Article shall not apply to a third-country nationalsnational who can provide, by any means, credible evidence that they enjoyhe or she enjoys the right of free movement under Union law, have a right of residence in a host Member State under the EU-UK Withdrawal Agreement, (ES) or that they holdhe or she holds a residence permit or a</i></p>	<p>ES: We support the inclusion of the presumption of not fulfilling or no longer fulfilling the conditions relating to entry or stay in the Member States.</p> <p>However, Spain has strong reservations to the mention to the EU-UK Withdrawal Agreement for several reasons:</p> <ul style="list-style-type: none"> - Firstly, it changes the scope and the agreed terms of the EES Regulation and the Schengen Borders Code, and thus it goes against 	<p>This presumption 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.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p>long-stay visa. <u>Where relevant, Article 35 of Regulation (EU) 2017/2226 shall apply. (BE)</u></p> <p>BE ES</p>	<p>the spirit of a surgical amendment meant by this Regulation;</p> <ul style="list-style-type: none"> - Secondly, it is unnecessary, because the beneficiaries of the Withdrawal Agreement are already out of the scope of the EES Regulation; - Finally, at operational level, there are still practical challenges to verify if the person is a true beneficiary or not of the withdrawal agreement. Therefore, it creates uncertainty for the border guards and it undermines the efforts done by Member States promoting that the true beneficiaries request a new card. Hence, it undermines the objectives underlined by the Commission of strengthening security within the Schengen area and the reduction in identity fraud. <p>Instead of solving problems for a smooth progressive start of EES, we might be creating new ones.</p> <p>Therefore, we suggest:</p> <ul style="list-style-type: none"> - Either to reword the first subparagraph to state that this presumption applies to the third country national falling under the scope of the EES Regulation and deleting consequently the whole second subparagraph; - Or to delete the reference to the Withdrawal Agreement in the second subparagraph. <p>ES</p>	
Article 5(4), third subparagraph			
77	<p>This(c) <u>The presumption referred to in paragraph 1</u> may be rebutted where the third-country nationals provide <u>national provides</u>, by any means, credible evidence, <u>such as transport tickets or proof of presence outside the territory</u></p>		<p>This <u>The</u> presumption <u>referred to in paragraph 1</u> may be rebutted where the third-country nationals provide, by any means, credible evidence, <u>such as transport tickets or proof of presence outside the territory of the Member</u></p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p><u>of the Member States or of the date of expiry of a previous residence permit or long-stay visa, that he or she has</u> that they have respected the conditions relating to the duration of a short stay. <u>(BE)</u></p> <p>BE</p>		<p><u>States or of the date of expiry of a previous residence permit or long-stay visa,</u> that they have respected the conditions relating to the duration of a short stay.</p>
Article 5(4), fourth subparagraph			
78	<p>Where the presumption is rebutted, national authorities shall perform one or more of the following tasks at the border crossing points at which the EES is operated <u>(AT) (CZ)</u>, to the extent allowed by this Regulation:</p> <p><u>BE proposes to replace the whole paragraph: In the case of a rebuttal, the competent authorities shall create an individual file in the EES if necessary or indicate in the EES the date on which, and the place where, the third-country national crossed the external border of one of the Member States or the internal border of a Member State not yet fully applying the Schengen acquis but operating the EES in accordance with Article 20 of Regulation (EU) 2017/2226. (BE)</u></p> <p>AT BE CZ</p>	<p>AT: it is unclear why implementation should only be possible at borders operating the EES. The EES Regulation and SBC currently do not include such a restriction, allowing registration both inland and at external borders. The option to “practice” this scenario inland should remain open.</p> <p>DK: 1. And does this mean that the tasks related to the rebuttal of the assumption, that the third country national has no legal stay cannot be performed inside the territory e.g. by the immigration authorities? Denmark would prefer that this task can also be performed inside the territory. 2. We would also need a more general clarification on the tasks to be performed at border crossing points operating the EES with or without biometrics. If a third country national turns up at a border crossing point for exit with no individual file in EES, and only an entry stamp in the passport what should be done? Should the BCP create a file in EES (including capturing the biometrics where relevant) and only register the exit record or must the BCP also register an entry record based on the latest entry stamp in the passport? The latter task would most probably mean considerable extra workload at the BCP’s. DK would prefer that the obligation is only to register the exit record</p>	<p>Where the presumption is rebutted, national authorities <u>using the EES</u> 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:</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		in EES, if possible by adding in article 7, that MS may as part of the partial suspension not register an entry record in EES in case there is an entry stamp in the passport but no file in EES. AT DK	
Article 5(4), fourth subparagraph, point (a)			
79	(a) create an individual file for that third-country national in the EES, if necessary; (BE) BE		(a) create an individual file for that third-country national in the EES, if necessary;
Article 5(4), fourth subparagraph, point (b)			
80	(b) update the latest entry/exit record by entering the missing data; (BE) (AT) AT BE		(b) update the latest entry/exit record by entering the missing data;
Article 5(4), fourth subparagraph, point (c)			
81	(c) erase an existing file where Article 35 of Regulation (EU) (BE) (AT) 2017/2226 provides for such erasure. AT BE		(c) erase an existing file where Article 35 of Regulation (EU) 2017/2226 provides for such erasure.
Article 5(5)			
82	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:		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:
Article 5(5), point (a)			

	Text proposals by MS	Comments by MS	First compromise text proposal
83	(a) at the border crossing points at which the EES is not operated;		(a) at the border crossing points at which the EES is not operated;
Article 5(5), point (b)			
84	(b) where the EES is suspended in accordance with Article 7 of this Regulation.		(b) where the EES is suspended in accordance with Article 7 of this Regulation.
Article 5(6)			
85	6.National authorities and Europol shall disregard the following:		6.National authorities and Europol shall disregard the following:
Article 5(6), point (a)			
86	(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;		(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;
Article 5(6), point (b)			
87	(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.		(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.
Article 5(7)			
88	7.Processing operations by Member States that comply with <u>based on (AT)</u> this Regulation shall not be considered as unlawful or not compliant with Regulation (EU) 2017/2226 for the purposes of Articles 45 and 48 of that Regulation.		7.Processing operations by Member States that comply with <u>based on</u> this Regulation shall not be considered as unlawful or not compliant with Regulation (EU) 2017/2226 for the purposes of Articles 45 and 48 of that Regulation.
Article 5(8)			
89	8.Verification of the identity and previous registration of third-country nationals pursuant to Article 23 of Regulation (EU) 2017/2226	8.SE: Is there a reason why this article states that verification and identification according to Article 23 of the EES Regulation should be	8.Verification of the identity and previous registration of third-country nationals pursuant to Article 23 of Regulation (EU) 2017/2226

	Text proposals by MS	Comments by MS	First compromise text proposal
	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.	applied at border crossing points where the EES is used with biometrics? Article 5.8 appears redundant if the EES Regulation should already be applied in these situations (compare with Article 5.14). SE	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.
Article 5(9)			
90	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 about the processing of their personal data in the EES, Member States shall accompany the template to be handed over <i>provided (AT, support by NL) (CZ)</i> to third-country nationals at the time the individual file of the person concerned is being created with the following information (NL) : NL AT CZ	9. AT: "handed over" implies a physical action only, which is not efficient, wording should therefore be aligned with Article 50 EES Regulation. NL: NL supports Austria in the text suggestion in art. 5 (9) and would also like to suggest text as included. The textual amendment allows the templates to be completed at a later time, reducing the administrative burden on border guards. CZ: would also welcome specification of how the Commission would support MSs in preparing the adapted materials of the information campaign in Article 5(9) or in Recital 16. Our goal should be a unified campaign. AT NL CZ	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 about the processing of their personal data in the EES, Member States shall accompany the template to be handed over <i>provided</i> to third-country nationals at the time the individual file of the person concerned is being created with the following information:
Article 5(9), amending provision, first paragraph			
91	The Entry/Exit System is being progressively rolled out. During this roll-out period from ... <i>(AT)</i> , 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	AT: The period should be deleted. Past experiences should be considered. The period can in any case be viewed online (EC website, national websites, etc.). AT	The Entry/Exit System is being progressively rolled out. During 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

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p>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.</p> <p>AT</p>		<p>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.</p>
Article 5(9), amending provision, second paragraph			
92	<p>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.</p>		<p>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.</p>
Article 5(10)			
93	<p>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.</p>		<p>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.</p>
Article 5(11)			
94	<p>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 (FR, supported by NL) conditions at the border crossing points (FR, supported by NL), 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 shall <u>adapt existing materials of the information campaign and make these</u></p>	<p>11. AT: The adaptation of the information campaign should focus on fundamental information. The emphasis is on making it clear to passengers why biometrics are collected in some situations and not in others, to minimize the subjective impression of "discrimination." Adjustments to the campaign must not create greater confusion than might already arise under the standard EES rules. Milestones and percentages are irrelevant to passengers. The minimum necessary adjustments to the EC's existing products should be implemented by the</p>	<p>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 shall <u>adapt materials of the information campaign prior to the start of operations. The Commission shall</u> support Member States in</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p><u>available at least 4 Months before the Entry into Operation (AT).</u></p> <p><u>(NL) [...] The Commission shall adapt the information campaign referred to in Article 51 of Regulation (EU) 2017/2226 and provide these at least 6 weeks prior to the Entry into Operation of the progressive start of EES. The Commission shall also support Member States in preparing the adapted materials of the information campaign.</u></p> <p><u>The information campaign referred to in Article 51 of Regulation (EU) 2017/2226 accompanying the start of operations of the EES, shall ensure that the relevant information is communicated to those affected</u> <u>(ES) support Member States in preparing the adapted materials of the information campaign.</u></p> <p>AT NL FR ES</p>	<p>EC itself. Additional explanations of the progressive approach can optionally be made available to Member States through other channels. The EC must provide the updated material to Member States in a timely manner – past experiences from the last Entry into Operation (EiO) attempt have shown how important this is. We therefore suggest setting an appropriate deadline. AT is flexible regarding the time frame, however, a reasonable time for publishing the material must be guaranteed.</p> <p>ES: Our point here is very much linked to our previous comment on flexibility and the nature and content of national roll-out plans. Again, given that the specific BCPs in which the EES will operate can be changed at any time, we consider it very difficult (if not technically impossible) to provide the public with fully accurate and up-to-date information on the specific conditions in each BCP. Instead, we strongly believe that general information will be sufficient to prepare travellers for the use of the new system, while understanding that traditional passport stamping will need to continue.</p> <p>LU: The division of responsibilities between COM and MS is not clear to us here. The initial agreement was that COM would develop the EES Information Campaign. However, the current text proposal in article 5.11 could be understood as shifting the responsibility of adapting the information campaign for the needs of the progressive start of operations on MS with COM merely in a supporting role.</p>	<p>preparing the adapted materials of the information campaign.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>Given the current content of the EES Information Campaign, the main message of which is that “travel to Europe is becoming easier”, we are wondering whether an adaptation of the available communication materials for the purposes of the progressive start of operations is at all feasible or whether in fact, an dedicated information campaign might be needed. Needless to stress that a clear and harmonised communication about the progressive start will be paramount to avoid major confusion among travelers.</p> <p>FR: It should be clarified that passenger information should remain at a general level (EES can be activated or deactivated at the border crossing point used by passengers upon arrival or departure from the Schengen area) and cannot reflect the actual state of activation of EES BCP by BCP. This state can be adapted at any time (partial suspension, total suspension) and vary between border lines within the same BCP.</p> <p>France reiterates its commitment to launching the communication campaign within a reasonable period (approximately three months) before the date of entry into operation.</p> <p>The text must also provide clear guarantees that entry-exit data collected during the progressive period cannot be used for migration purposes. This objective appears to be achievable, subject to an assessment of technical feasibility, by restricting access to such data only to law enforcement authorities, for judicial or intelligence purposes, within the framework of the central access point. At the very least, if the migration authorities were to retain access to</p>	



	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>these data, their incomplete nature, which could not serve as a legal basis for a decision adversely affecting them, would have to be duly reported by the system.</p> <p>NL: Suggest changes, in line with FR proposal.</p> <p>AT NL LU FR ES</p>	
Article 5(12)			
95	<p>12. The application of Article 11(13), 12(1) and (2), Article 13(1) and (2), Article 19 (SI), Article 20 and Article 21 of Regulation (EU) 2017/2226 shall be suspended.</p> <p>SI CZ</p>	<p>12. CZ: Article 5(6)(a) states that the results of the automatic calculator should be disregarded. However, there is no indication that this would no longer result in the obligation to inform the traveller of the remaining maximum duration of stay. CZ considers it appropriate that this Regulation should suspend the obligation to inform the traveller, ideally by including Article 11(3) of Regulation 2017/2226 in Article 5(12) of the Regulation among the suspended articles. SI: Application of Article 19 and other procedures of immigration authorities shall be suspended, because of unreliability of data stored in system. Immigration authorities can use the data for identification purposes.</p> <p>SI CZ</p>	<p>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 shall be suspended.</p>
Article 5(13)			
96	<p>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 90 days (NL) after the progressive start of operations of the EES has ended.</p> <p>NL</p>	<p>13. NL: has interpreted recital 19 and article 5 paragraph 13 in the way that article 22 of the EES Regulation does not apply during the progressive start of EES. The progressive start will however cause incomplete files (i.e. persons that entered the Schengen area with stamps but are exiting when EES is fully in force). In view of the gradual increase in entry registrations, this number will decrease over time. Therefore, on</p>	<p>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 progressive start of operations of the EES has ended.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>exit, border guards will be confronted with fewer and fewer missing entry files. However, in practice there will be travelers who have entered during the progressive approach (stamped) and exit after the end of the progressive approach (EES fully in force). The retroactive creation of entry files will continue to put pressure on the operation. Therefore, proposes amendment.</p> <p>NL</p>	
Article 5(14), first subparagraph			
97	<p>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.</p>	<p>14. AT: The suspension of Art. 12 SBC should be reviewed in light of the arguments above regarding Article 5(4). Regarding Art. 9 para 3 SBC we would like to refer to our comments below concerning Art. 8 para. 2 litera b. Austria remains convinced that an extension of the applicability of Article 5(14) of the EES Supplementary Regulation, which provides for a suspension of Article 9(3) of the SGK, beyond the envisaged 180 days is necessary. CZ would also like to ask for a reassurance that it is possible from a legal point of view to carry out certain obligations (border checks) “in accordance with a Regulation as applicable on the date before the date from which the EES is to start operation” as stated in Article 5(14). We understand of the COM explanation, still we find this formulation unusual;</p> <p>AT CZ</p>	<p>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.</p>
Article 5(14), second subparagraph			

	Text proposals by MS	Comments by MS	First compromise text proposal
98	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.		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.
Article 5(14), third subparagraph			
99	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), 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 6, point (f) (ii) and Article 8 (3), points (a) and (g) of Regulation (EU) 2016/399 shall not apply.	CZ would also welcome a clarification on the specific kind of derogations from Article 6 (f) (ii) as stated in Article 6(14), especially when it comes to the wording “solely for the purposes of the EES”. CZ	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), 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 6(1) , point (f) (ii) and Article 8 (3), points (a) and (g) of Regulation (EU) 2016/399 shall not apply.
Article 5(14), fourth subparagraph			
100	For the purposes of this Regulation, Article 9(3) and Article 12 of Regulation (EU) 2016/399 shall be suspended.		For the purposes of this Regulation, Article 9(3) and Article 12 of Regulation (EU) 2016/399 shall be suspended.
Article 5(14a)			
100a			<u><i>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-180 day period of progressive start of operations referred to in Article 4 of this Regulation, and in particular shall monitor such progressive start.</i></u>
Article 6			
101	Article 6 Access to the EES data		Article 6 Access to the EES data
Article 6(1)			

	Text proposals by MS	Comments by MS	First compromise text proposal
102	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:		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:
Article 6(1), point (a)			
103	(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;		(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;
Article 6(1), point (b)			
104	(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;		(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;
Article 6(1), point (c)			
105	(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.		(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.
Article 6(2)			
106	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 be incomplete when accessing data for reporting and statistics as referred in Article 63 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 be incomplete when accessing data for reporting and statistics as referred in Article 63 of Regulation EU 2017/2226.
Article 6(3), first subparagraph			

	Text proposals by MS	Comments by MS	First compromise text proposal
107	<p>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. <u>Stamps should be considered 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. (FR, NL)</u></p> <p>NL</p>	<p>3. FR: With regard to paragraph 3, France would like to draw the Commission's attention to the following subject: The first subparagraph of paragraph 3 provides that carriers may start using the internet service from day 90, while continuing to check the stamps affixed to the travel documents. However, there is no clarification as to the action to be taken in the event of a discrepancy between the data of the internet service and the stamp, as carriers are not covered by the provisions of Article 5(3) (indicating the primacy of the stamp over the EES file) which applies only to "national authorities". That article, as well as recital 10, could therefore specify those elements.</p> <p>FR</p>	<p>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. <u>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.</u></p>
Article 6(3), second subparagraph			
108	<p>For a period of 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 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 Council Directive 2001/51/EC.</p>		<p>For a period of 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 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 Council Directive 2001/51/EC.</p>
Article 6(4)			
109	<p>4. <u>By way of derogation from Article 35, when fulfilling the obligations referred in Articles 35 and this Article, Member States may complete the personal data recorded in the EES. (CZ)</u></p>	<p>4. CZ 1. appreciates the clarification of Article 6(4) and the obligation to complete files in accordance with Articles 35 and 52. When it comes to the derogation from the Article 35 of</p>	<p>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</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p><u>When fulfilling the obligations referred in Article (CZ) 52</u> 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.</p> <p></p>	<p>the EES, CZ considers the corresponding sentence still vague and potentially not a sufficient legal base for not completing the files, as in practice it would be possible to complete the file with such a data and we will have them also available, however we try to lower the burden of Member States fully operating EES from the beginning. Therefore, CZ proposes to modify the text. 2. CZ would like to receive a further clarification regarding a specific case. If we understood it correctly based on the COM explanation – if the TCN exits via a Member State already operating the EES (with/without the biometrics) and there is no file created in the EES, then such a Member State will have to create such a file with all the obligations and add into it the necessary exit data; what about a case when the file is already created, but such a file is without the biometric data and the TCN exits via a Member State operation the EES fully? Should biometric data be added into the file? Should data about the entry also be added into the file?</p> <p></p>	<p>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.</p>
Article 6(5)			
110	<p>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.</p>		<p>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.</p>
Article 6(5a)			

	Text proposals by MS	Comments by MS	First compromise text proposal
110a	<p><u>5a. After completion of the progressive start an automatic administrative closure, by eu-LISA, shall take place of missing exit registrations if no exit registration took place during the progressive start (NL).</u></p> <p><u>COM: Would be an amendment.</u> <u>Pcy: Wants recital > Settled in Recital 20.</u></p> <p>NL</p>	<p>5a. NL: would like to ask for further clarification on the consequences of article 4 (6) and article 6 (1). A potential risk could be that an amount of missing exit records could create a further risk on a high amount of (unnecessary) ETIAS hits and incomplete EES records for the competent authorities. Risk assessments for illegal immigration cannot be properly implemented. A possible solution could be an administrative closure of any records at the end of the progressive approach.</p> <p>The Netherlands deems it necessary to find a solution for travelers who have been registered in the EES when entering the Schengen area, but, due to the progressive implementation, were not registered when leaving the Schengen area. The Netherlands suggests implementing an automated administrative closure of these files to prevent false hits, such as when a person submits an ETIAS application. This administrative closure of incomplete EES files would take place after the progressive implementation, with the data remaining available for law enforcement purposes. The Dutch proposal implies that personal records will remain, including biometric, biographical and previous travel data. Only “open” entries will have an exit record clearly marked as an administrative closure. This prevents unjustified inclusion in the overstayer list and possible ETIAS-hits.</p> <p>NL</p>	
Article 6(5b)			

	Text proposals by MS	Comments by MS	First compromise text proposal
110b	<p><u>5b. After completion of the progressive start, entry and exit data (but not the individual files), shall be deleted. (DK)</u></p> <p>DK</p>		
Article 7			
111	<p>Article 7 Suspension of the EES</p>	<p>Article 7 <i>In favor of extending suspension period (BE, IT)</i> BE: Given that these provisions have not been specifically addressed before (specifically in Regulation 2017/2226) it is essential to formally include them in the current proposal to ensure legal certainty. Embedding the partial suspension for an <i>indefinite</i> period ensures that they remain a viable tool to guarantee the integrity of the system, even if unforeseen circumstances or technical failures arise after the system is fully operational. IT: the measure of partial suspension of operations in EES, which admits the registration of only alphanumeric data in exceptional situations (including excessive traffic) for 120 days after the end of the transitional period, becomes a <i>permanent tool for the management of unforeseeable events</i>. This amendment is necessary because Article 9 of the Schengen Borders Code, as amended by Regulation (EU) 2017/2225, even in the case of relaxed checks, requires the registration of data in EES, allowing the non-acquisition of biometric data only in cases of technical impossibility and not also in other situations characterised by exceptionality and unpredictability. FI: Article 7(2) and (3) cease to apply 300 calendar days after the EES is deployed.</p>	<p>Article 7 Suspension of the EES</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>Whether this 60 + 60 days is enough could be further discussed and assessed.</p> <p>SE: At the Counsellor's meeting on February 16th Sweden asked for the assessment of the CLS and the Commission whether Member states that fully implement EES from day one also are covered by article 7. No response was given. This should be clarified in a recital or in the article. It is important that the provisions stated in Article 5.14, second paragraph, regarding applicable regulations in the EES Regulation and the Schengen Borders Code for border controls at border crossing points where the EES has been implemented, also apply during a period of full or partial suspension according to Article 7. This should be clearly stated in the regulation. SE has made adjustments to our national legislation based on the assumption that the system will be fully operated from day 1.</p> <p>SE BE IT</p>	
Article 7(1), first subparagraph			
112	<p>1. During the progressive start of operations of the EES, <u>all (BE) Member States, including those that apply the EES in full, (BE)</u> may fully or partially suspend operating the EES at certain border crossing points in exceptional circumstances of failure of the EES Central System, national systems or communication infrastructure, or events leading to traffic of such intensity that the waiting time at a border crossing point becomes excessive. <u>By identifying and anticipating such events in advance, measures could be taken proactively</u></p>	<p>1. AT: The definition of exceptional circumstances should not be interpreted exhaustively. Welcomes the consideration of unreasonably long waiting times, particularly in border control areas that lack sufficient space capacity and currently pose a significant planning challenge. The EC should provide a form for notifying the suspension of EES operations to ease the administrative burden.</p> <p>DK: Further clarification is needed in relation to article 7 (1) and (2) what regards the</p>	<p>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 of failure of the EES Central System, national systems or communication infrastructure, or events leading to traffic of such intensity that the waiting time at a border crossing point becomes excessive.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p><u>to mitigate the impact and ensure smoother traffic flow. (NL)</u></p> <p>NL BE</p>	<p>interpretation of when the waiting time at a border crossing can be considered excessive.</p> <p>NL: would like to know whether art. 7(1) could also be applied in case of an anticipated / expected high passenger flows? In addition, NL would like to verify whether this article concerns both the inflow and outflow of travelers?</p> <p>CZ : supports the limitation of the period of time for which the use of EES can be suspended in exceptional circumstances leading to excessive waiting times and appreciates the clarification of the suspension rules.</p> <p>AT NL CZ DK</p>	
Article 7(1), second subparagraph			
113	<p>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. <u>MS may as part of the partial suspension not register an entry record in EES in case there is an entry stamp in the passport but no file in EES. (DK)</u></p> <p>DK</p>	<p>DK: We would also need a more general clarification on the tasks to be performed at border crossing points operating the EES with or without biometrics. If a third country national turns up at a border crossing point for exit with no individual file in EES, and only an entry stamp in the passport what should be done? Should the BCP create a file in EES (including capturing the biometrics where relevant) and only register the exit record or must the BCP also register an entry record based on the latest entry stamp in the passport? The latter task would most probably mean considerable extra workload at the BCP's. DK would prefer that the obligation is only to register the exit record in EES, if possible by adding in article 7, that MS may as part of the partial suspension not register an entry record in EES in case there is</p>	<p>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.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		an entry stamp in the passport but no file in EES. DK	
Article 7(1), third subparagraph			
114	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 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.
Article 7(1), fourth subparagraph			
115	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 duration and ensure that 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.	NL: would like to ask whether it is possible to exempt MS from the administrative obligation to notify COM and eu-LISA in case the suspension of the EES is applied during the progressive approach, as it will already follow in the monthly reports. FI: The para states that the suspension of the EES should be communicated to the operators of infrastructure hosting border crossing points and carriers. This should not be the case. Information related to the use of the EES should not be shared, but rather communication regarding the effects (e.g. delays) on border checks. Is there even a need to define border crossing point-specific reporting practices at the regulatory level? NL FI	In both cases, Member States shall promptly and no later than 6 ¹² 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 duration and ensure that ^{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.
Article 7(1a)			
115a	<u><i>1a. (SI): In case of inoperational central system or serious system faults, which lead to inoperability of national systems, progressive start can be suspended until central system is</i></u>	1a. (SI): We propose to insert the following Paragraph.	<u><i>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</i></u>

	Text proposals by MS	Comments by MS	First compromise text proposal
	<p><u>operational. Eu-LISA shall promptly and no later than 6 hours after the start of the inoperability of the central system notify the Commission and Member States of the reason for the inoperability and its expected duration needed for solving the issue. After eu-LISA informs all Member States and the Commission about resolution of the faults, all Member States must promptly confirm restart of operational use to eu-LISA and the Commission. If the central system is inoperational for more than 1 day, all the deadlines set in Article 4 are automatically extended for the period in which central system was not operational.</u></p> <p>SI</p>	<p>In case of inoperability of the central system, eu-Lisa shall provide detailed report on the reasons for it.</p> <p>SI</p>	<p><u>promptly notify them when the failure is remedied. All Member States shall promptly confirm restart of operations to eu-LISA and the Commission.</u></p>
Article 7(2)			
116	<p>2. For a period of 60 calendar days After <u>(BE)</u> 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 <u>(BE)</u> and only in exceptional circumstances leading to traffic of such intensity that the waiting time at a border crossing point becomes excessive. Member States shall be relieved of their obligation set out in Article 21(1) of Regulation (EU) 2017/2226 as regards biometric data. In those cases, Member States shall promptly and no later than 6 hours after the start of suspension notify the reason for the suspension and its expected duration to the Commission and eu-LISA.</p>	<p>2.BE: This timeframe might not respond to the operational reality at the BCPs of the different Member States, especially during peak times/periods. The notion ‘limited time and only in exceptional circumstances’ should be assessed on a case by case basis.</p> <p>DK: Further clarification is needed in relation to article 7 (1) and (2) what regards the interpretation of when the waiting time at a border crossing can be considered excessive.</p> <p>FI: What is the necessity of setting a 6 hour time-limit for the partial suspension of the EES? For example, a reference to the Article 9 of the SBC (relaxation of border checks), where the conditions are specified, could be made instead.</p>	<p>2.For a period of 60<u>90</u> 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. Member States shall be relieved of their obligation set out in Article 21(1) of Regulation (EU) 2017/2226 as regards biometric data. In those cases, Member States shall promptly and no later than 6<u>12</u> hours after the start of suspension notify the reason for the suspension and its expected duration to the Commission and eu-LISA.</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
	BE	BE DK FI	
Article 7(3)			
117	<p>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 <i>set out in paragraph 2 of this Article</i> <u>during which Member States may apply full suspension (BE)</u> shall be automatically extended by 60 calendar days.</p> <p>BE</p>	<p>3.AT: As an ultima ration possibility, the period should be extendable multiple times as a flexible solution for severe problems might be needed. See note on Article 2 regarding the need for a flexible provision on the 180-day limit.</p> <p>CZ: disagrees with the automatic extension of 60 calendar days in Article 7(3), which is requested by some delegations and seems to be a punishment for Member States that make the best use of the EES system.</p> <p>FI: We would also appreciate more information concerning what is the mechanism / process for extending the period (partial suspension of the EES), if not done automatically as set in Article 7(3)?</p> <p>AT CZ FI</p>	<p>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 set out in paragraph 2 of this Article shall be automatically extended by 60 calendar days.</p>
Article 7(4)			
118	<p>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 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.</p>		<p>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 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.</p>
Article 8			
119	<p>Article 8 Entry into force and application</p>	<p>Article 8 LU: is concerned about this issue and the fact that the current text does not foresee any technical or operational provisions to restore</p>	<p>Article 8 Entry into force and application</p>

	Text proposals by MS	Comments by MS	First compromise text proposal
		<p>data quality after progressive start period. LU can support any proposals in that direction. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>CZ: expect that the declarations of readiness will also be updated and amended to include, for example, a parameter on the level of readiness of the different actors (see the provision that says that the Regulation should "provide flexibility to Member States to start using the EES according to their level of readiness").</p> <p>LU CZ</p>	
Article 8(1), first subparagraph			
120	1. This Regulation shall enter into force on the fourth day following that of its publication in the Official Journal of the European Union.		1. This Regulation shall enter into force on the fourth day following that of its publication in the Official Journal of the European Union.
Article 8(1), second subparagraph			
121	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.		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.
Article 8(1), third subparagraph			
122	However, Article 3 of this Regulation shall apply from the entry into force of this Regulation.		However, Article 3 of this Regulation shall apply from the entry into force of this Regulation.
Article 8(2), first subparagraph			
123	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	2. AT: Article 8(2) should also consider Art. 5 para. 14 of this regulation in conjunction with Art. 9 para. 3 SBC relaxations on border controls. The derogation of this provision should	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

	Text proposals by MS	Comments by MS	First compromise text proposal
	Commission in accordance with Article 66(1) Regulation (EU) 2017/2226. However:	also apply for the same time period (5 years and 180 days). The relaxation possibility would provide a solution in the early years for situations where passengers are stuck in traffic or on planes due to inadequate border control capacities causing unreasonable waiting times. Underlines the importance of necessity for prolonging the period in which the derogation of Art. 9 para. 3 SBC (<i>no relaxation for EES</i>) should remain valid. AT	Commission in accordance with Article 66(1) Regulation (EU) 2017/2226. However:
Article 8(2), first subparagraph, point (a)			
124	(a) Article 5(13) shall 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;		(a) Article 5(13) shall 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;
Article 8(2), first subparagraph, point (b)			
125	(b) Article 6(1), (2), (4) and (5) shall 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;		(b) Article 6(1), (2), (4) and (5) shall 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;
Article 8(2), first subparagraph, point (c)			
126	(c) Article 6(3), second subparagraph, shall cease to apply 360 calendar days after the date 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 decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226;
Article 8(2), first subparagraph, point (d)			
127	(d) Article 7(2) and (3) (BE) shall cease to apply 300 calendar days after <u>remain in force indefinitely from (BE)</u> the date decided by the	(d) BE: Following the suggested amendments in Article 7 (2) & (3), the relevant paragraphs in Article 8 have been aligned with said suggestions.	(d) Article 7(2) and (3) shall cease to apply 300 <u>330</u> calendar days after the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226;

	Text proposals by MS	Comments by MS	First compromise text proposal
	Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226; BE	BE	
Article 8(2), first subparagraph, point (da)			
127a	<i><u>(e) Article 7(3) shall cease to apply 300 calendar days after the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226; (BE)</u></i> BE		
Article 8(2), first subparagraph, point (e)			
128	(f) <i>(BE)</i> Article 7(4) shall cease to apply 210 calendar days after the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226. BE		(e) Article 7(4) shall cease to apply 210 calendar days after the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.
Article 8(2), second subparagraph			
129	This Regulation shall be binding in its entirety and directly applicable in all Member States.	BE: The text includes specific obligations for Member States applying the progressive approach, yet the distinction is not made sufficiently clear regarding obligations that are applicable to MS that choose a big bang approach. If feasible and possible, perhaps a chapter on “general provisions” should be envisaged. BE	This Regulation shall be binding in its entirety and directly applicable in all Member States <u>in accordance with the Treaties</u> .
Formula			
130	Done at Brussels,		Done at Brussels,
Formula			

	Text proposals by MS	Comments by MS	First compromise text proposal
131	For the European Parliament		For the European Parliament
Formula			
132	The President		The President
Formula			
133	For the Council		For the Council
Formula			
134	The President		The President