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## INFORMATION NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System - Outcome of the European Parliament's first reading (Strasbourg, 23 to 26 October 2017)

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## I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Agustin DIAZ DE MERA (EPP, ES) presented a compromise amendment (amendment 35) to the proposal for a Regulation, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

## II. VOTE

When it voted on 25 October 2017 , the plenary adopted the compromise amendment (amendment 35) to the proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

**P8\_TA(2017)0412**

**Amendment of the Schengen Borders Code as regards the Use of the Entry/Exit System \*\*\*I**

**European Parliament legislative resolution of 25 October 2017 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System (COM(2016)0196 – C8-0134/2016 – 2016/0105(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0196),
  - having regard to Article 294(2) and Article 77(2)(b) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0134/2016),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 21 September 2016<sup>3</sup>,
  - after consulting the Committee of the Regions,
  - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 12 July 2017 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0059/2017),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>3</sup> OJ C 487, 28.12.2016, p. 66.

**P8\_TC1-COD(2016)0105**

**Position of the European Parliament adopted at first reading on 25 October 2017 with a view to the adoption of Regulation (EU) 2017/... of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure<sup>5</sup>,

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<sup>4</sup> OJ C 487, 28.12.2016, p. 66.

<sup>5</sup> Position of the European Parliament of 25 October 2017.

Whereas:

- (1) Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>6</sup> lays down the conditions, criteria and detailed rules for the crossing of the external borders of the Member States.
- (2) Regulation (EU) 2017/... of the European Parliament and of the Council<sup>7+</sup> aims at creating a centralised system for the registration of entry and exit data and refusal of entry data concerning third-country nationals crossing the external borders of the Member States of the Union for a short stay ■ .

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<sup>6</sup> 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).

<sup>7</sup> Regulation (EU) 2017/... of the European Parliament and of the Council of ... **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 ...).

<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17 and complete the footnote.

- (3) In order to carry out checks on third-country nationals pursuant to Regulation (EU) 2016/399, which include the verification of the identity of third-country nationals, their identification, or both, as well as the verification that a third-country national has not exceeded the maximum duration of authorised stay on the territory of the Member States, border guards should use all the information available, including data from the Entry/Exit System established by Regulation (EU) 2017/...<sup>+</sup> ("EES"), **where required**. The data stored in the EES should also be used to verify that third-country nationals holding a visa issued for one or two entries have respected the maximum number of authorised entries.
- (4) ***In certain cases, biometric data need to be provided by third-country nationals for the purpose of border checks. The entry conditions for third-country nationals should therefore be amended by including an obligation to provide those biometric data. Where a third-country national refuses to provide biometric data for the creation of his or her individual file or for the carrying out of border checks, a refusal of entry decision should be adopted.***
- (5) To ensure the full effectiveness of the EES, entry and exit checks need to be carried out in a harmonised way at the ■ borders ***at which the EES is operated***.

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

- (6) The establishment of the EES requires the adaptation of the procedures for checking persons when crossing the ■ borders *at which the EES is operated*. In particular, the EES aims to abolish on entry and exit the stamping of the travel documents of third-country nationals admitted for a *short* stay ■ by replacing it by the electronic recording of the entry and exit directly in the EES ■ . Furthermore, the interoperability between the EES and the Visa Information System (VIS) *established by Council Decision 2004/512/EC*<sup>8</sup> needs to be taken into account in the border check procedures. Lastly, the EES opens the possibility of using new technologies for the border crossings of short-stay travellers. *Those adaptations to the border check procedures should become effective in the Member States operating the EES on the date of start of operations of the EES determined in accordance with Regulation (EU) 2017/...<sup>+</sup>.*

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

<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

- (7) For a period of six months after the EES has started operations, border guards should take into account the stays of third-country nationals on the territory of the Member States in the six months preceding the entry or the exit by checking the stamps in the travel documents in addition to the entry/exit data recorded in the EES. That measure should enable the required verifications to be carried out in those cases where a person would have been admitted for a short stay on the territory of the Member States in the six months before the EES started operations. In addition, there is a need to lay down specific provisions for those third-country nationals who, having entered the territory of the Member States, have not yet exited it before the EES has started operations. In those situations, the last entry should also be recorded in the EES when the third-country national exits the territory of the Member States.
- (8) Taking into account the different situations in the Member States and at the different border crossing points of the Member States concerning the number of third-country nationals crossing the borders, Member States should be able to decide whether and to what extent to make use of technologies such as self-service systems, e-gates and automated border control systems. When using such technologies, entry and exit checks at the external borders should be carried out in a harmonised way and an appropriate level of security should be ensured.



- (9) In addition, it is necessary to specify the tasks and roles of the border guards when making use of such technologies. In this regard, it should be ensured that the results of border checks carried out by automated means are available to border guards so as to enable them to take the appropriate decisions. In addition, there is a need to supervise the use of self-service systems, e-gates and automated border control systems by travellers so as to prevent fraudulent behaviour and uses. In addition, when carrying out this supervision, border guards should pay particular attention to minors and should be placed in a position that should enable them to identify persons needing protection.
- (10) Member States should also be able to establish national facilitation programmes on a voluntary basis in order to allow pre-vetted third-country nationals to benefit on entry from derogations from certain aspects of thorough checks. Where such national facilitation programmes are used, they should be established in accordance with a harmonised model and an appropriate level of security should be guaranteed.
- (11) This Regulation is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council<sup>9</sup>.

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<sup>9</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (12) Since the objective of this Regulation, namely to amend the existing rules of Regulation (EU) 2016/399, can only be achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (13) 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 shall, 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.

- (14) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC<sup>10</sup>; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (15) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC<sup>11</sup>; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

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<sup>10</sup> Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

<sup>11</sup> Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20)

- (16) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*<sup>12</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC<sup>13</sup>.

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<sup>12</sup> OJ L 176, 10.7.1999, p. 36.

<sup>13</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

- (17) 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*<sup>14</sup> 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<sup>15</sup>.

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<sup>14</sup> OJ L 53, 27.2.2008, p. 52.

<sup>15</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

- (18) 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*<sup>16</sup> 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<sup>17</sup>.

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<sup>16</sup> OJ L 160, 18.6.2011, p. 21.

<sup>17</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

(19) *As regards Cyprus, Bulgaria, Romania and Croatia, the provisions of Regulation (EU) 2016/399 that relate to the EES should only apply where the conditions set out in Article 66(2) of Regulation (EU) 2017/...<sup>+</sup> are met. As a result, for those Member States that do not fulfil the conditions set out in Article 66(2) of that Regulation by the date of start of operations of the EES, it is necessary to lay down specific transitional provisions on stamping pending their connection to the EES. Those transitional provisions should ensure that the stamping of travel documents has the same effect as an entry/exit record in the EES.*

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

- (20) *The Member States which do not meet the conditions set out in Article 66(2) of Regulation (EU) 2017/...<sup>+</sup> at the date of the start of operations of the EES should continue to systematically stamp, on entry and exit, the travel documents of third-country nationals admitted for a short stay. Those Member States should examine the entry and exit stamps on the travel document of the third-country national concerned in order to verify, by comparing the dates of entry and exit, that the person has not exceeded the maximum duration of authorised stay on the territory of the Member State concerned. The stamping of travel documents and the examination of the stamps should continue until the Member State concerned is connected to the EES as referred to in Article 66(3) of Regulation (EU) 2017/...<sup>+</sup>.*
- (21) Regulation (EU) 2016/399 should therefore be amended accordingly.
- (22) *The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>18</sup> and delivered an opinion on 21 September 2016,*

HAVE ADOPTED THIS REGULATION:

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

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



## Article 1

Regulation (EU) 2016/399 is amended as follows:

(1) in Article 2, the following points are added:

- "22. 'Entry/Exit System' (EES) means the system established by Regulation (*EU*) 2017/... of the European Parliament and of the Council\*+;
23. 'self-service system' means an automated system which performs all or some of the border checks that are applicable to a person *and which may be used for pre-enrolling data in the EES*;
24. 'e-gate' means an infrastructure operated by electronic means where an external border *or an internal border where controls have not yet been lifted* is actually crossed;

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+ Please insert serial number of Regulation in PE-CONS 47/17 and complete the footnote.

25. 'automated border control system' means a system which allows for an automated border crossing, and which is composed of a self-service system and an e-gate;
26. *'confirmation of the authenticity and integrity of the chip data' means the process by which it is verified, through the use of certificates, that the data on the electronic storage medium (chip) originate from the issuing authority and that they have not been changed.*

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\* Regulation (EU) 2017/... of the European Parliament and of the Council of ... **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 ...).**”;

(2) *Article 6 is amended as follows:*

*(a) in paragraph 1, the following point is added:*

*“(f) they provide biometric data, if required for:*

- (i) the creation of the individual file in the EES in accordance with Articles 16 and 17 of Regulation (EU) 2017/...<sup>+</sup>;*
- (ii) the carrying out of border checks in accordance with Article 8(3)(a)(i) and (g)(i) of this Regulation, Article 23(2) and (4) of Regulation (EU) 2017/...<sup>+</sup> and, where applicable, Article 18 of Regulation (EC) No 767/2008 of the European Parliament and of the Council\*.*

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\* 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

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

exchange of data between Member States on short-stay visas (VIS Regulation)  
(OJ L 218, 13.8.2008, p. 60).”;

(b) *the following paragraph is inserted:*

*"1a. The period of 90 days in any 180-day period referred to in paragraph 1 of this Article shall be calculated as a single period for the Member States operating the EES on the basis of Regulation (EU) 2017/...<sup>+</sup>. That period shall be calculated separately for each of the Member States which do not operate the EES."*

(3) the following Article is inserted:

"Article 6a

Third-country nationals for *whom data are to* be entered in the EES

1. On entry and exit, data on the following categories of persons shall be entered in the EES in accordance with Articles 16, 17, 19 and 20 of Regulation (EU) 2017/...<sup>+</sup>:
  - (a) third-country nationals admitted for a short stay pursuant to Article 6(1) of this Regulation;
  - (b) third-country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies and who do not hold a residence card pursuant to that Directive;

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

- (c) third-country nationals who:
- (i) are members of the family of **a national of a third country** enjoying the right of free movement **equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other;** and
  - (ii) do not hold a residence card pursuant to Directive 2004/38/EC **or a residence permit pursuant to Regulation (EC) No 1030/2002.**
2. Data on third-country nationals whose entry for a short stay ■ has been refused in accordance with Article 14 of this Regulation shall be entered in the EES in accordance with Article 18 of Regulation (EU) 2017/...<sup>+</sup>.
3. Data on the following categories of persons shall not be entered in the EES:
- (a) third-country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies and who hold a residence card pursuant to that Directive, whether or not they accompany or join that Union citizen;

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

- (b) third-country nationals who are members of the family of ***a national of a third country***, whether or not they accompany or join that national of a third country, where:
- (i) that national of a third country enjoys the right of free movement ***equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other, and***
  - (ii) those third-country nationals hold a residence card pursuant to Directive 2004/38/EC ***or a residence permit pursuant to Regulation (EC) No 1030/2002;***
- (c) ***holders of residence permits referred to in point 16 of Article 2 other than those covered by points (a) and (b) of this paragraph;***
- (d) ***holders of long-stay visas;***
- (e) ***third-country nationals exercising their right to mobility in accordance with Directive 2014/66/EU of the European Parliament and of the Council\* or Directive (EU) 2016/801 of the European Parliament and of the Council\*\*;***

- (f) nationals of Andorra, Monaco and San Marino ***and holders of a passport issued by the Vatican City State***;
- (g) persons or categories of persons exempt from border checks or benefitting from specific rules in relation to border checks, namely:
  - (i) ***Heads of State, Heads of Government and members of national government with accompanying spouses***, and members of their official delegation, and ***sovereigns and other senior members of a royal family***, in accordance with point 1 of Annex VII;
  - (ii) pilots of aircraft and other crew members in accordance with point 2 of Annex VII;
  - (iii) seamen in accordance with point 3 of Annex VII, ***and seamen who are present within the territory of a Member State only when their ship puts in and in the area of the port of call***;
  - (iv) cross-border workers in accordance with point 5 of Annex VII;

- (v) rescue services, police, fire brigades acting in an emergency situation and border guards, in accordance with point 7 of Annex VII;
- (vi) offshore workers in accordance with point 8 of Annex VII;
- (vii) crew members and passengers of cruise ships in accordance with points 3.2.1, 3.2.2 and 3.2.3 of Annex VI;
- (viii) persons on board a pleasure boat who are not subject to border checks in accordance with points 3.2.4, 3.2.5 and 3.2.6 of Annex VI;
- (h) persons who benefit from a derogation from the obligation to cross external borders only at border crossing points and during the fixed opening hours pursuant to Article 5(2);
- (i) persons who present a valid local border traffic permit for their border crossing in accordance with Regulation (EC) No 1931/2006 of the European Parliament and of the Council\*\*\*;



- (j) *members of the crew of passenger and goods trains on international connections;*
- (k) *persons who present for their border crossing:*
- (i) *a valid Facilitated Rail Transit Document issued in accordance with Council Regulation (EC) No 693/2003\*\*\*\*; or*
  - (ii) *a valid Facilitated Transit Document issued in accordance with Regulation (EC) No 693/2003 provided that they transit by train and they do not disembark within the territory of a Member State.*

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\* *Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).*

\*\* *Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21).*

\*\*\* Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1).

\*\*\*\* Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 99, 17.4.2003, p. 8).";

(4) ■ Article 8 is amended as follows:

(a) paragraph 2 *is amended as follows*:

(i) *in point (a), the second subparagraph is replaced by* the following:

"If the travel document contains an electronic storage medium (chip), the authenticity *and integrity* of the chip data shall be confirmed using the complete valid certificate chain, unless this is technically impossible or, in the case of a travel document issued by a third country, impossible due to the unavailability of valid certificates;"

(ii) *in point (b), the following subparagraph is added*:

*"For persons whose entry is subject to a registration in the EES pursuant to Article 6a of this Regulation, a verification of their identity in accordance with Article 23(2) of Regulation (EU) 2017/...<sup>+</sup> and, where applicable, an identification in accordance with Article 23(4) of that Regulation shall be carried out."*

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

(b) paragraph 3 is amended as follows:

(i) in point (a)(i), *the second subparagraph* ■ is replaced by the following:

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" *For passports and travel documents containing an electronic storage medium (chip), the authenticity and integrity of the chip data shall be checked, subject to the availability of valid certificates.*

With the exception of third-country nationals for whom an individual file is already registered in the EES, where the travel document contains a facial image recorded in the electronic storage medium (chip) and that facial image can be ■ technically accessed, this verification shall include the verification of that facial image, by comparing electronically that facial image with the live facial image of the third-country national concerned ■ . *If technically and legally possible, this verification may be done by verifying the live fingerprints against the fingerprints recorded in the electronic storage medium (chip);*”;

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(ii) in point (a), point (iii) is replaced by the following:

"(iii) for persons whose entry or whose refusal of entry is subject to a registration in the EES pursuant to Article 6a of this Regulation, a verification of their identity *in accordance with Article 23(2) of Regulation (EU) 2017/...*<sup>+</sup> and, where applicable, an identification in accordance with Article 23(4) of that Regulation;"

(iii) in point (a), the following point is inserted:

"(iiia) for persons whose entry or whose refusal of entry is subject to a registration in the EES pursuant to Article 6a of this Regulation, verification that the third-country national has not reached or exceeded the maximum duration of authorised stay on the territory of the Member States and, for third-country nationals holding a visa issued for one or two entries, verification that they have respected the number of the maximum authorised entries, by consulting the EES in accordance with Article 23 of Regulation (EU) 2017/...<sup>+</sup>;"

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

(iv) *in* point (g), *point (i)* is replaced by the following:

"(i) *verification of the identity and the nationality of the third-country national and of the authenticity* ■ *and validity of the travel document* ■ *for crossing the border, including by consulting the relevant databases, in particular:*

(1) *the SIS;*

(2) *Interpol's SLTD database* ■ ;

(3) *national databases containing information on stolen, misappropriated, lost and invalidated travel documents.*

*For passports and travel documents containing an electronic storage medium (chip), the authenticity and integrity of the chip data shall be checked, subject to the availability of valid certificates.*

***With the exception of third-country nationals for whom an individual file is already registered in the EES, where the travel document contains a facial image recorded in the electronic storage medium (chip) and that facial image can be technically accessed, this verification shall include the verification of that facial image, by comparing electronically that facial image with the live facial image of the concerned third-country national. If technically and legally possible, this verification may be done by verifying the live fingerprints against the fingerprints recorded in the electronic storage medium (chip);"***

(v) in point (g), the following points are added:

***"(iii) for persons whose exit is subject to a registration in the EES pursuant to Article 6a of this Regulation, a verification of their identity in accordance with Article 23(2) of Regulation (EU) 2017/...<sup>+</sup> and, where applicable, an identification in accordance with Article 23(4) of that Regulation ;***

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

(iv) for persons whose exit is subject to a registration in the EES pursuant to Article 6a of this Regulation, verification that the third-country national has not exceeded the maximum duration of authorised stay on the territory of the Member States, by consulting the EES in accordance with Article 23(3) of Regulation (EU) 2017/...<sup>+</sup>;"

(vi) in point (h), point (ii) is deleted;

(vii) point (i) is replaced by the following:

"(i) for the purpose of the identification of any person who does not fulfil, or who no longer fulfils, the conditions for entry, stay or residence on the territory of the Member States, the VIS may be consulted in accordance with Article 20 of Regulation (EC) No 767/2008 and the EES may be consulted in accordance with Article 27 of Regulation (EU) 2017/...<sup>+</sup>;"

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

(c) the following paragraph is added:

"9. The third-country nationals shall be informed of the maximum number of days of *authorised stay*, which shall take into account **█** the number of entries and the length of *stay authorised by the visa*. *That information shall be provided either by the border guard at the moment of the border checks or by means of equipment installed at the border crossing point enabling the third-country national to consult the web service as referred to in Article 13(1) and (2) of Regulation (EU) 2017/...<sup>+</sup>*";

**█**

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.



(5) the following Articles are inserted:

"Article 8a

Use of self-service systems for pre-enrolling data in the EES

1. Persons whose border crossing is subject to a registration in the EES in accordance with Article 6a may use self-service systems for the purpose of pre-enrolling █ in the EES *the data referred in point (a) of paragraph 4 of this Article*, provided that all of the following conditions are fulfilled:
  - (a) the travel document █ contains an electronic storage medium (chip) and the authenticity *and integrity* of the chip data are confirmed using the complete valid certificate chain;
  - (b) the travel document █ contains a facial image recorded in the electronic storage medium (chip) which can be █ technically accessed by the *self-service* system so as to verify the identity of the holder of the travel document by comparing the facial image recorded in the *electronic storage medium* (chip) with his or her live facial image; *if technically and legally possible, this verification may be done by verifying the live fingerprints against the fingerprints recorded in the electronic storage medium (chip) of the travel document.*

2. Pursuant to paragraph 1 of this Article, the self-service system shall verify whether the person has a previous registration in the EES and shall verify the identity of the third-country national in accordance with Article 23(2) of Regulation (EU) 2017/...<sup>+</sup>.
3. In accordance with Article 23(4) of Regulation (EU) 2017/...<sup>+</sup>, the self-service system shall carry out an identification in accordance with Article 27 of that Regulation.



In addition, in accordance with Articles 23(4) of the Regulation (EU) 2017/...<sup>+</sup>, where an identification in the EES is carried out:

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

- (a) for third-country nationals who are subject to a visa requirement to cross the external borders, if the search in the VIS with the data referred to in Article 18(1) of Regulation (EC) No 767/2008 indicates that the person is recorded in the VIS, a verification of fingerprints against the VIS data shall be carried out in accordance with Article 18(6) of Regulation (EC) No 767/2008. Where a verification of the person pursuant to paragraph 2 of this Article has failed, the **■** VIS data *shall be accessed* for identification in accordance with Article 20 of Regulation (EC) No 767/2008;
- (b) for third-country nationals who are not subject to a visa requirement to cross the external borders and who are not found in the EES further to the identification run in accordance with Article 27 of Regulation (EU) 2017/...<sup>+</sup>, the VIS shall be consulted in accordance with Article 19a of Regulation (EC) No 767/2008.

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

4. In the event that data concerning the person referred to in paragraph 1 of this Article are not recorded in the EES pursuant to paragraphs 2 and 3:
- (a) third-country nationals who are subject to a visa requirement to cross the external borders shall pre-enrol in the EES through the self-service system the data listed under Article 16(1) *and Article 16(2)(c) to (f)* of Regulation (EU) 2017/...<sup>+</sup> *and, where relevant, the data referred to under Article 16(6)* of that Regulation, and third-country nationals who are not subject to a visa requirement to cross the external borders shall pre-enrol in the EES through the self-service system the data listed under *Articles 17(1)(a), (b) and (c) and 16(2)(c)* of that Regulation *and, where relevant, the data referred to in* Article 17(1)(d) of that Regulation;
  - (b) subsequently, the person shall be referred to a border guard who shall:
    - (i) pre-enrol the data concerned, where it was not possible to collect all the required data through the self-service system;

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

- (ii) verify:
- that the travel document used at the self service system corresponds to the one held by the person in front of the border guard;
  - that the live facial image of the person concerned corresponds to the facial image that was collected through the self service system;  
and
  - for persons who do not hold a visa required pursuant to Regulation (EC) No 539/2001, that the live fingerprints of the person concerned correspond to the fingerprints that were collected through the self-service system;
- (iii) when the decision to authorise or refuse entry has been taken, confirm the ***data referred to in point (a) of this paragraph*** and enter in the EES the data referred to in Articles 16(2)(a) ***and (b)*** and 18(6)(a), (b), (c) ***and (d)*** of Regulation (EU) 2017/...<sup>+</sup>.

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

5. Where the operations provided for in paragraphs 2 and 3 indicate that data on the person referred to in paragraph 1 are recorded in the EES, the self-service system shall assess whether any of the data *referred to in paragraph (4)(a) need to be updated*.
6. Where the assessment referred to in paragraph 5 reveals that the person referred to in paragraph 1 has *an individual* file registered in the EES but that his or her *data* need to be updated, the person shall:
  - (a) update the data in the EES by pre-enrolling them through the self-service system;
  - (b) be referred to a border guard who shall verify the correctness of the update under point (a) of this paragraph and, when the decision to authorise or refuse entry has been taken, update the individual file in accordance with Article 14(2) of Regulation (EU) 2017/...<sup>+</sup>.
7. Self-service systems shall be operated under the supervision of a border guard who shall be in charge of detecting any inappropriate, fraudulent or abnormal use of the self-service system.

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

## Article 8b

Use of self-service systems and e-gates for the border crossing *by* persons whose border crossing is subject to a registration in the EES

1. Persons whose border crossing is subject to a registration in the EES in accordance with Article 6a may be permitted to use a self-service system for the carrying out of their border checks, where all of the following conditions are fulfilled:
  - (a) the travel document ■ contains an electronic storage medium (chip) and the authenticity *and integrity* of the chip data are confirmed using the complete valid certificate chain;
  - (b) the travel document ■ contains a facial image recorded in the electronic storage medium (chip) which can be ■ technically accessed by the *self-service* system so as to verify the identity of the holder of the travel document, by comparing that facial image with his or her live facial image; and
  - (c) the person is already enrolled or pre-enrolled in the EES.

2. Where the conditions laid down in paragraph 1 of this Article are met, the **border** checks on entry ■ provided for in Article 8(2) and Article 8(3)(a) and (b) **and** the **border** checks **on exit provided for in** Article 8(2) and Article 8(3)(g) and (h) may be carried out through a self-service system. When carried out through an automated border control system, the border checks on exit shall include the checks provided for in Article 8(3)(h).

*Where a person is granted access to a national facilitation programme established by a Member State pursuant to Article 8d, the border checks carried out through a self-service system on entry may omit the examination of the aspects referred to in Article 8(3)(a)(iv) and (v) when that person crosses the external borders of that Member State or the external borders of a Member State which has concluded an agreement with the Member State which granted the access as referred to under Article 8d(9).*

3. On entry and exit, the results of the border checks carried out through the self-service system shall be made available to a border guard. **That border guard shall monitor** the results of ■ border checks ■ **and, taking into account those results,** authorise **the** entry or exit or, otherwise, refer the person to a border guard **who shall proceed with further checks.**



4. The person in question shall be referred to a border guard pursuant to paragraph 3 in any of the following situations:
- (a) where one or more of the conditions listed under paragraph 1 are not fulfilled;
  - (b) where the checks on entry or exit provided for in paragraph 2 reveal that one or several of the entry or exit conditions are not met;
  - (c) where the results of the checks on entry or exit provided for in paragraph 2 put into question the identity of the person or when they reveal that the person is considered to be a threat to the internal security, public policy or international relations of any Member State or to public health;
  - (d) in the case of doubt;
  - (e) where no e-gates are available.

5. In addition to the situations referred to in paragraph 4, the border guard supervising the border crossing may decide, based on other reasons, to refer the person using the self-service system to a border guard.
6. Persons whose border crossing is subject to a registration in the EES in accordance with Article 6a(1) and who used a self-service system for the carrying out of their border checks may be authorised to use an e-gate. Where an e-gate is used, the corresponding registration of the entry/exit record and the linking of that record to the corresponding individual file pursuant to Article 14 of Regulation (EU) 2017/...<sup>+</sup> shall be carried out when crossing the border through the e-gate. Where the e-gate and the self-service system are physically separated, a verification of the identity of the user shall take place at the e-gate in order to verify that the person using the e-gate corresponds to the person who used the self-service system. The verification shall be carried out by using at least one biometric identifier.

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

7. Where the conditions listed in point (a) or (b) of *paragraph 1 of this Article*, or in both, are not fulfilled, part of the border checks on entry *pursuant to Article 8(3)(a) and (b)* and part of the border checks on exit pursuant to Article 8(3)(g) and (h) may be carried out through a self-service system. *The* border guard may perform only those verifications pursuant to Article 8(3)(a) and (b) and Article 8(3)(g) and (h) that could not be carried out through the self-service system. In addition, the border guard shall verify that the travel document used at the self-service system corresponds to the one held by the person standing before that border guard.
8. Self-service systems and e-gates shall be operated under the supervision of a border guard who shall be in charge of detecting any inappropriate, fraudulent or abnormal use of the self-service system, e-gate, or both.
9. *This Article is without prejudice to the possibility for Member States to allow for the use of self-service systems, e-gates, or both, for border crossings by Union citizens, by citizens of a European Free Trade Association State of the European Economic Area, by citizens of Switzerland and by third-country nationals whose border crossing is not subject to a registration in the EES.*

*Article 8c*

*Standards for automated border control systems*

*Automated border control systems shall, to the extent possible, be designed in such a way that they can be used by all persons, with the exception of children under 12 years of age. They shall also be designed in a way that fully respects human dignity, in particular in cases involving vulnerable persons. Where Member States decide to use automated border control systems, they shall ensure the presence of a sufficient number of staff to assist persons with the use of such systems.*

## Article 8d

### National facilitation programmes

1. Each Member State may establish a voluntary programme ('national facilitation programme') in order to allow third-country nationals, ■ or nationals of a specific third country, who do not *enjoy* the right of free movement *under Union law* to benefit from the facilitations made pursuant to paragraph 2 when crossing the external border of a Member State.
2. By way of derogation from Article 8(3)(a), for third-country nationals referred to in paragraph 1 of this Article who are granted access to the national facilitation programme, the thorough checks on entry do not have to include an examination of the aspects referred to in Article 8(3)(a)(iv) and (v) when such third-country nationals cross the external border of a Member State.
3. *The* Member State *shall* pre-vet ■ third-country nationals applying to the national facilitation programme *in order to verify in particular that the conditions* referred to in *paragraph 4 are fulfilled*.

*Such third-country nationals shall be pre-vetted by ■ border guards, by visa authorities as defined in point 3 of Article 4 of Regulation (EC) No 767/2008 or by immigration authorities as defined in point (4) of Article 3(1) of Regulation (EU) 2017/...<sup>+</sup>.*

4. *The* authorities referred to in paragraph 3 *shall* only grant a person access to the national facilitation programme where all of the following conditions are fulfilled:
- (a) the applicant fulfils the entry conditions set out in Article 6(1);
  - (b) the applicant's travel document and, where applicable, visa, *long-stay visa* or residence permit are valid and not false, counterfeit or forged;
  - (c) the applicant proves the need for frequent or regular travel or justifies his or her intention to travel frequently or regularly;

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

- (d) the applicant proves *his or her* integrity and reliability, in particular, *where* applicable, *the lawful use of* previous visas *or visas* with limited territorial validity, *his or her* economic situation in the country of origin and *his or her* genuine intention to leave the territory of the Member States *before the end of the authorised period of stay*. In accordance with Article 25 of Regulation (EU) 2017/...<sup>+</sup>, the authorities referred to in paragraph 3 of this Article shall have access to the EES to verify that the applicant has not previously exceeded the maximum duration of authorised stay on the territory of the Member States;
- (e) the applicant justifies the purpose and conditions of the intended stays;
- (f) the applicant possesses sufficient means of subsistence both for the duration of the intended stays and for the return to the country of origin or residence, or that the applicant is in a position to acquire such means lawfully;
- (g) *the SIS is consulted.*

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

5. *First* access to the national facilitation programme shall be granted for a maximum of one year. *Access may be extended for a maximum of a further five years or until the end of the validity period of the travel document or any issued multiple-entry visas, long-stay visas and residence permits, whichever is shorter.*

*In the case of an extension* the Member State shall reassess every year the situation of each third-country national who is granted access to the national facilitation programme in order to ensure that, based on updated information, that *third-country national* still meets the conditions laid down in **■ paragraph 4. This reassessment may be performed when border checks are carried out.**

6. *The* thorough checks on entry **■** pursuant to Articles 8(3)(a) and (b) *and the* thorough checks *on exit pursuant to Article 8(3)(g)* shall also comprise verification **■ that the third-country national has valid access to the** national facilitation programme.



***Border guards may carry out the verification of the third-country national benefiting from the national facilitation programme on entry pursuant to Articles 8(3)(a) and (b) and on exit pursuant to Article 8(3)(g) without comparing biometrics electronically but by comparing the facial image taken from the electronic storage medium (chip) and the facial image in the third-country national's individual EES file with that third-country national's face. Full verification shall be carried out at random and on the basis of a risk analysis.***

7. ***The*** authorities referred to in paragraph 3 shall immediately revoke the access granted to a third-country national to the national facilitation programme if it becomes evident that the conditions for granting access to that programme were not met ***or*** are no longer met.

8. When verifying *in accordance with paragraph 3* whether the applicant fulfils the conditions set out in *paragraph 4*, particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration or a risk to the security of any of the Member States and whether the applicant intends to leave the territory of the Member States during the authorised stay.

The means of subsistence for the intended stays shall be assessed according to the duration and the purpose of the envisaged stay or stays and by reference to average prices in the Member States concerned for board and lodging in budget accommodation, on the basis of the reference amounts set by the Member States in accordance with Article 39(1)(c). Proof of sponsorship, private accommodation, or both, may also constitute evidence of sufficient means of subsistence.

The examination of an application shall be based, in particular, on the authenticity and reliability of the documents submitted and on the veracity and reliability of the statements made by the applicant. If a Member State responsible for examining an application has any doubts about the applicant, the applicant's statements or supporting documents that have been provided, it may consult other Member States before any decision on the application is taken.

9. Two or more Member States having established their own national facilitation programme pursuant to this Article may conclude among themselves an agreement in order to ensure that the beneficiaries of their national facilitation programmes may benefit from the facilitations recognised by another national facilitation programme. Within the time-limit of one month from the conclusion of the agreement, a copy of the agreement shall be transmitted to the Commission.
10. ***When establishing a national facilitation programme, Member States shall ensure that their system operating the programme meets the data security standards laid down in Article 43 of Regulation (EU) 2017/...<sup>+</sup>. Member States shall conduct a proper information security risk assessment and security responsibilities shall, for all steps of the process, be made clear.***
11. The Commission shall, by the end of the third year of the application of this Article, transmit to the European Parliament and to the Council an evaluation of its implementation. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose the establishment of a Union programme for frequent and pre-vetted third-country national travellers."

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

(6) Article 9 is amended as follows:

(a) paragraph 3 is replaced by the following:

"3. Even in the event that checks are relaxed, the border guard shall enter the data in the EES, in accordance with Article 6a. Where the data cannot be entered by electronic means, it shall be entered manually.";

(b) the following paragraph is inserted:

"3a. Where it is technically impossible to enter data in the Central System of the EES or in the event of the failure of the Central System of the EES, all of the following provisions shall apply:

- (i) by way of derogation from Article 6a of this Regulation, the data referred to in Articles 16 to 20 of Regulation (EU) 2017/...<sup>+</sup> shall be *temporarily* stored in the National Uniform Interface as defined in Article 7 of that Regulation. Where this is not possible, the data shall be temporarily stored locally in an electronic format. In both cases, the data shall be entered in the Central System of the EES as soon as the technical impossibility or failure has been remedied. The Member States shall take the appropriate measures and deploy the required infrastructure, equipment and resources to ensure that such temporary local storage may be carried out at any time and for any of their border crossing points.

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

*Without prejudice to the obligation to carry out border checks under this Regulation, in the exceptional situation that it is technically impossible to enter data in the Central System of the EES and in the National Uniform Interface, and it is technically impossible to temporarily store the data locally in an electronic format, the border guard shall manually store entry/exit data in accordance with Articles 16 to 20 of Regulation (EU) 2017/...<sup>+</sup>, with the exception of biometric data, and shall affix an entry or exit stamp in the travel document of the third-country national. That data shall be entered in the Central System of the EES as soon as technically possible.*

*Member States shall inform the Commission, in accordance with Article 21(2) of Regulation (EU) 2017/...<sup>+</sup>, of the stamping of travel documents in the event of the exceptional situations referred to in the second subparagraph of this point;*

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

(ii) by way of derogation from Article 8(3)(a)(iii) and (g)(iv) of this Regulation, for nationals of third countries holding a visa ■ as referred to in Article 6(1)(b), where technically possible, the verification of the identity of the holder of the visa shall be carried out by consulting directly the VIS in accordance with Article 18 of Regulation (EC) No 767/2008.";

(7) in Article 10, the following *paragraphs are* inserted:

"3a. Where Member States decide to use e-gates, self-service systems or automated border control systems, ■ they shall use the signs provided for in part D *of Annex III to identify the respective lanes.*

*3b. Where Member States decide to establish a national facilitation programme in accordance with Article 8d, they may decide to use specific lanes for the third-country nationals benefiting from such a national facilitation programme. They shall use the signs provided for in part E of Annex III to identify the respective lanes.*";

(8) Article 11 is replaced by the following:

*"Article 11*

*Stamping of travel documents*

1. Where provided expressly by its national law, a Member State may, on entry and exit, stamp the travel document of third-country nationals holding a residence permit *or long-stay visa* issued by that Member State.
  
2. ***The travel document of a third-country national who is a holder of a Facilitated Rail Transit Document issued in accordance with Regulation (EC) 693/2003 shall be stamped on entry and exit. Furthermore, the travel document of a third-country national who is a holder of a valid Facilitated Transit Document issued in accordance with Regulation (EC) No 693/2003 and who transits by train and does not disembark within the territory of a Member State shall be stamped on entry and exit.***



3. *The travel documents of third-country nationals entering or exiting, on the basis of a national short-stay visa issued for one or two entries, the territory of a Member State not yet fully applying the Schengen acquis but operating the EES shall be stamped on entry and on exit.*

4. The practical arrangements for stamping are set out in Annex IV.";

(9) Article 12 is replaced by the following:

"Article 12

***Presumption*** as regards fulfilment of conditions of duration of ***short*** stay

1. Without prejudice to Article 12a, if no individual file has been created in the EES for a third-country national present on the territory of a Member State or the entry/exit record of that third-country national does not contain an exit date following the date of expiry of the authorised length of stay, the competent authorities may presume that third-country national does not fulfil, or no longer fulfils, the conditions ***of*** duration of ***authorised*** stay ***within*** the territory of the Member States.

2. The presumption referred to in paragraph 1 of this Article shall not apply to a third-country national who can provide, by any means, credible evidence that **he or she** enjoys the right of free movement under Union law or that **he or she** holds a residence permit or a long-stay visa. Where relevant, Article 35 of Regulation (EU) 2017/...<sup>+</sup> shall apply.
3. The presumption referred to in paragraph 1 may be rebutted where the **third-country national** provides, by any means, credible evidence, such as transport tickets or proof of presence outside the territory of the Member **States** or of the date of expiry of a previous residence permit or long-stay visa, that he or she has respected the conditions relating to the duration of a short stay.

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/...<sup>+</sup>.

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

4. **Where** the presumption referred to in paragraph 1 ■ is not rebutted, **a** third-country national **present on** the territory of the Member States **may be returned in accordance with Directive 2008/115/EC** of the European Parliament and of the Council\*.

A third-country national **enjoying** the right of free movement under Union law may only be **returned** in accordance with Directive 2004/38/EC.

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\* Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).";

- (10) the following Article is inserted:

"Article 12a

Transitional period and transitional measures

1. For a period of **180 days** after the EES has started operations, in order to verify on entry and exit, that persons **admitted** for a short stay have not exceeded the maximum duration of authorised stay and, **where relevant**, to verify on entry that persons have not exceeded the **number of entries authorised by the short-stay visa issued for one or two entries**, the ■ border **guards** shall take into account the stays on the territory of the Member States during the 180 days preceding the entry or the exit by checking the stamps in the travel documents in addition to the entry/exit data recorded in the EES.

2. Where a person has entered the territory of the Member States before the EES has started operations *and exits it after the EES has started operations*, an individual file shall be created on exit in the EES and the date of that entry shall be entered in the entry/exit record in accordance with Article 16(2) of Regulation (EU) 2017/...<sup>+</sup>. The application of this paragraph shall not be limited to the 180-day period after the EES has started operations as referred to in paragraph 1. In the case of a discrepancy between the date of the entry stamp and the data recorded in the EES, the date of the entry stamp shall prevail.";

(11) Article 14 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

"Data on third-country nationals whose entry for a short stay ■ has been refused shall be registered in the EES in accordance with Article 6a(2) of this Regulation and Article 18 of Regulation (EU) 2017/...<sup>+</sup>.";

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

(b) in paragraph 3, the third subparagraph is replaced by the following:

"Without prejudice to any compensation granted in accordance with national law, the third-country national concerned shall, where the appeal concludes that the decision to refuse entry was ill-founded, be entitled to the correction of the data entered in the EES or of the cancelled entry stamp, or both, and any other cancellations or additions which have been made, by the Member State which refused entry.";

(12) *in Article 20(1), point (a) is replaced by the following:*

***"(a) Heads of State, Heads of Government and members of national government with accompanying spouses, and members of their official delegation, and sovereigns and other senior members of a royal family;"***

(13) *the following Article is inserted:*

*"Article 42a*

*Transitional measures for the Member States not yet operating the EES*

- 1. The travel documents of third-country nationals crossing the borders of the Member States referred to in Article 66(3) of Regulation (EU) 2017/...<sup>+</sup> shall be systematically stamped on entry and exit.*

*The travel documents of third-country nationals referred to in Article 6a(1)(b) and (c) of this Regulation crossing the borders of the Member States referred to in Article 66(3) of Regulation (EU) 2017/...<sup>+</sup> shall be stamped on entry and exit.*

*These stamping obligations shall also apply when border checks are relaxed in accordance with Article 9 of this Regulation.*

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

2. *By way of derogation from paragraph 1 of this Article, no stamp shall be affixed to the travel documents of third-country nationals referred to in Article 6a(3)(a), (b) and (f), Article 6a(3)(g)(i), (ii), (iii) and (vii) and Article 6a(3)(j).*
3. *The provisions of this Regulation that relate to the entry/exit data recorded in the EES and to the absence of such data in the EES, in particular Article 8(3)(a)(iiia) and (g)(iv), Article 8d(4)(d) and Article 12, shall apply mutatis mutandis to entry and exit stamps.*
4. *When a presumption as regards the fulfilment of conditions of duration of stay is rebutted in accordance with Article 12(2), the third-country national present on the territory of a Member State not yet operating the EES shall be entitled to have an indication inserted in his or her travel document of the date on which, and the place where, he or she crossed the external border or internal border of that Member State. A form as shown in Annex VIII may also be given to the third-country national.*

5. *The provisions on stamping set out in Annex IV shall apply.*
6. *The Member States referred to in Article 66(3) of Regulation (EU) 2017/...<sup>+</sup> shall stamp the travel documents of third-country nationals whose entry for a short stay is refused at their border. The stamping shall be carried out in accordance with the specifications laid down in Annex V, part A, point 1(d).*
7. *The stamping obligations under paragraphs 1 to 6 shall apply until the date of start of operations of the EES in the Member State concerned."*

(14) Annexes III, IV, V and VII are amended in accordance with the Annex to this Regulation.

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.



## Article 2

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from the date on which the EES is to start operations, as determined by the Commission in accordance with Article 66 of Regulation (EU) 2017/...<sup>+</sup>.
3. ***By way of derogation from paragraph 2 of this Article, this Regulation shall, from the date of their connection to the EES in accordance with Article 66(3) of Regulation (EU) 2017/...<sup>+</sup>, apply to those Member States referred to in Article 66(3) of that Regulation that are not yet operating the EES. Pending their connection to the EES, transitional provisions concerning the stamping of the travel documents laid down in Article 42a of Regulation (EU) 2016/399 shall apply to those Member States.***

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

Done at ,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

*ANNEX*

Annexes to Regulation (EU) 2016/399 are amended as follows:

1. In Annex III, the following Parts are added:

**"PART D**

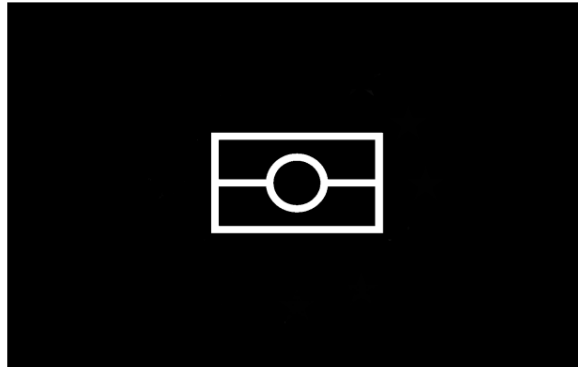
Part D1: Automated border control lanes for EU/EEA/CH citizens



Stars are not required for Switzerland, Liechtenstein, Norway and Iceland

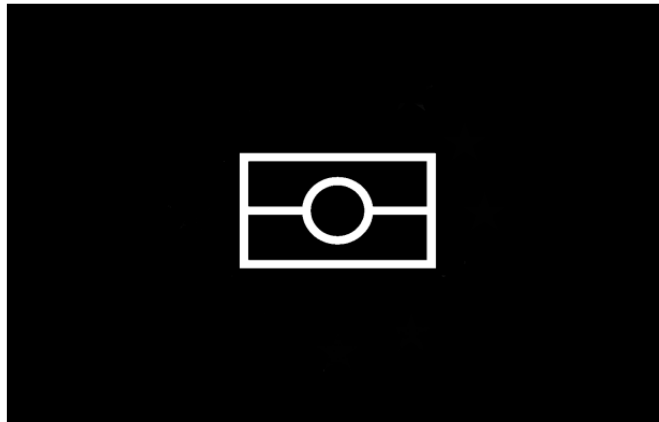
**I**

Part D2: Automated border control lanes for third-country nationals



**THIRD-COUNTRY  
NATIONALS**

Part D3: Automated border control lanes for all passports



**ALL PASSPORTS**



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2. Annex IV is amended as follows:
  - (a) point 1 is replaced by the following:

"1. *The travel document of a third-country national who is a holder of a Facilitated Rail Transit Document issued in accordance with Regulation (EC) No 693/2003 shall be stamped on entry and exit. The travel document of a third-country national who is a holder of a valid Facilitated Transit Document issued in accordance with Regulation (EC) No 693/2003 and who performs his or her transit by train and does not disembark within the territory of a Member State shall also be stamped on entry and exit. Moreover, where provided expressly by its national law, a Member State may stamp on entry and exit the travel document of a third-country national holding a residence permit or a long-stay visa issued by that same Member State in accordance with Article 11 of this Regulation.*

*The travel documents of a third-country national entering or exiting, on the basis of a national short-stay visa issued for one or two entries, the territory of a Member State not yet fully applying the Schengen acquis but operating the EES shall be stamped on entry and on exit.'";*

(b) the following point is inserted:

"1a. The specifications of those stamps are laid down in the Schengen Executive Committee Decision SCH/COM-EX (94) 16 rev and SCH/Gem-Handb (93) 15 (CONFIDENTIAL).";

(c) the following point is *inserted*:

"2a. *On the entry and exit* of ■ third-country *nationals* subject to the visa obligation *and to the stamping obligation*, the stamp shall be affixed on the page facing the one on which the visa is affixed. However, if that page cannot be used, the stamp shall be entered on the following page. The machine readable zone shall not be stamped.";

(d) *point 3 is deleted.*

3. Annex V is amended as follows:

(a) Part A is amended as follows:

(i) point (b) of point 1 is replaced by the following:

"(b) for third-country nationals whose entry for a short stay ■ has been refused, register in the EES the data on refusal of entry in accordance with Article 6a(2) of this Regulation and Article 18 of Regulation (EU) 2017/...<sup>+</sup>; ■";

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.



(ii) point (d) of point 1 is replaced by the following:

"(d) for third-country nationals whose refusals of entry are not to be registered into the EES, affix an entry stamp on the passport, cancelled by a cross in indelible black ink, and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the standard form for refusing entry as shown in Part B of this Annex. In addition, for these categories of persons, the border guard shall record every refusal of entry in a register or on a list stating the identity and nationality of the third-country national concerned, the references of the document authorising the third-country national to cross the border and the reason for, and date of, refusal of entry.";

(iii) in point 1, the following subparagraph is added:

"The practical arrangements for stamping are set out in Annex IV.";

*(b) in Part B, the Standard form for refusal of entry at the border is amended as follows:*

*(i) after letter (I), the following text is added:*

*"(J) has refused to provide biometric data, if required*

*for the creation of the individual file in the Entry/Exit System*

*to carry out the border checks.";*

*(ii) in the section entitled "Comments", the following text is added below the word "Comments":*

*" (to be marked by the border guard if data is stored in the Entry/Exit System)*

*The person concerned is hereby informed that her/his personal data and information on this refusal of entry are entered in the Entry/Exit System in accordance with Article 18 of Regulation (EU) 2017/...<sup>+</sup>.*

*In accordance with Article 52 of Regulation (EU) 2017/...<sup>+</sup>, the person concerned has the right to obtain the data relating to her/him which are recorded in the Entry/Exit System and may request that data relating to her/him which are inaccurate be rectified and that data recorded unlawfully be erased."*

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<sup>+</sup> OJ: Please insert serial number of Regulation in PE-CONS 47/17.

4. ***Point 1 of Annex VII is replaced by the following:***

***"1. Heads of State, Heads of Government and members of national government with accompanying spouses, and members of their official delegation, and sovereigns and other senior members of a royal family***

***By way of derogation from Article 6 and Articles 8 to 14, Heads of State, Heads of Government and members of national government with accompanying spouses, and members of their official delegation, and sovereigns and other senior members of a royal family, invited by Member States' governments or by international organisations for an official purpose and whose arrival and departure have been officially announced through diplomatic channels, shall not be subject to border checks."***

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