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**COVER NOTE**

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 567 final
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

Delegations will find attached document COM(2024) 567 final.

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EUROPEAN  
COMMISSION

Brussels, 4.12.2024  
COM(2024) 567 final

2024/0315 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for the proposal**

The Entry/Exit System (EES) is a crucial component of the border management of the Schengen area, laid down in Regulation 2017/2226<sup>1</sup> ('EES Regulation'). As a centralised database, the EES registers entries, exits and refusals of entry of third-country nationals crossing the external borders of 29 Schengen Member States for a short stay. The EES marks a significant milestone in the EU's efforts to enhance security and efficiency at its external borders. For the first time, a system will collect biometric data, such as facial images and fingerprints of third country nationals crossing the external borders. The EES will grant Schengen Member States real-time access to third-country nationals' personal data, travel history and information on whether they comply with the authorised short-stay period in the Schengen area. As a result, the EES will significantly reduce the likelihood of identity fraud and overstay, ultimately strengthening the security of the Schengen area.

Despite significant efforts from Member States, the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) and the Commission, it is not possible to launch the EES in Q4 2024 as endorsed by the Justice and Home Affairs Council in October 2023<sup>2</sup>. The Commission has not received all notifications from Member States as per Article 66(1)(c) of the EES Regulation, which is a legal requirement for the EES to start operations. While a large number of Member States have notified their readiness to the Commission, certain Member States have indicated that they are not in a position to do so. At the same time, a full start of operations overnight constitutes a risk factor for the resilience of a complex IT system, such as the EES Central System.

In light of the above, stakeholders involved in the operations of the EES have made clear their preference that the introduction of new processes at the external borders should be preceded by a period of adjustment for national authorities and travellers to give a greater degree of certainty. Fully launching a new large-scale IT system at all border crossing points where technical adjustments are required in real-time could pose risks to secure and smooth travel, particularly in areas where the existing infrastructure, a lack of space or other constraints already pose challenges. These challenges are exacerbated by the differences among Member States on the way that the EES is being implemented due to the diversity of border crossing points and different approaches to automation and to deployment of new technologies.

However, the EES Regulation only allows for a full start of operations, requiring all Member States to start using the EES fully and simultaneously for all travellers who are subject to

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<sup>1</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327 9.12.2017, p. 20, ELI: <http://data.europa.eu/eli/reg/2017/2226/2021-08-03>).

<sup>2</sup> The interoperability implementation involving the EES as the first system, followed by ETIAS, ECRIS-TCN, the new Eurodac, the revised VIS and the 'Interoperability' Regulations rolled out in parallel, follows a roadmap, which had been revised due to emerging complexities.

registration in the EES at all their external border crossing points. It does not foresee the option of a period of adjustment.

Considering the above, it appears that the objectives of the EES can be achieved more effectively and with greater certainty if a degree of flexibility is introduced at the start of the system's operations. To that end, a Regulation enabling a progressive start of operations for a limited period of time is considered necessary. This proposed Regulation derogates from the EES Regulation to the extent necessary to enable a progressive start of operations. This will preserve the efforts made by both eu-LISA and Member States, while meeting the objectives of the EES to modernise the management of the external borders and contribute to the internal security of the European Union.

Moreover, the proposed Regulation offers a flexible approach that accommodates the diverse needs of Member States. It enables those who wish to implement it gradually to do so, while enabling others to start operations fully from day one. It should however be noted that the full benefits of the EES will only be available once all Member States are applying it in full.

This proposal also introduces measures that enable Member States to effectively manage exceptional circumstances, such as technical problems or periods of peak travel. To mitigate such risks, Member States can suspend the use of the system, fully or partially, for a short period of time during the period of the progressive start of operations. This mechanism will also be retained for a limited period after the full start of operations.

In expert and technical level exchanges as well as in the Management Board of eu-LISA, most Member States expressed support for a progressive start of operations and acknowledged that it will allow for a better implementation of the new EES rules at the external borders. The progressive approach has also been welcomed by most carriers and operators of infrastructure hosting border crossing points during a dedicated meeting with these stakeholders. Member States should ensure appropriate coordination with the operators of infrastructure of those border crossing points at which the EES is deployed. Member States should ensure transparency about the deployment of the EES at their external border crossing points and make sure that the measures are effectively communicated to both carriers and travellers.

#### • Objectives of the proposal

The general objectives of this proposal result from the Treaty-based goals to further improve the management of the external borders of the Schengen area by starting to apply, as soon as possible, the EES harmonised rules on cross border movements and therefore contribute to the internal security of the European Union.

This initiative lays the ground for a progressive start of the EES operations, derogating temporarily from certain provisions of the EES Regulation and Regulation (EU) 2016/399 ('Schengen Borders Code'<sup>3</sup>) that require Member States to use the system fully.

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

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<sup>3</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 (OJ L 77, 23.3.2016, p. 1–52, ELI: <http://data.europa.eu/eli/reg/2016/399/2024-07-10>).

The specific objectives of the proposal are to:

1. provide flexibility to Member States to start using the EES according to their level of readiness in line with the EES's high standards for using technologically advanced equipment to collect data;
1. facilitate technical and operational adjustments during the first period of the EES operations by allowing the system to be gradually deployed;
2. better manage and avoid potential long waiting times at the external borders;
3. improve the current situation by ensuring that end users, such as border guards, immigration officials, visa authorities and law enforcement officers, have access to the most up-to-date information on travellers' identities even if the data recorded in the system is incomplete due to the progressive deployment of the EES;
4. ensure that solutions are in place for the Member States to address unexpected situations that may arise following the start of the EES operations to avoid disruptions at external borders and long waiting times;
5. enable national authorities, travellers and carriers to adjust to the new border management processes and technologies;
6. preserve major investments made, in particular those in infrastructure, equipment and human resources, in preparation for the start of the EES operations.

- **Consistency with existing policy provisions in the policy area**

The current EU legal framework in this area consists of EU legislation on controls at external borders. The proposed legislation also contributes to achieving the objectives set out in the Schengen Borders Code and the Convention implementing the Schengen Agreement.<sup>4</sup>

The proposal is consistent with the rules laid down in the General Data Protection Regulation.<sup>5</sup>

The Regulation is fully consistent with the existing legal framework for data protection. It provides targeted temporary derogations from the EES Regulation and the Schengen Borders Code that are necessary to allow for a progressive start of the EES operations.

- **Consistency with other EU policies**

The progressive start of the EES operations will be consistent with the application of the Visa Information System (VIS) and the future European Travel Information and Authorisation System (ETIAS), as well as with the future interoperability components being developed by eu-LISA, namely the European Search Portal, the shared Biometric Matching Service, the Common Identity Repository and the Multiple-Identity Detector<sup>6</sup>. A revised integrated

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<sup>4</sup> 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 (OJ L 239, 22.9.2000, p. 19, ELI: <http://data.europa.eu/eli/convention/2000/922/oj>).

<sup>5</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1–88, ELI: <http://data.europa.eu/eli/reg/2016/679/2016-05-04>).

<sup>6</sup> Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU)

planning of ETIAS as well as of all interoperability components will be discussed and agreed between the Commission, Member States and eu-LISA in the light of the expected entry into operations of the EES.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

This Regulation provides for a temporary derogation from certain provisions of the EES Regulation and of the Schengen Borders Code, which were adopted on the basis of Article 77(2)(b) and (d) of the Treaty on the Functioning of the European Union (TFEU) and Article 87(2)(a) of the TFEU, and of Article 77(2)(b) and (e) of the TFEU, respectively. It is appropriate to adopt this proposed Regulation on the basis of the same provisions of the TFEU as those of the EES Regulation.

### **• Subsidiarity (for non-exclusive competence)**

According to the principle of subsidiarity, EU action may only be taken if the envisaged aims cannot be achieved by Member States alone.

The aim of the proposed Regulation is to enable implementation of the rules set out in the EES Regulation. A progressive start of operations of a common information system with harmonised rules and timelines cannot be sufficiently achieved by the Member States alone. EU action is needed to ensure a progressive start of EES operations.

### **• Proportionality**

The proposal complies with the principle of proportionality as set out in Article 5 of the Treaty on European Union as it will not go beyond what is necessary for the set objectives to be achieved.

In particular, the proposed Regulation creates a limited derogation from the EES Regulation and the Schengen Borders Code with the aim of allowing for the progressive start of EES operations.

### **• Choice of the instrument**

The objectives of the proposal can best be pursued through a Regulation. It will ensure direct applicability of the provisions and a uniform and consistent approach throughout the Schengen area. This is of particular importance as the proposed Regulation derogates from the EES Regulation, which sets up a central system through which Member States cooperate and lays down rules on border checks, and the Schengen Borders Code. As the proposed Regulation aims to introduce uniform obligations on Member States and transport operators, the appropriate instrument to be used to achieve the objectives of this initiative is a Regulation.

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2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135 22.5.2019, p. 27, ELI: <http://data.europa.eu/eli/reg/2019/817/2024-04-25>).

### 3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

The proposal took into due consideration the results of a comprehensive consultation process during the design and development of the EES. This process included discussions with IT experts, policy experts, operational and legal experts from Member States and eu-LISA within the context of the eu-LISA Advisory Group, the eu-LISA Programme Management Board, the eu-LISA Management Board and the Smart Borders Committee. There were also exchanges with stakeholders and discussions in the Council.

- **Impact assessment**

The proposal intends to introduce a limited derogation from the EES Regulation and the Schengen Borders Code to ensure a progressive start of the EES operations. Given the policy objective, there are no other policy options available. An impact assessment is therefore not appropriate or needed.

The impact assessments for the EES were carried out starting in 2008, and together with the consultation of interested parties and discussions in the Council and European Parliament, constituted the basis for a detailed impact assessment prepared by the Commission accompanying the proposal on the EES Regulation<sup>7</sup>. The impact assessment focused on crucial needs for border management to be addressed by the establishment of the EES. The core commitments that need to be put in place are: (i) improving the quality of border checks; (ii) ensuring the reliable identification of individuals; and (iii) strengthening internal security and the fight against terrorism and serious crime. These needs will only be achieved through the entry into operation of the EES.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The proposal takes full account of the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union. In particular, the proposed measures take into account Article 6 of the Charter that protects the fundamental right to liberty and security, Article 7 of the Charter that protects the fundamental right of everyone to the respect for his or her private and family life and Article 8 on the fundamental right to the protection of personal data. The proposed measures are also in line with Article 16 TFEU which guarantees everyone the right to the protection of their personal data.

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<sup>7</sup> SWD(2016) 114 final, SWD(2016) 115 final, SWD(2016) 116 final.

The proposal does not change the strict access rules to the EES, and the necessary safeguards set out in the EES Regulation, including the respect for personal data as a fundamental right and the right to information.

#### 4. BUDGETARY IMPLICATIONS

This proposal has no implications for the EU budget.

#### 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The programme for monitoring the outputs, results and impact of the proposed Regulation follows the one set out in Article 72 of the EES Regulation.

In addition, a consistent mechanism based on roll-out plans and reporting obligations allows for decision-making and overall monitoring before and during the progressive start of operations. The roll-out plans developed at central and national level are the result of close cooperation between Member States, eu-LISA and the Commission.

- **Detailed explanation of the specific provisions of the proposal**

The proposal is composed of the blocks described below.

- **Phased deployment (Articles 1, 2 and 4):** Member States will progressively start the EES operations, beginning with a minimum registration of 10% of estimated border crossings and reaching full registration of all individuals by the end of the period of the progressive start of operations. Refusals of entry will be registered at the border crossing points at which the EES operates. Member States will have the possibility to accelerate implementation at national level or start operating the EES fully. Europol will also start using the EES from the first day of the progressive start of operations.
- **Roll-out plans, monitoring and reporting (Article 3):** The details of a progressive entry into operation at central and national level will be set out in the roll-out plans of eu-LISA and Member States, upon consultation with the Commission. Member States will provide monthly progress reports to the Commission and eu-LISA. In case a Member State decides to start operating the EES fully, the roll-out plan would only explain that choice.
- **Temporary rules derogating from the EES Regulation and the Schengen Borders Code (Article 5):** Mandatory stamping of travel documents for all individuals falling in the scope of the EES will remain in place until the end of the period of the progressive start of operations. Where the EES is deployed, Member States will record travellers' data from their travel documents. Member States may record biometric data progressively. The authorities accessing the data registered in the EES during the period of the progressive start of the EES operations will consider stamps as prevailing over the data registered in the EES. Interoperability between the EES and the VIS will be used at border crossing points at which the EES is operated. The possible consequences of the information on the maximum remaining duration of authorised stay provided by the automated calculator will be disregarded. Identity verification and previous registration of third-country nationals will only take place at the border crossing points at which the EES is operated with biometric functionalities. The website, information campaign and the template to be given to



travellers will be adapted to reflect the progressive start of operations. To ensure consistency across EU legal instruments and a clear application of the rules, certain provisions of the EES Regulation and of the Schengen Borders Code will be suspended during the progressive start of operations of the EES.

- **Access to the EES data (Article 6):** Relevant authorities should consider that the data registered in the EES during the progressive start of operations of the EES may be incomplete. Data registered in the EES during the period of the progressive start of operations will not be used by the European Border and Coast Guard Agency for risk analysis and vulnerability assessments. The use of several EES functionalities requiring the uniform application of the EES in all Member States will be suspended during the progressive start of operations. Carriers may only start using the web service 90 days after the start of the period of the progressive start of operations.
- **Suspension of the EES operations (Article 7):** In exceptional cases of failure of the EES Central System, national systems or communication infrastructure, or excessive waiting times at borders, Member States can decide not to record any data (full suspension) or not to record biometric data (partial suspension). Partial suspension will be possible after the end of the progressive start of operations for a limited period in exceptional circumstances leading to traffic of such intensity that the waiting times at borders become excessive.
- **Entry into force and application (Article 8):** The proposal sets out three phases of applicability: (i) the preparatory work related to the roll-out plans as referred to in Article 3 would be triggered by the date of the entry into force of the proposed Regulation; (ii) the period of the progressive start of operations will start from the date decided by the Commission in accordance with Article 66(1) of the EES Regulation after having received all notifications from Member States as per Article 66(1)(c) of the EES Regulation; and (iii) an extended period of applicability will apply for some of the derogatory rules on the application of transitional period and transitional measures, access to and use of incomplete files and on carriers' obligation to verify stamps affixed in the travel documents referred to in Article 6 and the suspension mechanism referred to in Article 7. The notifications from Member States as per Article 66(1)(c) of the EES Regulation should be seen in the light of the progressive start of operations. Through these notifications, Member States confirm their ability to use the EES. However, this does not entail that all border crossing points need to be fully ready and equipped from the start of the progressive approach.

Proposal for a

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure<sup>1</sup>,

Whereas:

- (1) Article 66(1) of Regulation (EU) 2017/2226 of the European Parliament and of the Council<sup>2</sup>, establishing the Entry/Exit System ('EES'), provides that the Commission is to decide the date from which the EES is to start operations, provided that certain conditions are met.
- (2) However, the Commission has not received all notifications pursuant to Article 66(1), point (c), of Regulation (EU) 2017/2226, which is one of the conditions for deciding on the start of operations of the EES.
- (3) Regulation (EU) 2017/2226 only allows for a full start of operations, requiring all Member States to start using the EES fully for all third-country nationals subject to registration in the EES and to use the EES simultaneously at all their border crossing points.
- (4) To provide Member States with the necessary flexibility to start using the EES according to their level of readiness and 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, such a progressive start should have a duration of 180 calendar days.

<sup>1</sup> [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].

<sup>2</sup> 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>).

- (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 Council<sup>3</sup> ('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 reliable and accurate.
- (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. 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.
- (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. 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.
- (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) the date from which the EES will operate at each border crossing point; (ii) the percentage of the estimated number of border crossings to be registered in the EES out of the total number of third-country nationals subject to registration in the EES; and (iii) where applicable, the biometric functionalities 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 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.

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

- (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.
- (10) Considering that the data registered in the EES during the progressive start of operations of the EES might be incomplete, national authorities should not take into account the results provided by the automated calculator on the maximum remaining duration of the authorised stay of third-country nationals registered in the EES. Similarly, when carrying out their tasks, national authorities should not take into account the automated mechanism to identify or flag the lack of exit records following the date of expiry of an authorised stay or the records for which the maximum duration of authorised stay was exceeded, generating lists of persons identified as overstayers.
- (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<sup>th</sup> 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.
- (12) To accommodate the need to progressively deploy the EES with biometric functionalities at some border crossing points, the biometric verification of third-country nationals subject to registration in the EES should only be carried out at the border crossing points at which the EES is operated with biometric functionalities.
- (13) To ensure coherence of the operations of the interoperability between the Visa Information System (VIS) established by Regulation (EC) No 767/2008 of the European Parliament and of the Council<sup>4</sup> 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.
- (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

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<sup>4</sup> 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>).

should be informed in the template that it will not be possible for them to verify the remaining duration of the authorised stay by automated means.

- (15) To reflect the progressive start of operations of the EES, the Commission should introduce relevant updates on the EES website.
- (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 to carry out the information campaign accompanying the progressive start of operations.
- (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.
- (18) This Regulation does not affect the obligations of air carriers, sea carriers and international carriers transporting groups overland by coach as set out in Article 26(1) of the Convention implementing the Schengen Agreement<sup>5</sup> and Council Directive 2001/51/EC.<sup>6</sup> In this respect, carriers should verify the stamps affixed in travel documents. To ensure effective communication with carriers about the distinct application of the EES at the border crossing points, ultimately benefiting travellers, it is crucial that Member States are transparent about the deployment of the EES at their border crossing points.
- (19) Article 22 of Regulation (EU) 2017/2226 and Article 12a of Regulation (EU) 2016/399 provide for a transitional period and transitional measures referring to the start of operations of the EES. 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 Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226.
- (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.
- (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

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<sup>5</sup> 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>).

<sup>6</sup> 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>).

incomplete data to the extent permitted by the limited availability of the sets of data registered in the EES during the progressive start of operations.

- (22) The European Border and Coast Guard Agency should refrain from using data registered in the EES during the progressive start of operations for carrying out risk analyses and vulnerability assessments due to the incompleteness of the data that could lead to misleading risk and vulnerability assessments.
- (23) To ensure effective management of the external borders during the progressive start of operations of the EES, 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.
- (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 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.
- (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.
- (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.

- (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 with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (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.
- (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.
- (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 development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC.
- (31) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC.
- (32) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* 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.
- (33) As regards Cyprus, the provisions of this Regulation relating to the VIS constitute provisions building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession. The operation of the EES requires the granting of passive access to the VIS. As the EES is only to be operated



by those Member States that fulfil the conditions related to VIS at the start of the operation of the EES, Cyprus will not operate the EES from the start of operations. Cyprus is to be connected to the EES as soon as the conditions of the procedure referred to in Regulation (EU) 2017/2226 are met.

- (34) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered its opinion on [xx].
- (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, the right to non-discrimination, the rights of the child, the rights of the elderly, the integration of persons with disabilities and the right to an effective remedy and to a fair trial.
- (36) This Regulation is without prejudice to the obligations deriving from the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967.

HAVE ADOPTED THIS REGULATION:

#### *Article 1* *Subject matter*

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* *Definitions*

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

- (a) 'progressive start of operations of the EES' means the period of 180 calendar days starting from the date decided by the Commission in accordance with Article 66(1) of Regulation (EU) 2017/2226;
- (b) 'national authorities' means the authorities referred to in Article 9 of Regulation (EU) 2017/2226;
- (c) 'estimated number of border crossings' means a Member State's estimate of the number of border crossings of third-country nationals 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.



### *Article 3*

#### *Roll-out plans*

1. By [the 30<sup>th</sup> 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.
2. By [the 60<sup>th</sup> 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.
3. For each of the phases set out in Article 4, the national roll-out plans shall include the information on the thresholds and requirements set out in that Article.
4. From the 30<sup>th</sup> 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 national roll-out plans, including corrective measures where necessary to comply with the obligations set out in Article 4.
5. At the request of the Commission, eu-LISA shall provide the Commission with the statistics necessary for the monitoring of the national roll-out plans, in accordance with Article 63(6) of Regulation (EU) 2017/2226.

### *Article 4*

#### *Progressive start of operations*

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

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.
3. No later than the 90<sup>th</sup> 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 (EU) 2017/2226 that are registered in the EES shall contain biometric data.
4. No later than the 150<sup>th</sup> 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.

5. No later than the 170<sup>th</sup> 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.
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.
7. From the first day of the progressive start of operations of the EES, Europol shall use the EES as provided for in Regulation (EU) 2017/2226.

#### Article 5

##### *Other derogations from Regulation (EU) 2017/2226 and Regulation (EU) 2016/399*

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

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

3. For entering, amending, erasing and consulting the data in the EES, national authorities that are competent for the purposes laid down in Articles 23 to 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.
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.

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.

This presumption may be rebutted where the third-country nationals provide, by any means, credible evidence that they have respected the conditions relating to the duration of a short stay.

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, to the extent allowed by this Regulation:

- (a) create an individual file for that third-country national in the EES, if necessary;

- (b) update the latest entry/exit record by entering the missing data;
  - (c) erase an existing file where Article 35 of Regulation (EU) 2017/2226 provides for such erasure.
- 5. Border authorities shall make use of the interoperability between the EES and the VIS referred to in Article 8(2) of Regulation (EU) 2017/2226 only at the border crossing points at which the EES is operated. Border authorities shall continue accessing the VIS directly:
  - (a) at the border crossing points at which the EES is not operated;
  - (b) where the EES is suspended in accordance with Article 7 of this Regulation.
- 6. National authorities and Europol shall disregard the following:
  - (a) the results of the automated calculator that provides information on the maximum duration of the authorised stay referred to in Article 11 of Regulation (EU) 2017/2226;
  - (b) the automatically generated list of overstayers and its consequences in particular as referred to in Article 6(1), points (c) and (h), Article 12(3), Article 16(4), Article 34(3), Article 50(1), points (i) and (k), Article 63(1), point (e) of that Regulation.
- 7. Processing operations by Member States that comply with 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.
- 8. Verification of the identity and previous registration of third-country nationals pursuant to Article 23 of Regulation (EU) 2017/2226 shall be carried out on the third-country nationals referred to in Article 2(1) and (2) of that Regulation at the border crossing points at which the EES is operated with biometric functionalities, including through self-service systems, where available.
- 9. In addition to the specific information referred to in Article 50(5) of Regulation (EU) 2017/2226 that is to be added by the Member States in the template to provide information to third-country nationals about the processing of their personal data in the EES, Member States shall accompany the template to be handed over to third-country nationals at the time the individual file of the person concerned is being created with the following information:
 

‘The Entry/Exit System is being progressively rolled out. During this roll-out period [from ...], your personal data, including your biometric data, might not be collected for the purposes of the Entry/Exit System at all Member States’ external borders. If we need to mandatorily collect this information and you choose not to provide it, you will be refused entry. During this period of the progressive roll-out your data will not be automatically added to a list of overstayers. In addition, you will not be able to check how much longer you are authorised to stay using the website or equipment available at border crossing points.

Please note that when the progressive roll-out of the EES is completed, your personal data will be processed according to the information provided in the document accompanying this form.’
- 10. The information on the EES website referred to in Article 50(3) of Regulation (EU) 2017/2226 shall be adapted by the Commission to reflect the progressive start of operations.

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 support Member States in preparing the adapted materials of the information campaign.
12. The application of Article 12(1) and (2), Article 13(1) and (2), Article 20 and Article 21 of Regulation (EU) 2017/2226 shall be suspended.
13. By way of derogation from Article 22 of Regulation (EU) 2017/2226 and Article 12a of Regulation (EU) 2016/399, the transitional period and the transitional measures set out in those Articles shall apply from the first day after the progressive start of operations of the EES has ended.
14. At the border crossing points at which the EES is not operated, border checks shall be carried out in accordance with Regulation (EU) 2016/399 as applicable on the day before the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) Regulation (EU) 2017/2226.  
 At the border crossing points at which the EES is operated, border checks shall be carried out in accordance with Regulation (EU) 2017/2226 and Regulation (EU) 2016/399.  
 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.  
 For the purposes of this Regulation, Article 9(3) and Article 12 of Regulation (EU) 2016/399 shall be suspended.

#### *Article 6* *Access to the EES data*

1. When accessing the entry and exit records registered in the EES during the progressive start of operations of the EES in the performance of their tasks:
  - (a) national authorities and Europol shall take into account that, due to the variable operations of the EES in each Member State during the progressive start of operations of the EES, the data could be incomplete;
  - (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;
  - (c) the ETIAS Central Unit shall take into account that the entry and exit records registered in the EES during the progressive start of operations of the EES could include incomplete sets of data for the purpose of verification in accordance with Article 25a(2) of Regulation (EU) 2017/2226.
2. Competent authorities, the Commission and relevant Union agencies shall take into account that the data registered in the EES during the progressive start of operations of the EES may be incomplete when accessing data for reporting and statistics as referred in Article 63 of Regulation EU 2017/2226.

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

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.

4. When fulfilling the obligations referred in Articles 35 and 52 of Regulation (EU) 2017/2226 in relation to the completion of personal data recorded in the EES, Member States shall complete the relevant data only to the extent possible taking into account the limited availability of the sets of data collected during the progressive start of operations of the EES. Where applicable, the administrative decision referred to in Article 52(4) of Regulation (EU) 2017/2226 shall refer to the conditions set out in Article 4 of this Regulation that allow for the registration of incomplete files.
5. By way of derogation from Article 63(1), second subparagraph, of Regulation (EU) 2017/2226, the duly authorised staff of the European Border and Coast Guard Agency shall not access the data registered in the EES during the progressive start of operations of the EES for the purpose of carrying out risk analyses and vulnerability assessments.

#### *Article 7* *Suspension of the EES*

1. During the progressive start of operations of the EES, Member States may fully or partially suspend operating the EES at certain border crossing points in exceptional circumstances 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.

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

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

In both cases, Member States shall promptly and no later than 6 hours after the start of the suspension notify to the Commission and eu-LISA the reason for the partial or full suspension and its expected 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.

2. For a period of 60 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 hours after the start of suspension notify the reason for the suspension and its expected duration to the Commission and eu-LISA.

3. If less than 80% of the individual files registered in the EES during the progressive start of operations of the EES contain biometric data, the period set out in paragraph 2 of this Article shall be automatically extended by 60 calendar days.
4. At the latest by the 10<sup>th</sup> 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 30<sup>th</sup> calendar day after the end of the progressive start of operations of the EES, the Commission shall inform the Member States of the outcome of its verification.

## *Article 8*

### *Entry into force and application*

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

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

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

2. This Regulation shall cease to apply 180 calendar days from the date from which the EES is to start operations as decided by the Commission in accordance with Article 66(1) Regulation (EU) 2017/2226. However:
  - (a) Article 5(13) shall cease to apply 5 years and 180 calendar days after the date 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;
  - (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;
  - (d) Article 7(2) and (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;
  - (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.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*