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**COMMISSION STAFF WORKING DOCUMENT**

**DETAILED EXPLANATION OF THE PROPOSAL BY CHAPTERS AND ARTICLES**

*Accompanying the document*

**Proposal for a**

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

**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 of the European Union and determining the conditions for access to the EES for law enforcement purposes and**

**amending Regulation (EC) No 767/2008,**

**and amending Regulation (EU) No 1077/2011**

{COM(2016) 194 final}

- **Detailed explanation of the proposal by Chapters and Articles**

Chapter One lays down the subject matter of the Regulation, the scope, the definitions relevant for the purpose of the Regulation, the set-up and the purpose of the EES, the technical architecture of the EES, the interoperability with the VIS, the access to the EES for entering, amending, deleting and consulting data, the general principles, the automated calculator and obligation to inform third country nationals on the remaining authorised stay, the information mechanism to identify records for which the maximum authorised stay has been exceeded and the web service.

Chapter Two details the procedures for entering the data in the EES, the personal data for visa holders, visa exempt and third country nationals who have been refused entry, the data to be added where an authorisation to stay is revoked, annulled or extended and in case of rebuttal of the presumption that the person does not fulfil the conditions of duration of stay, the fall-back procedures in case of technical impossibility to enter data or failure of the EES, the provisions concerning the transitional period and the use of data for verification at the external borders.

Chapter Three is dedicated to the entry and use of the EES data by other authorities for examining and deciding on visa applications, for examining applications for access to national facilitation programmes, for verification within the territory and for identification.

Chapter Four lays down the procedure and conditions for access to data stored in the EES for law enforcement purposes.

Chapter Five lays down the rules for the retention, amendment and advance data deletion of the data stored in the EES.

Chapter Six specifies the implementing measures to be adopted by the Commission prior to development and the rules concerning the development and operational management by eu-LISA. It also lays down the responsibilities of Member States and the responsibilities for the use of the data and data security, including rules on the keeping of records and for keeping data in national systems, for communication of data to third countries, international organisations and private parties, liability, self-monitoring and penalties.

Chapter Seven concerns rights and supervision on data protection. Whereas Directive 95/46/EC and Regulation (EC) No 45/2001 fully apply for this Regulation, the provisions of this chapter clarify certain points related to right of information, the information campaign accompanying the start of operations of the EES, the safeguard of the rights of data subjects to access, correction and deletion and the remedies, the roles of the national supervisory authorities and the European Data Protection Supervisor including the cooperation between national supervisory authorities and the European Data Protection Supervisor and the protection of personal data for law enforcement purposes including rules on logging and documentation.

Chapter Eight contains the amendments to other Union instruments, more specifically the amendments to the Convention implementing the Schengen Agreement, to Regulation (EC) No 767/2008 concerning the Visa Information System and the exchange of data between Member States (VIS Regulation) and to Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

Chapter Nine covers the final provisions, which includes the use of data for reporting and statistics, the costs of the EES, the start of operations, the set-up of a Committee to assist the Commission when adopting implementing measures, the set-up of an Advisory group, the

necessary trainings, the monitoring and evaluation of the EES, the production of statistics, and the entry into force and the applicability of this Regulation.

## **Chapter I: General provisions**

*Article 1* establishes the subject matter of the Regulation, which includes (1) the establishment of an 'Entry/Exit System' (EES) for addressing border check delays and improving quality of border checks for third country nationals and ensuring systematic and reliable identification of 'overstayers' and (2) the conditions under which Member States' designated law enforcement authorities and the European Police Office (Europol) may obtain access for consultation of the EES for the purposes of the prevention, detection and investigation of terrorist offences or of other serious criminal offences.

*Article 2* establishes the scope of the EES and lists the categories of third country nationals to whom the EES does not apply.

*Article 3* contains the relevant definitions for the purpose of the EES Regulation.

*Article 4* contains the set-up of the EES and entrusts eu-LISA with the development and the management of the EES, including the functionalities for processing biometric data.

*Article 5* defines the purpose of the EES (i.e. improving the management of the external borders and the fight against irregular immigration and contributing to the prevention, detection and investigation of terrorist offences or of other serious criminal offences.) and lists the specific objectives pursued by the EES.

*Article 6* sets out the technical architecture of the EES.

*Article 7* paragraph 1 defines the interoperability between the EES and the VIS in order to ensure more efficiency and rapidity of border checks and establishes a Secure Communication Channel between the EES Central System and the VIS Central System. Paragraph 2 lists the cases under which interoperability enables the direct consultation of the VIS from the EES. Paragraph 3 lists the cases under which interoperability enables the direct consultation of the EES from the VIS.

*Article 8* lays down the rules for access to the EES for entering, amending, deleting and consulting data by Member States' duly authorised authorities. These authorities, including border, visa and immigration authorities, should be designated by the Member States. Each Member State should communicate to eu-LISA without delay a list of these authorities. Access to the EES for those authorities must be limited to the extent needed for the performance of the tasks in accordance with this purpose, and proportionate to the objectives pursued.

*Article 9* provides that the use of the EES by each competent authority having access to the EES must be necessary, appropriate and proportionate to the performance of the tasks of the competent authorities. Competent authorities should ensure that the use of the EES does not lead to discrimination against third country nationals on any grounds and particular attention should be given to children, the elderly and persons with disability against third country nationals.

*Article 10* describes the automated calculator that should be integrated in the EES to inform the competent authorities of the maximum duration of stay authorised on border entry in each case and of whether the number of authorised entries of the single or double entry visas have been previously used as well as identify third country nationals upon exit who have overstayed. The calculator shall not apply to third country nationals who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card

referred to under Directive 2004/38/EC. Border authorities have the obligation to inform third country nationals of the maximum number of days of authorised stay, taking into account both the number of entries and the length of stay authorised by the visa {or the touring visa}. For the purpose of calculating the duration of authorised stay, stays in Member States which are not yet fully applying the Schengen *acquis* should not be taken into account.

*Article 11* defines the information mechanism by which alerts of overstaying are signalled in the system. The EES should also automatically generate a list with the data of identified overstayers.

*Article 12* defines the web service available for third country nationals and offering at any moment the possibility to verify whether they dispose or not of the remaining authorised length of stay to cover their intended stay in the territory of a Member State. The web service will allow third country nationals to provide the data required pursuant to Article 14(1) (b) in combination with the anticipated entry and exit dates and they will receive an answer indicating whether the third country national intended stay is authorised ("OK") or not ("NOT OK"). The web service will also enable carriers to verify whether third country nationals holding a single or double entry visa have used or not used the visa already. For this purpose they will also receive an OK/NOT OK answer from the web service.

## **Chapter II: Entry and use of data by border authorities**

*Article 13* lays down the procedures for entering data in the EES by the border authorities at the border crossing points both in case a previous individual file has already been created in the EES for the third country national and in case there is no previous registration.

*Article 14* paragraph 1 refers to the creation of the individual file and lists the personal data to be entered for visa holders, while paragraphs 2 and 3 list the data that should be entered respectively on entry and exit and linked to an already existing individual file. Paragraph 4 refers to the obligation for the system to identify by means of a mark or flag by the system of those visa holders that have not left the territory of the Member States following the date of expiry of the authorised length of stay. Paragraph 5 provides the possibility to retrieve the relevant personal data directly from the VIS.

*Article 15* paragraph 1 refers the creation of the individual file and lists the personal data to be entered for visa exempt third country nationals and the additional biometric data required for this category. Four fingerprints must be enrolled on first entry into the Entry/Exit System, if physically possible. Paragraphs 2, 3 and 4 list the exceptions to the enrolment of fingerprints requirement, for instance when physically impossible or in the case of children under the age of 12. In those cases the specific data field is marked as 'not applicable' in the EES individual file.

*Article 16* refers to the personal data for third country nationals who have been refused entry and lists the specific additional data to be entered in the EES in such cases: the date and time of refusal of entry, the border crossing point and the authority that refused the entry and the letter(s) corresponding to the reason(s) for refusing the entry.

*Article 17* paragraph 1 refers to the data to be added to the entry/exit record where an authorisation to stay is revoked, annulled or extended. As regards visa holders, paragraph 2 refers to the obligation for the visa authorities who have taken the decision to retrieve and export the necessary data from the VIS directly into the EES. Paragraphs 3 and 4 foresee that the entry/exit record shall indicate the grounds on which the person is being expelled, any other decision taken by the competent authorities of the Member State resulting in the removal or departure of the third country national who does not fulfil or no longer fulfils the conditions for the entry to or stay in the territory of the Member States and the grounds for

extending the duration of authorised stay. Paragraph 5 provides that when a person has departed or been removed from the territories of the Member States pursuant to a decision, the competent authority shall enter the data in the entry/exit record of that specific entry.

*Article 18* paragraph 1 refers to the presumption that, where a third country national present in the territory of a Member State is not registered in the EES or the entry/exit record does not contain an exit date following the date of expiry of the authorised length of stay, the competent authorities may presume that the third country national does not fulfil or no longer fulfils the conditions relating to duration of stay in the territory of the Member States. Paragraph 2 refers to the creation of an individual file for a person in the EES or the necessary update of the file in case of rebuttal of such presumption.

*Article 19* lists the fall-back procedures in case of technical impossibility to enter data or in case of failure of the EES.

*Article 20* paragraph 1 refers to the period of six months after the EES has started operations during which, in order to verify at entry that the person has not exceeded the number of entries authorised by the single or double entry visa and to verify at entry and at exit that persons entering for a short stay have not exceeded the length of the maximum authorised stay, the competent border authorities shall take into account the stays in the territories 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. Paragraph 2 specifies that where a person has entered the territory of the Member States and has not yet exited it before the entry into operations of the EES, the date of that entry as stamped in the passport shall be entered in the entry/exit record when the person exits. This rule is not limited to the six months after the EES has started operations. In case of discrepancy between this entry stamp and the data recorded in the EES, the concerned stamp shall prevail.

*Article 21* lays down the rules on the use of the data stored in the EES, and in case of visa exempt travellers, where relevant, in the VIS, by border authorities for verification and performance of border control purposes at the external borders. In this context, first, a search with specific alphanumeric data should be launched against the EES. In addition, for third country nationals who are subject to a visa requirement to cross the external borders, the border authorities may launch a search in the VIS directly from the EES using the same alphanumeric data for the purposes of carrying out the consultation of the VIS for verification at external borders. If the search in EES with these data indicates that data on the person are recorded in the EES, the border authorities shall compare the live facial image of the third country national with the facial image referred to in Article 16(1)f). Where the technology is not available for the use of live facial image, the competent authorities should carry out a verification of fingerprints of visa exempt nationals against the EES and of visa subject nationals against the VIS. Where the search with these data indicates that data on the third country national are not recorded in the EES, where a verification of the third country national fails or where there are doubts as to the identity of the third country national, the border authorities shall have access to data for identification purposes. In addition, for third-country nationals who are subject to a visa requirement to cross the external borders, if the search in the VIS indicates that the person is recorded in the VIS, a verification of fingerprints against the VIS shall be carried out. 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 identification, the VIS shall be consulted for the purpose of checking whether the person has been previously registered in the VIS.

### **Chapter III: Entry of data and use of the EES by other authorities**

*Article 22* Paragraph 1 ensures that competent visa authorities consult the EES prior to any decision on visa applications and on decisions to annul, revoke or extend the period of validity of an issued visa. Paragraph 2 specifies that, for this purpose, the visa authority shall be given access to search the EES directly from the VIS with specific data. Paragraph 3 lays down the rules on the consultation of existing files.

*Article 23* lays down the rules on the use of the data stored in the EES by the competent authorities for the purposes of examining applications for access to national facilitation programmes and the adoption of decisions relating to those applications.

*Article 24* lays down the rules on the access and use of the data stored in the EES, and in case of visa exempt travellers, where relevant, in the VIS, by border authorities for verification purposes within the territory of the Member State. First, a search of the EES is launched using specific alphanumeric data. If the search with these data indicates that data on the person are recorded in the EES, the competent authorities shall compare the live facial image of the third country national against the facial image registered in the EES. Where the technology is not available for the use of live facial image, the competent authorities should carry out a verification of fingerprints of visa exempt nationals against the EES and of visa subject nationals against the VIS. If the search for the data indicates that data on the third country national is recorded in the EES, the competent authority shall be given access to consult the data of the individual file of that person and the entry/exit record(s). Where the data on the third country national are not recorded in the EES, where a verification of the third country national fails or where there are doubts as to the identity of the third country national, the border authorities shall have access to data for identification.

*Article 25* refers to the access to the EES for the purpose of identification of any third country national who may have been registered previously in the EES or who may not or may no longer fulfil the conditions for entry to, stay or residence on the territory of the Member States. In this context, the authorities competent for carrying out checks at external border crossing points or within the territory are granted access to search with the facial image and the fingerprints of that person. Where the search with the biometric data indicates that the data on the person are not recorded in the EES access to data for identification must be carried against the VIS. If the search shows that data on the person is recorded in the EES, the competent authority will be granted access to consult the data of the individual file and the linked entry/exit records.

### **CHAPTER IV: Procedure and conditions for access to the EES for law enforcement purpose**

*Article 26* lays down the rules for the designation by Member States of their law enforcement authorities which are entitled to consult the data stored in the EES in order to prevent, detect and investigate terrorist offences or other serious criminal offences.

*Article 27* provides that Europol should designate an authority which is authorised to request access to data contained in the EES through a designated central access point. The designated authority shall be an operating unit of Europol. The central access point shall verify that the conditions for access to the EES are fulfilled and shall act independently when performing its tasks as regards the outcome of the verification.

*Article 28* paragraph 1 lays down the procedure for access to data stored in the EES for law enforcement purposes. Paragraph 2 refers to the simplified procedure to be followed only in exceptional cases where there is an urgent need to prevent an imminent danger associated to a

terrorist or other serious criminal offence. Paragraph 3 refers to the procedure to be followed in case an ex-post verification determines that the access to the EES data was not justified.

*Article 29* paragraph 1 lays down the cumulative conditions for access to the EES for consultation by the designated authorities. Paragraph 2 lays down the conditions to be met in addition to those listed under paragraph 1 for access to the EES as a criminal identification tool for the purpose of identification of an unknown suspect. Paragraph 3 specifies that for access to the EES as a criminal intelligence tool to consult the travel history or the periods of stay in the Schengen area of a third country national, in addition to the conditions of paragraph 1, there should be a duly justified need to consult the entry exit records of the person concerned. Paragraph 4 indicates that the consultation of the EES for identification is limited to searching with the following EES data: fingerprints of visa exempt nationals and facial image, whereas paragraph 5 lists the data to be used for the search of the EES data in case of consultation of the EES for the travel history of a person.

*Article 30* lays down the specific procedure and conditions for access to the EES for consultation by Europol. Paragraph 1 lists the cumulative conditions for access to EES data by Europol: the consultation must be necessary in order to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling under Europol's mandate, the consultation must be necessary in a specific case and there must be reasonable grounds to consider that the consultation will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question. Processing of information obtained by Europol from consultation with EES data shall be subject to the authorisation of the Member State of origin.

#### **CHAPTER V: Retention and amendment of the data**

*Article 31* paragraph 1 sets the retention period of entry/exit records and refusal of entry records at 5 years following the date of the exit record or of the refusal of the entry record in order to take into account both border crossing facilitation aspects for the traveller and operational aspects for the border guards. This is in line with the issuance of a multiple-entry visa for travellers (maximum period five years) whose data is kept in the VIS for five years. Paragraph 2 sets a specific rule for the data retention period for the individual file and the linked entry/exit or refusal of entry records at five years and one day from the last exit record for the case where there is no entry record within five years from that last exit record or refusal of entry record. Paragraph 3 provides that data shall be kept for five years from the date of expiry of the authorised period of stay in the case of overstay and that the EES shall automatically inform Member States three months in advance of the scheduled deletion. Paragraph 4 specifies that the entry/exit record(s) generated by third country nationals in their condition of family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC, shall be stored in the EES for a maximum of 181 days after the last exit record. Paragraph 5 lays down the obligation that the Central System shall automatically erase such data upon expiration of the retention period.

*Article 32* paragraph 1 enunciates the right of the competent authorities of the Member States to amend the data in the EES. Paragraphs 2 and 3 list the conditions under which the data stored in the EES should be amended where the Member State responsible or a Member State other than the Member State responsible has evidence to suggest that data recorded in the EES are factually inaccurate or that such data were processed in the EES contrary to the EES Regulation. Paragraph 4 concerns the specific case of amendment of visa related data. Paragraph 5 introduces the obligation of these authorities to delete the information on

overstayers referred to in Article 13 in case the person concerned proves that he or she was forced to exceed the duration of stay due to an unforeseeable and serious event, that he or she has acquired a legal right to stay or in case of errors.. Paragraph 6 stipulates that all data should be deleted from the EES and from the list of overstayers in the event that this Regulation should no longer be applicable to the person because of changes in his/her status. Paragraph 7 provides the obligation for the Central System to inform immediately the Member States of the erasure of data from the EES and the list of overstayers.

## **CHAPTER VI: Development, Operation and Responsibilities**

*Article 33* establishes the measures that the Commission shall adopt before the development and technical implementation of the Central System, the National Uniform Interfaces and the Communication Infrastructure. Those implementing measures shall be adopted in comitology in accordance with the examination procedure. For the adoption of the measures set down for the establishment and the high level design of the interoperability the VIS Committee shall be consulted.

*Article 34* paragraph 1 defines the tasks entrusted to eu-LISA as regards the development of the Central EES, the National Uniform Interfaces, the Communication Infrastructure, the Secure Communication Channel between the EES Central System and the VIS Central System and the web service for travellers and carriers Paragraph 2 establishes a Programme Management Board to adequately manage the design and development phase of the EES. Paragraph 3 defines the tasks entrusted to eu-LISA for the operational management of the above components and of the web service. Paragraph 4 provides for the application by eu-LISA of appropriate rules of professional secrecy.

*Article 35* defines the responsibilities of Member States. Paragraphs 1 to 3 define the obligation for each Member State to connect its existing national border infrastructure to the National Uniform Interface, to designate a national authority to provide the access for the competent authorities to the EES (including the designation of the competent national authorities and of the competent authority of Europol that should be granted access for the purposes of law enforcement) and to observe automated procedures for processing the data. Paragraph 4 emphasises the need for training of staff before they are authorised to process data stored in the EES about data security and data protection rules in particular and on relevant fundamental rights.

*Article 36* sets out in paragraph 1 that each Member State shall designate the authority which is to be considered as controller and shall ensure that the data recorded in the EES is processed lawfully. Paragraph 2 creates obligations for eu-LISA with regard to security and with regard to confidentiality. Paragraph 3 indicates that eu-LISA shall inform the European Parliament, the Council, the Commission and the European Data Protection Supervisor of the measures regarding security and confidentiality for the start of operations of the EES.

*Article 37* provides that alphanumeric data stored in the EES can be kept in a Member State's national files (or national entry exit system) in accordance with the purposes of the EES and the legal provisions applicable to this system in full respect of Union law and for no longer than they are kept in the EES and lists the specific conditions.

*Article 38* paragraph 1 provides that personal data stored in the EES cannot be communicated to third countries, international organisations or private parties. Paragraph 2 provides an exception to the above rule under which communication to third countries or to an international organisation could be possible in individual cases and only for identification for the purpose of return under specific conditions, including the legal provisions relevant to data security and data protection. Paragraph 3 provides that transfers of personal data to third



countries shall or international organisations should not prejudice the rights of applicants for and beneficiaries of international protection. Paragraph 4 forbids transfer to third countries or international organisations of personal data obtained from the Central System by a Member State or Europol for law enforcement purposes.

*Article 39* deals with data security, indicating the obligations of the Member States as well as the obligations of eu-LISA in this regard.

*Article 40* sets out the applicable rules on liability of Member States for damages.

*Article 41* creates the obligation for the Member States and eu-LISA to keep complete records of data processing operations within the EES (and for the operations listed under Article 7 also within the VIS in accordance with the relevant provision of the VIS Regulation), which may solely be used for the purposes of data protection monitoring of the admissibility of data processing and of ensuring data security.

*Article 42* obliges Member States' authorities entitled to access EES to carry out self-monitoring and to cooperate, where necessary, with the Supervisory Authority.

*Article 43* creates the obligation for each Member State to ensure the proper processing and use of data by applying the appropriate penalties, as an essential complement to the data protection and security arrangements. The penalties can have an administrative and/or criminal nature in accordance to the Member States' national law and must be effective, proportionate and dissuasive.

## **CHAPTER VII: Rights and supervision on data protection**

The EES should be applied in full compliance with the relevant EU legislation on protection of personal data (i.e. Directive 95/46/EC and Regulation (EC) 45/2001). The provisions in this chapter clarify certain points with respect to safeguarding the rights of the persons concerned and to the supervision of data protection.

*Article 44* covers the right of information of third country nationals whose data shall be stored in the EES pursuant to Article 3. Paragraph 1 contains in conformity with Article 10 of Directive 95/46/EC a list of items the person concerned has to be informed about in writing including the right of access, correction and deletion of data. Paragraph 2 specifies that the information shall be provided when the individual file is created. Paragraph 3 provides that a common leaflet and a website containing at least the information listed in paragraph 1 must be set up in a clear and simple way.

*Article 45* provides that the Commission, together with the national supervisory authorities and the European Data Protection Supervisor, should accompany the EES start of operations of the EES with an information campaign informing the public about the objectives, the data stored, the authorities having access to the data and the rights of the third country nationals.

*Article 46* paragraphs 1 and 2 provide the rights of access, correction and deletion of data relating to any person and stored in the EES which are inaccurate or recorded unlawfully. Paragraphs 3, 4 and 5 clarify that the related request may also be lodged with a Member State which is not the Member State which entered the data in the EES and establishes the rules applicable in that case including as regards visa related data which should be checked against the VIS and if necessary amended in the EES. Paragraph 6 specifies the obligation for Member States to inform the data subject on his right to bring an action or a complaint before the competent authorities or courts in case of a negative decision. Paragraph 7 provides that any request for access, correction or deletion of data stored in the EES must contain the necessary information to identify the person concerned, including fingerprints. Paragraph 8 stipulates that Member States must keep track of the data requests received.

*Article 47* lays down an obligation for the competent authorities to ensure the proper enforcement of the rights laid down in Article 46 and an obligation to the national supervisory authority to provide assistance upon request and advice to the persons wishing to exercise their right to correct or delete their personal data stored in the EES. It also provides that the relevant supervisory authorities shall cooperate to that effect.

*Article 48* clarifies, pursuant to Article 22 of Directive 95/46/EC, the right of any person to remedies before the courts of each Member State if the rights of access to or correction or deletion of data relating to him/her are refused. The assistance of the supervisory authorities shall remain available throughout the proceedings.

*Article 49* clarifies the competence of the national supervisory authorities to review the lawfulness of all the processing operations carried out by the Member States. It lays down rules on audit and obliges Member States to designate a controller which shall have central responsibility for the processing of data by this Member State. Furthermore, it specifies the obligation to Member States to supply any information requested by national supervisory authorities.

*Article 50* paragraph 1 sets that the European Data Protection Supervisor shall monitor the activities of eu-LISA related to the processing of personal data in the EES. Paragraph 2 specifies that the European Data Protection Supervisor's role includes ensuring that an audit of eu-LISA's personal data processing activities is carried out at least every four years and the report of such audit sent to the European Parliament, the Council, eu-LISA, the Commission and the national supervisory authorities. Paragraph 3 creates obligations for eu-LISA to supply information requested by the European Data Protection Supervisor, give him access to all documents and to its records and allow him access to all its premises at any time.

*Article 51* creates obligations for the Supervisory Authorities and the European Data Protection Supervisor to co-operate. They shall meet at least twice a year and send a joint report of activities to the European Parliament, the Council, the Commission and the Agency every two years.

*Article 52* clarifies that the provisions adopted under national law implementing Framework Decision 2008/977/JHA are also applicable to the processing of personal data for the purpose of the prevention, detection and investigation of terrorist offences or of other serious criminal offences. The monitoring of the lawfulness of the processing of the above mentioned personal data shall be carried out by the national supervisory authorities designated pursuant to Framework Decision 2008/977/JHA. Furthermore, the processing of personal data by Europol shall be in accordance with Decision 2009/371/JHA and shall be supervised by an independent external data protection supervisor. In order to allow the national data protection authorities and the European Data Protection Supervisor to monitor the compliance of data processing with EU data protection rules, the Central System, the designated authorities, the central access points and Europol shall keep records of the searches carried out for the purpose of prevention, detection and investigation of terrorist or of other serious criminal offences.

*Article 53* paragraph 1 lays down the obligation for Member States and Europol to ensure that data processing operations resulting from requests to access to EES data are logged or documented for the purposes of checking the admissibility of the request, monitoring the lawfulness of the data processing and data integrity and security, and self-monitoring. Paragraph 2 lists the information that the log or documentation must contain.

## **CHAPTER VIII: Amendments to other Union instruments**

*Article 54* lays down the amendments to the Convention implementing the Schengen Agreement.

In order to align the Convention to the EES, Article 20(2) is replaced and now provides the possibility that the contracting parties extend beyond 90 days an alien's stay in its territory in exceptional circumstances.

*Article 55* lays down the amendments to Regulation (EU) No 767/2008 concerning the Visa Information System (VIS).

### **Article 13 Data to be added for a visa annulled or revoked**

- The new paragraph 3 provides that the visa authority which has taken a decision to annul or revoke a visa shall immediately retrieve and export from the VIS into the EES the data listed under paragraph 1 of Article 17 of the EES Regulation in order to update the data of the person concerned registered in the EES and where necessary to signal them as overstayers.

### **Article 14 Data to be added for a visa extended**

- The new paragraph 3 provides that the visa authority which has taken a decision to extend a visa shall immediately retrieve and export from the VIS into the EES the data listed under paragraph 1 of Article 17 of the EES Regulation in order to update the data of the person concerned registered in the EES and prevent, where applicable, that such persons be signalled as overstayers.

### **Article 15 Use of VIS for examining applications**

- The existing text is adapted to the establishment of the EES and the interoperability between that system and the VIS. In paragraphs (2)(b) and (2)(c) the data to be used for launching a search in the VIS for the purpose of examining and deciding on visa applications is modified in order to match the data used in the EES.
- The new paragraph 4 introduces the possibility to search the EES directly from the VIS using fingerprints and/or several alphanumeric data including the number of the travel document for the purposes of carrying out the consultation of the EES for examining and deciding on visa applications.
- The new paragraph 5 lays down that, where the search with alphanumeric data indicates that data on the third country national are not recorded in the VIS or where there are doubts as to the identity of the third country national, the visa authorities shall have access to data stored in the EES for identification.

### **Article 17a Interoperability with the EES**

- New Article 17a establishes the interoperability between the VIS and the EES in order to ensure more efficiency and rapidity of border checks. It foresees the establishment of a Secure Communication Channel by eu-LISA between the two systems to enable the interoperability. Paragraph 2 lists the cases under which interoperability enables the visa authorities using the VIS to consult the EES from the VIS. Paragraph 3 lists the cases under which interoperability shall enable the border authorities using the EES to consult the VIS from the EES. Pursuant paragraph 4, the Commission shall adopt the measures for the establishment and the high level design of the interoperability. For this specific purpose, the VIS Committee will be involved in the preparation of the relevant measures. The Management Authority shall develop the required evolutions and/or adaptations of the Central Visa Information System, the National Interface in each Member State, and the

communication infrastructure as regards the Secure Communication Channel between the Central Visa Information System and the National Interfaces. The national infrastructures shall be adapted and/or developed by the Member States.

#### Article 18 Access to data for verification at external border crossing points

- The existing text is adapted to the establishment of the EES. Indeed, because of the interoperability between the EES and the VIS and the possibility to use self-service systems at external borders, it should be possible to consult at external borders the VIS using the travel document (and not only using the visa sticker). For the same reasons, the VIS should provide information to the border guards not only on the authenticity but also on the territorial and temporal validity and on the status of the visa (or the touring visa) via a hit/no hit answer. In addition, this article reflects the fact that the identity of visa holders will not be systematically verified against the VIS. In certain cases, the identity of visa holders will be verified against the EES, using their facial image.
- Paragraph 1 refers to the alphanumeric data to be used for launching a search in the VIS for the purpose of verification at external border crossing points. The data under paragraph (1)(a) match the data used in the EES for verification at external border crossing points and therefore enable the interoperability between the systems. In particular, the VIS may be searched using the travel document number and other data contained in the travel document.
- The new paragraph 2 provides that the competent border authority may launch a search in the VIS directly from the EES using alphanumeric data laid down in paragraph 1.
- The new paragraph 3 provides that if the search with the data listed in paragraph 1 indicates that the VIS stores data on one or more issued or extended visa(s)), which are under their validity period and are territorially valid for the border crossing, the competent border control authority shall be given access to consult the data related to the status information and the data taken from the application form, the photographs and the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended of the concerned application file as well as of linked application file(s).
- The new paragraph 4 provides that if the search with the data listed in paragraph 1 indicates that one or more visa(s) are recorded in the VIS but that the visa(s) recorded are not valid, the competent border authority shall be given access to consult the data related to the status information and the data taken from the application form, the photographs and the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended of the concerned application file as well as of linked application file(s).
- The new paragraph 5 provides that, in addition to a search in the VIS using alphanumeric data, the competent border authority shall verify the identity of a person against the VIS if two cumulative conditions are met (i.e. if the search indicates that data on the person are recorded in the VIS, and if the identity of the person cannot be verified against the EES). For this purpose, the border authorities shall verify the fingerprints of the visa holder against the fingerprints recorded in the VIS.
- The new paragraph 6 provides that for the purpose of verifying the fingerprints against the VIS, the competent authority may launch a search from the EES to the VIS. In particular, this may be the case when a visa holder enters the territory of the Member States for the first time: the data of the visa holder will be recorded already in the VIS but not yet in the EES.
- The new paragraph 7 provides that where the verification of the visa holder or of the visa fails or where there are doubts as to the identity of the visa holder, the authenticity of the

visa and/or the travel document, the competent authorities will have access to perform an identification against the VIS.

#### Article 18a Retrieve and import of VIS data for creating or updating the individual file of a visa holder into the EES

- Paragraph 1 explains that for the purpose of creating or updating the individual file of a visa holder in the EES the competent border control authority shall be given access to retrieve and import the required data stored in the VIS.

#### Article 19a Use of the VIS before creating in the EES the individual files of third country nationals exempt from the visa obligation

- New Article 19a explains that for the purpose of checking whether a person has been previously registered in the VIS, the authorities in charge of carrying out checks at external border crossing points shall consult the VIS before creating the individual file in the EES of a third country national exempted from the visa obligation. This provision only applies when a third country national exempted from the visa obligation is not found in the EES further to an identification carried out against that system. In this case, the competent border authority shall have access to search the VIS using a set of alphanumeric data. The competent border control authority may launch such search from the EES. If the search with the alphanumeric data indicates that data on the person are recorded in the VIS, the competent border authority shall verify the fingerprints of the person against the fingerprints recorded in the VIS. The competent border control authority may launch such verification of fingerprints from the EES. If the verification fails or where there are doubts as to the identity of the person or the authenticity of the travel document, the border authorities shall have access to perform an identification against the VIS. The competent border authority may launch from the EES the identification against the VIS.

#### Article 20 Access to data for identification

- Paragraph 1 is modified, now access to data for identification of any person who may not, or may no longer, fulfil the conditions for the entry to, stay or residence on the territory of the Member States is extended to include any person who may have been registered previously in the VIS.

#### Article 26 Operational management

- New paragraph 3a provides that six months after the entry into force of the EES Regulation, the Management Authority shall become responsible for the tasks relating to the implementation of the budget, acquisition and renewal and contractual matters of the Communication Infrastructure between the central VIS and the national interfaces, in particular. Those tasks are currently entrusted to the Commission.

#### Article 34 Keeping of records

- Paragraph 1 is amended to extend the type of data used for interrogation in order to include the data foreseen in Articles 18(5), 19b(2) and 19b(4).
- New paragraph 1a provides that, for the operations carried out in the framework of the interoperability between the EES and the VIS, a record of each data processing operation carried out within the VIS and the EES shall be kept in accordance with Article 34 of the VIS Regulation and Article 41 of the EES Regulation.

*Article 56* lays down the amendments to Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA).

The eu-LISA Regulation is amended in light of the EES proposal.

Article 1(2) is amended in order to include eu-LISA's responsibility for the operational management of the EES.

A new Article 5a) Tasks relating to the EES is added. This article lays down the tasks entrusted to eu-LISA in relation to the EES.

Article 7(5) is amended to extend the prohibition of access by the network provider to EES operational data and Article 7(6) is amended to include a reference to contracts on the network of the EES.

Article 8(1) is amended to include the obligation of eu-LISA to monitor the developments in research for the operational management of EES.

Article 12(1) is amended to insert the obligation for eu-LISA to adopt a report on the development of the EES and a report on the technical functioning of the EES, to make comments on the European Data Protection Supervisor's reports on the audits pursuant to the EES Regulation (Regulation XX of XX) and to publish statistics on the EES and a list of competent authorities.

Article 15(4) is amended to introduce the possibility that Europol attend to meetings of the Management Board as observers when a question concerning the EES in relation to the application of the EES Regulation (Regulation XX of XX) is on the agenda.

Article 17(5) is amended in order to include the confidentiality requirements of Article 34(4) of the EES.

Article 19 is amended to include the EES Advisory Group and to foresee the possibility of an appointment by Europol of a representative for the EES Advisory Group.

#### **CHAPTER IX: Final provisions**

*Article 57* paragraph 1 lists the anonymised data that might be consulted for the purposes of reporting and statistics by the competent authorities of Member States, the Commission, eu-LISA and Frontex. Paragraph 2 specifies that eu-LISA is responsible for establishing and implementing a central repository enabling the authorised staff set out in paragraph 1 to use the data enumerated at the same paragraph to produce statistics. Paragraph 3 specifies that the procedures to monitor the development and functioning of the EES shall include the possibility to produce regular statistics for that purpose. Paragraphs 4, 5 and 6 lay down the specific obligations of eu-LISA for the use of data for reporting and statistics.

*Article 58* lays down the costs of the implementation of the EES and specifies who bears which costs (i.e. the general budget of the Union, Member States and Europol).

*Article 59* paragraphs 1, 2 and 3 specify that Member States shall notify the Commission of the authority which is to be considered as controller and of its designated authorities and of its central access points and shall notify eu-LISA of the competent authorities which have access to enter, amend, delete, consult or search data. Paragraph 4 specifies that Europol shall notify the Commission of its designated authority and its central access point. Paragraph 5 specifies that eu-LISA shall notify the Commission of the successful completion of a comprehensive test of the EES. Paragraph 6 provides that the Commission shall make the information notified available to the Member States and the public by a constantly updated public website.

*Article 60* provides that the Commission shall determine the date from which the EES will start operations subject to the notification of each Member State to the Commission that it has made the necessary technical and legal arrangements for the transmission of data to the central repository, that eu-LISA has made necessary technical arrangements and that the

Member States have completed the notifications to the Commission referred to in Article 59. The Member States and Europol shall start using the EES from the date determined by the Commission.

*Article 61* establishes a Committee to assist the Commission with its responsibilities under Article 33.

*Article 62* establishes an Advisory Group to assist the Commission with the expertise related to the system.

*Article 63* refers to the obligation for eu-LISA to perform tasks related to the technical use of the EES.

*Article 64* creates the obligation for eu-LISA to ensure that procedures are in place to monitor the development of the EES and its functioning against objectives. It lays down an obligation for eu-LISA to submit a report to the European Parliament and the Council on the state of play of development six months after the entry into force of the Regulation. It also lays down the obligation for eu-LISA to submit to the European Parliament, the Council and the Commission a report on the technical functioning of the EES two years after the start of the EES and every two years thereafter.. Furthermore, it creates the obligation for the Commission to produce an overall evaluation of the EES, the first two years after the EES is brought into operation and every four years thereafter. This overall evaluation shall include an examination of results achieved against objectives and the impact on fundamental rights, and assessing the continuing validity of the underlying rationale, the application of the Regulation, the security of the EES and any implications on future operations, and shall make any necessary recommendations. Paragraphs 6 and 7 oblige Member States, Europol and eu-LISA to provide the information necessary to produce the above mentioned monitoring and evaluation. Paragraph 8 provides that each Member State and Europol shall prepare annual reports on the effectiveness of access to EES data for law enforcement purposes. Member States' and Europol's annual reports shall be transmitted to the Commission by 30 June of the subsequent year.

*Article 65* concerns the entry into force and applicability. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.