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

REGULATION (EU) 2017/2226 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) In its Communication of 13 February 2008 entitled ‘Preparing the next steps in border management in the European Union’, the Commission outlined the need, as part of the Union’s integrated border management strategy, to establish an Entry/Exit System (EES) which registers electronically the time and place of entry and exit of third-country nationals admitted for a short stay to the territory of the Member States and which calculates the duration of their authorised stay.

(2) The European Council of 19 and 20 June 2008 underlined the importance of continuing to work on the development of the Union’s integrated border management strategy, including better use of modern technologies to improve the management of external borders.

(3) In its Communication of 10 June 2009 entitled ‘An area of freedom, security and justice serving the citizens’, the Commission advocated for the establishment of an electronic system for recording entry to and exit from the territory of the Member States at external borders to ensure a more effective management of access to that territory.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/2226 of the European Parliament and of the Council. (See end of Document for details)*

(4) The European Council of 23 and 24 of June 2011 called for work on 'smart borders' to be pushed forward rapidly. On 25 October 2011, the Commission published a Communication entitled 'Smart borders – options and the way ahead'.

(5) In its strategic guidelines adopted in June 2014, the European Council stressed that the Schengen area, allowing people to travel without internal border controls, and the increasing numbers of people travelling to the Union require efficient management of the Union's common external borders to ensure strong protection. It also stressed that the Union must mobilise all the tools at its disposal to support the Member States in their task and that, to this end, integrated border management of external borders should be modernised in a cost efficient way to ensure smart border management, inter alia, with an entry-exit system and supported by the new agency for large-scale IT systems (eu-LISA).

(6) In its Communication of 13 May 2015 entitled 'A European agenda on migration', the Commission noted that a new phase would come with the 'Smart Borders' initiative to increase the efficiency of border crossings, facilitating crossings for the large majority of 'bona fide' third country travellers, whilst at the same time strengthening the fight against irregular migration by creating a record of all cross-border movements by third-country nationals, fully respecting proportionality.

(7) With a view to further improving the management of the external borders and, in particular, in order to verify compliance with the provisions on the authorised period of stay on the territory of the Member States, an EES should be established, which registers electronically the time and place of entry and exit of third-country nationals admitted for a short stay to the territory of the Member States and which calculates the duration of their authorised stay. It should replace the obligation to stamp the passports of third-country nationals which is applicable to all Member States.

(8) It is necessary to specify the objectives of the EES, the categories of data to be entered into the EES, the purposes for which the data are to be used, the criteria for their entry, the authorities authorised to access the data, further rules on data processing and the protection of personal data, as well as the technical architecture of the EES, rules concerning its operation and use, and interoperability with other information systems. It is also necessary to define responsibilities for the EES.

(9) The EES should apply to third-country nationals admitted for a short stay to the territory of the Member States. It should also apply to third-country nationals whose entry for a short stay has been refused.

(10) The EES should be operated at the external borders of the Member States which apply the Schengen *acquis* in full. It is desirable that Member States not yet applying the Schengen *acquis* in full apply it fully by the start of operations of the EES. However, in the event that the lifting of controls at internal borders cannot be achieved by the start of operations of the EES, it is necessary to specify the conditions for the operation of the EES by those Member States which do not apply the Schengen *acquis* in full and lay down the provisions for the operation and use of the EES at internal borders where controls have not yet been lifted.

As regards the conditions for the operation of the EES, the EES should be operated at the external borders of the Member States which do not yet apply the Schengen *acquis* in full but for which the verification in accordance with the applicable Schengen evaluation procedure has already been successfully completed, to which passive access to the Visa Information System (VIS) established by Council Decision 2004/512/EC[(3)] has been granted for the purpose of operating the EES and for which the provisions of the Schengen *acquis* relating to the Schengen Information System (SIS), established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council[(4)], have been put into effect in accordance with the relevant Act of Accession. As regards the provisions on the operation and use of the EES by the Member States fulfilling such conditions, the EES should be operated at all internal borders of those Member States where the controls have not yet been lifted. However, specific provisions on the operation and use of the EES at such borders should apply, in order to minimise the impact of the border check procedure at such borders, while not affecting the level of security and the proper functioning of the EES and without prejudice to the other border control obligations under Regulation (EU) 2016/399 of the European Parliament and of the Council[(5)].

(11) The duration of the authorised stay of third-country nationals on the territory of the Member States for the purpose of this Regulation results from the applicable Schengen *acquis*.

(12) An automated calculator should be included in the EES. The automated calculator should take into account stays on the territory of the Member States which operate the EES for the calculation of the overall limit of 90 days in any 180-day period. Any extensions of authorised stay should be taken into account for the purpose of calculation of that overall limit on the subsequent entry of the third-country national to the territory of the Member States. Stays on the territory of Member States which do not yet operate the EES should be counted separately on the basis of stamps affixed in the travel documents of third-country nationals.

(13) The automated calculator should only take into account stays on the territory of Member States which do not yet apply the Schengen *acquis* in full but operate the EES for the purposes of verifying compliance with the overall limit of 90 days in any 180-day period and for the purposes of verifying the period of validity of a Schengen short-stay visa. The automated calculator should not calculate the duration of stay as authorised by a national short-stay visa issued by a Member State which does not yet apply the Schengen *acquis* in full but operates the EES. When calculating the duration of stay authorised by a Schengen short-stay visa, the automated calculator should not take into account stays on the territory of Member States which do not yet apply the Schengen *acquis* in full but operate the EES.

(14) Precise rules should be laid down as regards the responsibility for the development and operation of the EES and the responsibility of the Member States for their connection to the EES. The European agency for the operational management of large-scale information systems in the area of freedom, security and justice, established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council[(6)], should

be responsible for the development and operational management of a centralised EES in accordance with this Regulation. Regulation (EU) No 1077/2011 should therefore be amended accordingly.

(15) The objectives of the EES should be to improve the management of external borders, to prevent irregular immigration and to facilitate the management of migration flows. The EES should, in particular and when relevant, contribute to the identification of any person who does not fulfil or no longer fulfils the conditions of duration of the authorised stay on the territory of the Member States. Additionally, the EES should contribute to the prevention, detection and investigation of terrorist offences and of other serious criminal offences.

(16) The EES should consist of a Central System (EES Central System), which operates a computerised central database of biometric and alphanumeric data, a National Uniform Interface in each Member State, a Secure Communication Channel between the EES Central System and the central Visa Information System (VIS Central System) of the VIS, and a secure and encrypted Communication Infrastructure between the EES Central System and the National Uniform Interfaces. Each Member State should connect its national border infrastructures to the National Uniform Interface in a secure manner. In order to enable the generation of statistics and reporting, a data repository should be established at central level. In order to enable third–country nationals to verify at any moment the remaining authorised stay, a web service should be developed. The web service should also enable carriers to verify whether third-country nationals holding a Schengen short-stay visa issued for one or two entries have already used the number of entries authorised by their visa. Relevant stakeholders should be consulted in the development phase of that web service. In establishing the technical specifications for the access of carriers to the web service, the impact on passenger travel and carriers should be limited to the extent possible. For this purpose, appropriate integration with relevant systems should be considered.

(17) Interoperability should be established between the EES and the VIS by way of a direct communication channel between the VIS Central System and the EES Central System to enable the border authorities using the EES to consult the VIS in order to retrieve visa-related data to create or update entry/exit records or refusal of entry records, to enable the border authorities to verify the validity of the visa and the identity of the visa holder by directly searching the VIS with fingerprints at the borders at which the EES is operated and to enable the border authorities to verify the identity of visa-exempt third–country nationals against the VIS by using fingerprints. Interoperability should also enable the border authorities and visa authorities using the VIS to directly consult the EES from the VIS for the purposes of examining visa applications and of taking decisions relating to those applications, and of enabling visa authorities to update the visa-related data in the EES in the event that a visa is annulled, revoked or extended. Regulation (EC) No 767/2008 of the European Parliament and of the Council[7] should therefore be amended accordingly. The retrieval of visa-related data from the VIS, their importation into the EES and the updating of data from the VIS in the EES should be an automated process once the operation in question is launched by the authority

concerned. The purpose limitation principle should be respected when establishing interoperability between the EES and the VIS.

(18) This Regulation should specify which authorities of the Member States may be authorised to have access to the EES in order to enter, amend, erase or consult data for the specific purposes of the EES and to the extent necessary for the performance of their tasks.

(19) Any processing of EES data should be proportionate to the objectives pursued and necessary for the performance of the tasks of the competent authorities. When using the EES, the competent authorities should ensure that the human dignity and integrity of the person whose data are requested are respected and should not discriminate against persons on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

(20) The EES should record and process alphanumeric data and biometric data primarily for the purposes of improving the management of external borders, preventing irregular immigration and facilitating the management of migration flows. Furthermore, it should also be possible to access personal EES data in order to contribute to the prevention, detection and investigation of terrorist offences and of other serious criminal offences only under the conditions laid down in this Regulation. The use of biometrics, despite its impact on the privacy of travellers, is justified for two reasons. First, biometrics are a reliable method of identifying third-country nationals who are present on the territory of the Member States but not in possession of travel documents or any other means of identification, a common situation for irregular migrants. Second, biometrics allow for a more reliable matching of entry and exit data of bona fide travellers. The use of facial images in combination with fingerprint data makes it possible to reduce the total number of fingerprints required to be registered, while enabling the same result in terms of accuracy of the identification.

(21) Four fingerprints per visa-exempt third–country national should be registered in the EES, if physically possible, to allow for accurate verification and identification, thus ensuring that the third–country national is not already registered under another identity or with another travel document, and to guarantee that sufficient data are available in order to ensure that the objectives of the EES are achieved in every circumstance. The fingerprints of visa-holding third-country nationals should be checked against the VIS. The facial image of both visa-exempt and visa holding third-country nationals should be registered in the EES. Fingerprints or facial images should be used as a biometric identifier for verifying the identity of third–country nationals who have been previously registered in the EES, for as long as their individual files have not been deleted. In order to take into account the specificities of each border crossing point and the different kinds of borders, the national authorities should establish for each border crossing point whether the fingerprints or the facial image are to be used as the main biometric identifier for carrying out the required verification.

(22) In the fight against terrorist offences and other serious criminal offences, it is necessary that designated authorities have the most up-to-date information if they are to perform