Regulation (EU) 2017/2225 of the European Parliament and of the Council of 30 November 2017 amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System

REGULATION (EU) 2017/2225 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 November 2017

amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

(1) Regulation (EU) 2016/399 of the European Parliament and of the Council[(3)] lays down the conditions, criteria and detailed rules for the crossing of the external borders of the Member States.

(2) Regulation (EU) 2017/2226 of the European Parliament and of the Council[(4)] aims at creating a centralised system for the registration of entry and exit data and refusal of entry data concerning third-country nationals crossing the external borders of the Member States of the Union for a short stay.

(3) In order to carry out checks on third-country nationals pursuant to Regulation (EU) 2016/399, which include the verification of the identity of third-country nationals, their identification, or both, as well as the verification that a third-country national has not exceeded the maximum duration of authorised stay on the territory of the Member States, border guards should use all the information available, including data from the Entry/Exit System established by Regulation (EU) 2017/2226 (‘EES’), where required. The data stored in the EES should also be used to verify that third-country nationals holding a visa issued for one or two entries have respected the maximum number of authorised entries.

(4) In certain cases, biometric data need to be provided by third-country nationals for the purpose of border checks. The entry conditions for third-country nationals should therefore be amended by including an obligation to provide those biometric data. Where a third-country national refuses to provide biometric data for the creation of his or her

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/2225 of the European Parliament and of the Council. (See end of Document for details)*

individual file or for the carrying out of border checks, a refusal of entry decision should be adopted.

(5) To ensure the full effectiveness of the EES, entry and exit checks need to be carried out in a harmonised way at the borders at which the EES is operated.

(6) The establishment of the EES requires the adaptation of the procedures for checking persons when crossing the borders at which the EES is operated. In particular, the EES aims to abolish on entry and exit the stamping of the travel documents of third-country nationals admitted for a short stay by replacing it by the electronic recording of the entry and exit directly in the EES. Furthermore, the interoperability between the EES and the Visa Information System (VIS) established by Council Decision 2004/512/EC[(5)] needs to be taken into account in the border check procedures. Lastly, the EES opens the possibility of using new technologies for the border crossings of short-stay travellers. Those adaptations to the border check procedures should become effective in the Member States operating the EES on the date of start of operations of the EES determined in accordance with Regulation (EU) 2017/2226.

(7) For a period of six months after the EES has started operations, border guards should take into account the stays of third-country nationals on the territory of the Member States in the six months preceding the entry or the exit by checking the stamps in the travel documents in addition to the entry/exit data recorded in the EES. That measure should enable the required verifications to be carried out in those cases where a person would have been admitted for a short stay on the territory of the Member States in the six months before the EES started operations. In addition, there is a need to lay down specific provisions for those third-country nationals who, having entered the territory of the Member States, have not yet exited it before the EES has started operations. In those situations, the last entry should also be recorded in the EES when the third-country national exits the territory of the Member States.

(8) Taking into account the different situations in the Member States and at the different border crossing points of the Member States concerning the number of third-country nationals crossing the borders, Member States should be able to decide whether and to what extent to make use of technologies such as self-service systems, e-gates and automated border control systems. When using such technologies, entry and exit checks at the external borders should be carried out in a harmonised way and an appropriate level of security should be ensured.

(9) In addition, it is necessary to specify the tasks and roles of the border guards when making use of such technologies. In this regard, it should be ensured that the results of border checks carried out by automated means are available to border guards so as to enable them to take the appropriate decisions. In addition, there is a need to supervise the use of self-service systems, e-gates and automated border control systems by travellers so as to prevent fraudulent behaviour and uses. In addition, when carrying out this supervision, border guards should pay particular attention to minors and should be placed in a position that should enable them to identify persons needing protection.

(10) Member States should also be able to establish national facilitation programmes on a voluntary basis in order to allow pre-vetted third-country nationals to benefit on

entry from derogations from certain aspects of thorough checks. Where such national facilitation programmes are used, they should be established in accordance with a harmonised model and an appropriate level of security should be guaranteed.

(11) This Regulation is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council[(6)].

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

(13) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(14) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[(7)]; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(15) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[(8)]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(16) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*[(9)] which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC[(10)].

(17) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[(11)] 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[(12)].

(18) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/2225 of the European Parliament and of the Council. (See end of Document for details)*

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*[(13)] 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[(14)].

(19) As regards Cyprus, Bulgaria, Romania and Croatia, the provisions of Regulation (EU) 2016/399 that relate to the EES should only apply where the conditions set out in Article 66(2) of Regulation (EU) 2017/2226 are met. As a result, for those Member States that do not fulfil the conditions set out in Article 66(2) of that Regulation by the date of start of operations of the EES, it is necessary to lay down specific transitional provisions on stamping pending their connection to the EES. Those transitional provisions should ensure that the stamping of travel documents has the same effect as an entry/exit record in the EES.

(20) The Member States which do not meet the conditions set out in Article 66(2) of Regulation (EU) 2017/2226 at the date of the start of operations of the EES should continue to systematically stamp, on entry and exit, the travel documents of third-country nationals admitted for a short stay. Those Member States should examine the entry and exit stamps on the travel document of the third-country national concerned in order to verify, by comparing the dates of entry and exit, that the person has not exceeded the maximum duration of authorised stay on the territory of the Member State concerned. The stamping of travel documents and the examination of the stamps should continue until the Member State concerned is connected to the EES as referred to in Article 66(3) of Regulation (EU) 2017/2226.

(21) Regulation (EU) 2016/399 should therefore be amended accordingly.

(22) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[(15)] and delivered an opinion on 21 September 2016,

HAVE ADOPTED THIS REGULATION:

Article 1

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

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

22. "Entry/Exit System" (EES) means the system established by Regulation (EU) 2017/2226 of the European Parliament and of the Council[(16)];

23. "self-service system" means an automated system which performs all or some of the border checks that are applicable to a person and which may be used for pre-enrolling data in the EES;

24. "e-gate" means an infrastructure operated by electronic means where an external border or an internal border where controls have not yet been lifted is actually crossed;

25. "automated border control system" means a system which allows for an automated border crossing, and which is composed of a self-service system and an e-gate;

26. "confirmation of the authenticity and integrity of the chip data" means the process by which it is verified, through the use of certificates, that the data on the electronic storage medium (chip) originate from the issuing authority and that they have not been changed.;

(2) Article 6 is amended as follows:

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

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

(i) the creation of the individual file in the EES in accordance with Articles 16 and 17 of Regulation (EU) 2017/2226;

(ii) the carrying out of border checks in accordance with Article 8(3)(a)(i) and (g)(i) of this Regulation, Article 23(2) and (4) of Regulation (EU) 2017/2226 and, where applicable, Article 18 of Regulation (EC) No 767/2008 of the European Parliament and of the Council[17].;

(b) the following paragraph is inserted:

1a. The period of 90 days in any 180-day period referred to in paragraph 1 of this Article shall be calculated as a single period for the Member States operating the EES on the basis of Regulation (EU) 2017/2226. That period shall be calculated separately for each of the Member States which do not operate the EES.;

(3) the following Article is inserted:

Article 6a

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

1 On entry and exit, data on the following categories of persons shall be entered in the EES in accordance with Articles 16, 17, 19 and 20 of Regulation (EU) 2017/2226:

a third-country nationals admitted for a short stay pursuant to Article 6(1) of this Regulation;

b third-country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies and who do not hold a residence card pursuant to that Directive;

c third-country nationals who:

(i) are members of the family of a national of a third country enjoying the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other; and