Commission Implementing Decision (EU) 2019/326 of 25 February 2019 laying down measures for entering the data in the Entry/Exit System (EES)

COMMISSION IMPLEMENTING DECISION (EU) 2019/326

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laying down measures for entering the data in the Entry/Exit System (EES)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular point (c) of the first paragraph of Article 36 thereof,

Whereas:

(1) Regulation (EU) 2017/2226 established the Entry/Exit System (EES) as a system 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 EES aims to improve the management of external borders, to prevent irregular immigration and to facilitate the management of migration flows. The EES should, in particular, 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.

(3) Regulation (EU) 2017/2226 specifies 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 also defines responsibilities for the EES.

(4) Prior to the development of the EES it is necessary to adopt measures for the development and technical implementation of the EES.

(5) Based on those measures, the European agency for the operational management of large-scale information systems in the area of freedom, security and justice should then be able to define the design of the physical architecture of the EES including its

Communication Infrastructure, as well as the technical specifications of the system and to develop the EES.

(6) The measures laid down by this Decision for the development and technical implementation of the EES should be completed by the Technical Specifications and the Interface Control Document of the EES.

(7) This Decision is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council[(2)].

(8) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark did not take part in the adoption of Regulation (EU) 2017/2226 and is not bound by it or subject to its application. However, given that Regulation (EU) 2017/2226 builds upon the Schengen *acquis*, Denmark, in accordance with Article 4 of that Protocol, notified on 30 May 2018 its decision to implement Regulation (EU) 2017/2226 in its national law. Denmark is therefore bound under international law to implement this Decision.

(9) This Decision 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[(3)]; the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(10) This Decision 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[(4)]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(11) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*[(5)], which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC[(6)].

(12) As regards Switzerland, this Decision 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*[(7)], 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[(8)].

(13) As regards Liechtenstein, this Decision 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*[(9)] which fall within the area referred to in Article 1,

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2019/326. (See end of Document for details)*

point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[10].

(14) As regards Cyprus, Bulgaria, Romania and Croatia, the operation of the EES requires the granting of passive access to the VIS and the putting into effect of all the provisions of the Schengen *acquis* relating to the SIS in accordance with the relevant Council Decisions. Those conditions can only be met once the verification in accordance with the applicable Schengen evaluation procedure has been successfully completed. Therefore, the EES should be operated only by those Member States which fulfil those conditions by the start of operations of the EES. Member States not operating the EES from the initial start of operations should be connected to the EES in accordance with the procedure set out in Regulation (EU) 2017/2226 as soon as all of those conditions are met.

(15) The European Data Protection Supervisor delivered an opinion on 20 July 2018.

(16) The measures provided for in this Decision are in accordance with the opinion of the Smart Borders Committee,

HAS ADOPTED THIS DECISION:

Article 1

The measures necessary for the technical implementation of the EES in relation to the procedures for entering data in accordance with Articles 16 to 20 of the Regulation (EU) 2017/2226 shall be as set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 25 February 2019.

For the Commission

The President

Jean-Claude JUNCKER

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2019/326. (See end of Document for details)*

ANNEX

The data to be entered in the EES as provided for in Articles 16 to 20 of Regulation (EU) 2017/2226 are grouped into two categories: individual file and entry/exit/refusal records. The individual file consists of both alphanumeric and biometric data.

The technical specifications referred to in Article 37(1) of Regulation (EU) 2017/2226 shall define the business and validation rules to be applied to the data to be entered in EES.

1.1. Alphanumeric data

Most of the content stored in EES shall be extracted either from the Machine Readable Zone of the travel document or, where technically possible, electronically extracted from the electronic Machine Readable Travel Document (e-MRTD). It is therefore important that the information transmitted to the EES is compliant with the standards used for this, especially in the cases where it cannot be retrieved electronically and/or it has to be manually encoded by a border guard on the basis of data available in the Visual Inspection Zone. This applies only to the alphanumeric information that can be retrieved from the travel document's data page.

The following fields shall comply with the ICAO DOC9303 standard:

Article	Attribute	Standard
16(1)(a)	Surname (family name); first name(s) (given names)	ICAO DOC9303
16(1)(b)	Three-letter code of the issuing country of the travel document or documents	As per: ISO/IEC 3166-1 alpha-3[a]
16(2)(d)	Three-letter code of the issuing Member State of a short stay visa sticker number	As per: ISO/IEC 3166-1 alpha-3
19(1)(d)	Three-letter code of the issuing country of a visa sticker	As per: ISO/IEC 3166-1 alpha-3

a Some exceptions compared to the ISO/IEC 3166-1 alpha-3 may exist and will be documented in the technical specifications referred to in article 37(1) of Regulation (EU) 2017/2226. Any evolution of the ISO/IEC 3166-1 alpha-3 standard will have to be reflected in the future.

In addition, the following rules shall be respected:

(a) Article 16(2)(b) of Regulation (EU) 2017/2226 — border crossing point and authority that authorised the entry: the border crossing point is an authority of type Border Crossing Point. The list of authorities shall be maintained in accordance with the Article 9 of Regulation (EU) 2017/2226.

(b) Article 16(2)(c)- A flag to identify that the entry was performed by a third-country national who:

— is a member of the family 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 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

— does not hold a residence card pursuant to Directive 2004/38/EC or a residence permit pursuant to Council Regulation (EC) No 1030/2002[(11)];