## Basic information

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|---|---|
| **2016/0105(COD)**<br><br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation | Procedure completed |
| Schengen Borders Code: use of the Entry/Exit System (EES)<br><br>Amending Regulation (EU) 2016/399 2015/0006(COD)<br>See also 2016/0106(COD)<br><br>**Subject**<br><br>7.10.02 Schengen area, Schengen acquis<br>7.10.04 External borders crossing and controls, visas | |

## Key players

**European Parliament**

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| LIBE Civil Liberties, Justice and Home Affairs | DÍAZ DE MERA GARCÍA CONSUEGRA Agustín (PPE) | 20/04/2016 |
| | Shadow rapporteur<br><br>FAJON Tanja (S&D)<br><br>HALLA-AHO Jussi (ECR)<br><br>MLINAR Angelika (ALDE)<br><br>VERGIAT Marie-Christine (GUE/NGL)<br><br>ALBRECHT Jan Philipp (Verts/ALE)<br><br>VON STORCH Beatrix (EFDD) | |

**Council of the European Union**

| Council configuration | Meetings | Date |
|---|---|---|
| Justice and Home Affairs (JHA) | 3528 | 2017-03-27 |

**European Commission**

| Commission DG | Commissioner |
|---|---|
| Migration and Home Affairs | AVRAMOPOULOS Dimitris |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| | | COM(2016)0196 | Summary |

| | | | |
|---|---|---|---|
| 06/04/2016 | Legislative proposal published | | |
| 09/05/2016 | Committee referral announced in Parliament, 1st reading | | |
| 27/02/2017 | Vote in committee, 1st reading | | |
| 27/02/2017 | Committee decision to open interinstitutional negotiations with report adopted in committee | | |
| 08/03/2017 | Committee report tabled for plenary, 1st reading | A8-0059/2017 | Summary |
| 13/03/2017 | Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72) | | |
| 15/03/2017 | Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72) | | |
| 27/03/2017 | Debate in Council | | |
| 25/10/2017 | Decision by Parliament, 1st reading | T8-0412/2017 | Summary |
| 25/10/2017 | Results of vote in Parliament | | |
| 25/10/2017 | Debate in Parliament | | |
| 20/11/2017 | Act adopted by Council after Parliament's 1st reading | | |
| 30/11/2017 | Final act signed | | |
| 30/11/2017 | End of procedure in Parliament | | |
| 09/12/2017 | Final act published in Official Journal | | |

## Technical information

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| **Procedure reference** | 2016/0105(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Regulation |
| **Amendments and repeals** | Amending Regulation (EU) 2016/399 2015/0006(COD)<br>See also 2016/0106(COD) |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 077-p2 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | LIBE/8/06159 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE594.059 | 23/11/2016 | |
| Amendments tabled in committee | | PE597.484 | 16/01/2017 | |
| Committee report tabled for plenary, 1st reading/single reading | | A8-0059/2017 | 08/03/2017 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T8-0412/2017 | 25/10/2017 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Draft final act | 00046/2017/LEX | 29/11/2017 | |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2016)0196 | 06/04/2016 | Summary |
| Document attached to the procedure | SWD(2016)0115 | 07/04/2016 | |
| Document attached to the procedure | SWD(2016)0116 | 07/04/2016 | |
| Commission response to text adopted in plenary | SP(2017)766 | 06/12/2017 | |

**National parliaments**

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---|---|---|---|---|
| Contribution | CZ_SENATE | COM(2016)0196 | 24/06/2016 | |
| Contribution | IT_SENATE | COM(2016)0196 | 28/06/2016 | |
| Contribution | PT_PARLIAMENT | COM(2016)0196 | 28/06/2016 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| EESC | Economic and Social Committee: opinion, report | CES3098/2016 | 21/09/2016 | |
| EDPS | Document attached to the procedure | N8-0141/2016<br>OJ C 463 13.12.2016, p. 0014 | 21/09/2016 | |

**Additional information**

| Source | Document | Date |
|---|---|---|
| European Parliament | Briefing | |
| European Commission | EUR-Lex | |

**Final act**

Regulation 2017/2225
OJ L 327 09.12.2017, p. 0001 Summary

Corrigendum to final act 32017R2225R(01)
OJ L 312 07.12.2018, p. 0107

# Schengen Borders Code: use of the Entry/Exit System (EES)

2016/0105(COD) - 06/04/2016 - Legislative proposal

PURPOSE: to amend Regulation (EU) 2016/399 on the Schengen Borders Code as regards the use of the Entry/Exit System.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: in February 2013, the Commission tabled a package of legislative proposals on Smart Borders to modernise the Schengen area's external border management. Since then, technical, financial and operational concerns on certain aspects of the design of the systems have been brought to light.

Therefore, the Commission has decided to:

- revise its 2013 proposal for a Regulation for the establishment of an Entry/Exit System (EES);
- revise its 2013 proposal for **Regulation amending the Schengen Borders Code** to integrate the technical changes that result from the new proposal for a Regulation establishing an Entry/Exit System (EES);
- withdraw its 2013 proposal for a Regulation for a Registered Traveller Programme (RTP).

CONTENT: this proposal aims to amend Regulation (EU) 2016/399 of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

The proposed amendments are due to the proposed establishment of an Entry Exit System (EES) for which a legislative proposal is presented simultaneously.

The current proposal replaces the 2013 proposal and integrates the following, *inter alia*, into the Schengen Borders Code:

**Definitions**: additional definitions of the **EES, self-service system, e-gate and Automated Border Control** (ABC) system.

**Border checks on persons**: the obligation to check the authenticity of all travel documents that contain an electronic storage medium using valid certificates has been added.

Provisions have been laid down as regards the use of automated border control systems for EU/EEA/CH citizens and for third country nationals who hold a residence card.

**National facilitation programmes**: the proposal foresees the possibility for each Member State to introduce **national facilitation programmes** on a voluntary basis.

**Relaxation of border checks**: the obligation to always enter the data of the traveller into the EES while entering or exiting the Schengen area is highlighted. Even in situations of relaxation of border check procedures the registration in the EES shall be carried out. **Fall-back solutions** are proposed in case of technical impossibility to enter data in the Central System of the EES or in case of failure of the Central System of the EES.

**Stamping of the travel document**: given that the new EES targets the abolition of stamping on entry and exit of the travel documents of third country nationals admitted for a short stay, the obligation to systematically stamp on entry and exit the travel documents of third country nationals admitted for a short stay is **deleted**. However, where expressly provided under national legislation, the new proposal foresees the possibility, for each Member State to stamp on entry and exit the travel document of those third country nationals holding a residence permit issued by that same Member State.

**Refusal of entry**: the proposal foresees that data on third country nationals whose entry for a short stay [or for a stay on the basis of a touring visa] has been **refused** shall be registered in the EES.

**Territorial provisions**: the proposed Regulation constitutes a development of the provisions of the Schengen acquis in which the United Kingdom and Ireland do not take part. Therefore, they shall not be bound by it or subject to its application.

# Schengen Borders Code: use of the Entry/Exit System (EES)

2016/0105(COD) - 30/11/2017 - Final act

PURPOSE: to amend the Schengen Borders Code as regards the entry / exit system for third-country nationals crossing external borders.

LEGISLATIVE ACT: Regulation (EU) 2017/2225 of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System (EES).

CONTENT: this Regulation amends Regulation (EU) 2016/399 on the Schengen Borders Code to take account of the adoption of Regulation (EU) 2017/2226 of the European Parliament and of the Council on the creation of 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.

The Regulation:

- **amends the entry requirements for third-country nationals** by including an obligation to provide biometric data where such data must be provided by third-country nationals for the purpose of border checks. In case of refusal to provide biometric data, a refusal of entry decision will be taken. Data on third-country nationals whose entry for a short stay has been refused will be recorded in the EES;
- now provides for the verification of the identity and the nationality of the third-country national and of the authenticity and validity of the travel document for crossing the border, **including by consulting the relevant databases**, in particular: (i) the Schengen Information System (SIS) ); (ii) the Interpol Stolen and Lost Travel Document Database (SLTD); and (iii) national databases containing information on stolen, misappropriated, lost or invalid travel documents;
- **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. However, where provided expressly by its national law, a Member State may, on entry and exit, stamp the travel document of third-country nationals holding a residence permit or long-stay visa issued by that Member State;
- allows Member States 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, an appropriate level of security should be ensured. The results of border checks carried out by automated means must be available to border guards so as to enable them to take the appropriate decisions;
- allows Member States 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;
- provides for **transitional measures** for those Member States that are not yet implementing the EES: the latter will have to continue to systematically stamp travel documents of third-country nationals admitted for a short stay, on entry and exit.

ENTRY INTO FORCE: 29.12.2017.

# Schengen Borders Code: use of the Entry/Exit System (EES)

2016/0105(COD) - 08/03/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Agustín DÍAZ DE MERA GARCÍA CONSUEGRA (EPP, ES) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System.

The committee recommended that the European Parliament's position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

**Standards for automated border control systems**: Members called for an automated border control system designed in such a way that they can be used by all persons, with the exception of children under 12 years of age. They shall also be designed in a way that fully respects human dignity, in particular in cases involving vulnerable persons. Where Member States decide to use automated border control systems, they shall ensure the presence of a sufficient number of staff to assist persons with the use of such systems.

The Commission in close cooperation with eu-LISA shall be empowered to adopt delegated acts concerning the adoption of **additional technical standards for automated border control systems**.

Before adopting a delegated act, the Commission shall consult experts designated by each Member State on the matter.

**Lightened formalities**: Members set down technical provisions for the implementation of national programmes to alleviate border formalities. Where a person is granted access to a national facilitation programme established by a Member State, the border checks carried out through a **self-service system** on entry may not include examination of certain aspects when crossing the external borders of that Member State or the external borders of another Member State having concluded an agreement) with that Member State.

In the case of third-country nationals benefiting from a national facilitation programme, border guards may carry out the verifications on entry and on exit **without electronically comparing biometrics** but by comparing a **facial image taken from the chip** and the facial image of the third country national´s individual EES file with the third-country national. **Full verification shall be carried out at random and on the basis of a risk analysis.**

**Risk assessment**: an adequate level of security shall be established between national facilitation programmes and the EES following a proper information security risk assessment. When establishing such a national facilitation programme, Member States shall, in close cooperation with eu-LISA, ensure data security standards equivalent to those laid down in the Regulation establishing the Entry/Exit System (EES). Member States shall conduct a **proper information security risk assessment and security responsibilities** shall be made clear for all steps of the process.

**Separate lanes**: where Member States decide to establish a national facilitation programme, they may decide to use specific lanes for third-country nationals who benefit from such a national facilitation programme.

**Annex**: it is provided to amend the Annex to the Regulation so as to specify that the person concerned by a control should be informed that her/his personal data and information on this refusal of entry are entered into the Entry/Exit System (EES). The person concerned has the right to obtain the data relating to her/him recorded in the EES and may request that data relating to her/him which are inaccurate be rectified and that data recorded unlawfully be erased.

# Schengen Borders Code: use of the Entry/Exit System (EES)

2016/0105(COD) - 25/10/2017 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 496 votes to 137 with 32 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 ('the Schengen Borders Code') as regards the use of the Entry/Exit System.

The European Parliament's position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

**Entry conditions for third-country nationals**: it is proposed to amend the entry conditions applicable to third-country nations by including **an obligation to provide biometric data** when such data need to be provided by third-country nationals for the purpose of border checks. Where a third-country national refuses to provide biometric data for the creation of his or her individual file or for the carrying out of border checks, **a refusal of entry** decision should be adopted.

The Schengen Borders Code sets out the entry conditions for third-country nationals for intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay.

The amended text states that **the period of 90 days in any 180-day period** shall be calculated as a single period for the Member States operating the EES. That period shall be calculated separately for each of the Member States that do not operate the EES.

**Border checks on persons**: with regard to passports and travel containing an electronic storage medium (chip), the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain.

The amended text provides for the verification of the identity and the nationality of the third-country national and of the authenticity and validity of the travel document for crossing the border, including by **consulting the relevant databases**, in particular: (i) the SIS (Schengen Information System); (ii) Interpol's SLTD (stolen and lost travel documents) database; (iii) national databases containing information on stolen, misappropriated, lost and invalidated travel documents.

**Self-service systems and electronic gates**: where a person is granted access to a national facilitation programme established by a Member State, the border checks carried out through a self-service system on entry may omit the examination of certain aspects.

Furthermore, Member States must allow for the use of self-service systems, e-gates, or both, for border crossings by: (i) Union citizens, (ii) citizens of a European Free Trade Association State of the European Economic Area (iii) citizens of Switzerland and(iv) third-country nationals whose border crossing is not subject to a registration in the EES.

**Standards for automated border control systems**: automated border control systems shall, to the extent possible, be designed in such a way that all persons, with the exception of children under 12 years of age, can use them. They shall also be designed in a way that fully **respects human dignity**, in particular in cases involving vulnerable persons. Where Member States decide to use automated border control systems, they shall ensure **the presence of a sufficient number of staff** to assist persons with the use of such systems.

**National facilitation programmes**: first access to the national facilitation programme shall be granted for a **maximum of one year**. Access may be extended for a **maximum of a further five years** or until the end of the validity period of the travel document or any issued multiple-entry visas, long-stay visas and residence permits, whichever is shorter.

**Border guards** may carry out the verification of the third-country national benefiting from the national facilitation programme on entry and on exit without comparing biometrics electronically but by comparing the facial image taken from the electronic storage medium (chip) and the facial image in the third-country national´s individual EES file with that third-country national's face. **Full verification shall be carried out at random and on the basis of a risk analysis.**

**Transitional measures for the Member States not yet operating the EES**: the Member States which do not meet the conditions set out in the regulation on the creation of an entry/exit system (EES) 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.