Basic information

2016/0106(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Entry/Exit System (EES) Amending Regulation (EC) No 767/2008 2004/0287(COD) Amending Regulation (EU) No 1077/2011 2009/0089(COD) Amended by 2017/0351(COD) Amended by 2018/0152A(COD) Amended by 2019/0002(COD) Amended by 2020/0278(COD) Amended by 2022/0132A(COD) Amended by 2022/0132B(COD) See also 2016/0105(COD) **Subject** 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 FAJON Tanja (S&D) HALLA-AHO Jussi (ECR) MLINAR Angelika (ALDE) VERGIAT Marie-Christine (GUE/NGL) ALBRECHT Jan Philipp (Verts/ALE) VON STORCH Beatrix (EFDD)	

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	HOHLMEIER Monika (PPE)	25/04/2016

Committee for opinion on the legal basis	Rapporteur for opinion	Appointed
JURI Legal Affairs	GUTELAND Jytte (S&D)	19/04/2017

Council of the European Union	

Council configuration	Meetings	Date
General Affairs	3578	2017-11-20
Justice and Home Affairs (JHA)	3508	2016-12-09
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
06/04/2016	Legislative proposal published	COM(2016)0194	Summary
09/05/2016	Committee referral announced in Parliament, 1st reading		
09/12/2016	Debate in Council		
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	A8-0057/2017	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	T8-0411/2017	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

Procedure reference	2016/0106(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation

Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 767/2008 2004/0287(COD) Amending Regulation (EU) No 1077/2011 2009/0089(COD) Amended by 2017/0351(COD) Amended by 2018/0152A(COD) Amended by 2019/0002(COD) Amended by 2020/0278(COD) Amended by 2022/0132A(COD) Amended by 2022/0132B(COD) See also 2016/0105(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 077-p2 Treaty on the Functioning of the European Union TFEU 088-p2-a1 Treaty on the Functioning of the European Union TFEU 087-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/06162

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE592.408	30/11/2016	
Committee opinion	BUDG	PE587.729	09/12/2016	
Amendments tabled in committee		PE597.482	13/01/2017	
Amendments tabled in committee		PE597.483	13/01/2017	
Committee report tabled for plenary, 1st reading/single reading		A8-0057/2017	08/03/2017	Summary
Specific opinion	JURI	PE603.073	14/06/2017	
Text adopted by Parliament, 1st reading/single reading		T8-0411/2017	25/10/2017	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00047/2017/LEX	29/11/2017	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2016)0194	06/04/2016	Summary
Document attached to the procedure	SWD(2016)0114	07/04/2016	
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)0194	24/06/2016	
Contribution	IT_SENATE	COM(2016)0194	28/06/2016	
Contribution	PT_PARLIAMENT	COM(2016)0194	28/06/2016	
Contribution	RO_CHAMBER	COM(2016)0194	01/07/2016	

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 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 2017/2226
OJ L 327 09.12.2017, p. 0020 Summary

Corrigendum to final act 32017R2226R(03)
OJ L 117 03.05.2019, p. 0014

Corrigendum to final act 32017R2226R(01)
OJ L 258 15.10.2018, p. 0005

Entry/Exit System (EES)

2016/0106(COD) - 30/11/2017 - Final act

PURPOSE: to create an entry / exit system to improve controls at the external borders of the Schengen area.

LEGISLATIVE ACT: Regulation (EU) 2017/2226 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 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.

CONTENT: the Regulation creates **a common electronic system**, **the "entry/exit system" (EES)** for:

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- **the recording and storage** of the date, time and place of entry and exit of third–country nationals crossing the borders of the Member States at which the EES is operated;
- **the automatic calculation of the duration of authorised stay** of such third-country nationals, and the generation of alerts to Member States when the authorised stay has expired.

The EES will:

- improve the management of external borders, prevent irregular migration and facilitate the **management of migration flows**;
- assist in the **identification** of any person who does not fulfil, or no longer fulfils, the conditions relating to the length of stay authorised in the territory of the Member States;
- to contribute to the **prevention and investigation of terrorist offenses** or other serious criminal offenses.

Scope: the EES will **apply to travellers subjected to a visa requirement and those exempted from it** and admitted for a short stay of up to 90 days in a 180-day period, crossing the external borders of the Schengen area.

The system will replace the requirement to stamp the passport of third-country nationals, which is applicable by all Member States.

The EES should be operated at the external borders of the Member States which apply the Schengen acquis in full and also by 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) has been granted.

Data storage: the system will store data on the identity of third-country nationals and their travel documents as well as **biometric data** (four fingerprints and the facial image).

The data stored will be accessible to border authorities, visa issuing authorities and authorities responsible for monitoring, within the territory of the Member States, whether a third-country national fulfils the conditions of entry or residence. They will also be accessible to designated law enforcement authorities and **Europol.**

The data will be kept for **five years** for those who have exceeded the authorised period of stay and three years for others.

Technical architecture of the EES: the EES shall be composed 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;
- a secure and encrypted Communication Infrastructure between the EES Central System and the National Uniform Interfaces;
- a data repository system to obtain customisable reports and statistics;
- the web service in order to enable third-country nationals to verify at any moment the remaining authorised stay.

The European Agency for the Operational Management of Large-Scale Information Systems (eu-LISA) should establish a secure communication channel between the central EES system and the central VIS system to enable interoperability between EES and VIS.

ENTRY INTO FORCE : 29.12.2017.

Entry/Exit System (EES)

2016/0106(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 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 Regulation (EU) No 1077/2011.

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:

Subject matter: the amended text stipulated that the proposed Regulation establishes an 'Entry/Exit System' (EES) for the recording and storage of information on the date, time and place of entry and exit of third country nationals crossing the external borders of the Member States, for the calculation of the duration of their **authorised** stay, and for the generation of alerts to Member States when authorised periods for stay have expired as well as for the recording of the date, time and place of refusal of entry of third country nationals whose entry for a short stay {or on the basis of a touring visa} has been refused as well as the authority of the Member State which refused the entry and the reasons for refusal.

Scope: for the purposes of the prevention, detection and investigation of terrorist offences or of other serious criminal offences, this Regulation also lays down in its Chapter IV the conditions and limitations under which Member States' designated law enforcement authorities and the European Police Office (Europol) may obtain access for consultation of the EES.

Definitions: Members proposed to clarify the following terms:

- “designated law enforcement authorities” shall mean the authorities responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences designated by the Member States;
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"touring visa" shall mean an authorisation issued by a Member State with a view to an intended stay in the territory of two or more Member States for a duration of **12 months in any 15 month period**, provided that the applicant does not stay for more than **90 days in any 180 day period** in the territory of the same Member State.

Purpose of the EES: the amended text stated that in order to facilitate border crossing for third-country nationals who frequently travel and have been pre-vetted, Member States may establish **national facilitation programmes** and connect them to the EES. The EES shall enable the national competent authorities to have access to information on previous short stays or refusals of entry for the purposes of the examination of applications for access to national facilitation programmes and the adoption of decisions.

Interoperability between the EES and the VIS and Europol: the idea of strengthened interoperability is outlined in a recital. Members also stipulated that access to the EES as a tool for the purpose of identifying an unknown suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence shall be allowed where certain conditions are met and the consultation, as a matter of priority, of the data stored in the databases that are technically and legally accessible by Europol has not made it possible to verify the identity of the person concerned. Since fingerprint data of visa-holding third-country nationals are only stored in the VIS, a request for consultation of the VIS on the same data subject may be submitted in parallel to a request for consultation of the EES.

Development and operational management: according to the text, eu-LISA shall play an important role in the development and maintenance of the EES. It shall be the controller responsible for the security of the web service, for the security of the personal data it contains and the process to extract the personal data from the central system into the web service.

By developing and implementing the Central System, the National Uniform Interfaces, the Secure Communication Channel between the EES Central System and the VIS Central System, and the secure and encrypted Communication Infrastructure, **eu-LISA shall**:

- perform a **risk assessment** as part of the development of the EES;
- follow the principles of privacy by design and by default during the entire lifecycle of the system development;
- update the risk assessment for the VIS to take into account the new connection with the EES and follow up by implementing any additional security measures highlighted by the updated risk assessment.

Personal data for visa holders: the border authority shall create an **individual file** of the third country national subject to a visa requirement to cross the external borders by entering the following data:

- type and number of the travel document or documents and three letter code of the issuing country of the travel document or documents;
- the facial image with **sufficient image resolution** and quality to be used in automated biometric matching, where possible extracted electronically from the eMRTD or the VIS, and where this is not possible, taken live.

Where a visa holding third country national benefits from the national facilitation programme of a Member State, the Member State concerned may insert a **notification** in the individual file of that third country national specifying the national facilitation programme concerned.

According to Members, knowing whether a person has been pre-vetted and accepted to a national facilitation programme in one of the Member States would be a valuable piece of information to border guards.

Biometrics: the amended text stated that border guards shall, when capturing biometric data for the EES, fully respect human dignity, in particular in the event of difficulties encountered in the capturing of facial images or the taking of fingerprints.

Retention period for data storage: Members proposed that each entry/exit record or refusal of entry record linked to an individual file shall be stored in the EES Central System for **two years** (as opposed to the Commission's five years) following the date of the exit record or of the refusal of entry record, as applicable.

Data protection: the report stressed that data retrieved from the EES may be kept in national files only where necessary in an individual case, in accordance with the purpose of the EES and relevant Union law, in particular on data protection, and for no longer than necessary in that individual case. A Member State may keep the alphanumeric data which that Member State entered into the EES, in accordance with the purposes of the EES in its national entry exit system in full respect of Union Law.

Reporting: the report noted that every quarter, eu-LISA shall publish statistics on the EES showing in particular the number, **nationality, age, gender, duration of stay and border crossing point** of entry of over stayers, of third country nationals who were refused entry, including the grounds for refusal, and of third country nationals whose stays were revoked or extended as well as the number of third country nationals exempt from the requirement to give fingerprints.

Lastly, Members suggested enhancing rules on reporting back to the Parliament and the Council during and after the development of the EES, including an obligatory **update on budgetary and cost developments**, to ensure full parliamentary scrutiny and oversight of the process and to minimise the risk of cost overruns and delays.

Entry/Exit System (EES)

2016/0106(COD) - 25/10/2017 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 477 votes to 139 with 50 abstentions, a legislative resolution on the 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 Regulation (EU) No 1077/2011.

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

Purpose: the proposed regulation aims to establish an 'Entry/Exit System' (EES) for:

- the recording and storage of **the date, time and place of entry and exit** of third–country nationals crossing the borders of the Member States at which the EES is operated;
- **the calculation of the duration of the authorised stay** of such third-country nationals;
- the generation of **alerts** to Member States when the authorised stay has expired; and
- the recording and storage of the **date, time and place of refusal of entry** of third-country nationals whose entry for a short stay has been refused.

Scope: in order to verify compliance with the provisions on the authorised period of stay on the territory of the Member States, the EES will apply to third country nationals crossing the external borders of the Schengen area, **both those requiring a visa and those visa-exempt**, admitted for a short stay of 90 days in any 180 day period.

The system will replace the obligation to stamp the passports of third-country nationals, which is applicable to all Member States.

Implementation: the amended text provides that the EES should be operated at the **external borders** of the Member States that apply the Schengen acquis in full. It will also be operated by Member States not yet applying the Schengen acquis in full, but for whom:

- the verification in accordance with the applicable Schengen evaluation procedure has already been successfully completed;
- passive access to the Visa Information System (VIS) has been granted;
- the provisions of the Schengen acquis relating to the Schengen Information System (SIS), have been put into effect in accordance with the relevant Act of Accession.

Accordingly, Bulgaria and Romania will operate the EES.

Data: 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. It will 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.** Any search must be duly justified and proportionate in the light of the interest invoked.

Four fingerprints per visa-exempt third–country national should be registered in the EES, if physically possible. 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.

The data retention period is set at **three years**. If there is no exit record following the date of expiry of the period of authorised stay, the data shall be stored for a period of **five years**.

The use of the EES, including the capturing of biometric data, must be in accordance with the safeguards laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms, in the **Charter of Fundamental Rights** of the European Union and in the United Nations Convention on the Rights of the Child.

Access to data: data stored in the EES will be accessible to border authorities, consular officers dealing with visas and authorities that check, within the territory of the Member States whether the conditions for entry to, or stay on, the territory of the Member States are fulfilled.

For the purposes of the prevention, detection and investigation of terrorist offences or of other serious criminal offences, **Member States' designated authorities and Europol** may obtain access to the EES for consultation.

Technical architecture of the EES: the EES will be comprised of the following:

- **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**, enabling the connection of the EES Central System to the national border infrastructures in Member States in a secure manner;
- a Secure Communication Channel **between the EES Central System and the VIS Central System;**
- a secure and encrypted Communication Infrastructure between the EES Central System and the National Uniform Interfaces;
- **a web service** to allow: (i) third–country nationals to verify at any moment the remaining authorised stay; (ii) 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;
- **a data repository established at central level** in order to enable the generation of statistics and reporting.

Eu -LISA shall establish a Secure Communication Channel between the EES Central System and the VIS Central System to enable **interoperability between the EES and the VIS.**

Communication of data to third countries: the amended text provides for the possibility of transferring personal data obtained by Member States to third countries: (i) in an exceptional case of urgency; (ii) where there is an imminent danger associated with a terrorist offence or where there is an imminent danger to the life of a person associated with a serious criminal offence. An imminent danger to the life of a person should be understood as covering a danger arising from a serious criminal offence committed against that person such as grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint and hostage-taking, sexual exploitation of children and child pornography, and rape.

Such data should only be transferred to a third country if the reciprocal provision of any information on entry/exit records held by the requesting third country to the Member States operating the EES is ensured.

Entry/Exit System (EES)

2016/0106(COD) - 06/04/2016 - Legislative proposal

PURPOSE: to propose a revised version of the Entry/Exit System (EES) to speed-up, facilitate and reinforce border check procedures for non-EU nationals travelling to the EU.

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 is part of the broader 'Smart Borders Package', addressing the role of information systems in enhancing external border management, internal security and the fight against terrorism and organised crime. It seeks to **modernise external border management** by improving the quality and efficiency of controls and support Member States with the increasing numbers of travellers entering and exiting the EU.

The **main differences** between this revised proposal and the 2013 proposals are as follows:

Single system: only one system is proposed, the Entry Exit System.

Scope of the new Entry Exit System: the scope of the new Entry Exit System includes border crossings by all third country nationals visiting the Schengen area for a short stay (maximum 90 days period in any period of 180 days), both visa-required and visa-exempt travellers, or eventually, on the basis of a touring visa (up to one year).

The system will register the name, type of travel document and biometrics and the date and place of entry and exit. This will facilitate the border crossing of bona fide travellers, detect over-stayers and identify undocumented persons in the Schengen area. The EES will also **record refusals of entry** of third country nationals falling within its scope.

Interoperability: this should be ensured between the EES and VIS in order to achieve more efficiency and rapidity at border checks.

Biometric identifiers: while the 2013 EES proposals were relying on ten fingerprints, the revised EES proposals suggests a combination of **four fingerprints and the facial image** as biometric identifiers introduced from the start of operations of the EES. The four fingerprints are used at enrolment to check if the third country national was already registered in the system while the facial image allows for a quick and reliable (automatic) verification at subsequent entry that the individual subject to the border control is the one already registered in the EES.

The Entry-Exit System will **replace the current system of manual stamping of passports** which is time consuming, does not provide reliable data on border crossings and does not allow the detection of over-stayers or address cases of loss or destruction of travelling documents.

Data protection and data retention period: there is a significant reduction in the volume of personal data recorded in EES: 26 data items are to be recorded in EES instead of 36. Appropriate data protection safeguards and strict access rights are foreseen in accordance with EU data protection rules. The retention time for stored data is five years. This extended period shall reduce the re-enrolment frequency.

The facilitation of border crossings: the approach for facilitation is based on the implementation of **self-service systems and e-gates**, which will allow third country nationals to initiate the procedure for border clearance, to be completed by providing additional information to the border guard on request. The use of these accelerators (introduced in the proposal amending the Schengen Borders Code) is optional for Member States, open to most of the travellers and does not require the development of any new system.

In addition there will be a harmonised legal basis (again introduced in the amendments to the Schengen Borders Code) for the establishment of national Registered Travellers Programmes by Member States, on a voluntary basis.

Law enforcement access: from the start of operations, Member States' law enforcement authorities and Europol will have access to the EES, under strictly defined conditions.

BUDGETARY IMPLICATIONS: in the 2013 proposals, EUR 1.1 billion was set aside as an indicative amount for the development of an EES and an RTP. For the revised proposal, based on the preferred option of a single EES system including the law enforcement access, the amount needed has been estimated at **EUR 480 million**.