

**AMENDMENTS 001-033**

by the Committee on Civil Liberties, Justice and Home Affairs

**Report****Agustín Díaz de Mera García Consuegra****A8-0059/2017**

Amendment of the Schengen Borders Code as regards the Use of the Entry/Exit System

Proposal for a regulation (COM(2016)0196 – C8-0134/2016 – 2016/0105(COD))

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**Amendment 1****Proposal for a regulation****Recital 5***Text proposed by the Commission*

(5) The establishment of an EES requires adapting the procedures for checking persons when crossing the external borders laid down in Regulation (EU) 2016/399. In particular, the EES aims to abolish on entry and exit the stamping of the travel documents of third country nationals admitted for a stay [or for a stay on the basis of a touring visa] by replacing it by the electronic recording of the entry and exit directly in the EES. ***However, stamping of travel document on refusal of entry of a third country national is maintained since it concerns higher risk travellers.*** Furthermore, the establishment of the interoperability between the EES and the Visa Information System (VIS) needs to be taken into account in the border checks procedures. Lastly, the EES opens the possibility to use new technologies for the border crossings of short stay travellers.

*Amendment*

(5) The establishment of an EES requires adapting the procedures for checking persons when crossing the external borders laid down in Regulation (EU) 2016/399. In particular, the EES aims to abolish on entry and exit the stamping of the travel documents of third country nationals admitted for a stay [or for a stay on the basis of a touring visa] by replacing it by the electronic recording of the entry and exit directly in the EES. Furthermore, the establishment of the interoperability between the EES and the Visa Information System (VIS) needs to be taken into account in the border checks procedures. Lastly, the EES opens the possibility to use new technologies for the border crossings of short stay travellers.

## Amendment 2

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 1 – introductory part

*Text proposed by the Commission*

(1) In Article 2, the following points 22, 23, 24 **and** 25 are added:

*Amendment*

(1) In Article 2, the following points 22, 23, 24, 25 **and 25a** are added:

## Amendment 3

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 2 – point 25 a (new)

*Text proposed by the Commission*

*Amendment*

**25a. '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 chip originates from the issuing authority and that it has not been changed.**

## Amendment 4

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 2

Regulation (EU) 2016/399

Article 6a – paragraph 3 – point d – point i

*Text proposed by the Commission*

(i) heads of State and members of their delegation in accordance with point 1 of Annex VII;

*Amendment*

(i) **Heads** of State, **heads of government** and **the** members of their **delegations** in accordance with point 1 of Annex VII;

## Amendment 5

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 3 – point a

Regulation (EU) 2016/399

Article 8 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

**"If** the travel document contains an electronic storage medium (chip), the authenticity of the chip data shall be confirmed using the complete valid certificate chain, unless this is impossible, for technical reasons or, in the case of a travel document issued by a third country, due to the non-availability of valid certificates."

**"For persons whose border crossing is subject to a registration in the EES,** if the travel document contains an electronic storage medium (chip), the authenticity of the chip data shall be confirmed using the complete valid certificate chain, unless this is impossible, for technical reasons or, in the case of a travel document issued by a third country, due to the non-availability of valid certificates."

## **Amendment 6**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 3 – point b – point i**

Regulation (EU) 2016/399

Article 8 – paragraph 3 – point a – point i

*Text proposed by the Commission*

*Amendment*

**"(i) verification of the identity and the nationality of the third country national and the validity and authenticity of the travel document, by consulting the relevant databases, in particular:**

**deleted**

- (1) the Schengen information system;**
- (2) the Interpol database on stolen and lost travel documents;**
- (3) national databases containing information on stolen, misappropriated, lost and invalidated travel documents.**

**This verification includes a thorough scrutiny of the travel document for signs of falsification and counterfeiting.**

**Except for third country nationals whose entry is subject to a registration in the EES, if the travel document contains a facial image recorded in the electronic storage medium (chip) and if the facial image recorded in the chip can be legally and technically accessed, this verification shall include the verification of the facial image recorded in the chip, by comparing electronically this image with the live**

*facial image of the concerned third country national.*

#### **Amendment 7**

##### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 3 – point b – point i**

Regulation (EU) 2016/399

Article 8 – paragraph 3 – point a – point ii

*Text proposed by the Commission*

*Amendment*

**(ii) verification that the travel document is accompanied, where applicable, by the requisite visa or residence permit.** **deleted**

*If the residence permit contains an electronic storage medium (chip) the authenticity of the chip data shall be confirmed using the complete valid certificate chain, unless this is impossible, for technical reasons. The thorough checks on entry shall also comprise a systematic verification of the validity of the residence permit or long stay visa by consulting, in the SIS and in other relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents. [21]*

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<sup>21</sup> *These paragraphs may require further adjustments after the adoption of COM's proposal (2015)670/2*

#### **Amendment 8**

##### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 3 – point b – point iii**

Regulation (EU) 2016/399

Article 8 – paragraph 3 – point b

*Text proposed by the Commission*

*Amendment*

**(iii) point (b) is replaced by the following:** **deleted**

**"(b) if the third country national holds a visa [or a touring visa] referred to in**

*Article 6(1)(b) the thorough checks on entry shall also comprise the verification of the authenticity, territorial and temporal validity and status of the visa and, if applicable, of the identity of the holder of the visa, by consulting the VIS in accordance with Article 18 of Regulation (EC) No 767/2008 of the European Parliament and of the Council<sup>22</sup>"*

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*<sup>22</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)."*

#### **Amendment 9**

##### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 3 – point b – point iv**

Regulation (EU) 2016/399

**Article 8 – paragraph 3 – point g – point i**

*Text proposed by the Commission*

*Amendment*

*(iv) point (g)(i) is replaced by the following:*

*deleted*

*"(i) verification that the third country national is in possession of a document valid for crossing the border and that the document is accompanied, where applicable, by the requisite visa or residence permit. Verification of the document shall include the consultation of relevant databases, in particular the Schengen Information System; the Interpol database on stolen and lost travel documents; and national databases containing information on stolen, misappropriated, lost and invalidated travel documents. <sup>23</sup> Except for third country nationals whose exit is subject to a registration in the EES, if the travel document contains a facial image recorded in the electronic storage medium*

*(chip) and if the facial image recorded in the chip can be legally and technically accessed, this verification shall include the verification of the facial image recorded in the chip, by comparing electronically this image with the live facial image of the concerned third country national ."*

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<sup>23</sup> *This conditions is foreseen in the proposal (COM(2015)670/2) amending Article 7 of the SBC and will be part of the compulsory checks for persons enjoying the right of free movement. Depending on the final version of the text adopted, this sentence may require adjustments.*

## **Amendment 10**

**Proposal for a regulation**  
**Article 1 – paragraph 1 – point 4**  
Regulation (EU) 2016/399  
Article 8a

*Text proposed by the Commission*

*Amendment*

*[...]*

**deleted**

*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

*Justification*

*The provisions in this article are outside of the scope (Article 2) of the EES as proposed by the Regulation establishing the Entry/Exit System (EES) which does not include Union citizens or categories referred to in paragraphs 3 and 4. This paragraph should therefore be deleted.*

## **Amendment 11**

**Proposal for a regulation**  
**Article 1 – paragraph 1 – point 4 a (new)**  
Regulation (EU) 2016/399  
Article 8aa

*Text proposed by the Commission*

*Amendment*

**(4a) The following Article 8aa is inserted:**

**“Article 8aa**

***Standards for automated border control systems***

***1. Automated border control systems shall be 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.***

***2. The Commission in close cooperation with eu-LISA shall be empowered to adopt delegated acts in accordance with Article 37 concerning the adoption of additional technical standards for automated border control systems.”***

*Justification*

*There is a need of standards for automated border control systems.*

## **Amendment 12**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 5**

Regulation (EU) 2016/399

Article 8b

*Text proposed by the Commission*

*Amendment*

**[...]**

***deleted***

*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

## *Justification*

*The provisions in this article are outside of the scope (Article 2) of the EES as proposed by the Regulation establishing the Entry/Exit System (EES) which does not include third country nationals who hold a residence permit. This paragraph should therefore be deleted.*

### **Amendment 13**

#### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 6**

Regulation (EU) 2016/399

Article 8c – paragraph 1 – point a

#### *Text proposed by the Commission*

(a) the travel document presented for the border crossing shall contain an electronic storage medium (chip) and the authenticity of the chip data shall be confirmed using the complete valid certificate chain;

#### *Amendment*

(a) the travel document presented for the border crossing shall contain an electronic storage medium (chip) and the authenticity **and integrity** of the chip data shall be confirmed using the complete valid certificate chain;

### **Amendment 14**

#### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 6**

Regulation (EU) 2016/399

Article 8c – paragraph 1 – point b

#### *Text proposed by the Commission*

(b) the travel document presented for the border crossing shall contain a facial image recorded in the chip which can be legally and technically accessed by the automated system so as to verify the identity of the holder of the travel document by comparing the facial image recorded in the chip and his or her live facial image.

#### *Amendment*

(b) the travel document presented for the border crossing shall contain a facial image recorded in the chip which can be legally and technically accessed by the automated **border control** system so as to verify the identity of the holder of the travel document by comparing the facial image recorded in the chip and his or her live facial image.

### **Amendment 15**

#### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 7**

Regulation (EU) 2016/399

Article 8d – paragraph 1 – point a



*Text proposed by the Commission*

(a) the travel document presented for the border crossing shall contain an electronic storage medium (chip) and the authenticity of the chip data shall be confirmed using the complete valid certificate chain;

*Amendment*

(a) the travel document presented for the border crossing shall contain an electronic storage medium (chip) and the authenticity **and integrity** of the chip data shall be confirmed using the complete valid certificate chain;

**Amendment 16**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 7**

Regulation (EU) 2016/399

Article 8d – paragraph 1 – point b

*Text proposed by the Commission*

(b) the travel document presented for the border crossing shall contain a facial image recorded in the chip which can be legally and technically accessed by the automated system so as to verify the identity of the holder of the travel document, by comparing the facial image recorded in the chip and his/her live facial image;

*Amendment*

(b) the travel document presented for the border crossing shall contain a facial image recorded in the chip which can be legally and technically accessed by the automated **border control** system so as to verify the identity of the holder of the travel document, by comparing the facial image recorded in the chip and his/her live facial image;

**Amendment 17**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 7**

Regulation (EU) 2016/399

Article 8d – paragraph 2

*Text proposed by the Commission*

2. Where the conditions laid down in paragraph 1 are met, the checks on entry and exit provided for in Articles 8(2) and 8(3)(a) and (b) or Articles 8(2) and 8(3)(g) and (h) may be carried out through a self-service system. When carried out through an automated border control system, the borders check on exit shall include the checks provided for in Article 8(3)(h).

*Amendment*

2. Where the conditions laid down in paragraph 1 are met, the **border** checks on entry and exit provided for in Articles 8(2) and 8(3)(a) and (b) or Articles 8(2) and 8(3)(g) and (h) may be carried out through a self-service system. When carried out through an automated border control system, the borders check on exit shall include the checks provided for in Article

8(3)(h).

## Amendment 18

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 7

Regulation (EU) 2016/399

Article 8d – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Where a person is granted access to a national facilitation programme established by a Member State pursuant to Article 8e, the border checks carried out through a self-service system on entry may not include examination of the aspects referred to in Article 8(3)(a) (iv) and (v) when crossing the external borders of that Member State or the external borders of another Member State having concluded an agreement as referred to in Article 8e(4) with that Member State.**

## Amendment 19

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 8

Regulation (EU) 2016/399

Article 8e – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Each Member State may establish a voluntary programme in order to allow third country nationals as defined in Article 2(6) or nationals of a specific third country who do not **benefit from** the right of free movement to benefit from the facilitations made pursuant to paragraph 2 of this Article when crossing the external border of a Member State.

1. Each Member State may establish a voluntary programme in order to allow third country nationals as defined in Article 2(6) or nationals of a specific third country who do not **enjoy** the right of free movement **under Union law** to benefit from the facilitations made pursuant to paragraph 2 of this Article when crossing the external border of a Member State.

## Amendment 20

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 8

Regulation (EU) 2016/399

Article 8e – paragraph 2 – point c – point iv

*Text proposed by the Commission*

(iv) the applicant proves integrity and reliability, in particular, **if applicable, that previous visas with limited territorial validity have been lawfully used, the applicant's economic situation in the country of origin and the genuine intention to leave the territory of the Member States in due time.** In accordance with Article 23 of [Regulation establishing the Entry/Exit System (EES)], the authorities referred to in paragraph b) of this Article shall have access to consult the EES to verify that the applicant has not previously exceeded the maximum duration of authorised stay in the territory of the Member States;

*Amendment*

(iv) the applicant proves **his or her** integrity and reliability, in particular, **where applicable, the lawful use of** previous visas **or visas** with limited territorial validity, **his or her economic situation in the country of origin and his or her genuine intention to leave the territory of the Member States before the expiry of the visa, where applicable, or the end of the authorised period of stay.** In accordance with Article 23 of [Regulation establishing the Entry/Exit System (EES)], the authorities referred to in paragraph (b) of this Article shall have access to consult the EES to verify that the applicant has not previously exceeded the maximum duration of authorised stay in the territory of the Member States;

## Amendment 21

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 8

Regulation (EU) 2016/399

Article 8e – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. In the case of third-country nationals benefiting from a national facilitation programme, border guards may carry out the verifications on entry pursuant to Article 8(3)(a) and (b) and on exit pursuant to Article 8(3)(g) 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.*

## **Amendment 22**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 8**

Regulation (EU) 2016/399

Article 8e – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

***4b. An adequate level of security shall be established between national facilitation programmes and the EES following a proper information security risk assessment.***

## **Amendment 23**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 8**

Regulation (EU) 2016/399

Article 8e – paragraph 4 c (new)

*Text proposed by the Commission*

*Amendment*

***4c. 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 Article 39 of [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.***

## **Amendment 24**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 10 a (new)**

Regulation (EU) 2016/399

Article 10 – paragraph 3a a (new)

*Text proposed by the Commission*

*Amendment*

***(10a) In Article 10, the following paragraph 3aa is added:***

***3aa. Where Member States decide to establish a national facilitation programme in accordance with Article 8e, they may decide to use specific lanes for third-country nationals who benefit from such a national facilitation programme.***

## **Amendment 25**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 14 a (new)**

Regulation (EU) 2016/399

Article 37 – paragraph 2

*Present text*

“2. The power to adopt delegated acts referred to in Article 13(5) and Article 36 shall be conferred on the Commission for an indeterminate period of time.”

*Amendment*

***(14a) In Article 37, paragraph 2 is replaced by the following:***

“2. The power to adopt delegated acts referred to in **Article 8aa**, Article 13(5) and Article 36 shall be conferred on the Commission for an indeterminate period of time.”

## **Amendment 26**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 14 b (new)**

Regulation (EU) 2016/399

Article 37 – paragraph 3

*Present text*

“3. The delegation of powers referred to in Article 13(5) and Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall

*Amendment*

***(14b) In Article 37, paragraph 3 is replaced by the following:***

“3. The delegation of powers referred to in **Article 8aa**, Article 13(5) and Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that

take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.”

decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.”

## **Amendment 27**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 14 c (new)**

Regulation (EU) 2016/399

Article 37 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(14c) In Article 37, the following paragraph 3a is added:***

***3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making\*.***

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\* *OJ L 123, 12.5.2016, p. 1.*

## **Amendment 28**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 14 d (new)**

Regulation (EU) 2016/399

Article 37 – paragraph 5

*Present text*

*Amendment*

“5. A delegated act adopted pursuant to Article 13(5) and Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council

***(14d) In Article 37, paragraph 5 is replaced by the following:***

“5. A delegated act adopted pursuant to ***Article 8aa***, Article 13(5) and Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council

or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.”

or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.”

## Amendment 29

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 15 a (new)

Regulation (EU) 2016/399

Annex VII – point 1

#### *Present text*

1. Heads of State

By way of derogation from Article 6 and Articles 8 to 14, Heads of State and the members of their *delegation*, whose arrival and departure have been officially announced through diplomatic channels to the border guards, may not be subject to border checks.

#### *Amendment*

***(15a) In Annex VII, point 1 is replaced by the following:***

1. Heads of State ***and heads of government***

By way of derogation from Article 6 and Articles 8 to 14, Heads of State, ***heads of government*** and the members of their *delegations*, whose arrival and departure have been officially announced through diplomatic channels to the border guards, may not be subject to border checks.

## Amendment 30

### Proposal for a regulation

#### Annex – paragraph 1 – point 2 – point a

Regulation (EU) 2016/399

Annex IV – point 1

#### *Text proposed by the Commission*

“1. Where provided expressly by its national legislation, a Member State may stamp on entry and exit the travel document of those third country nationals holding a residence permit issued by that same Member State in accordance with

#### *Amendment*

***deleted***

“1. Where provided expressly by its national legislation, a Member State may stamp on entry and exit the travel document of those third country nationals holding a residence permit issued by that same Member State in accordance with

Article 11. *In addition, in accordance with Annex V part A, where third country nationals are refused entry pursuant to Article 14, the border guard shall affix an entry stamp on the passport, cancelled by a cross in indelible black ink, and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the standard form for refusing entry shown in Part B of Annex V. "*

Article 11."

### **Amendment 31**

#### **Proposal for a regulation**

**Annex I – paragraph 1 – point 2 – point c**

Regulation (EU) 2016/399

Annex IV – point 3

*Text proposed by the Commission*

(c) point 3 is *replaced by the following:*

**"3. In case of refusal of entry of a third country national subject to the visa obligation, the stamp shall, as a general rule, be affixed on the page facing the one on which the visa is affixed.**

***If that page cannot be used, the stamp shall be entered on the following page. The machine readable zone shall not be stamped. "***

*Amendment*

(c) point 3 is *deleted*.

### **Amendment 32**

#### **Proposal for a regulation**

**Annex – paragraph 1 – point 3 – point a**

Regulation (EU) 2016/399

Annex V – part A – point 1 – point b

*Text proposed by the Commission*

"(b) for third country nationals whose entry for a short stay [or on the basis of a touring visa] has been refused, the data on refusal of entry shall be registered into the EES in accordance with Article 6a(2) of

*Amendment*

"(b) for third country nationals whose entry for a short stay [or on the basis of a touring visa] has been refused, the data on refusal of entry shall be registered into the EES in accordance with Article 6a(2) of



this Regulation and Article 16 of [Regulation establishing the Entry/Exit System (EES)]. ***In addition, the border guard shall affix an entry stamp on the passport, cancelled by a cross in indelible black ink, and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the standard form for refusing entry shown in Part B of this Annex;***"

this Regulation and Article 16 of [Regulation establishing the Entry/Exit System (EES)];"

### Amendment 33

**Proposal for a regulation**  
**Annex I – paragraph 1 – point 3 a (new)**  
Regulation (EU) 2016/399  
Annex V – part B

*Text proposed by the Commission*

*Amendment*

***3a. In Annex V part B, the following is added under the section entitled “comments”::***

***“The person concerned is hereby informed that her/his personal data and information on this refusal of entry are entered into the Entry/Exit System in accordance with Article 16 of [Regulation establishing the Entry/Exit System (EES)].***

***According to Article 46 of [Regulation establishing 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.”***