

Mr Marc SULON Head of Unit 'Digital Schengen' Directorate-General for Home Affairs European Commission

Brussels, 25 November 2024

Please use <u>csc-secretariat@edpb.europa.eu</u> for all correspondence

Subject: Concerns regarding the EES information campaign

Dear Mr Sulon,

The Coordinated Supervision Committee (CSC), operating within the framework of the European Data Protection Board (EDPB), would like to draw attention to its letter of 12 June 2024¹, in which it expressed its concerns about the EES information campaign in Article 51 of the EES Regulation².

As indicated in the letter, Article 51 of the EES Regulation contains an obligation for the Commission to - in cooperation with the supervisory authorities and the European Data Protection Supervisor (EDPS) - accompany the start of operations of the EES with an information campaign informing the public and, in particular, third country nationals, about the objectives of EES, the data stored in EES, the authorities having access and the rights of persons concerned. Article 51 also states that these information campaigns shall be conducted regularly. In view of this provision, the CSC requested the Commission to inform the CSC on the EES information campaign and indicate the steps for the envisaged cooperation with the supervisory authorities and the EDPS.

¹ Referenced Ares (2024) 4276213 – 13/06/2024

² 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

The CSC appreciates the information provided by representatives of the Commission (DG HOME) during the CSC meeting of 25 September 2024. The Commission explained how the system works and for what purpose, and provided the CSC with an update on the information for the public on EES as shared with the Member States in the context of Article 50(3) of the EES Regulation.

The CSC regrets however that the Commission did not elaborate on the cooperation with the national supervisory authorities and the EDPS as per Article 51 of the EES Regulation, nor on the specific means through which the information campaign intends to ensure that the data subjects concerned are properly informed about their data subject rights. The Commission stated that it was assumed that the national supervisory authorities would have been engaged in the preparation of the information campaign materials by their national authorities, competent for the EES. Although this may be true for some Member States, this certainly is not the case, or cannot be assumed for all. During the CSC meeting of 25 September 2024, several national supervisory authorities noted, in fact, that they were not consulted in the context of this process. Furthermore, relying on the initiative of the Member States would exclude the EDPS, which was in 2022 consulted on part of the Commission's public website on EES as per Article 50(3), but not in the context of Article 51 of the EES Regulation.³

The CSC reminds the Commission of the obligation to ensure a timely and coordinated involvement of national supervisory authorities in the design of the EES information campaign. The CSC emphasises that a large number of data subjects are affected by the processing of their data in the EES and that their data subject rights should be protected in line with the standards provided for in EU data protection laws. Data subjects whose data are to be recorded in the EES should be provided with appropriate information, in clear, accessible and intelligible formats, in relation to the processing of their personal data. The direct cooperation with each national data protection authority and the EDPS, or involving the CSC, composed of all national data protection authorities and the EDPS, in the development of the EES information campaign is therefore of the utmost importance.

Considering that the Entry into Operation of EES, scheduled for 10 November 2024, has been postponed, the CSC would like to call upon the Commission to take this opportunity to indicate how the obligations arising from Article 51 of the EES Regulation will be fulfilled, and what the Commission's envisaged next steps are in the cooperation with national supervisory authorities and the EDPS.

We remain at your disposal in case you wish to discuss this matter further.

Yours Sincerely, On behalf of the CSC, Fanny Coudert Coordinator

³ The EDPS was also, in 2022, consulted on the draft Implementing Decision setting out the template for the provision of information to third-country nationals about the processing of personal data in the Entry/Exit System pursuant to Articles 50(1) and 50(5) of Regulation (EU) 2017/2226. While parts of the text of the template may have been re-used in the communication campaign materials, it cannot be claimed that consultation on the templates amounts to cooperation on the information campaign itself, which is subject to a separate, specific requirement under Article 51.