FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

ENTRY/EXIT SYSTEM:

FUNDAMENTAL RIGHTS GUIDANCE FOR MANAGERS



REPORT

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The entry/exit system and fundamental rights

The entry/exit system (EES) is a large-scale information system of the European Union (EU) to register the entry and exit of short-stay non-EU nationals coming to the Schengen area. The EES Regulation (Regulation (EU) 2017/2226, as amended) is the legal basis for this system, which captures and stores personal data, including facial images and fingerprints. Designed to strengthen border management and improve the efficiency of migration control, the EES replaces manual stamping of passports at borders with automated data collection and verification.

The European Commission estimates that the data from approximately 300 million border crossings by non-EU nationals will be recorded in the EES per year – noting that this figure refers to individual crossings, not people. Under Commission Implementing Decision (EU) 2025/1544, the EES will start to operate on 12 October 2025. Pursuant to Regulation (EU) 2025/1534, not all functions of the EES will be implemented during the first six-month progressive start period.

While the EES promises operational benefits, its implementation also carries significant implications for the fundamental rights of non-EU nationals who require mitigating measures. An example of mitigating measures could be reducing hardship for vulnerable passengers. The system touches on a broad range of rights enshrined in the European Union Charter of Fundamental Rights (the Charter), including: human dignity (Article 1), respect for private and family life (Article 7), the protection of personal data (Article 8), the prohibition of discrimination (Article 21), and specific protection for children, older persons, and persons with disabilities (Articles 24–26). It may also affect the right to asylum (Article 18) and the principle of *non-refoulement* (Article 19).

Exercising the right to an effective remedy (Article 47) against incorrect decisions based on EES records is also a central consideration, given that biometric matching errors may occur despite safeguards. The rate of false results will never be zero. For a system that processes hundreds of millions of records, even a very small error rate affects a considerable number of people.

Charter rights, which are included in the European Convention on Human Rights (ECHR) and its protocols, must be interpreted in the same way as the equivalent rights in the ECHR, in accordance with Article 52(3) of the Charter. This means that the case law of the European Court of Human Rights (ECtHR) must be duly taken into account when determining the meaning and content of rights set forth in both the Charter and the ECHR. This is the case for many Charter rights.

The EES Regulation itself contains numerous fundamental rights safeguards, which need to be implemented when operating the system. For non-EU nationals, decisions based on EES data must be transparent and fair. Non-EU nationals with specific needs, such as children, should not face an additional burden (Article 10), and effective safeguards must be in place to ensure data accuracy (Articles 35 and 39), access to information (Article 50) and the right to seek correction or redress (Article 52). These safeguards do not only fulfil legal obligations, they also enhance the

reliability and functionality of the system itself.

The EES is one of six large-scale information systems that the EU is in the process of setting up to support asylum, border and immigration management, policing and internal security. These systems will become interoperable, meaning that responsible authorities can access or view certain data across the systems, for example to establish the identity of a non-EU national. Gaps in the reliability and accuracy of data in the EES may thus lead to adverse impacts on individuals in other procedures, such as asylum or immigration procedures, more generally. For an overview of the fundamental rights risks and opportunities of the EU's large-scale IT systems, the reader can consult the online information platform on the EU's IT systems for migration and policing, and their interoperability, which the European Union Agency for Fundamental Rights (FRA) published in 2024. The platform informs non-EU nationals, lawyers and civil society organisations about the main features of the EU's IT systems and provides guidance on how to help data subjects exercise their rights.

Guidance from the European Union Agency for Fundamental Rights

Based on research carried out between May and September 2024, FRA compiled fundamental rights considerations for the operation of the EES that were consulted by practitioners and experts at a workshop in September 2024 and at training events organised by the European Border and Coast Guard Agency.

This guidance is for officials managing the roll-out and the operation of the EES. It is addressed to staff within ministries and/or border management authorities who are responsible for the EES and senior border management staff at border crossing points (BCPs).

While the EES Regulation (Regulation (EU) 2017/2226, as amended) and the European Commission's practical handbook for national authorities using the EES under Article 71 of the regulation provide the necessary information for operating the EES, this guidance adds a fundamental rights perspective. It turns legal requirements into practical suggestions, based on real challenges seen at the border.

Without being exhaustive, this guidance for EES managers focuses on the seven operational aspects that the research identified as the most relevant for the protection of fundamental rights:

- informing non-EU nationals effectively;
- treating non-EU nationals waiting for border checks with dignity;
- respecting data protection law;
- capturing biometric data in a dignified manner;
- supporting non-EU nationals with specific needs;
- using EES data in line with fundamental rights;
- incorporating fundamental rights into training.

For each area, this FRA guidance starts by setting the scene, presents selected research and describes key aspects of the EU law framework. The guidance itself, presented in bullet point format, focuses on areas which FRA's field research and ensuing discussions identified as the most important. Depending on the national setup of administrative responsibilities, much of the guidance may also fall into the remit of senior officers at the BCP level. Such guidance is flagged accordingly and may relate, for example, to logistical arrangements, such as the setup of self-registration systems and the organisation of waiting areas, preparing BCP-wide protocols and cooperation agreements, coordinating staffing requests, determining equipment needs or organising training. Some of the guidance may also concern the tasks of shift leaders, who directly oversee, guide and coordinate frontline officers and supervise second-line checks, for which passengers undergo more detailed checks. At the end of each section, the reader will find references for further reading.

This guidance for managers is published together with a separate guidance publication for border guards using the EES during first-line checks, The Entry/Exit System: Fundamental rights guidance for border guards, 2025.

This FRA guidance applies from the moment the EES is rolled out. Some guidance in Section 6 only become relevant when all functions of the EES have been implemented.

This guidance focuses specifically on fundamental rights considerations linked to the operation of the EES for border and immigration management. It does not cover law enforcement access to the EES for combating terrorism and serious crime, as this constitutes a separate objective involving different authorities to those targeted by this guidance.

For aspects related to border management that are not covered in this guidance, the reader may consult the following FRA publications.

- European Union Agency for Fundamental Rights, Border controls and fundamental rights at external land borders– Practical guidance, Publications Office of the European Union, Luxembourg, 2020. This is practical guidance for border guards.
- Council of Europe, European Court of Human Rights and European Agency for Fundamental Rights, Handbook on European law relating to asylum, borders and immigration– Edition 2020, Publications Office of the European Union, Luxembourg, 2020, in particular Chapter 2. Update forthcoming in 2026.
- Council of Europe, European Court of Human Rights, European Data Protection Supervisor and European Agency for Fundamental Rights, Handbook on European data protection law– 2018 edition, Publications Office of the European Union, Luxembourg, 2018. This explains relevant data protection standards.
- European Union Agency for Fundamental Rights, Fundamental rights complications of the obligation to provide fingerprints for Eurodac, Publications Office of the European Union, Luxembourg, 2015.
- European Union Agency for Fundamental Rights, Right to information– Guide for authorities when taking fingerprints for Eurodac, Publications Office of the European Union, 2019. This was published with the Eurodac Supervision Coordination Group.
- FRA's online information platform on EU IT systems for migration and policing, which describes the EU large-scale IT systems on borders, visas, asylum and migration and their interoperability (December 2024).

Research methodology

FRA carried out research and contributed fundamental rights expertise to training activities on the EES as the system will process personal data, including sensitive biometric data, of hundreds of millions of non-EU nationals each year.

FRA's research gathered together the experiences and expectations of practitioners and experts on matters that are relevant for the roll out of EES in compliance with fundamental rights. These included collecting and processing biometric data at borders – for example through automated border control (ABC) gates, sharing information with non-EU nationals or managing queues in settings with limited space.

Between May and September 2024, FRA collected experiences from border guards, national authorities, supervisory authorities and fundamental rights experts. Field research took place in six EU Member States, covering nine air, sea and land BCPs with relevant experience in processing biometric data at borders. More specifically, the following research tasks were carried out.

- 30 national-level authorities and experts were interviewed, five in each of the following Member States: Bulgaria, Estonia, France, Germany, Italy and Poland.
- At nine BCPs, 61 shift leaders and 25 other stakeholders such as airport operators, transport companies and non-governmental organisations were interviewed. At these BCPs, the border guards offered a guided tour to the researchers, which enabled some participatory observation.
- At nine BCPs, covering 177 border guards in total a survey was carried out.
- FRA staff visited five BCPs (Frankfurt and Vienna airports, a Eurostar terminal in France and the ports of Marseille and Bari), observing and discussing the preparations for the EES with respective Member State authorities.

The research took place at the following BCPs:

- Bulgaria– Kapitan Andreevo (road BCP) and Sofia airport;
- Estonia– Narva (land BCP);
- France– the port of Marseille and the Eurostar BCP;
- Italy– Rome Fiumicino airport and the port of Bari; and
- Poland– Medyka (road BCP) and Warsaw airport.

The research findings were the starting point for compiling this FRA guidance.

1. Informing non-EU nationals effectively

The right to information is crucial to the operation of the EES as it ensures transparency and enables the protection of fundamental rights. Information promotes accountability, legal clarity and trust in the EU's border management system.

1.1. Selected key findings

The following findings were achieved through qualitative research.

- None of the BCPs in which the fieldwork took place, except Medyka (Poland) and Narva (Estonia), had information boards or leaflets at first-line checks.
- The common opinion across all BCPs in which the fieldwork was carried out is a need to anticipate the timing of the provision of information to non-EU nationals.
- A shift leader in Estonia noted that 'in the future, having to photograph babies in strollers … will cause difficulties… for the person who has to do it, as they will have to explain to the parent why they are taking a picture of their child.'
- Academics in Germany and Italy noted that non-EU nationals may not fully comprehend the information provided.
- An academic in Bulgaria highlighted the potential risks related to language barriers and inconsistent information delivery across Member States.

The border guards survey revealed the following findings.

- 84% of border guards stated that based on their experience, providing advance information to passengers about the purpose, procedures and rights related to data collection in the EES is essential for ensuring the quality of biometric data (*n*=175) [1] .
- 91% of border guards say that giving non-EU nationals prior information on entry requirements would help their communication with them during first-line checks, along with information videos while waiting (81%), access to interpretation tools (77%), written information material provided while waiting (70%) and foreign language support staff (68 %) (*n*=176).
- 37% of border guards say that many or some non-EU nationals are not well informed about checks, which affects their work negatively (*n*=161).
- Officers mentioned time pressure (73%), insufficient information material (61%), communication and language difficulties (59%) and lack of expertise (43 %) as challenges to informing non-EU nationals about checks (*n*=172).

1.2. Legal references

Under the EES Regulation, non-EU nationals must be clearly informed about the use of their personal data, their obligations and their rights. Article 50(1) of the regulation lists what non-EU nationals must be informed about and how they should be informed. It requires Member States to inform them about the need to provide fingerprints and facial images, the consequences of refusing to do so and the possibility of data being shared with law enforcement authorities or for return purposes. Individuals must also be informed of their rights to access, correct or delete their data, the use of data for monitoring overstaying, data retention periods and the right to lodge complaints. The regulation clarifies that information must be in writing, be concise, transparent, intelligible, easily accessible, use plain language and be in a language non-EU nationals understand or are reasonably expected to understand. Commission Implementing Decision (EU) 2022/1337 of 28 July 2022 sets out the template for the provision of information.

The right to information set out in the EES Regulation complements EU data protection law (see section 3), in particular Regulation (EU) 2016/679 (the General Data Protection Regulation (GDPR)). The EES Regulation must be interpreted in line with the right to respect for private and family life and the protection of personal data set out in Articles 7 and 8 of the Charter and the right to an effective remedy in Article 47 of the Charter. It must also comply with the right to good administration, which is a general principle of EU law. To promote fairness and legal protection when informing non-EU nationals, national authorities must avoid discrimination as prohibited by the Charter in Article 21 and take the necessary measures to respect the rights of the child (Article 24), of the elderly (Article 25) and people with disabilities (Article 26).

1.3. Guidance

The following guidance may help national authorities to provide information on the EES to non-EU nationals in an effective and non-discriminatory manner that respects fundamental rights.

- **Guidance 1.1:** Making the European information campaign on the EES accessible on an official national website and complementing it, where appropriate, with national-level information made available online.

The following guidance may also fall into the remit of senior officers at BCPs.

- **Guidance 1.2:** Producing information material, which is as concrete and specific as possible, naming and providing contact details of the person(s) responsible for data protection matters and for the submission of complaints.
- **Guidance 1.3:** Supporting BCPs with guidance on how to set up on-site information points, providing information in multiple languages and accessible formats, such as QR codes, posters, pamphlets, screens with informative videos, braille stations, audio information, pictograms or symbols for children.

- **Guidance 1.4:** Encouraging BCPs to distribute QR codes linking to the web service to verify the remaining days of authorised stay.
- **Guidance 1.5:** Regularly monitoring whether information materials displayed at BCPs are easily accessible to all non-EU nationals without requiring them to leave the queue.
- **Guidance 1.6:** Deploying adequate staff at BCPs to respond to non-EU nationals' questions in the different relevant languages.
- **Guidance 1.7:** Where needed and feasible, making cultural mediators or similar support staff available at BCPs to assist non-EU nationals during self-registration, particularly those with specific needs and with limited digital skills and to facilitate the identification and referral of vulnerable people.
- **Guidance 1.8:** Sharing relevant information material and coordinating, as appropriate, with transport companies ('carriers'), travel agencies, visa authorities and neighbouring BCPs in non-EU countries to inform non-EU nationals about the EES in advance of their travel.

1.4. Further reading

- The European Commission's 'EES Practical Handbook' for national authorities (not publicly available).
- European Union Agency for Fundamental Rights, Border controls and fundamental rights at external land borders: Practical guidance, Publications Office of the European Union, Luxembourg, 2020, point7.

2. Treating non-EU nationals waiting for border checks with dignity

Facilities at BCPs are often limited in space. Waiting times may lead to difficulties for non-EU nationals, which is an issue that goes beyond the context of the EES but could be significantly exacerbated by its operation. This issue requires appropriate design and queue management.

2.1. Selected key findings

The following findings were achieved through qualitative research.

- The infrastructure for first- and second-line checks at the researched BCPs varies widely, with airports generally better equipped to manage passenger flows.
- At sea and land borders the high volume of vehicular and pedestrian traffic can exacerbate delays and put non-EU nationals in an uncomfortable position, especially when adequate shelter is not provided. For example, a shift leader in the port of Bari (Italy) noted that 'passenger numbers have increased crazily, there is no space… And when there are so many people, it is also difficult to identify critical situations.' A stakeholder in Kapitan Andreevo (Bulgaria) described how 'people get off the bus, go through the checks and stand on the side while the bus moves… If the check lasts, say, two hours, for two hours the passengers stand wherever they find [a place].'
- A shift leader at Warsaw airport in Poland noted that the EES may have a positive effect on queues: 'often passengers have a lot of these stamps [in their passports] and [to] count it all, it takes time. And if the system calculates these days of stay on its own, I think it will definitely have a positive effect.'
- Authorities in France identified the waiting conditions and the modalities of collecting biometric data as among the issues that may affect the respect for human dignity. Bulgarian authorities noted that the introduction of the EES would lead to longer processing times at BCPs, potentially impacting on the treatment of non-EU nationals.

The border guards survey revealed the following findings.

- Border guards experienced with e-gates mentioned the following as effective measures to facilitate passenger flow: onsite guidance by queue managers (79%), clear signs on who can use the gates (76%) and the presence and reachability of the company responsible for technical maintenance (74%) (n=140) [2] .
- Most responding officers (87%) consider the availability of support staff such as queue assistants or cultural mediators as useful to carry out checks in a way that reduces hardship for people with specific needs in case of long queues (n=177).

2.2. Legal references

Under Article 7 of the Schengen Borders Code (Regulation (EU) 2016/399), border guards must fully respect human dignity when checking people, in particular in cases involving people with specific needs. Under Article 10 of the EES Regulation, the use of the EES must respect the Charter, the ECHR and, for children, the UN Convention on the Rights of the Child. The UN Convention on the Rights of Persons with Disabilities, which is binding on the EU and all its Member States, protects the rights of people with disabilities, for example, by ensuring that transportation is accessible (Article 9).

2.3. Guidance

The following guidance may help national authorities to promote the dignified treatment of non-EU nationals while their personal data are processed in the EES. It may also fall into the remit of senior officers at BCPs.

- **Guidance 2.1:** Supporting, where appropriate, negotiations on space allocation with the entity responsible for the BCP infrastructure to ensure adequate space for waiting areas, self-service systems and first- and second-line checks.
- **Guidance 2.2:** Providing guidance and support to BCPs on how to provide proper waiting areas with seating, sufficient toilets, drinking water and, at land BCPs and seaports, sheltered places for pedestrians and vehicle passengers to protect them from sun, rain and snow.
- **Guidance 2.3:** Making all reasonable efforts to support BCPs to keep waiting times short, for example, through effective information provision, queue management and adequate staffing and equipment.
- **Guidance 2.4:** Encouraging BCPs to develop emergency protocols, particularly at seaports and land BCPs, to ensure that non-EU nationals' fundamental rights are respected in cases of prolonged delays.
- **Guidance 2.5:** Regularly monitoring if there is sufficient space for EES-related second-line checks at BCPs, without interfering with the space needed for interviewing asylum applicants or for identifying potential victims of trafficking in human beings.

2.4. Further reading

- The European Commission's 'EES Practical Handbook' for national authorities (not publicly available).

- European Union Agency for Fundamental Rights, Border controls and fundamental rights at external land borders: Practical guidance, Luxembourg, Publications Office of the European Union, 2020, point1.

3. Respecting privacy and data protection law

The EES processes personal data, including biometric data, namely fingerprints and facial images. Biometric data are sensitive personal data, as they allow for unique identification or authentication of a natural person. The central storing of data of hundreds of millions of people bears fundamental rights risks, which must be mitigated by effective data protection safeguards.

3.1 Selected key findings

The following findings were achieved through qualitative research.

- The field research at BCPs suggests that, in general, privacy is better protected at air borders, with some exceptions during busy travel periods.
- The interoperability of the EU IT systems amplifies the risks related to data protection, according to experts in Germany, France and Italy.
- In Bulgaria and Poland data protection experts and academics noted that gaps in administrative capacity and operating procedures, along with limited oversight, may lead to unlawful access to EES data, creating risks of data protection violations.
- An academic in Bulgaria identified risks to the right of good administration and the right to an effective remedy, as non-EU nationals might face challenges in accessing their own data stored in the EES or having incorrect data corrected or deleted.

The border guards survey revealed the following findings.

- 87% of border guards consider the availability of a comfortable setting that ensures privacy to be an important safeguard for data quality (n=176) [3] .

3.2. Legal references

Article 16 of the EES Regulation lists the personal data that the EES processes. Article 39 gives guidance on how to process personal data in the EES lawfully.

More generally, Article 49 of the EES Regulation specifies that EU data protection law, particularly the GDPR and Directive (EU) 2016/680, applies to Member States' processing of personal data in the EES. Under Article 5 of the GDPR, personal data must be processed lawfully, fairly and in a transparent manner. The processing of biometric data is subject to the limitation and safeguards in Article 9 of the GDPR.

Article 52 of the EES Regulation describes data protection rights, such as the right to access

stored personal data, or the right to ask that data be rectified or deleted. In accordance with Article 50(1)(l), all individuals must be informed of their right to lodge a complaint with the relevant supervisory authority if they believe their data protection rights have been violated (for information provision see Section 1).

3.3. Guidance

The following guidance may help national authorities to process personal data in the EES in line with EU data protection law.

- **Guidance 3.1:** Conducting a data protection impact assessment before operating new EES components, involving national data protection authorities, as appropriate.
- **Guidance 3.2:** Ensuring the security and regular maintenance of hardware and software developed and deployed at the national level through continuous technical optimisation, proactive safeguards and system checks.
- **Guidance 3.1:** Taking multi-layered cybersecurity measures to protect personal data against unauthorised access, hacking or misuse.

The following guidance may also fall into the remit of senior officers at BCPs.

- **Guidance 3.4:** Offering support and guidance to BCPs on how to provide an environment that ensures confidentiality and privacy when collecting personal data from non-EU nationals.
- **Guidance 3.5:** Supporting BCPs to install privacy screen protectors on self-service systems and protective foil to screens or border control booth windows, as appropriate.
- **Guidance 3.6:** Raising awareness on the consequences for data entry mistakes and the particularly severe impact they can have on the person concerned.
- **Guidance 3.7:** Offering training and guidance to front-line officers on data corrections to be made at first line (e.g. errors at self-registration) and cases to refer to second line (e.g. miscalculation of days of stay), based on agreed data correction policies.
- **Guidance 3.8:** Offering training and guidance to officers on how to effectively inform non-EU nationals who request the rectification, completion or erasure of their data about the competent authority to contact and how to proceed with their request.

3.4. Further reading

- The European Commission's 'EES Practical Handbook' for national authorities (not publicly available).
- Council of Europe, European Court of Human Rights and European Union Agency for

Fundamental Rights, Handbook on European law relating to asylum, borders and immigration– Edition 2020, Publications Office of the European Union, Luxembourg, 2020, in particular Chapter2. Update forthcoming in 2026.

- Council of Europe, European Court of Human Rights, European Data Protection Supervisor and European Union Agency for Fundamental Rights,Handbook on European data protection law– 2018 edition, Publications Office of the European Union, Luxembourg, 2018.

4. Processing biometric data in a dignified and lawful manner

Non-EU nationals from non-EU countries must provide their fingerprints and facial images the first time they enter the Schengen area. During subsequent entries and exits the biometric information collected will be verified and – unless the biometric data needs to be updated – no new biometric information is captured. Border guards may face challenges, for example taking facial images of babies. Although accuracy standards are high, wrong biometric matching can never be fully excluded. Adequate safeguards help to ensure that every person is treated with dignity in these situations.

4.1. Selected key findings

The following findings were achieved through qualitative research.

- It is a common opinion among border guards at researched BCPs that fingerprints are easier to capture compared to facial images, when, for example, people do not stand still.
- The border guard's attitude is pivotal in the biometric data collection process, as this affects the cooperation of the individual. As a shift leader in Poland noted 'if you approach someone with a smile, they also somehow approach you with a smile. People don't make problems.'
- At least in one BCP (Marseille airport), border guards were equipped with tablets that enable mobile EES checks, a measure which may facilitate checks of people with reduced mobility.
- Border guards rely on their judgment and experience to handle complex situations effectively. A shift leader in Bulgaria noted 'we did not receive specific training or instruction on how to assess hand impairments. We just act according to our own experience.'
- Flexibility is key when handling unique circumstances involving cultural factors. A shift leader at Rome Fiumicino airport said in relation to a woman wearing a burqa or a particular veil that does not allow for facial biometric verification: 'we will not force her to remove it or send her to the second line… if her fingerprints provide a match, that will be sufficient.'
- Concerns by experts in Germany about respect for human dignity focus on three main issues: the use of biometric data, the attitude and style of communication by border guards and support mechanisms for travellers with special needs.

The border guards survey revealed the following findings.

- 87% of border guards consider the availability of a comfortable setting that ensures privacy to be an important safeguard for data quality (besides adequate equipment, confirmed by 91% of border guards) (n=176) [4] .

- 36% of border guards said they needed training on obtaining biometric data from people with special needs (*n*=173).
- Border guards with experience in processing biometrics at borders say that explaining the consequences of a refusal to provide biometric data and providing more information on the use of the data (56%), giving the passenger more time to consider the options (31 %), calling a colleague for support (21%), referral to a shift manager (16 %) and calling an interpreter (14%) have helped them in situations when passengers refused to provide their biometric data (*n*=48).

4.2. Legal references

Article 39(1)(a) of the EES Regulation requires Member States to ensure that data are collected lawfully and in full respect of human dignity.

Under Article 10 of the EES Regulation, the capturing of biometric data must respect the Charter, the ECHR and, for children, the Convention on the Rights of the Child. When capturing a child's data, the best interests of the child must be a primary consideration. Article 17(3) exempts children under 12 years of age from the duty to give fingerprints but facial images must be collected from all children, including babies. Article 17(4) and (5) guides the authorities in situations when fingerprints cannot be physically taken either temporarily, for example due to an injured hand, or permanently.

These safeguards in the EES Regulation flow from Article 1 of the Charter, in accordance with which human dignity is inviolable, and from Articles 24 to 26 of the Charter, protecting children, the elderly and people with disabilities.

Fingerprints and facial images must be of sufficient quality to obtain correct matches. Article 15 of the EES Regulation requires that the facial image must have sufficient image resolution and quality to be used in automated biometric matching. Under Article 39 – which mirrors a more general duty in Article 5(1)d of the GDPR – Member States must ensure that data collected are accurate. Commission Implementing Decision (EU) 2019/329 of 25 February 2019 lays down the specifications for the quality, resolution and use of fingerprints and facial image for biometric verification and identification in the EES.

4.3. Guidance

The following guidance may help national authorities to take fingerprints and facial images from non-EU nationals in a manner that respects human dignity.

- **Guidance 4.1:** Ensuring that any data quality guidance to capture biometric data, is strictly in line with EU quality standards.

The following guidance may also fall into the remit of senior officers at BCPs.

- **Guidance 4.2:** Providing guidance to front-line officers on how to capture biometric data in a dignified and non-discriminatory manner, paying particular attention to cultural and/or religious considerations and to the categories of people for whom capturing biometrics may be more challenging, such as small children, people with darker skin tones, or those with facial or hand injuries.
- **Guidance 4.3:** Providing guidance to front-line officers on how to ensure that non-EU nationals with specific needs are provided with the privacy, time or assistance they need to submit their biometric data.
- **Guidance 4.4:** Providing guidance to frontline officers on how to respond to non-EU nationals refusing to provide biometric data.
- **Guidance 4.5:** Supporting BCPs to have sufficient staff to monitor self-service registration systems and provide assistance when required.
- **Guidance 4.6:** Providing guidance to front-line officers on how to address biometric reliability challenges affecting people with diverse physical characteristics (e.g. children, older people, people of colour or other people with less distinct facial features).
- **Guidance 4.7:** Applying high-quality IT infrastructure and software capable of promptly capturing accurate and high-resolution images and fingerprints.

4.4. Further reading

- The European Commission's 'EES Practical Handbook' for national authorities (not publicly available).
- Annex to the Commission Recommendation establishing a common 'Practical Handbook for Border Guards (Schengen Handbook)' to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation (C(2019) 7131 final), C(2022) 7591 final of 28October 2022'., pp.14, 16.
- Council of Europe, European Court of Human Rights and European Agency for Fundamental Rights, Handbook on European law relating to asylum, borders and immigration– Edition 2020, Publications Office of the European Union, Luxembourg, 2020, in particular Chapter 2. Update forthcoming in 2026.
- Council of Europe, European Court of Human Rights, European Data Protection Supervisor and European Agency for Fundamental Rights, Handbook on European data protection law– 2018 edition, Publications Office of the European Union, Luxembourg, 2018.
- European Union Agency for Fundamental Rights, Fundamental rights complications of the obligation to provide fingerprints for Eurodac, Publications Office of the European Union, Luxembourg, 2015.

5. Supporting non-EU nationals with specific needs

The proper identification and provision of support to people with specific needs arriving at a border crossing point is essential for a fundamental rights-oriented operation of the EES. It ensures fairness, promotes accuracy of the data collected through the system, while also minimising the risk of discrimination and harm.

5.1. Selected key findings

The following findings were achieved through qualitative research.

- FRA research shows that resources to identify and support non-EU nationals with specific needs are limited, especially at land and sea BCPs.
- Concerning people with disabilities, a stakeholder at Sofia airport illustrates the practical challenges. He noted that they 'go to the front of the line with the officer who assists them… but infrastructurally there are… no such areas in the entire terminal that are adapted and accordingly marked for people with disabilities.'
- At airports families with children under 12 cannot use ABC gates because doing so would require separating family members.
- The use of ABC gates is largely impractical for people with reduced mobility, particularly those in wheelchairs.

The border guards survey revealed the following findings.

- Border guards participating in FRA's survey anticipated the need for EES-related information and assistance to be highest for people with disabilities (65%), children travelling alone (61%) and older people (52 %), based on their experience of checking non-EU nationals with specific needs (n=176).

5.2. Legal references

When implementing the EES, national authorities must respect the safeguards embedded in the Charter and in the ECHR, in accordance with Article 10 of the EES Regulation. This means that they must pay particular attention to non-EU nationals with specific needs, such as older people, people with disabilities and children – all categories of people protected by Articles 24 to 26 of the Charter. To comply with Article 21 of the Charter, the EES must operate in a non-discriminatory manner.

In accordance with Article 10 of the EES Regulation, when facial images or fingerprints are

collected from children, the primary consideration of the authorities must be the best interests of the child. This principle applies regardless of whether the child is accompanied or travelling alone. The EES Regulation provides specific protection for younger children. In accordance with Article 17(3), children under the age of 12 are exempt from the requirement to provide fingerprints. This exemption acknowledges the fact that children's fingerprints evolve over time.

5.3. Guidance

The following guidance may help national authorities to properly identify and support non-EU nationals with specific needs in a way which is respectful of human dignity.

- **Guidance 5.1:** Setting up a system to allow and encourage non-EU nationals to notify their specific needs in advance, to enable BCPs to offer the necessary support.
- **Guidance 5.2:** Engaging with civil society, child protection organisations and human rights bodies to obtain their feedback on the operation of the EES.

The following guidance may also fall into the remit of senior officers at BCPs.

- **Guidance 5.3:** Providing guidance and training to BCPs on how to organise waiting facilities and queues in a manner which allows families to stay together and enables older people to sit without losing their place in the queue.
- **Guidance 5.4:** Providing guidance and training to BCPs on managing queues so that people with specific needs, who are unable to use ABC gates or self-service systems, are not disproportionately affected by long waiting times.
- **Guidance 5.5:** Providing guidance and training to BCPs on how to promptly identify non-EU nationals requiring assistance, for example by ensuring sufficient supervision of self-service systems and first-line queues.
- **Guidance 5.6:** Offering guidance and training to BCPs on how to ensure accessibility for people with disabilities, including by providing sufficient space for wheelchair users.
- **Guidance 5.7:** Procuring and deploying self-service systems with adjustable height scanners, voice assistance and tactile feedback to accommodate individuals with disabilities.
- **Guidance 5.8:** Cooperating with disability organisations when preparing public tenders for technical equipment and to regularly assess the accessibility of BCP premises.
- **Guidance 5.9:** Providing guidance to BCPs on how to guarantee that accompanying people may assist non-EU nationals with disabilities during the biometric data capture process.

5.4. Further reading

- The European Commission's 'EES Practical Handbook' for national authorities (not publicly available).
- European Union Agency for Fundamental Rights, Border controls and fundamental rights at external land borders– Practical guidance, Publications Office of the European Union, Luxembourg, 2020, point1.
- Annex to the Commission Recommendation establishing a common 'Practical Handbook for Border Guards (Schengen Handbook)' to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation (C(2019) 7131 final), C(2022) 7591 final of 28October 2022', page 15.

6. Using entry/exit system data in line with fundamental rights

EES information and data support various immigration procedures. Staying alert about the possible inaccuracy of biometric matching results and being aware of potential justifications for overstay reduces the risk of wrong decisions or actions triggered by incomplete or inaccurate EES data.

6.1. Selected key findings

The following findings were achieved through qualitative research.

- The field research at BCPs pointed to limitations as regards capacity and flexibility to carry out second-line checks at land and sea borders, as these often operate with limited staff and have to manage both pedestrians and vehicle traffic.
- A human rights expert in France noted that expeditious procedures may compromise the right to an effective remedy, particularly when people do not speak the language of the host country.

The border guards survey revealed the following findings.

- About 1 in 4 officers (27 %) encountered mistakes in the Schengen information system or other databases more than 6 times in the past year, 1 in 5 officers encountered such mistakes at least 2–5 times (*n*=177).
- 45% of border guards indicated a need for training or guidance on procedures concerning asylum applicants and EES registration (*n*=173).

6.2. Legal references

The EES calculates the duration of the authorised stay of non-EU nationals in the Schengen area and generates alerts when the authorised stay has expired (EES Regulation, Article 1). There is an automated calculator (Article 11) that indicates the maximum duration of a person's authorised stay. When they reach the maximum duration for short stay, non-EU nationals will not be allowed entry into the Schengen area, unless they hold a permit for longer-term stay. Article 22 of the GDPR prohibits decisions solely based on automated processing.

In accordance with Article 12(3) read together with Article 9(2) of the EES Regulation, the EES generates a list of individuals who have exceeded their authorised duration of stay in the Schengen area, referred to as overstayers. This list is shared with border, visa and immigration

authorities, allowing them to take appropriate follow-up measures. For non-EU nationals apprehended within the Schengen area, this would normally mean starting a return procedure.

To prevent the start of immigration law enforcement procedures against people staying lawfully in the Schengen area, for example, when stay is prolonged due to medical reasons or an application for asylum, Article 39 of the EES Regulation contains a duty to keep EES data accurate and up to date. This also means that EES records of non-EU nationals who are no longer short-term visitors – for example if they acquired EU citizenship, obtained a residence permit or a residence card for family members of EU citizens under Directive 2004/38/EC – must be erased. These categories of people fall outside the scope of the EES, as defined in Article 2 of the EES Regulation.

The EES Regulation does not exclude asylum applicants from its scope. Under Article 10 of Regulation (EU) 2024/1348 (the Asylum Procedure Regulation), asylum applicants are allowed to remain during the asylum procedure. If they feature in the list of overstayers, this would put them at risk of *refoulement*, which would be contrary to the Charter.

Article 35(5) of the EES Regulation has a safeguard to deal with non-EU nationals who overstay for reasons beyond their control, for example due to hospitalisation or a cancelled return flight. If non-EU nationals can show that their stay beyond the authorised period was due to unforeseeable and serious circumstances, they must be removed from the list of overstayers and their EES data must be corrected.

Under Article 41 of the EES Regulation, EES data may be transferred to non-EU countries if this is necessary to prove the person's identity to implement their return. Under Article 41(4) such a transfer must not prejudice the rights of applicants for and the beneficiaries of international protection, in particular as regards the prohibition of *refoulement*.

6.3. Guidance

The following guidance may help national authorities to reduce the risk that inaccurate EES data trigger inappropriate or unlawful follow-up.

- **Guidance 6.1:** Establishing effective systems to swiftly correct or erase EES data when non-EU nationals fall outside the scope of the EES, for example if they obtain a residence permit or are granted international protection.
- **Guidance 6.2:** Establishing a system to monitor whether EES data of non-EU nationals who fall outside the scope of the EES are swiftly rectified, completed or erased.
- **Guidance 6.3:** Providing regular guidance and training to relevant authorities on steps to take when a person whose data are in the EES applies for asylum, to avoid that they feature on the list of overstayers, as this may expose them to a risk of *refoulement*.
- **Guidance 6.4:** Providing regular guidance and training to immigration law enforcement

officers to ensure that any transfer of EES data to non-EU countries for the purpose of return occurs only once a final return decision has been issued.

The following guidance may also fall into the remit of senior officers at BCPs.

- **Guidance 6.5:** Offering training and guidance to front-line staff to treat any person whose duration of authorised stay has expired in a professional and dignified manner.
- **Guidance 6.6:** Offering training and guidance to front-line staff on how to implement procedures for non-EU nationals to rebut the presumption of overstay, including how to give non-EU nationals the opportunity to provide credible evidence.
- **Guidance 6.7:** Providing guidance to BCPs hosting non-EU guest officers to set up workstations in a manner that ensures the confidentiality of the EES and prevents them from accessing EES data, particularly on asylum applicants.

6.4. Further reading

- The European Commission's 'EES Practical Handbook' for national authorities (not publicly available).
- Council of Europe, European Court of Human Rights and European Agency for Fundamental Rights, Handbook on European law relating to asylum, borders and immigration– Edition 2020, Publications Office of the European Union, Luxembourg, 2020.Update forthcoming in 2026.
- European Agency for Fundamental Rights, Apprehension of migrants in an irregular situation– fundamental rights considerations, 2012.

7. Incorporating fundamental rights into training

Training is crucial for a fundamental rights-compliant EES. It ensures that all staff involved learn how to deal with the different situations they may encounter in practice in a manner that fully respect individuals' rights.

7.1. Selected key findings

The following findings were achieved through qualitative research.

- At the researched BCPs, relatively few border guards had the opportunity to participate in specific in-person training sessions on the EES. Most of them followed online training, which was considered as a limitation in terms of access to hands-on practice, immediate feedback and the chance to discuss real-life scenarios with trainers and colleagues.
- At the time of the research at BCPs, many border guards did not know what they would need to do in case of erroneous data entry into the EES.
- At the time of the research at BCPs, many border guards were not yet aware of the mechanisms for data correction in the EES.

The border guards survey revealed the following findings.

- Border guards mentioned the following as training needs: the categories of passengers exempted from the EES (60%), the procedures concerning asylum applicants and their registration in the EES (45%), the data correction possibilities at first line and referral (45 %), the procedures concerning children (42%), performing thorough checks when there are EES discrepancies (41%), taking and verifying biometric data from people with special needs (36%), communicating effectively with non-EU nationals (28 %) and the use of upcoming interoperability of EU large-scale information systems in border checks (21%) (*n*=173).

7.2. Legal references

Article 38(5) of the EES Regulation says that staff who are allowed to access and use data in the EES must first receive proper training. This training should cover how to keep data secure, how to protect people's personal information and how to respect their fundamental rights.

7.3. Guidance

The following guidance may help national authorities to enhance the fundamental rights knowledge and skills of all staff working with the EES.

- **Guidance 7.1:** Regularly reviewing and updating the fundamental rights components of EES training adapting the content to evolving practices and lessons learnt.

The following guidance may also fall into the remit of senior officers at BCPs.

- **Guidance 7.2:** Incorporating fundamental rights into on-the-job learning on the EES to reinforce knowledge and adapt to evolving practices and responsibilities.
- **Guidance 7.3:** Continuing to offer targeted training to first-line officers on the following fundamental rights aspects concerning the EES:
  - how to take fingerprints and facial images in a child- and gender-sensitive manner;
  - how to provide clear and non-discriminatory explanations on the purpose and process of biometric data collection;
  - how to use child-friendly communication, including simple and non-intimidating language, and how to provide child-friendly information materials (e.g. illustrated guides, videos);
  - how to respect data protection principles, cybersecurity rules, data security rules, network and information systems' rules, based on examples and simulations of use cases;
  - how to treat people with dignity and professionalism during biometric data collection with cultural sensitivity and awareness of implicit bias;
  - how to apply the 'human-in-the-loop' approach when assessing data quality and risks of possible data entry or matching mistakes;
  - how to effectively inform non-EU nationals who requested the rectification, completion or erasure of their data;
  - how to recognise signs of distress or discomfort and how to provide support, particularly for people with specific needs, such as children, older people and people with disabilities;
  - how to assist people with disabilities and with other specific needs respectfully and professionally, while ensuring their privacy and security;
  - how to assess justified reasons for overstaying and how to treat overstayers with dignity and impartiality in accordance with the principle of non-discrimination, regardless of their legal status;
  - how to treat applicants for international protection whose data have already been registered in the EES, ensuring respect for their dignity, the right to asylum and the principle of *non-refoulement*.

7.4. Further reading

- The European Commission's 'EES Practical Handbook' for national authorities (not publicly

available).

- European Union Agency for Fundamental Rights, Border controls and fundamental rights at external land borders– Practical guidance, Publications Office of the European Union, Luxembourg, 2020, point10.

Endnotes

[1]'n' denotes the number of border guards who responded to the specific question across all nine border crossing points in which the fieldwork was carried out, out of a total of 177 participants to the survey. The total number of respondents for each question takes into account both respondents who gave substantial answers to the questions and those who selected the answer options 'I do not know' or 'I prefer not to say'. It does not take into account questionnaire responses in which no answer option was selected.

[2]'n' denotes the number of border guards who responded to the specific question across all nine border crossing points in which the fieldwork was carried out, out of a total of 177 participants to the survey. The total number of respondents for each question takes into account both respondents who gave substantial answers to the questions and those who selected the answer options 'I do not know' or 'I prefer not to say'. It does not take into account questionnaire responses in which no answer option was selected.

[3]'n' denotes the number of border guards who responded to the specific question across all nine border crossing points in which the fieldwork was carried out, out of a total of 177 participants to the survey. The total number of respondents for each question takes into account both respondents who gave substantial answers to the questions and those who selected the answer options 'I do not know' or 'I prefer not to say'. It does not take into account questionnaire responses in which no answer option was selected.

[4]'n' denotes the number of border guards who responded to the specific question across all nine border crossing points in which the fieldwork was carried out, out of a total of 177 participants to the survey. The total number of respondents for each question takes into account both respondents who gave substantial answers to the questions and those who selected the answer options 'I do not know' or 'I prefer not to say'. It does not take into account questionnaire responses in which no answer option was selected.

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