



## **Informal meeting of the Justice and Home Affairs Ministers Sopot**

**18-19 July 2011**

### **Smart borders in the Schengen space**

#### **I. Introduction**

In line with the European Council conclusions of 24 June 2011, Europe's external borders must be effectively and consistently managed. New technologies are to be harnessed to meet the challenges of border control work and the efforts on "smart borders" are to be strengthened. These endeavours should also be considered from the perspective of their possible contribution to enhancing credibility of the Schengen governance.

Ensuring smooth and fast border crossing for travellers while ensuring an adequate level of security is a challenge for many Member States. Every year, there are some 700 million external border crossings by EU citizens and third-country nationals. This figure seems set to increase yet Member States, faced with public expenditure restraint, are not able to increase the number of staff carrying out border checks.

The potential offered by new technologies in the area of border management has been under active consideration at EU level since 2008 when the Commission published its Communication "Preparing the next steps in border management in the European Union"<sup>1</sup>. The European Council in June 2011 called for "pushing forward rapidly with work on 'smart borders'".

The Entry/Exit System (EES) and the Registered Travel Program (RTP) are the core components of the "smart borders" package. The EES would be the answer to the current problem of the lack of registration of 'overstayers' which constitute the largest group of irregular migrants in the EU. The system would record the time and place of entry and length of authorized stay. In case someone would overstay the period allowed, an alert would be transmitted to the competent authorities that could take further steps. The RTP would allow certain groups of frequent travellers from third countries to enter the EU, subject to appropriate pre-screening, using simplified

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<sup>1</sup>COM(2008) 69 final.

border checks at automated gates. Together, EES and RTP would allow the EU to get a better grip on irregular flows while at the same time facilitating access to the EU for bona fide travellers.

The context has evolved since 2008: politically in terms of the attention given to border management systems but also to the privacy of personal data; technologically in terms of the systems being developed in MS and at EU level notably concerning the problems encountered when developing VIS and SIS II; and financially with increased pressure on national and EU budgets.

On the one hand, the debate on the governance of the Schengen area at the European Council showed that the Union must continue to reinforce the management of its external borders. On the other hand new systems of this magnitude would require substantial investment by the EU and the Member States in terms of IT development and public expenditure and considerable efforts to ensure high level standards for the protection of personal data.

Before embarking on new projects of this kind, the Commission and the Member States must first ensure there is a shared understanding and a strong commitment and ownership towards working together to deliver on commonly agreed objectives.

Therefore Ministers are invited to express their views on the justification for the system, notably the **added value** in the light of the **technological implications** (including in relation to data protection) and the **cost**.

The results of this discussion as well as those with the European Parliament will feed into a Communication on Smart Borders to be presented by the European Commission in October, which the Council will address at its December meeting.

## **II. Current rules and procedures for border checks**

The Schengen Borders Code requires a thorough check at entry for all travellers crossing the external border apart from EU citizens and their family members. The same level of checking applies regardless of the level of risk associated with the traveller or their frequency of travel. If no flexibility is introduced into this system, the procedures applicable could become unwieldy and burdensome for the third country nationals in question. The EU may become less attractive as a travel and business destination.

In addition, there are no provisions for recording travellers' cross border movements. The authorised stay in the Schengen area is calculated based only on the stamps affixed in the travel document. As a result there is no information basis allowing relevant authorities to address the issues of overstayers, their origins and final destinations. This information gap influences the capacity of Member States to carry out returns and the extent to which EU border and visa policy is based on evidence.

### **III. The components of a smart borders initiative**

- **The Registered Traveller Programme**

Automated border control is increasingly used by some Member States to speed up external border crossings by EU citizens. An EU Registered Traveller Programme would also allow certain third-country nationals to use automated border control.

An RTP could therefore facilitate border checks for pre-vetted, frequent third-country travellers. The vetting criteria could be aligned with the criteria for multiple-entry visa holders. Third-country nationals could lodge an application for the RTP at consulates or at the external border crossing points. The data could be stored both in a token (unique identifier number) and a centralised storage of anonymised biometric data (fingerprints) of each applicant as well as the data from an application. Registered Travellers could be given access to a fully automated border check procedure wherever available. This would require implementation of an entry/exit system to waive stamping obligation and manual calculation of authorised stay.

- **The Entry Exit System**

The EES would systematically register the basic personal data (alphanumeric data, possibly also biometrics from the start or at a later stage) of each third-country national admitted for a short stay when entering and exiting the Schengen area, together with the time and place for doing so. The system could be designed as a central database at EU level, or as a network of national systems.

In case the biometric data (fingerprints) were registered in the system, it would allow for identifying undocumented non-visa holders within the Schengen territory having entered legally. Law enforcement authorities could be given access to the data stored in the system.

#### **IV. Technical implications**

The only biometric identifiers currently used in the context of EU systems are the digital facial image and fingerprints. European e-passports and residence permits contain a facial image and fingerprints, EURODAC uses fingerprints, the VIS will use fingerprints to verify the identity of visa holders and the SISII will eventually store fingerprints. Member States' law enforcement systems are also mainly based on fingerprints and facial images.

Future large-scale IT systems could follow the same approach, in order to leverage synergies from the infrastructure that have already been implemented.

The technological choices, once made, will have long term implications for border crossing infrastructure such as Automated Border Crossing systems as well as for the choice of biometric identifier. They will entail a harmonisation between Member States. So the choices need, to a certain extent, to be future-proof and to be in line with developments in the EU and Member States.

#### **V. Data Protection**

The RTP and the EES will need to comply with the relevant legislation on the protection of personal data, in particular the data protection principles and the requirements of necessity, proportionality, purpose limitation and quality of data. Safeguards and mechanisms will need to be in place for the effective protection of the fundamental rights of the individual travellers and in particular the protection of their private life and their personal data. Visa and border authorities as well as third-country nationals will need to be made aware of these rights.

#### **VI. Costs**

If the EES is built together (i.e. on the same technical platform) with the RTP, the total costs at central and national level for three years of development followed by the first five years of operation would be approximately €947 million. If the systems are built separately, the cost would come to €1335 million<sup>2</sup>.

#### **VII. Questions for the Ministers**

The Commission will present a Communication in October which will be discussed in the Council. On the basis of the information and considerations set out above, the Ministers are invited to express their opinion on the following questions:

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<sup>2</sup> These estimates are based on an RTP with alphanumeric data stored in a token and biometric data stored in a central repository plus a centralised EES with biometrics added later.

**Questions:**

1. Do the Ministers consider that the EES and the RTP are proportionate in relation to the problems identified and their possible solutions, and in relation to the objectives of the systems? Will the systems bring unquestionable added-value for Member States in terms of border management and facilitation of entry and law enforcement? Should any of them be further strengthened by ensuring access of law enforcement authorities? Should any of the systems be given a priority? Are there any alternative options?
2. Taking into account the existing systems, as well those under development, in the Member States, what are the key technological implications to be considered, also taking into account the need to store large amount of personal data?
3. Are the likely costs of the new systems proportionate to the solutions they could bring? Considering public expenditure restraint faced by Member States how can the best cost-effectiveness be ensured while meeting the existing challenges? How, and with which sharing of responsibility, should the costs be covered at national and European level?