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ARTICLE 29 DATA PROTECTION WORKING PARTY

Serious concerns regarding proposed Entry Exit System

At their 91st plenary meeting on 5 and 6 June 2013, the European data protection authorities, assembled in the Article 29 Working Party (WP29), adopted an opinion on "[Smart Borders](#)", the proposals for an Entry Exit System (EES) and a Registered Traveller Programme (RTP) for the Schengen Area that were presented by the Commission on 28 February 2013. The Opinion focuses, in particular, on serious concerns regarding the proposed Entry Exit System.

The Entry Exit System proposal proposes a centralised storage system for entry and exit data of third country nationals admitted for short stays to the Schengen area, whether required to hold a Schengen visa or not. Rather than having passports stamped on entry to and exit from the Schengen Area, data relating to the identity of the visitor and length and purpose of stay will be entered in the system on entry and will be checked on exit, to ensure that the third country national has not exceeded the maximum permissible stay. A centralised system means that the data can be checked no matter where the third country national exits the Schengen Area. The primary purpose of the system is allegedly to counteract the problem of overstay in the Schengen Area of third country nationals who originally entered for a short stay (max 90 days out of 180 days) on a valid visa or for a valid purpose.

The Working Party recognises the need for integrated border management of the external borders of the EU and acknowledges that improving the management of migration flows and preventing irregular migration are legitimate purposes. However, the Entry Exit System proposed would essentially create a new very huge database and must therefore meet the threshold of being "necessary in a democratic society" in order to justify its impact on the right to protection of personal data as set out in Article 8 of the EU Charter of Fundamental Rights.

In its opinion the Working Party highlights that the added value of an Entry Exit System to achieve its aims is not a sufficient test to prove its necessity and its proportionality in terms of its impact on fundamental rights. The Working Party's opinion furthermore calls into question whether the Entry Exit System can be effective in achieving its own stated aims. Even if it were accepted that the proposed system provided significant added value, the opinion concludes that the added value of the Entry Exit System to achieving its stated aims does not meet the threshold of necessity which can justify interference with the rights under Article 8 of the EU Charter of Fundamental rights. Furthermore, the opinion expresses that the added value of the proposed system is not proportionate to

the scale of its impact on fundamental rights in relation to each of its aims, and that alternatives exist to meet its aims.

Background information

The European data protection authorities (the Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data) is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive 95/46/EC. It is composed of representatives from the national data protection authorities of the EU Member States, the European Data Protection Supervisor and the European Commission. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC. The Article 29 Working Party is competent to examine any question covering the application of the data protection directives in order to contribute to the uniform application of the directives. It carries out this task by issuing recommendations, opinions and working documents.

http://ec.europa.eu/justice/data-protection/index_en.htm