

ROADMAP

Title of the initiative: **Communication on the possibility of introducing an EU ESTA**
Type of initiative (CWP/Catalogue/Comitology): CWP
Lead DG: DG HOME
Expected date of adoption of the initiative (month/year): 2011 second quarter
Date of modification: August 2010
Version No: 1

This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

– Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

(i) In its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "*Preparing the next steps in border management in the European Union*" of 13 February 2008, the Commission announced to launch a study on the possibility of introducing an EU electronic system for travel authorisation (EU ESTA).

(ii) The initiative is both related to the EU border management and the EU common visa policy. There may be a subsequent related legislative proposal, if analysis supports that approach.

What are the main problems identified?

Council Regulation (EC) No 539/2001 of 15 March 2001 (listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement) determines the list of third countries whose nationals require a visa to cross the external borders (the so-called negative list) and those whose nationals do not require a visa (the so-called positive list). Some third countries have introduced an ESTA system, a system of prior authorisation - to be obtained before travelling after a screening which is lighter than the traditional visa procedure - for third country nationals of countries on their positive list. It should be examined whether the EU should introduce such an ESTA system, in the context of its integrated border management and as a complement to its present visa policy. It should also be examined whether in the longer term such an ESTA system based on the appreciation of the individual risk should apply to all third country nationals and thus replace the traditional visa policy guided by nationality based risk assessment.

A contract was awarded for a policy study at the end of December 2009. The final report of the study is expected before the end of 2010, therefore only at that moment will it be possible to provide a more detailed problem description.

Who is affected?

The question of who will be affected - all third country nationals or only the nationals of (all or some) of the countries on the positive list - will depend on the results of the study, the discussions with the Council and the European Parliament, and the option that in the end will be chosen if any. Therefore, at this moment it is not possible to indicate who will be affected or if even anybody will be affected.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

An ESTA system would be part of the common EU external borders management and visa policies and thus should be set up on the basis of an EU instrument. Of course, these questions could only be replied to definitively on the basis of the results of the policy study which is currently being carried out on behalf of the Commission. The results of the study will be available before the end of 2010.

B. Objectives of EU initiative

What are the main policy objectives?

The objective of an EU ESTA would be to support and complement the EU common visa policy by allowing pre-screening and pre-verification of whether a person fulfils the entry conditions before travelling to the EU, using a lighter and simpler procedure compared to a visa.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

The objectives would imply developing EU policy of strategic importance, namely the EU border management policy and the EU common visa policy.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

(i) The Communication on "*Preparing the next steps in border management in the EU*" indicated one option for the use of an EU ESTA: it would apply to third-country nationals (TCNs) not subject to the visa requirement. However, in order to have a complete overview of the feasibility, the practical implications and the impacts of such a system in the broadest sense in relation to the border management of the EU and the EU common visa policy, in addition to the 'status quo' policy option the scope of the policy study is extended to four options for the use of an EU ESTA:

1. An ESTA for visa-exempted TCNs;
2. An ESTA for certain countries whose nationals are visa-exempted;
3. Combination of an ESTA with electronic visas;
4. Gradual substitution of the visa requirement by an ESTA.

The purpose of the study is to assess for each option the feasibility, the legal and practical implications and the impacts for the EU border management and the EU common visa policy.

Based on the results of the policy study, the Commission will prepare a report to the Council and the European Parliament in which the Commission will indicate which options assessed in the policy study the Commission would consider feasible for implementation, if any. This report will be discussed with the Council and the European Parliament.

(ii) The contractor should provide answers on the criteria used for deciding what kind of EU legal instrument (e.g. regulation, directive) should be used to implement an ESTA; however, the final report of the study is only before the end of 2010 and the need for an impact assessment will need to be evaluated against the results of the study.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The action proposed will cut across several policy areas: EU border management, EU common visa policy.

Explain how the options respect the proportionality principle

Respect of the proportionality principle will be examined in the policy study of which the final version is before the end of 2010. .

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

The contractor of the policy study should indicate the impacts of each option in his report, of which the final version is expected before the end of 2010. The need for an IA will be assessed depending on the results of the study.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

The contractor of the policy study should indicate the costs of each option and its establishment in his report, of which final the version is expected before the end of 2010. If the EU ESTA would be developed and implemented by the Commission each option will have impacts on the EU budget.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

The options could have an impact on the administrative burden for Member States' authorities and the Commission if a new electronic system would be set up.

The options could also have an impact on the relation with third countries. The extent to which the EU ESTA would have an impact on the relation with third countries and with how many will depend on the option to be chosen.

E. Planning of further impact assessment work

When will the impact assessment work start?

As indicated above, this depends on the timing and results of the discussions with the Council and the European Parliament following the report from the Commission on the results of the policy study. If the Commission decides, after further reflection, to use this Communication to propose an intervention with significant impacts then it will start work immediately on an Impact Assessment Report to accompany it. It is therefore setting aside time for IA work in early 2011. However, if the Commission decides instead that it will not propose any changes to existing policies then no formal IA report is required and it does not intend to provide one, although it would explain the reasons behind its decision in the Communication.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

(i) At this moment no information or data are available. The report of the policy study should provide the first basic information.

(ii) Whether an IA will be carried out remains to be decided. In any case, the contractor of the policy study will examine whether other EU systems, still under development (VIS) or foreseen (entry-exit-system, Registered Travellers Programme) could be used. However, because these systems are still under development, no preliminary or ex-post evaluation results are available at this stage. The policy study will provide an assessment of impacts of the existing ESTA systems in the US and Australia on the different stakeholders (travellers, carriers and public authorities) which will constitute an important element when appreciating the possible impacts of an EU ESTA on the different stakeholders.

(iii) This depends on what option will be chosen, if any.

(iv) Not yet determined and depending on which option will be chosen for implementation, if any.

(V) Not yet determined and depending on which option will be chosen for implementation, if any.

Which stakeholders & experts have been/will be consulted, how and at what stage?

For the policy study for an EU ESTA several stakeholders will be consulted: border control authorities, intelligence agencies, foreign affairs administrations, data protection supervisory authorities, visa authorities, transport carriers, travellers' representatives and port of entry authorities.