

ROADMAP

Title of the initiative: **Legislative proposal to set up Entry/Exit System (EES)**
Type of initiative CWP
Lead DG: DG HOME
Expected date of adoption of the initiative: 2011
Date of modification: August 2010
Version No:

This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice 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?

This roadmap concerns the establishment of an entry/exit system allowing for the electronic recording of entry and exit information of third country nationals admitted for short stay to the Schengen area, replacing the current practice of manually stamping the travel document of each person. This system is part of the EU's Integrated Border Management concept which is under constant development.

The Commission in its Communication of 13 February 2008 *preparing the next steps in border management in the European Union*¹ suggested the establishment of an entry/exit system, allowing the electronic recording of the time and place of entry and exit of third country nationals. The Communication was accompanied by an impact assessment.

The European Council of 19 and 20 June 2008 underlined the importance of continuing work on the further development of the integrated border management strategy, including better use of modern technologies to improve the management of external borders. The European Council invited the Commission to present a proposal for an Entry/Exit system by the beginning of 2010.

In its resolution on the communication, the European Parliament expressed doubts on the added value of such a system and called for a further assessment of its impact.²

The Communication of the Commission of 10 June 2009 entitled 'an area of freedom, security and justice serving the citizens'³, feeding into the "Stockholm programme" agreed by the European Council in December 2009, highlighted the need for proceeding with the establishment of an entry/exit system.

What are the main problems identified?

General problems were already presented in the previous IA (SEC(2008)153).

¹ COM(2008) 69 final.

² European parliament, Committee on Civil Liberties, Justice and Home Affairs, Draft report no 2008/2181(INI).

³ COM (2009) 262 final.

Illegal immigration into the EU poses a challenge to every Member State. In terms of absolute numbers the vast majority are made up of "overstayers", persons having legally entered the European Union but stayed after their entitlement to do so had expired. EC law stipulates that third-country nationals have, as a general rule, the right to enter for a short stay up to three months per six months period.

Currently the stamping of the travel document indicating the dates of entry and exit is the sole instrument at the disposal of border guards and immigration authorities to calculate the duration of the stay of third country nationals (TCN) and to verify if someone is overstaying, also when carrying out checks within the Schengen area. The time a TCN has spent in the Schengen area is calculated based on the stamps, which are however often difficult to interpret; they may be illegible or the target of counterfeiting. Exact calculation of time spent in the Schengen area on the basis of stamps in the travel documents is thus both time-consuming and difficult. This poses a problem not only for enforcement but also in terms of informing persons of their rights, for example, the exact number of days they are entitled to remain in the Schengen area, following a series of stays lasting a few days each. Moreover, as long as data are not recorded elsewhere than the passport sharing of data between Member States is physically impossible. Finally, the absence of such recordings deprives law enforcement authorities of information allowing for reconstructing travel routes of persons suspected of serious crimes. Several Member States have set up national entry/exit systems, but in an area without internal border controls these cannot provide reliable information on overstayers as persons may enter via one MS and exit via another.

Who is affected?

Member States, travellers from third countries crossing the external border, border and visa authorities.

(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)?

No Member State is able to build up a common, interoperable entry/exit system alone. The entry conditions and border checks for third-country nationals are harmonised through EC law. Any measures relating to border control would have to apply to the Schengen area without internal border controls. Schengen countries are committed to maintaining common EU borders and common standards for border controls. Therefore, the problem cannot be solved by the Member States acting alone but must be addressed at EU level.

B. Objectives of EU initiative

What are the main policy objectives?

The objectives were already presented in the previous IA (SEC(2008)153).

The main general objectives of the entry/exit system are:

- to reduce illegal immigration (especially overstayers);
- to contribute to the fight against terrorism and serious crime.

The specific objectives of the entry/exit system are:

- to generate information which would help to apprehend irregular and illegal immigrants especially overstayers, to deter illegal immigration and to give reliable information on travel patterns;
- to generate information that would prevent terrorism and serious criminal activity and that would lead to (or help ensure) the apprehension of terrorist and criminal suspects.

The examples of operational objectives:

- to identify overstayers;
- to facilitate the sanctioning of overstayers;
- to identify the cross border movements of potentially dangerous third country nationals.

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

No new EU policy in new areas will be developed. Proposal foreseen is part of the continuous development of the Integrated Border Management Strategy of the European Union.

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?

In the previous IA the preferred policy option included an entry/exit system for all TCN (SEC(2008)153; p. 55). The following policy options are designed in the framework of this general preferred policy option:

Recording of personal data:

- a) biographic
- b) biometric (fingerprints)
- c) transition from a) to b) after a given time period

Sanctions for overstaying

- a) harmonise at EC level in conjunction with this proposal
- b) no measures taken

Access to personal data beyond immigration/border control authorities

- a) law enforcement authorities
- b) third countries authorities

Storage of data

- a) national databases running regular cross-checks
- b) central database with national interfaces

Retention time for the storage of data

- a) aligned with the VIS
- b) shorter

Certain accompanying non-legislative measures will be needed regardless of which option is chosen.

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

No. The Entry/Exit System does not have any notable cross-cutting impact.

Explain how the options respect the proportionality principle

All the options respect the proportionality principle. The options proposed do not go beyond addressing international problems (e.g. overstayers) which cannot be solved by individual Member States alone. The Schengen Member States are committed to uniform border control (including the border checks) at the external borders. Consistent border control is implemented according to the Schengen Borders Code.

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?

Impacts of the different sub-options are likely to be of economic and social nature. A centralised database may be needed for an entry/exit system and Member States need to procure some IT

infrastructure and devices at the external border crossing points (on exit mainly); this will also generate operating costs at the EU level and at Member States level.

From the social impacts point of view all the options would involve the processing of personal data and thus require strict data protection rules. Enrolment of biometrics and recording of additional data at each border crossing may slow down border crossings for individuals. Persons could be better informed of their rights, especially persons travelling frequently for several very short stays.

Better identification of overstayers will support the return of third-country nationals not authorised to stay in the Schengen area.

The availability, for the first time since the creation of the Schengen area, of reliable statistics on number of travellers divided into categories, will have a positive impact on the further development of EC and national policies on border control as well as immigration in general.

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?

In accordance with the final report of the entry/exit and RTP technical feasibility study the estimated costs of the centralised entry/exit and RTP system would be in the range of 20 million euro depending on the chosen technical solution, spread out over 2-3 years and the annual maintenance and operational costs would be approximately 6 million euro.

Subsequently the costs across all Member States for developing the national interfaces would be approximately 35 million euro.

These estimates will be refined taking into account the final combination of sub-options chosen.

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

Management of the national interfaces of the entry/exit system would increase the administrative burden, and so would also the management of the system at border crossing points. On the other hand the administrative burden would decrease as border guards would not need to calculate time spent in the Schengen area based on the stamps in a passenger's travel document.

E. Planning of further impact assessment work

When will the impact assessment work start?

Impact assessment work has started and is ongoing.

(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)?

Substantial amounts of data were gathered when preparing the 2008 communication, its impact assessment and the subsequent consultation paper on technical options for the systems. The data was collected from different sources mainly through studies carried out by external contractors. The impact assessment on the communication (SEC(2008)153) provides the relevant data for the problem definition. That IA as well as the report on the stamping obligation (COM (2009) 489) drew on a backward-looking evaluation of the existing policy which identified most of the problems now being examined.

One problem was the non-existence of reliable data on border crossings, illegal immigration and overstayers. This kind of data was gathered through questionnaires launched in the Council Frontiers working party and by organising meetings with Member States' experts. External contractors were not used except analysing the cost of different implementation options. The latter is still ongoing.

The Commission published a report on the application of the current stamping obligation in September 2009. The report was based on a questionnaire addressed to all MS which provided information and data on the problems encountered with the current system.

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

The Commission Communication (COM(2008) 69 final) and the consultation paper on technical options were discussed at several meetings starting from Member States' expert level ending up at ministerial and European Council level. Civil society as well as the private sector have participated actively in the debate and organised several conferences. The private sector has also provided feedback via ESRIF. Also Frontex has organised several meetings/conferences on the topics.

One questionnaire on the entry/exit system was launched during the French Presidency and discussed at several Frontiers Working Group meetings. A second questionnaire was introduced and discussed during the Czech Presidency.