



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 10 October 2013
(OR. en)**

13680/13

**Interinstitutional File:
2013/0057 (COD)**

LIMITE

**FRONT 125
VISA 185
CODEC 2059
COMIX 503**

NOTE

From:	Presidency
To:	Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union - Access for law enforcement purposes: Summary of the replies to the questionnaire

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (04.11.2013)

I. INTRODUCTION

On 15 July 2013, the Presidency issued a questionnaire (12107/13) seeking further information from delegations as regards current national rules and statistics on law enforcement authorities' access to their own national entry/exit systems (NEESs) as well as on salient cases where such access has proved to be crucial in a criminal investigation.

In the view of the Presidency such information is indispensable in order to examine the necessity and proportionality of any envisaged access for law enforcement purposes and may also be useful in future discussions within the Council and with the EP.

20 Member States and one associated country have sent in their replies.

The replies provide solid evidence that access to national entry and exit systems (NEES) is an effective tool to prevent, detect, investigate and prosecute criminal offences, especially in such areas as facilitated illegal immigration, trafficking in human beings, terrorism, drug smuggling, money laundering, smuggling of excise goods or trafficking in stolen vehicles.

NEESs are run by border authorities. Access is granted to immigration authorities, the police and other law enforcement authorities, e.g. prosecution and anti-corruption services or bodies dealing with money laundering offences. In addition, in most Member States access is also granted to customs and excise authorities. In a few Member States access is also granted to national security agencies.

The purposes of the NEESs as it emerges from the replies are: use for border checks and controlling length of stay; for immigration purposes; to carry out controls inside the territory; prevention, detection, investigation and prosecution of criminal offences; providing evidence in court proceedings; detection of tax evasion and customs' offences; and risk-analysis and statistics.

The procedures for granting access to the NEES for law enforcement purposes vary among Member States, but in all of them all the information recorded in the NEES can be accessed for law enforcement purposes. In some Member States access is based on a need-to-know basis and is granted following a written request. In those cases, access is granted by border authorities which are the holders of the information and a decision is taken on a case-by-case basis. In other Member States, police or judicial authorities do not need to submit a written request. Instead, they have credential rights which authorise them to have systematic access to the NEES under certain conditions.

As regards the retention period provided for in NEES, it is 5 years in six Member States, 10 years in three Member States and 25 years in one Member State. It is worth highlighting the case of one Member State which initially established a retention period of six months. In 2011, it changed the retention period to 5 years to meet the needs of the daily activities of the different authorities. The Member State in question explained that an investigation most often takes more than 6 months, especially if it is necessary to identify all the members of a criminal organisation. In judicial proceedings there may be a need for such data 2 or 3 years after the border crossing, and not only for criminal investigation purposes but also to protect the rights of persons. It is important that this information is borne in mind when the Working Party discusses amendments to the EES draft Regulation to incorporate access for law enforcement purposes into it.

II. MAIN ADDED VALUE OF GRANTING ACCESS FOR LAW ENFORCEMENT PURPOSES

In their replies, delegations have shared substantial information on their NEESs and have emphasised, quoting salient cases, the contribution of those systems in the prevention, detection and prosecution of criminal offences. Four delegations which do not have an NEES in place have also made very valuable contributions to show the added value of granting access to the future EES for law enforcement purposes.

From the replies it appears that the main added value of allowing access to the NEES for law enforcement purposes may be summarised as follows:

DELETED

DELETED

Delegations which do not have a NEES see the added value of access to the future EES for law enforcement purposes as follows:

DELETED

DELETED

DELETED

For a majority of delegations, it was not possible to provide statistics showing cases where access to data stored in the NEES was key for the investigation or for the resolution of a case. The reasons are twofold: in the first place, records of the entry and exit of third-country nationals represent only a part of the data in a case and therefore it is impossible to ascertain that any given record has led to successful investigation or solution of the case. Secondly, criminal proceedings may last several years and consequently it would only be possible to say that such a record was conclusive after a period of three, four or five years on the basis of a definitive conviction by a criminal court. Without a monitoring system in place which would allow criminal courts to report back to prosecutors, and the prosecutors back to the police, and further to the border authorities, it would appear almost impossible to collect such statistics.

Delegations also argued that statistics are not very relevant because a search in the database may be negative but that does not mean that the search has been inefficient. In particular, such a negative search may exclude someone's involvement thereby reducing a number of working hypotheses and contributing to the investigation of a criminal offence.

III. CONCLUSION

All the Member States have conveyed the same message that from the point of view of all the law enforcement authorities, the NEES data or data in the future EEE is highly significant because it helps to prevent, detect and investigate criminal offences.

The Presidency invites delegations to take note of this summary.
