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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL

On an entry/exit system at the external borders of the European Union, facilitation of border crossings for *bona fide* travellers, and an electronic travel authorisation system

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1. INTRODUCTION

The external borders of the EU are crossed every year by more than 300 million travellers, EU citizens and third country nationals combined. Europe is and will continue to be the world's most important tourist destination[1]. This mirrors the importance of EU cultural heritage and the success of its political and social-economic model. In order to share its values and support economic growth, the EU must remain open and accessible to others.

The Union's integrated border management strategy is continuously being enhanced through legislative and operational measures at consulates, in cooperation with third countries, at the border itself, and within the Schengen area. The key challenge for the medium-term lies in how the Union will be able to embrace new technologies in an extensive, consistent and proportionate way, identifying synergies among systems to most effectively apply these technologies. The overall **strategic objective** when seeking to meet this challenge will be to facilitate the entry of *bona fide* visitors to the Union while enhancing security. A step-by-step approach is needed, implementing what has already been planned and decided, while developing a long-term strategy that can build upon existing initiatives – notably in this context the introduction of the Visa Information System (VIS) - and be accompanied by a thorough cost-benefit analysis.

This Communication presents

– proposals for the introduction of an entry/exit system, allowing the electronic recording of the dates of entry and exit of third country nationals into and out of the Schengen area; it thereby responds to the request of the European Council of December 2006 to report on the feasibility of such a system;

– proposals to facilitate border crossing for bona fide travellers, through the introduction of automated border crossing facilities for EU citizens and certain categories of third country nationals;[2]

– parameters for the possible introduction of an Electronic Travel Authorisation System, including how it would interrelate with the above two initiatives;

– links and synergies between the above as well as existing initiatives, and related data protection challenges.

This Communication is based on an impact assessment which was carried out with the support of two studies from external contractors. A Commission staff working paper to be presented in March will describe in more detail issues related to the technical implementation.

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[1] World Tourist Organisation (WTO): Vision 2020 Volume 4 pag.48. 'Tourism' also includes travelling for the purposes of improving one's professional qualifications and health.

[2] The Commission included the creation of an entry-exit system and the introduction of a border-crossing facilitation scheme among possible developments in its Communication on enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs (COM(2005)597 final of 24 November 2005) and in its Communication on Policy Priorities in the fight against Illegal Immigration of Third-Country Nationals (COM (2006) 402 final of 19.7.2006).

2. POLICY CONTEXT

2.1. The relevant legal framework

According to the Schengen Borders Code[3], EU citizens and other persons enjoying the Community right of free movement (e.g. members of the family of EU citizens) crossing the external border shall be subject to a "minimum check", at both entry and exit, consisting of the examination of the travel document so as to verify the identity of the individual. Third country nationals must be subject, at entry, to a "thorough check", which entails determining their purpose of stay and whether they possess sufficient means of subsistence, as well as a search in the Schengen Information System and in national databases to verify that they are not a threat to public policy, internal security, public health and the international relations of the Schengen States.

Border guards are obliged to affix manually a stamp – indicating the date and place of entry and exit - on the travel documents of third country nationals crossing the external border. However, there is no obligation to keep a record of such entries or exits in a separate register or database. It is therefore very difficult to identify swiftly those third country nationals who have overstayed their visa or their visa-free period, and it is impossible for a Member State to record the exit of third country nationals from the EU if the person departs from another Schengen Member State.

Border crossings may be facilitated in certain cases and/or for specific categories of persons (e.g. heads of State, pilots, seamen, diplomats)[4]. This is mainly linked to their status/function or, for categories such as border residents or cruise passengers[5], due to the fact that people have already been checked in advance and thus can be considered *bona fide* travellers. Nevertheless, these cases comprise only a very small percentage of border crossings and checks are not automated. The vast majority of third-country nationals therefore remain subject to a thorough, manual check at each border crossing, and this regardless of whether they require a visa or not.

2.2. Existing IT infrastructure and biometric systems

Third country nationals requiring a short stay visa will be checked against the Visa Information System, once operational. The main purposes of the VIS are, on entry, to verify the authenticity of the visa and the identity of its holder. Biometrics will be introduced from the start in the VIS but biometric verifications and identity checks will be compulsory only at entry[6]. The Commission has presented a proposal to amend the Schengen Borders Code, making compulsory the verification of the identity of the visa holder at each entry.

The Schengen Information System (SIS) and the future SIS II registers alerts, with respect to third country nationals, on persons to be refused entry to the Schengen area, wanted persons, and persons to be put under protection. SISII will be able to store the biometrics, if available and required, of certain categories of persons. All third country nationals entering the EU, whether under visa obligation or not, are checked systematically in the SIS; this check is optional at exit.

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[3] OJ L 105 of 13.4.2006, p. 1.
[4] See Annex VII to Regulation No 562/2006, points 1-4.
[5] See, respectively, Annex VII to Regulation No 562/2006, point 5, as well as Annex VI to the same Regulation, point 3, paragraphs 3.2.2. and 3.2.3.
[6] The VIS Regulation states that once VIS becomes operational, biometric verifications will be compulsory at all borders within three years of starting operations. This transition period can be reduced to one year at airports.

Biometrics are being introduced as an additional layer of security for travel documents and for accurate identity checks. Member States have begun issuing biometric passports[7] containing the digitised facial image of the holder, and will from 28 June 2009 issue passports containing the holder's fingerprints[8]. European residence permits will contain the same biometric identifiers in the future[9].

3. THE OPERATIONAL IMPLEMENTATION OF NEW TOOLS

3.1. The creation of a system to register the entry/exit of third country nationals

- The automatic registration of the time and place of entry and exit of third country nationals, to identify overstayers, should be introduced at the borders.

- A new database should be set up for this purpose, taking and storing biometric identifiers of third country nationals entering the EU, building on the same technical platform as the VIS, SIS II and the Biometric Matching System (BMS).

- An alert available to national authorities should be issued once the validity of an individual's stay in the EU has expired, and no exit data had been captured.

Main features of the system

An entry/exit system should apply to third country nationals admitted for a short stay (up to 3 months), as they may present problems with regard to overstaying (excluding therefore holders of local border permits, holders of national long stay visas as they are not covered by the VIS, holders of residence permits, and third country nationals exempted from stamping[10]). The system should include the recording of information on the time and place of entry, the length of stay authorised, and the transmission of automated alerts directly to the competent authorities, should a person be identified as 'overstayer', both at the time this occurs and upon departure from the EU. In case of exceptional extension (e.g. a national visa granted due to flight cancellation, illness or other justifiable reason) or of a change of the status of the person (e.g. extended right of residence) the system should automatically keep track of the updated record.

The alert information will allow for:

– Enabling national authorities to identify overstayers and take the appropriate measures;

– Providing a deterrent for third-country nationals not to overstay;

– Providing information for operational purposes on patterns of overstaying (e.g. travel route, country of origin and reasons for travelling) as well as data on migration flows and overstayers for visa policy purposes.

Data on third country nationals not requiring a visa would enable identification of undocumented persons within the Schengen area, in cases where such persons cannot be

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[7] Council Regulation 2252/2004 of 13 December 2004 on Biometrics in Passport.
[8] Commission Decision C(2006)2909 of 28 June 2006.
[9] Proposal for a Council Regulation amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third country nationals (COM(2003) 0558); the implementation of both biometric identifiers in residence permits could be envisaged to start in 2001, at the earliest.
[10] Article 10 §3 of the Schengen Borders Code; Heads of State and diplomats; pilots and aircraft crew members; seamen, crew and passengers of cruise ships, under certain conditions; nationals of Andorra, Monaco and San Marino.

identified using the VIS or Eurodac. No such tool exists for this category today, while for short-stay Schengen visa holders identification of undocumented persons will be possible in the VIS.

Implementation

All third country nationals requiring visas will have to provide their biometric data when applying for a visa at a Member State's consular post for the Visa Information System, and border crossing points will be equipped with the necessary equipment to allow for the verification of the identity of the visa holder on the basis of that data. The implementation of the entry/exit system will therefore not require any substantial investments at border crossing points, and should not have a major impact on border control systems and procedures. It would however be necessary to await the complete and successful rollout of the VIS to all consular posts and border crossing points, which is expected for 2012 at the earliest.

Consequently also for third-country nationals not requiring visas the same biometric equipment and identification/verification procedures as for visa holders can be used at the borders. However, it would be necessary to capture and store their biometric data at each entry so that subsequent biometric checks on exit as well as within the Schengen area could be performed, which could potentially complicate the management of passenger flows, especially at land borders.

A separate system is required to store the entry/exit data, as well as the biometric data for third country nationals, for capacity and performance reasons. This new system will use the same technical platform as SIS II and VIS and the Biometric Matching System (BMS), thereby exploiting synergies with existing biometric systems, keeping costs low and ensuring interoperability. The Commission will present a more detailed technical analysis of these solutions, including whether the VIS could be extended for the specific purpose of storing the entry/exit data of third-country nationals requiring visas. Care should be taken to design the new system in a user-friendly way that is easy and quick to operate for border guards and compatible with the existing and future working environment, having regard to the SIS II and the VIS.

3.2. Facilitating border crossings for *bona fide* travellers

- For third-country nationals, measures at consulates should foresee a differentiated screening of visa applicants: low-risk travellers issued with a multiple-entry visa, for instance, could be granted Registered Traveller status.

- Low-risk travellers not requiring a visa should be offered a pre-screening process, on a voluntary basis, with a view to being granted the same status.

- At the borders Registered Travellers would benefit from a facilitated and automated border check.

- For EU citizens automated gates at the external borders can be introduced under the current legal framework and should be encouraged. Access to automated gates can be given to those holding a biometric passport or, as an interim measure, a specific token issued upon individual application under national schemes.

Main features of facilitated border crossings

The introduction of Automated Border Control systems can enable the automated verification of travellers' identity without the intervention of border guards. A machine reads the biometric data contained in the travel documents or stored in a system or database and

compares them against the biometrics of the traveller, accelerating border checks by creating automated separate lanes replacing the traditional control booths.

A decision on the border crossing points at which facilitation measures are introduced should be taken by Member States individually, based on the flow of passengers and the traffic conditions.

Third-country nationals

Awarding the status of "Registered Traveller" and providing for automated checks for those persons will mean waiving the verification of certain entry conditions at the border (purpose of stay, means of subsistence, absence of threat to public order). Persons should be granted "Registered Traveller" status after appropriate screening on the basis of common vetting criteria to be established in Community law. The criteria for Registered Traveller status should as a minimum include a reliable travel history (no previous overstays; data to this effect can be retrieved from the entry/exit system), proof of sufficient means of subsistence, and holding a biometric passport containing fingerprints. Further criteria should involve successful visa applications or electronic travel authorisations over the past years. A limited period of validity should be defined. During this period the compliance with the vetting criteria should be subject to continuous monitoring by the Member State who awarded the status, including continuous checking against the SIS and national databases as relevant.

Third country nationals submitted to visa should apply for Registered Traveller status at the consulates when submitting their visa application. Notably, persons who fulfil the conditions for a multiple entry visa could be granted Registered Traveller status automatically.

For third country nationals not requiring a visa a separate application process will be necessary to enrol their biometric and biographic data. The application procedure could be organised at Member States' consular posts or at future common application centres. A separate card, or a database, should contain the biometric data. To allow for the use of the same infrastructure and equipment, the same biometric identifiers (facial image and fingerprints) should be used as for visa holders. Information will need to be shared between Member States on holders of Registered Traveller status, as they must be recognised at all border crossing points in the EU where automated gates are installed. The Registered Traveller data would functionally and technically be part of the Entry-Exit system or could comprise the same database used to store the entry/exit data.

EU citizens

Simplified checks under the current legal framework can be automated for EU citizens in possession of an e-passport. Automated gate systems as described above would read and extract the information from the travel document, capturing biometrics and performing the verification to enable entry or exit, as well as random checks of the SIS and national databases. [11]

In the perspective of finalising the introduction of biometrics in passports, which should be completed by 2016 for one biometric identifier and by 2019 for two identifiers, at the latest (assuming a maximum period of validity of passports of 10 years) all EU citizens will at that time be able to benefit from automated border crossings should they be taken up by Member States in a widespread fashion.

In the run-up to the full introduction of biometric passports, schemes based on voluntary enrolment can be deployed by Member States, storing the biometric data in a local database or in a separate card or token. Criteria for enrolment should correspond to those for minimum checks at the borders and be open for all persons enjoying the Community right to free movement. Such schemes should be interoperable within the EU, based on common technical standards, which should be defined.

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[11] Portuguese RAPID is an example of such system already in operation.

3.3. Electronic travel authorisation

- Third-country nationals would be requested to make an electronic application supplying data identifying the traveller and passport details.

- The data would be used for the purpose of an on-line check against certain databases in advance of departure.

- Such a system would provide an additional layer of security by preventing third-country nationals who are clearly flagged in, for example, the SIS to arrive at a border crossing point of the Schengen area and thereby offloading national border guard resources.

Experience in third countries

There is no fixed definition of how an ETA can be designed, for example, with regard to the procedures or data to be submitted in advance. Two examples from other countries can illustrate issues to be considered further.

Before travelling to Australia and before an air ticket is issued, the traveller or the travel agent/airline sends an electronic application for an ETA to the relevant Australian authorities. This involves entering in the ETA system data identifying the traveller and details of the passport. The data are compared with an on-line file held by the Australian authorities on persons whose entry into Australia is considered undesirable. No fee is charged when the application is made through a travel agent/airline.

If consultation of the file does not give rise to an alert, an ETA number is assigned electronically and the air ticket can be issued. If an alert is given, no ETA number can be assigned and the traveller is asked to contact the Australian consular authorities. On arrival in Australia, the immigration authorities check that the passport holder has an ETA.

Under new legislation on the modernization of the Visa Waiver Program (VWP), the USA will also introduce an ETA system for citizens of countries which are part of the VWP. Although details of the US ETA system are not yet available, it seems likely that:

- Biographical and other information will be collected to determine, in advance of travel, the eligibility of the traveller to enter the USA. The information would also be used to verify if there is a law enforcement or security risk in permitting the person to travel to the USA. Names will be checked against watch lists of known and suspected terrorists;

- A fee may be charged, set at a level that will ensure recovery of the full costs of providing and administering the ETA system;

- The ETA may be valid for a maximum period of three years, which would mean that it would not be necessary to apply for an ETA each time a person will travel to the USA;

- The eligibility of a person to travel to the USA is not a determination of admissibility; border checks will still be carried out.

A European ETA

In recent months, discussions have taken place on whether the EU should create an electronic travel authorisation (ETA) system. It could be applicable to third-country nationals not subject to the visa obligation, and as a consequence have an influence on the countries to be subject to that obligation in the future. As part of the further development of the integrated management of the EU external borders, the setting up of an ETA system should be analysed to assess its potential added value compared to existing and planned initiatives. Technical, financial and practical implications in the light of current provisions on Advance Passenger Information

(API) and future provisions on a European passenger name record (PNR) system should be examined.

Moreover, since an application for an ETA would have to be made in advance of travelling, applying it to land borders and even to sea borders will need to be carefully analysed having regard to unplanned border crossings and the fact that large numbers of people travel on an individual basis without any carrier or travel agent involved.

The Commission intends to launch a study to analyse these issues in 2008.

4. LINKS BETWEEN THE SYSTEMS

The entry/exit system enhances border security and the fight against illegal immigration; automated border control systems facilitate the border crossing of *bona fide* passengers. An increase in the time required and longer queues due to the introduction of the entry/exit system will be offset by better management of the flow of passengers due to automated border crossings. For the group of travellers eligible for the latter, the enrolment of biometrics at each entry for the purpose of the entry/exit system should be dispensed since otherwise the Registered Traveller status would lose its meaning. Subject to finding the appropriate technical solutions the registration of dates for entry and exit should therefore be included in the automated border control process for such travellers.

Automated border controls for bona fide travellers would provide major benefits in time savings on crossing the external border and allow border authorities to focus their resources on those groups of third country nationals that require more attention, thus improving overall security at borders. Additional benefits to this effect could follow from the introduction of an ETA.

Travellers that have already been subject to pre-screening for the purpose of being awarded the status of registered travellers should be exempted from the requirement to obtain an ETA, as the pre-screening - which would also be subject to a continuous review – would fulfil the same function. Requiring an ETA for that group would go against the aim of minimising procedures and facilitating travel. An ETA could on the other hand not replace the pre-screening process as it would not in itself provide sufficient security with a view to granting access to automated gates at the border, notably since the introduction of biometrics in an ETA would not be feasible.

The development of an entry/exit system and measures to facilitate travel would not be influenced by any future decision on whether to proceed with a European ETA or not. However, while the functioning of the entry/exit system is not dependent on the existence of automated border controls, those two systems should be considered together, in order to upgrade security and to facilitate travel simultaneously and offset the implementation issues involved in the entry/exit system.

5. DATA PROTECTION ISSUES

Systems should comply with EU data protection rules including the requirements of necessity, proportionality, purpose limitation and quality of data.

The data protection rules for the VIS and the status quo including the retention of information for only five years would seem appropriate.

The data generated by the entry/exit system should be used mainly by immigration authorities. Access by law enforcement agencies could be envisaged subject to the appropriate legal framework. Individuals should have the right of access to information held on them and to challenge and correct this information if errors have occurred. Provisions should be made

for an appeal mechanism in cases where third country nationals are 'forced' to overstay and/or if there were errors made in recording dates of entry and exit.

The Registered Traveller Programme, while voluntary, would also pose data protection challenges. Data protection provisions including the right of access to personal information used to justify refusals of applications would be appropriate. The Registered Traveller Programme should also include a requirement that authorities provide reasons for refusal and an opportunity for applicants to appeal against refusal.

The study to be launched by the Commission on the implications of an ETA will consider the relevant data protection issues arising from such a system.

6. CONCLUSIONS

Having regard to the progress made in agreeing upon and launching the Visa Information System, the EU should seriously consider building on this achievement by agreeing on the necessary parameters for putting in place an **entry/exit system** for all third-country nationals admitted for a short stay, to be operational by 2015. Legislation would be needed to:

- amend the Schengen Borders Code to ensure that registration of dates of entry and exit is carried out systematically at all crossing points of the external border, and that the enrolment of biometrics at the border for third country nationals not requiring a visa becomes a compulsory entry condition.

The EU should seriously consider, within the same time-frame, creating a legal framework for the status of **"registered traveller"** for certain third country nationals. This would require legislative initiatives for

- a separate decision on the vetting criteria to be applied to applicants for such a status and possibly also rules on where the enrolment of third-country nationals not requiring a visa should take place;

- amendments to the Schengen Borders Code to allow for a simplified check of travellers awarded such a status at the borders;

- amendments to the Common Consular Instructions [or the Visa code] to provide for automatic status of registered traveller for people with a multiple-entry visa.

A legislative initiative will also be needed for a separate decision setting up the new entry/exit system to register the entry and exit information and store biographic and biometric data of third country nationals. This system will also be used for the enrolment of third-country nationals in the Registered Travellers programme, and will build on the same technical platform as the VIS/SIS II/BMS.

Member States are encouraged to set in place **automated border control systems for EU citizens**, based on the e-passport or national schemes. A discussion on the development of technical standards to achieve interoperability of national schemes not based on the e-passport should take place in the appropriate fora. In a wider perspective, developing global standards should be considered, with a view to coordinating enrolment, eligibility and technical interoperability features of such schemes at international level.

The Commission will report back to the European Parliament and the Council on the outcome of the study on an **electronic travel authorisation system**, the main features of which should be taken into account in the discussions on a registered travellers programme.

The Commission invites the European Parliament and the Council to discuss these recommendations. It will further assess the presentation of legislative proposals taking into account the outcome of that debate.