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Committee on Civil Liberties, Justice and Home Affairs

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WORKING DOCUMENT

on the Amendment of Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)

Committee on Civil Liberties, Justice and Home Affairs

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1. Introduction

The present working document deals with the horizontal elements of the smart borders package. It starts with an overview of the work undertaken during the last term which led to the request and subsequently the preparation of a further technical study (part I). After that it presents the results of the study concerning horizontal elements (architecture and costs) (part II). Part III sums up the next steps.

2. Work undertaken during the last legislative term

a) Discussion of the legislative proposals

In February 2013 the Commission presented the legislative proposals comprising together the smart borders package: 1) the proposal for an Entry/Exit System (COM(2013)95) which would record the time and place of entry and exit of third-country nationals crossing the external borders, calculate the duration of their stay as well as generate an alert when authorised periods for stay have expired;

2) the proposal for a Registered Traveller Programme (COM(2013)97) which would allow certain groups of frequent travellers (i.e. business travellers, family members etc.) from third countries to enter the Union, subject to appropriate pre-screening, using simplified border checks including at automated gates;

3) a proposal amending the Schengen Borders Code "as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)" at the border (COM(2013)96).

The Committee had appointed as rapporteurs Renate Sommer (EPP, DE) for the EES and Ioan Enciu (S&D, RO) for the RTP. Both were appointed co-rapporteurs for the proposal modifying the Schengen borders code. The proposals were presented at the hearing "Schengen / Border Management: state of play and further developments" which took place on 20 and 21 March 2013.¹ During that hearing the study "Evaluating current and forthcoming proposals on JHA databases and a smart borders system at EU external borders" requested by the LIBE Committee was presented as well.²

On 17 September 2013 an exchange of views took place in LIBE in which the rapporteurs presented working documents³ and the EDPS as well as the Article 29 Working Party their opinions.⁴

¹ Programme with links to supporting documents:

<http://www.europarl.europa.eu/document/activities/cont/201303/20130325ATT63906/20130325ATT63906EN.pdf>

² <http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=79693>

³ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dt/941/941239/941239en.pdf

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dt/940/940761/940761en.pdf

⁴ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/09_10_edpsopinion_/09_10_edpsopinion_en.pdf

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/9_10_wp29opinion206_/9_10_wp29opinion206_en.pdf

On 9 October 2013 the Chair of the AFET Committee wrote to the LIBE Chair pointing out that fingerprinting may delay the transit at the borders and drawing attention to possible effects on relations with third countries.

In October 2013 a further study "The Commission's legislative proposals on Smart borders: their feasibility and costs" requested by the LIBE Committee was published.¹

b) The request for a further technical study

In light of the increasingly voiced questions regarding, among others, the technical feasibility of the proposals, the costs for the systems, the impact at the border but also proportionality and impact on fundamental rights the rapporteurs suggested to request a further study.

While these reflections were on-going within Parliament, the Commission services started to consider a similar option and discussions on this began between Commission services and rapporteurs/shadow rapporteurs.

Rapporteurs and shadow rapporteurs considered that the study should analyse more options each with respect to costs, impact on fundamental rights (including data protection), technical feasibility, practical implications at the border (including waiting and processing time), capability to address the problems identified, and proportionality.

The options they suggested to look at were:

- 1) Status quo
- 2) "Non-technological solutions": modification of the Schengen Borders Code to foresee a further differentiation between travellers (for example only a minimum check on holders of multiple-entry visa)
- 3) Facilitation of travel of EU citizens through the deployment of more ABC gates
- 4) Adding an entry/exit function to the VIS
 - a) for third country nationals subject to the visa requirement
 - b) for all third country nationals
- 5) An EES by connecting national systems (Interoperability of existing systems)
- 6) EES and RTP as proposed
 - 6.1) The proposed use of the token for the RTP and alternatives
- 7) EES with law-enforcement access
 - 7.1) Extended data retention period in case of law-enforcement access?
- 8) An RTP only for selected major airports

¹http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493026/IPOL-LIBE_ET%282013%29493026_EN.pdf

9) Use of biometrics from the start? What kind of biometrics? State-of-the-art of science and technology? Ensure that biometrics are used in line with fundamental rights, such as the right to protection of personal data

10) Possible additional arrangements with neighbouring countries for the exchange of advanced passengers' data (for example for land border crossings via train)?

They also wished to obtain more detailed and reliable basic information (pointing for example to the need for proper statistics and information on experiences with automated border control, experiences of other countries, and on the use of the VIS).

These suggestions were discussed in a meeting with Commission services in January 2014.

c) Further proceedings

From 18 to 20 December 2013 rapporteurs and shadow rapporteurs visited Finland. The purpose of the delegation was to see the current situation in Finland, and in particular the situation at the land border with Russia, by looking at the current situation but also at challenges and how the proposals of the Smart Borders Package would affect the situation at the border. The delegation also wanted to see the national EES in operation learn from the experiences of Finland with a number of pilot projects on automation and border checks on trains.¹

On 23 January 2014 a debate took place in LIBE. Members discussed the impressions of the visit to Finland and the request for the additional study.

The technical study was then prepared between February and October 2014. A presentation of the study took place in LIBE on 16 October.

3. The results of the technical study

The study looked at a wide range of issues (especially border control processes, use of biometrics, data, data retention time, law enforcement access, architecture, as well as statistics and forecasts). It also introduced the concept of the Target Operating Models (TOMs) as hypothetical scenarios for the implementation of the systems in the conclusions. There is, however, no systematic overview of other conclusions and recommendations. There is also no overview comparing the results of the study with the remarks made by Council and Parliament.

Below more details on the architecture and the costs are given. Other issues are covered in the respective working documents on the EES and the RTP.

a) Architecture

¹ Delegation report:

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/1017/1017737/1017737en.pdf

The first issue which is analysed in the chapter on architecture is the question whether the systems should be developed as two separate systems as initially proposed (option 1) or whether a single system should be developed (option 2). For both options the advantages and disadvantages are discussed. Page 278 contains an overview for option 1 and page 281 for option 2. The following comparison of the options (p. 282) shows mainly a highly negative impact on costs for option 1 and on the complexity of the implementation for option 2. In the executive summary it is stated that the study considers a single system "as the most suitable one" (p. 19).

The second issue in the chapter on architecture is the question whether the EES/RTP should be independent from the VIS (option 1), be integrated with the VIS (option 2) or re-use VIS artefacts (option 3). Advantages and disadvantages of the options are discussed (pp. 286, 287, 290, 291, 292, 294, 295). Arguments made include: Remaining independent from the VIS would be less complex but would duplicate capability in a marginally different ways; integration with VIS would have a "serious impact on the VIS legal instrument" (p. 288) and "would lead to a more complex testing phase and entry into operation" (p. 19); re-use VIS artefacts would avoid intervening in a live system and mitigate the risks of complex project management while allowing for full integration with the VIS at a later stage. On page 297 the options are compared. The study does not contain a clear conclusion but the findings with regard to option 3 are worded in a way which indicates that option 3 seems preferred.

b) The cost analysis

The cost analysis was presented as a separate chapter of the study on 27 October. It aimed to provide a new, up-to-date cost estimate for the systems as well as detailed cost estimates for the various options discussed in the study.

According to it the systems would be considerably cheaper than initially estimated: The total cost for four years, i.e. three years of development and one year of operation, would be €381 m for EES and RTP if developed jointly and €430 m if developed separately while the initial MFF budget allocation 2014-2020 was €791 m. The lower figure is due to a number of reasons; among them are reduced network costs and the introduction of national uniform interfaces. The cost analysis estimates also the costs of options which deviate from the baseline assumptions such as for example the access to law enforcement, different retention periods or integration with the VIS.

4. The next steps

As outlined in the study the next step would be a testing phase to be conducted in the course of 2015 in which some of the technical questions would be tested in a number of locations across the EU.

The rapporteurs intend to continue the political discussions while awaiting revised legislative proposals which Commissioner Avramopoulos announced for the end of 2015/the beginning of 2016. As part of these political discussions a meeting with national parliaments will be held at the end of February.