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WORKING DOCUMENT

on the Registered Traveller Programme

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Rapporteur: Tanja Fajon

1. Introduction

The proposed Registered Traveller Programme (RTP) is part of the Commission's Smart Borders Package from February 2013. The package also includes the proposal for an Entry/Exit system (EES) and a proposal to amend the Schengen Borders Code (SBC) to reflect the new systems. The basic purpose of the RTP would be to facilitate the crossing of EU external borders for visitors from third countries who travel frequently to the EU and who would be pre-vetted before arriving at the border.

This working document summarises some of the key issues which remain unresolved following the presentation by the Commission of its *Technical Study on Smart Borders and the Cost analysis*. It concludes with a section on *Outstanding concerns and issues for reflection*, posing a number of questions which need to be addressed going forward.

2. Summary of issues considered in the Technical study and the Cost analysis

The technical study looks in detail at a number of aspects of the RTP, such as the border control process, data, the use of biometrics and the overall architecture of the system. Many of the suggestions made vary considerably from the Commission's original legislative proposal. The study did not examine nor alter the basic purpose of the Registered Traveller Programme.

Border control process

The study devotes a lot of attention to the enrolment of the registered traveller, and explores the use of photographs in that process. It claims that the quality of photographs used in the VIS is not always satisfactory. The study recommends allowing online applications for the RTP, but states that this would impact the overall architecture and would raise security concerns which would need further consideration.

One of the tasks of the study was to evaluate the use of a token in the RTP. The study suggests that electronic passports (electronic machine readable travel documents - eMRTDs) could be used as an alternative to a token. Simple MRTDs (passports without a chip) are not reckoned to be secure enough.

The study also examines actions that could reduce the length of time taken for border processing. Such actions are called '*accelerators*'. Some possible *accelerators* include: advance data gathering; pre-border registrations; longer data retention periods; more efficient organisation of border crossing points; minimising the number of documents required; automatic border gates, and iris scans.

Data

The original Commission proposals provided that a set of 36 data items would be retained per traveller. The study suggests that, in fact, 26 data items would be sufficient for the RTP (and the EES). No access for law enforcement was foreseen in the original RTP proposal and the study does not find reasons to propose it. The study confirms that there are "*no*

disadvantages" to the data retention period set out in the initial Commission proposal, that is to say, a maximum period of five years from the expiry date of the RTP.

Biometric data

Biometric characteristics are considered to be a way of enhancing and strengthening identity checks at external borders, and the overall security of border controls. The study looked at the use of facial imagery as a biometric characteristic and concludes that it would be possible to use facial imagery only (no fingerprints) for the RTP. This was not presented as an option in the legislative proposal.

The study also highlighted that the use of facial imagery in combination with fingerprints would be beneficial both for verification and identification in terms of speed and security, which should in turn lead to lower false rejection rates and, of course, would mean that a smaller number of fingerprints would be required than stated in the initial Commission proposal.

All three options for the RTP, namely, using facial imagery only, using facial imagery combined with a number of fingerprints, or using no biometric data, need to be tried out during the testing phase.

Architecture

Regarding the overall architecture, one of the principal questions is whether the RTP should be part of a single system together with the EES, or whether they should be separate but interlinked systems.

The Parliament had asked the Commission, in the study, to consider using and building on already existing systems. The study finds that certain parts of the Visa Information System (VIS) software could be reused for the RTP, for example, the existing biometric matching system (BMS) that is currently used for VIS. A new version of the BMS (the BMS-2) is scheduled to come into operation in 2015. That new version could also be used for the Smart Borders project. The study unsurprisingly finds that building on existing systems and software should achieve cost savings.

The study also concludes that the integration of EES, RTP and VIS makes sense from a capabilities and data point of view, but data retention would need to be harmonised and the rights of the data subject would clearly need to be fully guaranteed.

3. Outstanding concerns and issues for reflection

Following the work by former rapporteur Ioan Enciu, in particular the working document of 20 June 2013, the contribution by the rapporteurs towards the formulation by the Commission of the objectives of the study of 29 January 2014, the analysis of the study itself, and while awaiting the testing phase to be conducted by eu-LISA this year, the Rapporteur would like to raise outstanding matters and highlight those queries that the study failed to address.

Former rapporteur, Mr. Enciu, in his working document deplored the European policy-making process which, in his opinion, did not allow for a properly structured debate focusing on two key elements of the Commission's Smart Borders proposals, namely on a clear definition of the problem and then an open debate on possible solutions. On the contrary, the supporting documents – the study being no different – are drafted with a view to supporting the creation of new systems and not to assessing their necessity or proportionality which remain unproven, with no evidence that the main objectives of the proposals will be achieved.

The Rapporteur regrets that the study, despite the input from Parliament in the last legislative term, does not provide answers to those key observations and concerns. The Rapporteur feels the study has moved even further away from main objectives of the first Commission's proposal and would like to invite Members to reflect on the following issues.

Following the different opinions on the Smart Borders Package, namely from the European Data Protection Supervisor, the Meijers Committee, the Article 29 Data Protection Working Party, the European Economic and Social Committee, the Committee of the Regions, commenting on a wide range of issues including the proportionality and practical feasibility of the proposals, the compatibility of the Smart Borders Package with basic data protection principles has not been sufficiently demonstrated.

Regrettably, the study failed to prove adequately why such systems should be built in the first place, and completely disregarded the Parliament's request to assess and address other options which might achieve the objectives set. Those include but are not limited to: '*the status quo*' option and '*a non-technological solutions*' option (whereby only a minimum check on holders of multiple-entry visas (MEV) would have been carried out through modification of the Schengen Borders Code; and/or in addition the option for such travellers to use automated borders checks based on their previous registration in VIS).

With regard to fundamental rights, the study does not make an assessment of the extent or impact on citizens' or travellers' rights.

Regarding the national systems, the study suggests that there are several possibilities of re-using or integrating existing systems with EES and RTP, however no final conclusion is reached in this respect. Although a different Commission document¹ mentions that the individual national RTP systems are extending their actions beyond the EU: the Netherlands extended its system to other countries, including Canada and South Korea, and Germany extended its system to the United States, the study does not mention how the Commission intends to deal with these third countries when a European-wide system has been set up.

Furthermore, the study does not address other related topics such as past experience with national systems, the potential for a decrease of staff at the border, the need for standardisation (for example for ABC gates), the experiences of other third countries that have implemented a smart borders system including their experiences in cases of individuals circumnavigating the smart borders system. The US-Canada border system has been pointed to as an example by the previous rapporteurs.

¹ SWD(2014) 165 final, section 6.4.3

Concerning costs, the study does not provide a clear answer as to how much the proposals will cost in the end. Having in mind the likelihood of increasing expenditure, as in case of SIS II, particular concern is being given to the chapter on 'other cost options'.

The original Commission's proposal on EES and RTP does not foresee access for law enforcement authorities (LEA) to the systems, which may be given only following an evaluation to be carried out after the system has been in operation for two years. However, the study positively considers LEA access as a secondary objective provided that the biometric identifiers are used and the data retention period is significantly longer than the one suggested by the Commission in its first proposal.

The rapporteur is concerned that LEA access is becoming increasingly central to the proposals, without having been properly analysed, and that the objectives of such a system automatically change if LEA access is included: away from facilitating border crossings and border processing to fighting crime and terrorism.

Having serious concerns regarding the LEA access, the Rapporteur regrets that the study did not adequately take account of the recent data retention directive ruling when assessing such options, whilst acknowledging that the conclusions of the Court may have a wider impact. The shift of main objectives in that regard is obvious. The question once again presents itself, what, in reality, is or should be the main purpose of EES/RTP systems?

Recalling former rapporteur's working document, there is still no clear answer whether the EES system is a pre-condition for the RTP, or whether the RTP system could be launched without it.

Based on the present working document, the Rapporteur invites Members to reflect on the different aspects of the proposed RTP and to present their views on the way forward.