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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011

and

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/xxx as regards the use of the Entry/Exit System (EES)

{ COM(2016) 194 final }
{ COM(2016) 196 final }
{ SWD(2016) 115 final }

Executive Summary Sheet

Impact assessment on the Modified proposal for a Regulation establishing an EU Entry Exit System and for a Regulation amending the Schengen Border Code (Regulation (EC) N°562/2006)

A. Need for action

Why? What is the problem being addressed?

Scope of the Impact Assessment: third-country nationals (TCN) having the right to enter for a short stay of up to 90 days within any 180 day period or on the basis of a touring visa.

Addressed problems and main drivers: (1) the increasing number of border crossings in and out of the Schengen area (around 300 million TCN border crossings estimated for the year 2025) leading to delays in border checks, (2) the current control of authorised period of stay of TCN is error prone, slow and not systematically implemented (complexity and slowness of the current travel document stamping obligation), (3) current border control process cannot report and identify overstayers systematically, easily and in a reliable manner, resulting in a lack of reliable information on irregular immigration and problems for return (absence of modern means and technologies) and (4) the need to further reinforce the fight against international criminality, terrorism and other security threats.

Stakeholders: mainly TCN crossing the Schengen borders, border guards, visa/immigration authorities and carriers.

What is this initiative expected to achieve?

The general policy objectives of the Entry Exit System (EES) are:

- (1) To improve the management of external borders;
- (2) To reduce irregular migration, by addressing the phenomenon of overstaying;
- (3) To contribute to the fight against terrorism and serious crime and ensure a high level of internal security.

The EES will facilitate the border crossing of *legitimate* travellers while increasing the possibility to identify overstayers and irregular migrants as well as facilitating the implementation of return decisions. It will also ensure a better identification of third country nationals and will allow detecting people using several identities.

What is the value added of action at the EU level?

The absence of internal borders in the Schengen area requires a sound management of external borders where each country has to control the external border on behalf of the other Schengen States. Consequently, no Member State (MS) is able to cope on its own with irregular immigration. A person may enter the Schengen area at a border crossing point in a MS where a national register of entry/exit data is used, but exit through a border crossing point where no such system is used. The monitoring of compliance with EU rules on authorised stays can therefore not be done by MS acting alone. In an area without internal borders, action against irregular immigration should be undertaken in common. Moreover, better information on cross border movements of TCN at EU level would establish a factual basis to develop and adapt the EU migration policy. Considering all this the EU is better placed than MS to take the appropriate measures.

B. Solutions

Which is the preferred policy option? Why?

The preferred options for the implementation of the EES have the following characteristics:

- (1) There will be one single system: the EES. Interoperability between the EES and the existing Visa Information System (VIS) is established at central level. Communications with MS occur via a National Uniform Interface which is the same for all MS.
- (2) The biometric identifiers for EES are 4 fingerprints used in combination with the facial image. This option meets both the objectives of sufficiently accurate identification and of border crossing facilitation.
- (3) The approach for facilitation is based on the implementation of self-service systems used by TCN to start border clearance which will be completed by providing additional information on border guard's request. National Registered Traveller Programmes could be established on a voluntary basis. This is the preferred option as it combines many positive impacts, addresses a larger group of travellers and has the best cost/benefit efficiency.
- (4) The retention period of 5 years for stored data reduces the re-enrolment frequency and will be beneficial for all travellers, while allowing the border guard to perform the necessary risk analysis required by the Schengen Borders Code.
- (5) From the start of operations, MS' law enforcement authorities and Europol will have access to the EES, under strictly defined conditions and in accordance with the relevant data protection rules. Providing access to data to law enforcement authorities from the start is coherent with the VIS Regulation.

Who supports which option?

MS support in general the options of the preferred solution. Divergences exist between immigration services who favour limited biometrics (as proposed) and law enforcement services who favour extensive biometrics. Some MS may still bring up the point that EES should record entries and exits of residence permit or card holders.

The European Parliament (EP) appreciates the interoperability between EES and VIS, the limited biometrics, the reduced budget as compared to the 2013 proposal and the fact that facilitation does not require as much budget as the mainstream system. Part of the EP and the EDPS will challenge the data retention period and the access to EES by law enforcement authorities.

C. Impacts of the preferred option

What are the benefits of the preferred option?

Social impact: Positive impact on border crossing time at entry for travellers using the self-service kiosks. Benefits for border guards in terms of saved workload. Positive impact for law enforcement authorities.

Economic cost: For some categories of travellers, the enrolment in EES will generate an additional workload while the use of self-services solutions will reduce the workload. This explains why at the beginning the benefits are low as all visa-exempt third country nationals need to be enrolled with facial image and 4 fingerprints. Furthermore, EES will increase the possibility to identify overstayers and irregular migrants and will help for the implementation of return decisions.

With the benefits that can be quantified, the net present value of the EES becomes positive four years after start of operations and the cumulated benefits over ten years are more than 2,5 times the accumulated costs over the same period.

What are the costs of the preferred option?

Social impact: Slight negative impact on border crossing time at entry for visa-exempt travellers at first enrolment (i.e. estimated additional 40 seconds to the border crossing time), however mitigated by the use of process accelerators such as self-service kiosks (see above).

Economic cost: The development cost of the EES to be borne by the EU budget amounts to €394,77 million over the three years required to build the system. The first year of operations the EU budget would bear a total operations cost of €45,47 million. The changes required to VIS and SIS have been estimated at €40 million development cost and no additional operational cost. The cost to be borne by the EU budget amounts to €480,2 million over 4 years (3 years development and 1 year operations).

The implementation cost on the MS side would consist respectively of €57,0 million one-off set-up costs of new processes and infrastructure improvement and €109,5 million equipment cost both assumed to be done over the 3-year development period. The annual maintenance cost of the investments will be €11 million.

How will businesses, SMEs and micro-enterprises be affected?

The EES will have a positive effect for carriers as it facilitates the implementation of their legal obligation to check that TCN that are carried to the Schengen border are in possession of the travel documents required for entry.

The EES will decrease the supply of informal labour in the EU by addressing the phenomenon of overstaying. The impact of the EES on tourism and SMEs is estimated to be negligible.

Will there be significant impacts on national budgets and administrations?

The EES has a significant and positive impact on the way border guards perform their checks (e.g. they are relieved from the manual reading of entry and exit stamps and the calculation of the authorised duration of stay).

The EES does not create any additional administrative burden to private or public organisations because all legal reporting obligations will be obtained from reports produced by the system.

Will there be other significant impacts?

- (1) Fundamental rights (see section 6.1.4 of the IA for the impact on Protection of Personal Data and 6.1.5 for impact on other Fundamental Rights). EES stores a small amount of personal data but including biometrics for a large amount of persons. However the minimum data set is stored for the minimum amount of time that also provides benefits for the traveller. Data are also only accessed by specific authorities.
- (2) Law Enforcement authorities (see section 6.4.3 of the IA). Law enforcement authorities are given access the EES data under strict conditions which guarantee that the access is related to a case and is meaningful.
- (3) International Relations (see section 6.5 of the IA). Some visa-exempt countries might raise objections that their citizens are fingerprinted at first entry into the Schengen area.

D. Follow up

How will monitoring and evaluation be performed?

The Commission shall ensure that systems are in place to monitor the functioning of the entry/exit system and evaluate them against the main policy objectives. Two years after the EES starts operations and every two years thereafter, euLISA should submit to the European Parliament, the Council and the Commission a report on the technical functioning of the system. Moreover, two years after the EES starts operations and every four years thereafter, the Commission should produce an overall evaluation of the system.