

BACKGROUND DOCUMENT FOR THE PUBLIC CONSULTATION ON THE SMART BORDERS PACKAGE

I- The 2013 'Smart Borders Package'

The 'Smart Borders Package' was proposed by the European Commission in February 2013. It consists of three legislative proposals:

- (1) a Regulation establishing an EU [Entry/Exit System \(EES\)](#)  [248 KB] [COM\(2013\) 95 final](#);
- (2) a Regulation establishing a [Registered Traveller Programme \(RTP\)](#)  [393 KB] [COM\(2013\) 97 final](#); and
- (3) a Regulation amending the Schengen Borders Code [COM\(2013\)96 final](#), in order to take into account the establishment of the EES and the RTP.

The number of crossings at the Schengen area external borders has increased steadily and this trend is set to continue. The Commission's 2014 [Technical Study](#) predicts an increase of 28 % by 2020 and 57 % by 2025 compared to the 2014 figures.

The package aims to:

- improve the management of the external borders of the Schengen area;
- help to combat irregular immigration; and
- provide information on persons who overstay beyond the authorised period of stay.

It would also make it easier and quicker for pre-vetted frequent travellers (i.e. non-EU citizens) to cross the borders.

The package would be delivered through two large-scale IT systems: the EES and the RTP. The EES would record information relating to non-EU nationals who enter the Schengen area for a short stay (less than 90 days within a period of 180 days). This would notably include information contained in the passport together with information on the date and point of entry or exit. The system would then:

- **calculate the authorised period of stay** of non-EU nationals admitted for a short stay;
- **enable authorities in Member States to identify overstayers** (i.e. persons who have remained in the EU beyond the limit of their authorised stay) **and take appropriate measures**;
- **assist in identifying** any person who may not fulfil the conditions to enter or stay in Member States;
- **gather statistics on the entries and exits of third-country nationals.**

In addition, the EES legislative proposal provides for an evaluation of **potential access to the system for law enforcement purposes** after a period of two years.

The RTP is a scheme for which non-EU nationals travelling regularly to the Schengen area could apply. It would **facilitate border crossings** for pre-screened and pre-vetted frequent

third-country travellers by allowing them to use automated border control gates or the lanes reserved for EU/EEA/CH citizens.

II- The review of the 2013 ‘Smart Borders Package’

The proposals are still before the European Parliament and the Council. However, in the European Agenda on Security¹ and the European Agenda on Migration², the Commission announced its intention to present revised proposals by early 2016.

This follows discussions in the European Parliament and the Council which raised a number of technical, operational and cost concerns, including:

- the impact of these systems on the time taken for border control checks;
- the data retention period in the EES;
- the choice of biometric identifiers to be used in both systems (e.g., fingerprints, facial pictures, iris scans);
- the possibility of law enforcement authorities accessing the EES.

The European Parliament also expressed concerns relating to fundamental rights (and in particular the right to personal data protection, should law enforcement access to the EES be granted).

In order to evaluate potential solutions to these issues, the European Commission — with the support of Member States and the European Parliament — is undertaking additional analysis to identify the most promising solutions and verify their feasibility. This includes:

- a [Technical Study](#)  [12 MB] (see the [executive summary](#)  [374 KB]) and a [Costs Study](#)  [3 MB], completed in October 2014; and
- a testing phase that will be completed during 2015.

An impact assessment (including the impact on fundamental rights) will be carried out for the revised proposals, to which this consultation will contribute.

This consultation aims to give an opportunity to a variety of stakeholders to contribute to this process of developing a revised proposal.

¹ COM(2015) 185 final, 28.4.2015

² COM(2015) 240 final, 13.5.2015