



EUROPEAN COMMISSION

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C(2013) 7450 final

Mr Milan ŠTĚCH
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAHA 1

Dear President,

The Commission would like to thank the Senát for its Opinion concerning the Smart Borders Package, consisting of the Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union {COM(2013) 95 final}, the Proposal for a Regulation of the European Parliament and of the Council establishing a Registered Traveller Programme {COM(2013) 97 final} and the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP) {COM(2013) 96 final}.

The Commission appreciates the endorsement of the establishment of Entry/Exit System (EES) by the Senát and its recognition of the added value thereof.

The Commission would also like to address the particular concerns expressed in the Opinion.

*Firstly, concerning the **verification of fingerprints in EES**, the Commission would like to underline that following the expiry of the proposed three-year transitional period, the collection of biometrics would be, unless physically/legally impossible, carried out systematically for each crossing of the external border by a third country national exempt from the visa obligation in the absence of a previous registration in the EES, i.e. in the case of a first crossing of the external border. However, where a previous registration in the EES already exists and has not yet expired, the border authorities would have access to search the EES to verify the identity of the third country national exempt from the visa obligation with the data referred to in Article 11(1)(a) of the proposed EES Regulation¹. They may, in addition to the abovementioned data, consult the fingerprints also in case of doubt about the identity of the third country national in question but there is no legal obligation to do so.²*

¹ surname (family name), surname at birth (earlier family name), first name(s), given names), date of birth, nationality or nationalities and sex

² Article 15 of COM(2013) 95 final

Furthermore, the competent authorities of the Member States would have access to search with the fingerprints also within the territory of the Member State in order to verify the identity of the third country national and/or whether the conditions for entry to or stay on the territory of the Member States are fulfilled³.

The Commission acknowledges the importance of biometrics for reliable identification of persons. The Commission has proposed a three-year transitional period for the use of biometrics by EES to allow Member States to adapt the border check process and handling passenger flows to avoid increasing waiting times at the border⁴. The VIS is a good example of implementing a large-scale system using biometrics only after a transitional period.

As to the **purpose of RTP** and its added value for money and in terms of the protection of borders, the RTP has been conceived as an integral part of the Smart Borders package. This package aims not only at strengthening the overall governance of the Schengen area by modernising the border checks at the external borders and providing Member States with new tools and data to better enforce the rule on short stay of the third country nationals in the EU, but also at managing better their travel flows and simplifying life of frequent and pre-screened and pre-vetted third country travellers.

Indeed, there is overall a growing need to manage increasing travel flows in coming years. The RTP would address that phenomenon and ensure that border crossings are fast and simple for the growing number of regular travellers that constitute the vast majority of third country nationals crossing the external borders. The RTP is therefore specifically designed for those travellers that are likely to cross the borders several times a year and who would be pre-enrolled in the programme (e.g. business travellers, workers on short term contracts, researchers and students, third country nationals with close family ties to EU citizens or living in regions bordering the EU). In addition, making it as easy as possible for frequent travellers to come to the EU would ensure that it remains an attractive destination and would help boosting economic activity and job creation. Lastly, the financial contribution collected from the fee for the RTP application would also help to compensate the extra effort of the Member States' authorities for examining the applications.

In any case, the RTP would actually also directly contribute to the protection of borders as it would result in releasing human resources needed at the external borders for thorough checking where appropriate and/or carrying out other relevant tasks.

Limiting the **possibility of lodging the application for RTP** only to the territory of the Member States as suggested in the Sénat's Opinion would in the view of the Commission actually go against the main objectives of RTP as outlined above, notably to facilitate crossing of the external borders of the EU by pre-screened frequent travellers. Indeed, it has been estimated that half of the participants in the programme would be third-country nationals requiring a visa. As a consequence, allowing the lodging of applications at the consulates/common application centres abroad should guarantee a larger number of participants in the programme, thus helping Member States to manage better their passenger flows at the external border crossing points.

³ Article 18 of COM(2013) 95 final

⁴ Recital 10 of COM(2013) 95 final

In any case, a regular reporting and evaluation mechanism has been foreseen, which would provide for an overall evaluation of the RTP, including an examination of the results achieved against objectives and the assessment of the continuing validity of the underlying rationale. This report would be accompanied, where necessary, by appropriate proposals to amend this Regulation.⁵

*Following the currently envisaged objectives of both the EES and RTP and in compliance with the principles of necessity, proportionality and with fundamental rights and notably the right for a protection of personal data, the Commission has not proposed the **use of these systems for law enforcement purposes**.*

However, as regards the EES only, the corresponding proposal foresees that an evaluation of the system would be carried out two years after the EES has been brought into operation. This evaluation would specifically examine the contribution the entry-exit system could make in the fight against terrorist offences and other serious criminal offences and would deal with the issue of access for law enforcement purposes to the information stored in the system, taking into account the experience of the implementation of the Visa Information Systems (VIS) with regard to access for law enforcement purposes and overall experiences with regard to the operation of the EES⁶. The Commission trusts that the Member States requesting the use of the system for law enforcement purposes will contribute proactively to this exercise by providing hard data that would enable a thorough assessment of the situation.

The Commission hopes that these clarifications address the concerns raised by the Senát and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

⁵ Article 63(3)(4) of COM(2013)97 final

⁶ Article 46(5) of COM(2013) 95 final