

Opinion

on 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

on 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

and on the Proposal for a Regulation of the European Parliament and of the Council establishing a Registered Traveller Programme
COM(2013) 97

Having regard to the Treaty of Lisbon, and in particular Articles 5 and 12 TEU and Protocols 1 and 2 annexed to the Treaty,

Having regard to the Constitution of Romania, republished, in particular Article 148 thereof,

Having regard to Decision No 11/2011 of the Chamber of Deputies,

Taking into account the draft opinion adopted by the Committee for Defence, Public Order and National Security at its meeting 13 May 2013,

Taking into account the draft opinion adopted by the Committee for Information Technology and Communications at its meeting of 8 May 2013,

Having regard to the draft opinion adopted by the Committee for Legal Affairs, Disciplinary Matters and Immunities at its meeting of 2 April 2013,

Taking into account the views of the Government of Romania, expressed in its letters of 15 April 2013, and 12 and 17 April 2013,

Taking into account the information document provided by the EU Law Directorate of the Chamber of Deputies,

Taking into account the final draft opinions adopted by the Committee for European Affairs at its meeting of 22 May 2013,

Having regard to the approval given by the Permanent Office of the Chamber of Deputies on 27 May 2013,

The Chamber of Deputies, acting in accordance with Article 40 of its Decision No 11/2011 of 27 April 2011, hereby adopts this Opinion:

We welcome the following key issues addressed in the legislative proposals, which demonstrate particular concern for the interests of the European Union:

- identification of any person who may not or may no longer fulfil the conditions of entry to or stay in the territory of the Member States, and providing a precise picture of travel flows at the external borders;
- fully automated border controls for registered travellers and abolishing the obligation to stamp the travel document provided for in the Schengen Borders Code;
- facilitation and speeding up of border crossings for third-country nationals who travel frequently and have undergone prior security checks;
- setting up a centralised system for cooperation between Member States in the area of managing the external borders of the European Union, which is regarded as a priority for the European Union.

After having examined the inter-related rights and obligations introduced by the Proposal, the Chamber of Deputies would draw attention to the following aspects of interest:

1. The objectives of the proposals made can be achieved only through common rules at Union level. The new provisions add value to EU actions, and all three proposals comply with the principle of subsidiarity.
2. In the case of the Proposal for a Regulation establishing the Entry/Exit System, the proposed scheme is useful for identifying any person who may not or may no longer fulfil the conditions of entry to or stay in the territory of the Member States. This concerns persons found without travel documents or other means of identification during checks performed in the territory of a Member State, and provides a precise picture of travel flows at the external borders. It will be possible to calculate the number of overstayers, e.g. by nationality of travellers.
3. In the case of the Proposal for a Regulation on the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP) (COM(2013) 96), we have a favourable opinion in respect of fully automating border controls for registered travellers and abolishing the obligation to stamp the travel document laid down in the Schengen Borders Code.
4. As regards the Proposal for a Regulation establishing a Registered Traveller Programme, we welcome the proposal to facilitate and speed up border crossings for third-country nationals who travel frequently and who have undergone prior security controls;
5. The legislative proposals on border management, involving a common regime and technique in order to establish a centralised system of cooperation between Member States, requires a common architecture and common operational rules. The management of the external borders of the European Union is a priority interest of the European Union.
6. We would note that the proposals comply with the principle of proportionality.
7. There may be differences between the financial cost of maintaining and operating the external borders of certain Member States of the European Union facing more difficult conditions (geographical location, the space available at the border crossing point, passenger flows, different length of the border, etc.) and the budgetary tasks undertaken by the other Member States. It would not be fair to allow each state to contribute the

same share to the External Borders Fund. There should be sustainable criteria for differentiated contributions.

8. There is concern that, although the Entry/Exit System will calculate the period of stay of a person in a Member State and will be able to identify persons who have exceeded their legal stay in a state and locate them in the territory of the state where they are with a view to initiating the return procedure, it will not be able to identify potential alerts, terrorism, etc. It will only facilitate travelling.

9. It is unclear what would be the situation of a state which is preparing for accession to the Schengen area, but that accession is yet to be approved. The question is how 'smart borders' are going to be implemented in that state after accession, if that State does not contribute to the External Borders Fund (EBF).

10. There should be no differentiation between, on the one hand, the 'external borders' of the European Union, and, on the other, the border points of the Schengen area and the entry/exit border points of the European Union. All Member States should have access to the EES system, when monitoring, recording and examining the entry and exit of passengers to/from the EU area.

11. When proposing and designing new large-scale IT systems, there should be compliance with the principles of necessity, proportionality, and 'privacy by design', and the principle of limited scope. When processing biometric data, there should be strict protection measures laying down the minimum conditions for the use thereof, and contingent procedures for persons who are not able to register.

12. Adopting these three European legislative proposals is timely, because they will effectively ensure the modernisation and operation of smart management of EU borders, and will combat irregular immigration.

13. Amending the legislation in this area is necessary because there are no reliable means of monitoring the movements of third-country nationals who have been permitted a short stay in one of the EU Member States.

14. The legislative proposals on border management imply a common regime and technique in order to establish a centralised system of cooperation between Member States, and this requires common operational rules.

15. The 'smart borders' package meets the EU's policy objectives of modernising and increasing the effectiveness of the border management system by using latest generation technology, taking into account the objectives of the instruments (ensuring a high level of security and facilitating travel within the Schengen area of third-country nationals), national priorities and international commitments (in particular those under the European framework) on border security, and the current challenges and threats. Romania will support, in principle, the proposals included in the border management package.

16. The free movement of persons within an area without internal borders is one of the Union's key achievements, and there is undoubtedly a need for mechanisms and measures for improving the 'Schengen governance' at EU level rather than national level.

17. The proposals under consideration are part of the larger context of EU policies related to the Area of Freedom, Security and Justice. The key objective is to achieve a balance between freedom and security, by using 'compensatory' measures added to the freedom of movement. Such measures consist in improving cooperation and coordination between

the police and the judicial authorities, with a view to ensuring internal security and, in particular, fighting organised crime.

18. The challenge of ensuring that the EU remains an attractive destination for third-country nationals, through its ‘openness’, is sufficiently important to justify action to improve the EU’s border management system.

19. The development and operation of state-of-the-art procedures for the management of external borders is intended to strengthen the ties of solidarity, responsibility and mutual trust between the Member States as regards the common policies of the EU in this area. The principles of solidarity and fair sharing of responsibilities between Member States is at the heart of the common policies on asylum, immigration and external borders.

20. Giving Member States access to EU know-how, logistics, legal framework and funding for IT systems for the purpose of strengthening national and European capabilities, with a view to developing and operating smart borders, represents an act of solidarity.

21. Implementing the Entry/Exit System (EES) at European level is timely, given that it will assist in determining the exact purpose for which foreigners enter the territory of EU Member States, making a precise and fast calculation of the period of authorised stay, and making an automatic calculation of the period of authorised stay, and in performing risk profiling for the relevant categories.

22. The development of the EES should include the existing architecture of national systems. The Romanian Border Police, for example, has its own entry/exit system which allows it to check persons, documents and vehicles using national and European databases.

23. During border controls, the general rule should be to collect machine-readable data, visa-related data (where a visa is required), and data regarding a foreign national’s destination within the EU. Collecting a wide range of alphanumeric data, in addition to biometric data, could lead to an exaggerated increase in waiting times.

24. It is necessary to include the biometric data from the outset of the process of implementing the systems, provided that the EES is inter-connected with the Visa Information System. This would enable the EES to import the digital fingerprints of the foreign nationals from whom fingerprints have already been collected when the visa was issued. In the case of foreign nationals who do not need a visa in order to enter the territory of a Member State of the EU, the digital fingerprints can be collected on first entry into the territory of a Member State.

25. Since the implementation of the EES implies large-scale processing of personal data, in particular sensitive (biometric) data, the design of this system must respect the fundamental human rights and freedoms, in particular the right to an intimate, family and private life, in line with the existing rules. In connection with the use of biometric data, there should be strict protection measures laying down the minimum conditions for the use thereof, and contingency procedures for persons who are not able to register by entering such data.

26. The practice of stamping the travel documents of foreign nationals should be maintained for certain situations such as a first entry (on the visa), during periods of light border controls, and in the event of technical problems with the computer system.

27. The general retention period for the data kept in this system should be five years.

28. It is necessary to include special provisions on the budgetary implications of implementing, developing and maintaining this system.

29. Implementing such a system for collecting and processing data via the European Entry/Exit System (EES) and the Registered Traveller Programme (RTP) may create new risks for the protection of the personal data of natural persons, in particular in the case of sensitive (biometric) data, and implicitly for the protection of their fundamental rights, especially the right to an intimate, family and private life.

30. Granting access to the databases which are part of this system also to other authorities raises the issue of extending the original scope of this system and may have a serious impact if the use of the databases is subsequently further extended to other purposes. When proposing and designing new large-scale IT systems, there should be compliance with the principles of necessity, proportionality, and 'privacy by design', and the principle of limited scope. Moreover, considering that this system will also process biometric data, there should be strict protection measures laying down the minimum conditions for the use of those data, and contingency procedures for persons who are not able to register.

31. The development of the EU's data and information exchange systems, including the 'smart borders', may result in 'statistical discrimination' if it does not comply with the legal obligations, principles and values enshrined in the Treaties and other instruments which make up the European legal system and which are not limited to data protection, but also include rules on confidentiality and non-discrimination which are now binding commitments under the EU Charter of Fundamental Rights.

32. The objective of maintaining a high level of mutual trust between the Member States which are part of an area without internal border controls, by strengthening border management systems, should be subscribed to in full also by Romania, which has already experienced reactions of distrust from several other Member States as regards its capacity to manage the external border of the Union up to the standards of the Schengen Agreement. Supporting the new instruments without reservation demonstrates our desire to contribute to the good management of the borders and the Romanian authorities' confidence that the progress recorded in preparing for accession to the Schengen area is sufficient to meet the increasing requirements.

This opinion is addressed to the Presidents of the European Parliament, the Council and the European Commission, and to the Romanian Government.

President,
Valeriu Ștefan Zgonea