



## EUROPEAN COMMISSION

*Brussels, 10.3.2017*

*C(2017) 1590 final*

*Mr Liviu DRAGNEA  
President of the Camera Deputaților  
Palace of the Parliament  
Str. Izvor nr. 2-4, sector 5  
RO – 050563 BUCHAREST*

*Dear President,*

*The Commission would like to thank the Camera Deputaților for its Opinion on the Communication enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders {COM(2016) 602 final}.*

*The Communication sets out a number of practical and operational measures to accelerate the implementation of the European Agenda on Migration<sup>1</sup> and the European Agenda on Security<sup>2</sup>, and to pave the way towards a genuine and effective Security Union. These measures include an accelerated operational delivery of the European Border and Coast Guard, quick adoption and implementation of an EU Entry-Exit System and the proposal to create a European Travel Information and Authorisation System. In addition, the Communication also proposes to take further actions to improve the security of travel documents to prevent document fraud and to strengthen Europol's European Counter-Terrorism Centre.*

*The Commission appreciates Romania's commitment to contributing to the work of the European Border and Coast Guard Agency in line with the concept of shared responsibility for the management of the EU's external borders.*

*In response to the Camera Deputaților comments related to the single calculation of the period of stay in the territory of both Schengen and non-Schengen Member States, the Commission would like to underline that the calculation should not take into account the stays in Member States not yet fully applying the Schengen acquis when verifying the compliance with the maximum length of the stay limit under the short stay rule of 90 days in any 180 days period. The EU Entry-Exit System should monitor the compliance with this overall limit only in the area without controls at internal borders.*

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<sup>1</sup> COM(2015) 240 final.

<sup>2</sup> COM(2015) 185 final.

*In response to the more technical comments in the Opinion, the Commission would like to refer the Camera Deputaților to the attached annex.*

*The Commission hopes that these clarifications address the issues raised by the Camera Deputaților and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Dimitris Avramopoulos  
Member of the Commission*

## ANNEX

*The Commission has carefully considered each of the issues raised by the Camera Deputaților in its Opinion and is pleased to offer the following clarifications.*

### Point 3: role of border guards in the EU's strategy for controlling the flow of irregular migration

*The Commission is pleased that the Camera Deputaților appreciates the border guards' role in controlling the EU's external borders. Border guards have directly contributed to managing migration flows towards the EU since the beginning of the migration crisis.*

*The migration crisis has stretched some Member States' capacity to carry out border checks and revealed some deficiencies in the management of the EU external borders. At the same time, the rules applying to EU external border management have never been suspended. The 'wave through' approach witnessed for some months along the Western Balkan route with regard to persons who wanted to exercise their asylum rights in specific Member States, but not in the Member State of first entry, posed certain problems. In particular, third country nationals must fulfil all entry conditions laid down in Article 6 (1) of the Schengen Borders Code (SBC) in order to enter the territory of a Member State. This is without prejudice to the right of access to international protection (Article 3 (b) and Article 6 (5) c SBC). If a third country national does not fulfil the entry conditions and does not apply for asylum despite having received the possibility to do so, they cannot benefit from the provision of Article 3 (b) and Article 6 (5) c SBC no matter the humanitarian reasons which may be invoked. As the Camera Deputaților rightly points out, this ad hoc practice has stopped and the flow of irregular migration is currently subject to controls thanks to the measures both at the EU's external and internal borders. These measures include for example the establishment of hotspots, the increased role of the European Borders and Coast Guard Agency as well as temporarily reintroduced border controls at the internal borders of some Member States.*

### Point 5: entry into force of the European Border and Coast Guard Regulation

*The Commission appreciates the Camera Deputaților's positive views on the quick adoption and entry into force of the Regulation on the European Border and Coast Guard<sup>3</sup>. The Commission is closely cooperating with the European Border and Coast Guard Agency to make the new rules operational as soon as possible.*

### Point 6: challenges posed by the new European Border and Coast Guard Regulation

*The European Border and Coast Guard Agency will carry out rapid border interventions or other actions in urgent situations with the help of a newly established rapid reaction pool and a rapid reaction equipment pool. Member States gave their agreement to the establishment of these pools during the negotiation process ahead of the Regulation's adoption. In addition, each Member State gave individually its consent to their contributions to the rapid reaction pool composed of border guards and other relevant staff. These contributions are now included in Annex I of the Regulation. The Agency's Management Board at its extraordinary*

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<sup>3</sup> Regulation (EU) 2016/1624 of 14 September 2016.

meeting of 18-19 October 2016 decided on the profiles and the minimum number of border guards or other relevant staff to be made available for the rapid reaction pool. At the same meeting, the Agency's Management Board adopted a Decision establishing a common vulnerability assessment methodology. The adopted methodology defines a framework for the assessment process. The methodology was amended at the Management Board meeting of 23-24 November 2016 to include objective criteria against which the assessments will be carried out. The Agency intends to launch the assessment process in the first quarter of 2017.

The ongoing work aims to eliminate any complexities in the implementation of the new Regulation. Member States' commitment and cooperation will, of course, be an indispensable condition for the smooth implementation of the Regulation.

#### Point 9: adoption of the common vulnerability assessment

The Commission appreciates the Camera Deputaţilor's support for the adoption of the common vulnerability assessment model by the European Border and Coast Guard Agency's Management Board.

#### Point 10: Entry-Exist System (EES)

The revised legislative proposal for the Entry Exist System (EES)<sup>4</sup> adopted on 6 April 2016 envisages interoperability between the EES and the Visa Information System (VIS) for more efficient and faster border checks.

With regard to the Passenger Name Register (PNR) and Advance Passenger Information (API), the revised EES proposal does not foresee interoperability and interconnection with this travel related information. API and PNR data, related only to air travel and thus air borders, are implemented in a decentralised way at Member State level. The Commission encourages Member States to make full use of these data through their automated cross-checking against the Schengen Information System and the Interpol's Stolen and Lost Travel Documents database.

#### Point 11: EU financing for the implementation of the EU entry/exit system (EES)

The proposed legal financial statement (LFS) accompanying the EES<sup>5</sup> proposal foresees financing for the EES with:

- a budget of EUR 288 million for the agency eu-LISA to develop and execute the EES Central System, the National Uniform Interface (NUI) and the communication infrastructure between the central system and the NUI (2017-2020);
- a budget of EUR 120 million for the European Commission to manage grants to Member States for the integration of the NUI, translating into EUR 4 million per Member State (2017-2019);

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<sup>4</sup> COM(2016) 194 final.

<sup>5</sup> Annex II to COM(2016) 194 final.

- a budget of EUR 52.7 million for expenses related to the operations in the Member States, in particular in testing phases of the system (shared management, years 2017-2019), translating into EUR 1.75 million per Member State. In addition, EUR 19.7 million have been reserved (shared management, in 2020) to ensure the necessary staff for 24h/24h shift in the Member States, translating into EUR 0.65 million per Member State.

Member States will therefore benefit from a financial support of EUR 120 million + EUR 52.7 million + EUR 19.7 million (to be managed via shared management) for the expenses related to the development and operation of the new system in the Member States, translating into an average of approximately EUR 6.4 million per Member State.

### Point 13: geographic scope of the European Travel Information and Authorisation System (ETIAS)

The Commission welcomes the Camera Deputaţilor's support for the creation of a European Travel Information and Authorisation System (ETIAS). The Commission adopted a legislative proposal for the creation of ETIAS<sup>6</sup> on 16 November 2016.

The system is proposed to apply to those Member States that are part of the Schengen area, including Member States which do not yet fully apply the Schengen acquis (Romania, Bulgaria, Croatia, Cyprus) and Associated Schengen countries (Iceland, Norway, Switzerland and Liechtenstein).

Member States that are not part of the Schengen area (United Kingdom and Ireland) will not take part in the adoption of the Regulation and would not be bound by the ETIAS Regulation or subject to its application. Denmark will not take part in the adoption of the Regulation either, but will be able to decide within six months after the Council has decided on the Regulation whether to transpose the Regulation into its national law.

### Point 14: introducing specific criteria related to the security risk of visa exempted third country nationals

ETIAS will largely be an automated system which will process travellers' applications and automatically check the declared information against relevant databases at the European level. It will also consult Interpol databases and Europol data.

In addition, it is proposed that ETIAS applications shall be checked against a dedicated ETIAS watchlist and specific risk indicators. The ETIAS watchlist will help identify connections between ETIAS application files and information related to persons who are suspected of having committed a serious crime or a terrorist offence, or who can be suspected of committing such an act in the future based on factual indications or reasonable grounds. The risk indicators will be determined on the basis of information provided by Member States on specific security risk indicators or threats identified by that Member State and/or, information provided by Member States on abnormal rates of overstayers and refusals of entry for a specific group of travellers.

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<sup>6</sup> COM(2016) 731 final.

*Europol will be involved in the definition of ETIAS screening rules and will also manage the ETIAS watchlist. Moreover, ETIAS National Units will consult Europol in the follow up to any hit occurring during the ETIAS automated processing with data held by Europol.*

*Point 15: information platforms between law enforcement authorities and intelligence services*

*The Commission notes the Camera Deputaţilor's view that fragmentation of information exchange should be eliminated both at national and EU Level. In line with the interoperability strategy proposed in the Communication on Stronger and Smarter Information Systems for Borders and Security<sup>7</sup> of 6 April 2016, ETIAS would be interoperable with existing systems, and with systems currently under development, such as the Entry Exit System. In parallel, the Commission, supported by the work of the High-Level Expert Group on Information Systems and Interoperability (HLEG) is reflecting on and working to reduce fragmentation and fill information gaps in the overall data architecture for information systems with the dual function of border management. On 21 December 2016 a Chairman's report set out the interim findings of the HLEG. The HLEG will present its final report in the first half of 2017. Based on these findings and discussions with the European Parliament and the Council, the Commission will consider measures to further boost the interoperability of EU information systems and increase their effectiveness to address the current security threats.*

*Point 16: cooperation between law enforcement authorities and security services*

*The Commission welcomes the Camera Deputaţilor's support for closer cooperation between law enforcement and security services, including through interaction between the Counter Terrorism Group and Europol's European Counter Terrorism Centre. In line with the Communication on Stronger and Smarter Information Systems for Borders and Security, the Commission has initiated a consultation with Member States to identify practical solutions in this area, fully acknowledging that Member States remain responsible for defining national procedures for information sharing with Europol.*

*While the Commission does not intend to pre-empt the results of this consultation, it fully shares the Camera Deputaţilor's view that the nexus between terrorism and organised crime constitutes a key area where cooperation between the law enforcement and intelligence communities should be stepped up.*

*Point 17: access to ETIAS data*

*ETIAS, as proposed by the Commission, would reinforce EU internal security in two ways. First, it would help identify persons that pose a security risk before they arrive at the Schengen external border. Second, it would make information available to national law enforcement authorities and Europol where this is necessary for a specific case of prevention, detection or investigation of a terrorist offence, or other serious criminal offences. Requests for law enforcement access shall be subject to a prior review by a court or by an authority providing guarantees of full independence and impartiality.*

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<sup>7</sup> COM(2016) 205 final.

Point 20: European Counter Terrorism Centre and cooperation with third countries

*The Commission is working with Europol to establish a Programme Board to enhance the internal governance of the European Counter Terrorism Centre, in close coordination with Member States and relevant partners. The Commission welcomes the position of the Camera Deputaţilor regarding the importance of cooperation with countries in the Middle East and North Africa to fight terrorism. As indicated in the Communication on delivering the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union<sup>8</sup>, Europol has already been participating in counter terrorism/security dialogues. In addition, the Commission is committed to developing concrete action plans to ensure effective counter-terrorism cooperation with third countries, notably through effective information sharing and police cooperation within appropriate data protection frameworks.*

Point 22: Interoperability of information systems

*The Commission notes the Camera Deputaţilor's support for full Europol access to the Schengen Information System (SIS). The Commission proposal of 21 December 2016 to amend the SIS legislation foresees additional rights for Europol to access and search of data, within its mandate, that have been entered in SIS. Moreover, in the context of the work of the High Level Expert Group on Information Systems and Interoperability and with a view to further strengthening information sharing on terrorism, the Commission will assess if Europol should automatically receive a notification from SIS when an alert on terrorism-related activity is created.*

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<sup>8</sup> COM(2016) 230 final.