



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
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Opinion

Title **DG HOME - Impact Assessment on a proposal establishing the entry/exit system to register entry and exit data of third-country nationals crossing the external borders of the Member States of the European Union**

(draft version of 16 February 2012)

(A) Context

According to the Schengen Borders Code, third-country nationals must be subject to a control at entry and exit of the Schengen territory. None of the existing databases (such as SIS, VIS or Eurodac) records travellers' cross border movements and stamping the travel document remains the sole method to indicate the dates of entry and exit. The creation of an automated entry/exit system has been discussed since 2005 as a possible policy option in several EU documents and finally analysed in the impact assessment accompanying the 2008 Communication "Preparing the next steps in border management in the European Union". The aim of this impact assessment is to examine different implementation options of the system allowing Member States to record entry and exit of third-country nationals in the Schengen area and effectively share this data while safeguarding data protection. This initiative is linked to the proposal establishing a Registered Traveller Programme, for which a separate impact assessment is prepared.

(B) Overall assessment

The report should be significantly improved in several respects. It should better present the specific problems that the envisaged system aims to address and should clearly acknowledge that some of these cannot be underpinned by robust evidence at the present time, such as the need to collect biometric data from third-country nationals without visa. On this basis the report should demonstrate how the problems are likely to develop without the additional system in place and should justify the need for taking an immediate decision before sufficient experience from the implementation of the Visa Information System becomes available. The report should strengthen the intervention logic by defining policy objectives that better correspond to the specific problems and by presenting fully-fledged implementation options. It should clearly demonstrate the added value and proportionality of these options, fully taking into account fundamental rights aspects. Finally, the analysis of costs should be strengthened, particularly as regards the robustness of time and cost estimates for the development and the implementation of the various system configurations.

Given the nature of these recommendations, the Board asks DG HOME to submit a revised version of the report, on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Improve the problem definition. The report should explain to what extent the conclusions of the previous impact assessment remain valid in view of (i) ongoing economic, political and technological developments; (ii) the experience with other large-scale IT systems at the EU level (such as VIS and SIS II); (iii) the much higher estimated system costs and (iv) the opinion of the European Data Protection Supervisor. Against this background, the report should better present and justify the specific problems and their drivers to be addressed by the system and define its purpose(s)/objectives accordingly. In doing so, the report should clearly differentiate between the problems that can be credibly substantiated by available evidence (such as the information gap for decisions on visa and immigration issues related to all third-country nationals) and those for which further evidence needs to be gathered (such as the need to collect biometric data from third-country nationals without visa). The report should clearly present all the available evidence of the pros and cons of the key design choices and specify what kind of information still needs to be collected to allow for a definitive decision to be made. In terms of fundamental rights, the report should clarify for which purpose(s) the particular type of personal data would be collected, retained and accessed and if this purpose can change in the future. It should then describe in more detail the challenges for privacy and data protection and explain which safeguards are used by the existing systems (and how effective they are).

(2) Strengthen the baseline scenario and justify the need for immediate action. The baseline scenario should better demonstrate how the problems and their drivers are likely to evolve without the additional system being put in place. In this respect, the report should explain why the identified problems are not expected to change despite the foreseen substantial increase in cross-border movements on the one hand and the full implementation of VIS and SIS II on the other. Furthermore, the report should explain the likelihood that more Member States could introduce national entry/exit systems that cannot be interconnected. On this basis, the report should justify the need for an immediate decision rather than waiting for the full implementation of VIS.

(3) Strengthen the intervention logic. The report should improve the intervention logic by designing policy objectives that better correspond to the identified specific problems and are clearly linked to the key system design choices. Consequently, the report should present the most realistic implementation options upfront by combining individual design elements into several fully-fledged option packages including phased approaches. The report should also describe the safeguard measures related to privacy and data protection in more detail and explain how their exact content will be designed.

(4) Better analyse the impacts and demonstrate the value added and proportionality. The report should assess the impacts of the combined design elements as a whole and clearly separate the analysis of impacts from the comparison of options. On border management, the report should specify the possible impacts (particularly on queuing times) and should describe what kind of countermeasures would need to be taken by Member States. Any disproportionate impacts on individual Member States should be accounted for. On fundamental rights, the report should justify that the corresponding limitation of fundamental rights is necessary and proportionate to achieve the stated objectives. Any uncertainty related to these impacts should be clearly spelled out. On this basis, the report should demonstrate the added value and proportionality of the alternative implementation options in comparison to the baseline scenario.

(5) Strengthen the presentation and analysis of costs. The report should present an estimation of costs for all analysed implementation options (including phased approaches) in a comparable timeframe and explain how robust the time and cost estimates are. In this respect, a sensitivity analysis should be carried out to indicate the most sensitive underlying assumptions and to explain how their variations impact on the overall costs. Furthermore, the report should explain in more detail how the higher costs of the phased approaches have been calculated, particularly given the relatively long timeframe for the potential system upgrade (in 2020). Finally, given the fact that the EU foresees to finance fully the development costs and partly the operational costs at national level, the report should clarify the proportion of costs that is likely to be borne by Member States and indicate this upfront in the cost comparison tables.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should present in a transparent and differentiated manner the views of all affected stakeholders, namely national authorities, private sector, civil society/NGOs, respective agencies and data protection authorities, as well as third country authorities and stakeholders to the fullest extent possible. An annex containing their detailed views should be included to the report. Synergies with the Registered Traveller Programme should be explained in a separate section. The report should clearly indicate which design elements will be defined via implementing measures. The underlying cost study should be made public, ideally including the model itself.

(E) IAB scrutiny process

Reference number	2010/HOME/004
External expertise used	No
Date of Board Meeting	14 March 2012