EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
D(2016)

Opinion

Title   **DG HOME – Modified proposal for a Regulation establishing an EU Entry/Exit System and for a Regulation amending the Schengen Border Code (Regulation (EC) Nr. 562/2006)**

(draft version of 21 December 2015)[*]

(A) Context

In February 2013, the Commission adopted a Smart Borders package consisting of three proposals: (1) a Regulation for an Entry/Exit System (EES) for the recording of information on the time and place of entry and exit of third country nationals travelling to the Schengen area, (2) a Regulation for a Registered Traveller Programme (RTP) to allow third country nationals who have been pre-vetted to benefit from facilitation of border checks at the Union external border, and (3) a Regulation amending the Schengen Borders Code in order to take into account the existence of the EES and RTP. The proposals were accompanied by an impact assessment that concluded that setting up an EES and a RTP was the most suitable policy option.

The co-legislators voiced technical, cost-related and operational concerns, mainly on the feasibility of both systems and the practicability of certain features. Concerns related especially to the limited number of potential users and the administrative burden of implementing RTP, the length of the data retention period in the EES, the choice of the biometric identifiers, the extent to which the national entry exit systems could be integrated and/or reused, the need for enhanced synergies and/or interoperability with existing systems used during border controls and the possibility for law enforcement authorities to access the system.

In view of presenting a revised smart borders proposal, this impact assessment addresses these specific issues. The Commission carried out a technical study and a pilot phase to test the systems at selected border crossing points. Based on the findings of these tests and on numerous technical discussions with co-legislators and stakeholders, the Commission is considering potential improvements and simplifications to the 2013 proposal.

(B) Overall opinion: POSITIVE

The Board recommends that the following points be clarified:

1) How does this initiative relate (or not) to the refugee crisis and to the terrorists threat? What are the technical and practical problems identified in relation to the 2013 proposal which are being addressed by this initiative? What border management systems exist in third countries and what lessons can be learnt?

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[*] Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

2) How do the policy objectives address the outstanding technical/practical problems related to the entry/exit system? Why is access for law enforcement considered as a "secondary" objective?

3) How would the entry/exit system work in practice and how would it fit into the context of other border management and security systems (e.g. VIS, Eurodac, etc.) and would these systems together cover all border crossings by third country nationals?

(C) Main recommendations for improvements

(1) Clarify the policy context and the problems addressed. As the initiative concerns the Schengen area, the report should clearly state from the outset the scope of the present initiative, e.g. to what extent it is associated with the problems linked to the refugee crisis (this should also be the case whenever data on migration flows is presented) and terrorism. The problem section should then be revised in order to better describe the technical and practical problems that are being addressed by the initiative, following the 2013 proposal, the discussions with EP and Council and the technical studies and field tests carried out. In this sense, the problem section should also explain the need for biometric identification and possible concerns with regard to fundamental rights and privacy. Furthermore, the report should describe existing practices and systems in relevant third countries, and what (positive and negative) lessons can be drawn from their experience.

(2) Clarify/update the policy objectives. The policy objectives should be updated in the light of recent events concerning the Schengen area, clarifying the focus on border management and explaining why the access to the system for law enforcement is considered as a secondary issue in this context. The policy objectives should be designed to respond directly to the identified problems.

(3) Clarify the policy options. The report should improve the description of the policy options, by explaining how the entry/exit and facilitation system will work in practice, in particular from the point of view of the citizen (e.g. dedicated lanes). It should also provide a better overview of how the new entry/exit and facilitation system would fit in with existing systems (thereby showing who will be registered how and by which system at border crossings).

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 option description should be clearly separated from the impact analysis, and the report should be simplified by removing duplications. Furthermore, the report should be clarified by avoiding acronyms as far as possible and explaining used acronyms at their first appearance.

(E) RSB scrutiny process

Reference number	2016/HOME/001
External expertise used	No
Date of RSB meeting	20 January 2016