

Procedure file

Basic information	
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Entry/Exit System (EES) to register entry and exit data of third country nationals	
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Key players	
European Parliament	
Council of the European Union	

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Documentation gateway					
Legislative proposal		COM(2013)0095	28/02/2013	EC	Summary
Document attached to the procedure		SWD(2013)0047	28/02/2013	EC	
Document attached to the procedure		SWD(2013)0048	28/02/2013	EC	
Document attached to the procedure		SWD(2013)0049	28/02/2013	EC	
Document attached to the procedure		N7-0074/2014 OJ C 032 04.02.2014, p. 0025	18/07/2013	EDPS	Summary
Committee of the Regions: opinion		CDR3534/2013	29/11/2013	CofR	

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

Entry/Exit System (EES) to register entry and exit data of third country nationals

PURPOSE: to establish 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.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: according to the [Schengen Borders Code](#), EU citizens and other persons enjoying the right of free movement under Union law crossing the external border shall be subject to a minimum check, both at entry and exit, consisting of the verification of the travel document in order to establish the identity of the person. On the other hand, all third country nationals however must be subject, at entry, to a thorough check, which implies a check of their purpose of stay, possession of sufficient means of subsistence, as well as a search in the Schengen Information System (SIS) and in national databases.

There are no provisions in the Schengen Borders Code on the recording of travellers' cross border movements. Currently, stamping the travel document is the sole method to indicate the dates of entry and exit which can be used by border guards and immigration authorities to calculate the duration of the stay of a third-country national in the Schengen area, which shall not exceed 90 days within a period of 180 days. Other measures and tools available at border crossing points, such as databases (SIS and the Visa Information System VIS), the consultation of which is compulsory at entry, but not at exit, are not intended for the purpose of recording border crossings and do not provide for this functionality.

There are currently no electronic means to check if, where and when a third-country national has entered or left the Schengen area. Reliable data on the number of irregular immigrants currently staying in the EU does not exist either (estimates of the number of irregular immigrants within the EU vary between 1.9 and 3.8 million).

For these reasons, it is appropriate to create an Entry/Exit System and to define the purpose, the functionalities and responsibilities for its use.

It should be noted that this proposal has been presented together with a proposal to establish a [Registered Traveller Programme](#) and a proposal to amend the Community Code on the rules governing checks at external border crossing points and surveillance at the external border ([Schengen Borders Code](#)) for the purpose of the functioning of the two new systems.

IMPACT ASSESSMENT: a first [impact assessment](#) was carried out in 2008 when preparing the [Commission Communication](#) on this subject (please refer to the European Parliaments position on this question [2008/2181\(INI\)](#)).

A [second](#) was completed in 2012. It analysed key implementation options. Analysis of the different options and sub-options showed that the preferred solution for an EES should be the following:

- the EES will be designed as a centralised system containing both alphanumeric and biometric data;
- the data retention period would be for ordinary cases six months and in case of overstay five years;
- the use of biometrics would be subject to a transitional period of three years to allow for Member States' adapting processes at the border crossing points;
- after a period of two years, the EES should be evaluated and, in particular, the possible access to the system for law enforcement purposes as well as the retention period, also taking into account the experience of access for such purposes to the VIS.

LEGAL BASIS: Articles 74 and 77(2)(b) and (d) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal has three main objectives:

1. to create an EES and establish a legal basis for the development and implementation of the technical system;
2. to define the purpose, the functionalities and responsibilities for use of the EES; and
3. to confer on the Agency the development and operational management of the central system.

Scope: the Regulation shall apply to any third country national admitted for a short stay in the territory of the Member States. Provisions are also included to determine persons to whom the Regulation does not apply, in particular third country nationals who are members of the family of a Union citizen who holds a residence card, and holders of residence permits referred to in the Schengen Borders Code, whose stay is limited to 90 days within a period of 180 days.

Purpose of the system:

(a) improve the management of the external borders: the EES will facilitate the improvement of the management of the Unions external borders by offering a system that will calculate the length of each travellers authorised stay (the so-called automated calculator):

- at entry, in the case of a traveller who visits the Schengen area frequently, it enables a quick and precise calculation of how many days there are left out of the maximum of 90 days within 180 days;
- at exit, it verifies that the traveller has respected the authorised stay, as well as permitting, within the territory, where checks are carried out on third-country nationals, the verification of the legality of their stay.

(b) better control of illegal immigration: the system will assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, or stay on the territory of the Member States; this concerns notably persons who are found during checks within the

territory not in possession of their travel documents or any other means of identification;

(c) support the analysis of the entries and exits of third-country nationals: the system will provide a precise picture of travel flows at the external borders and the number of overstayers.

The mechanism set in place will provide:

- precise information in a rapid way to border guards during border checks, by replacing the current slow and unreliable system of manual stamping of passports; this will allow for both a better monitoring of the authorised stay as well as more efficient border checks;
- precise information to travellers on the maximum length of their authorised stay;
- precise information on who is overstaying their authorised stay, which will support controls within the territory and to apprehend irregular migrants.

EESs technical architecture: provisions are made to define the EESs technical architecture. It will consist of the following main components: (i) a Central Unit and a Back-up Central Unit; (ii) a National System comprising the required hardware, software and national communication infrastructure to connect the end user devices of the competent authorities with the Network Entry Points in each Member State; (iii) the Uniform Interfaces in each Member State based on common technical specifications and identical for all Member States; (iv) the Network Entry Points, connecting the National System of each Member State to the Central System; and (v) the Communication Infrastructure between the Central EES and the Network Entry Points.

Personal files and fingerprints: the proposal lays down the procedures for the drawing up of personal files and entry/exit records of those concerned:

- for visa holders, an individual file will be created entering the data of third country nationals (alphanumeric data: name, passport number, etc.);
- for nationals of third countries exempted from visa requirements, an individual file will be created, and ten fingerprints will be entered, in addition to alphanumeric data.

Children under the age of 12 shall be exempt from the requirement to give fingerprints for legal reasons, as will persons for whom fingerprinting is physically impossible.

For a period of three years after the EES has started operation only the alphanumeric data shall be recorded.

Data protection: the proposal includes a number of provisions on data protection, as well as defining strictly those persons with exclusive access to the EES having the right to enter, amend, delete and consult data depending on the objectives pursued. National authorities should be designated to this end:

- Retention of data: in principle, each entry/exit record shall be stored for a maximum of 181 days. Each individual file together with the linked entry/exit record(s) shall be stored in the EES for a maximum of 91 days after the last exit record, if there is no entry record within 90 days following that last exit record. If there is no exit record following the date of expiry of the authorised period of stay, the data shall be stored for a maximum period of five years following the last day of the authorised stay. However, where, before expiry of the period in question, a third country national has acquired the nationality of a Member State, his details shall be deleted without delay from the EES.
- Communication of data to third parties: data stored in the EES shall not be transferred or made available to a third country, to an international organisation or any private party, except under certain specified circumstances.

Provision is also made for data security, control of the use of data, as well as for sanctions in the event of their inappropriate use and for procedural guarantees for persons whose data have been used (including appeal mechanisms, etc.).

Role of the Agency: the European Agency for the operational management of large-scale information systems in the area of freedom, security and justice shall be entrusted with the tasks of development and operational management of the EES. The Agency shall be responsible for the development of the Central Unit, the Back-Up Central Unit, the Uniform Interfaces including the Network Entry Points and the Communication Infrastructure. Technical provisions lay down the tasks, mission and responsibilities of the Agency in this context. Provisions are also included defining the Member States responsibilities in regard to the EES infrastructure and its use.

Operational management of the EES shall consist of all the tasks necessary to keep the EES functioning 24 hours a day, 7 days a week.

Evaluation: two years after the start of operations of the EES and every two years thereafter, the Agency shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of EES, including the security thereof. For its part, the Commission shall produce an overall evaluation of the EES two years after the EES is brought into operation and every four years thereafter.

Territorial measures: given that the proposal constitutes a further development of the Schengen acquis, it will have direct consequences for certain Member States and associated countries, in accordance with the relevant texts of the Treaties, Protocols and Agreements concluded with third countries:

- Denmark shall decide within a period of six months after the Council has decided on this proposal whether it will implement it in its national law;
- Ireland and the United Kingdom: these Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application;
- Iceland, Norway, Switzerland and Liechtenstein shall be associated with the application of this Regulation;
- Cyprus, Bulgaria and Romania shall apply this Regulation because it replaces the requirement to check the length of stay of third country nationals.

BUDGETARY IMPLICATION: the Commission's proposal for the next multi-annual financial framework (MFF) includes a proposal of EUR 4.6 billion for the Internal Security Fund (ISF) for the period 2014-2020. In the proposal, EUR 1.1 billion is set aside as an indicative amount for the development of an EES and an RTP assuming development costs would start from 2015.

This financial support would cover not only the costs of central components for the entire MFF period (EU level, both development and operational cost) but also the development costs for the national, Member States, components of these two systems, within the resources available.

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Opinion of the European Data Protection Supervisor on the proposal

for a Regulation establishing an Entry/Exit System (EES).

On 28 February 2013, the Commission adopted a 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. On the same day, this and a [parallel proposal](#) to establish A Registered Traveller Programme (RTP) to register entry and exit data of third-country nationals crossing the external borders of the Member States of the European Union were sent to the EDPS for consultation.

The analysis of the EES and RTP proposals from a privacy and data protection angle must be done in the light of the EUs Charter on Fundamental Rights which provides for a general right to respect for private and family life, and protects the individual against interference by public authorities, and which gives the individual the right that his or her personal can only be processed under certain specified conditions. The so-called Smart Borders package was assessed in this perspective.

The lawful character of the proposed system from a data protection angle: the EDPS confirms that the proposed EES system constitutes an interference with the right to respect for private and family life. While he welcomes the safeguards in the proposals and recognises the efforts made by the Commission in that sense, he concludes that necessity remains the essential issue: the cost/efficiency of the system is at stake, not only in financial terms, but also in relation to fundamental rights, seen in the global context of existing schemes and border policies.

As regards more specifically the EES, the EDPS makes the following recommendations:

- in accordance with Article 7 of the Charter on Fundamental Rights, the necessity and proportionality of the system could only be positively demonstrated after a clear European policy on management of overstayers has been established, and the system is assessed against the more global context of existing large-scale IT systems;
- in accordance with Article 8 of the Charter, the data protection principles should be improved in such a way that:
 - purposes should be limited and the design of the system should not pre-empt on the future assessment of any possible law enforcement access to EES data;
 - data subjects rights should be reinforced, especially with regard to the right to information and redress possibilities, taking into account the need for specific safeguards concerning automated decisions taken in relation to the calculation of the duration of stay;
 - oversight should be complemented with a clear picture of the allocation of competences at national level, to ensure that data subjects exercise their rights with the relevant authority;
 - the use of biometrics should be subject to a targeted impact assessment, and if considered necessary, the processing of such data should be subject to specific safeguards regarding the enrolment process, the level of accuracy and the need for a fallback procedure. Besides, the EDPS strongly questions the collection of 10 fingerprints instead of two or four which would in any case be sufficient for verification purposes;
 - the reasons for which the transfer of EES data to third-countries is necessary for the return of third-country nationals should be substantiated.

With regard to security aspects, the EDPS considers that for EES and RTP a Business Continuity Plan and Information Security Risk Management practices should be developed to assess and prioritise risks.