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REPORT

on the next steps in border management in the European Union and similar experiences in third countries
(2008/2181(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jeanine Hennis-Plasschaert

PR_INI

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the next steps in border management in the European Union and similar experiences in third countries (2008/2181(INI))

The European Parliament,

- having regard to the Commission Communication of 13 February 2008 entitled 'Preparing the next steps in border management in the European Union' (COM(2008)0069),
- having regard to the Commission Communication of 13 February 2008 entitled 'Report on the evaluation and future development of the FRONTEX Agency' (COM(2008)0067),
- having regard to the Commission Communication of 13 February 2008 entitled 'Examining the creation of a European Border Surveillance System (EUROSUR)' (COM(2008)0068),
- having regard to the preliminary comments of the European Data Protection Supervisor of 3 March 2008 and to the joint comments of the Article 29 Data Protection Working Party and the Working Party on Police and Justice of 29 April 2008 on the three above mentioned communications,
- having regard to the Council Conclusions on the management of the external borders of the Member States of the European Union,
- having regard to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)¹,
- having regard to Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)²,
- having regard to Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)³ and to Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)⁴,
- having regard to the Commission Communication of 24 November 2005 on improved effectiveness, enhanced interoperability and synergies among European databases in the

¹ OJ L 105 13.4.2006, p. 1.

² OJ L 218, 13.8.2008, p. 60.

³ OJ L 299, 8.11.2008, p. 1.

⁴ OJ L 299, 8.11.2008, p. 43.

area of Justice and Home Affairs (COM(2005)0597),

- having regard to its resolution of 18 December 2008 on the evaluation and future development of the FRONTEX Agency and of the European Border Surveillance System (EUROSUR)¹,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0061/2009),
- A. whereas the dismantling of the EU's internal border controls is one of the greatest achievements of European integration,
- B. whereas an area without internal borders cannot function without shared responsibility and solidarity in managing its external borders,
- C. whereas attention should be paid to cooperation with third countries' border security authorities in line with general EU external policy,
- D. whereas the EU external border is crossed every year by 160 million EU citizens, 60 million third country nationals (TCNs) not requiring a visa, and 80 million requiring a visa,
- E. whereas measures to enhance border security must go hand in hand with facilitation of passenger flows and the promotion of mobility in an increasingly globalised world,
- F. whereas within the framework of the EU integrated border management, several instruments and programmes have already been established, are in the course of preparation or are at the stage of policy development,
- G. whereas the Commission has stated that it intends to be ready in 2009-2010 to present legislative proposals for the introduction of an entry/exit system, a Registered Traveller Programme (RTP) and an Electronic System of Travel Authorisation (ESTA),
- H. whereas similar systems exist in Australia and are being implemented by the USA as part of the US-VISIT programme,
- I. whereas a comprehensive master plan setting out the overall architecture of the EU's border strategy as well as a thorough evaluation and assessment of existing systems and those under preparation are lacking,

Entry/exit system

1. Is aware that the so-called 'overstayers', who are central to the proposed entry/exit system, are supposed to represent the biggest category of illegal immigrants in the EU; requests, however, more information on the data collected by an external contractor estimating that

¹ Texts adopted, P6_TA(2008)0633.

'there were up to 8 million illegal immigrants within the EU25 in 2006'¹; insists, moreover, on a clear definition of the term 'overstay', including the possible exemptions under specific conditions, and a closer qualitative and quantitative analysis of the threats/risks/costs they bring to European society;

2. Points out that, although the proposed system and alert information might help to deter TCNs from overstaying, as well as providing data and information on patterns, further contact with law enforcement agencies is still necessary for an individual who overstays his or her period of admission to be apprehended, and therefore does not believe that the proposed system will put an end to the 'overstay' phenomenon as such;
3. Does not have sufficient information on how this system will be integrated in – and interact with – the existing framework, on the possible changes that might need to be made to existing systems and on the actual costs generated by it; is therefore of the opinion that the absolute need to implement such a system remains doubtful;
4. Recalls that the correct functioning of the entry/exit system will depend both materially and operationally on the success of the VIS and SIS II; points out that these instruments are not yet fully operational and that it has thus not yet been possible to evaluate them properly; stresses that the operability and reliability of the SIS II are being called into question;
5. Notes that, without a doubt and following the lessons learned in the USA, it is more challenging to implement exit capability than entry, and in particular with regard to sea and land exit; furthermore, following the same lessons learned, has considerable concerns about the cost-effectiveness of such a system; therefore calls on the Commission to provide additional information on the actual investments generated by such a system;

Registered Traveller Programme (RTP)

6. Supports in principle the concept of an RTP for TCNs, whether or not subject to visa requirements, which would help speed up traveller flows and prevent congestion at entry and exit points and the possible use of automated gates by EU citizens, since Community law as it currently stands does not allow for the simplification of border checks except in the case of TCNs residing in border areas;
7. Criticises, however, the terminology used in the Communication entitled 'Preparing the next steps in border management in the European Union' ('low-risk'/'bona fide' travellers), as it would imply that a huge number of travellers are considered a priori as 'high-risk' or 'mala fide', and recommends the term "frequent travellers";
8. Points out that several Member States have already set up or are preparing such an RTP for TCNs, and highlights the risk of ending up with a patchwork of twenty-seven systems based on different criteria, including those on data-protection and fees; is aware of the fact that the Netherlands, together with Germany, the UK and FRONTEX, are seeking to promote the 'International Expedited Traveller Programme' as a possible blueprint for other Member States;

¹ SEC(2008)0153.

9. Advocates a harmonised approach and therefore urges the Commission to speed up the process, on the basis of best practices in Member States, and to make sure that Member States continue to act in conformity with Community law;
10. Notes that, in fact, RTPs for TCNs are different from RTPs for EU citizens; stresses therefore that a clear distinction between the two must be made at all times;

Electronic System of Travel Authorisation (ESTA)

11. Acknowledges that it would be unwise to focus attention in terms of security measures only on TCNs travelling to the EU from countries with a visa requirement; questions, however, whether the proposed system is absolutely necessary and would like a thorough explanation of the rationale for it; is convinced that close cooperation between intelligence services in particular is the right way forward, rather than a massive collection of data in general;
12. Wishes to be informed on the exact timetable and the details of the study as envisaged by the Commission;

Data protection and biometrics concerns

13. Finds it unacceptable that the Commission failed to consult either the European Data Protection Supervisor (EDPS), who had none the less expressed a number of concerns, or the Article 29 Working Party prior to the adoption of the Communication entitled 'Preparing the next steps in border management in the European Union'; requests the Commission, therefore, to consult both in respect of any action to be taken under that Communication, as the proposed building blocks entail the processing of vast amounts of personal data;
14. Is aware that biometrics are theoretically effective personal identifiers because the characteristics measured are thought to be unique to each person; however, underlines the fact that the reliability of biometrics is never absolute and that biometrics are not in all cases accurate; therefore points out that fall-back procedures should be provided for at all times and that risk profiles should be better elaborated;
15. Insists on a standard protocol for the use and exchange of biometric information and interface control agreements to describe how the protocol will be used; is furthermore of the opinion that the use of biometrics should be subject to a quality standard in order to avoid divergences in acceptance between different systems used by Member States;
16. Considers a "privacy by design" approach to be an essential feature of any development which risks jeopardising the personal information of individuals and the public's trust and confidence in those who hold information about them;

Conclusions

17. Considers the objective of truly EU integrated border management to be legitimate and agrees that it is important to continuously develop and strengthen the EU's common policy on border management;

18. However, is of the opinion that, within the framework of border and immigration management, far-reaching proposals are piling up at an amazing pace; asks therefore the Commission to think in terms of the need for, and the cost of, the border logistics;
19. Deplores, moreover, the notion that the EU's border management policy should be founded on the idea that all travellers are potentially suspect and have to prove their good faith;
20. Criticises the lack of a comprehensive master plan setting out the overall objectives and architecture of the EU's border management strategy as well as the absence of details showing how all related programmes and schemes (already in place, in the course of preparation or at the stage of policy development) are supposed to function together and how relationships between them can be optimised; takes the view that, when considering the architecture of the EU's border management strategy, the Commission should analyse first of all the effectiveness of the existing border management systems of the Member States, in order to bring about the optimal synergies between them;
21. Stresses the need for an evaluation and assessment, first of all, of existing systems and those under preparation, and emphasises that the EU's ability to achieve its strategic goals depends to a great extent on its success in managing the interdependencies among related programmes, as duplication and inconsistency between them will have a negative impact on organisational performance and results as a consequence; is of the opinion that no new instruments or systems should be launched until the existing tools are fully operational, safe and reliable;
22. Is of the opinion that, before any investment is made, it is of the utmost importance to have a clearly defined operational context in which to align all the measures and emerging initiatives; points out, moreover, that it should be crystal clear what modifications are necessary in order to ensure that technology and processes work in harmony, and stresses that all investments should be economically justified;
23. Expresses doubts concerning the need for, and the proportionality of, the proposed measures, given their expensive nature and the potential risks they pose for data protection; is therefore of the opinion that they should be assessed against those criteria before any formal proposal is envisaged;
24. Acknowledges that striking a balance between ensuring the free movement of a growing number of people across borders and ensuring greater security for Europe's citizens is a complex exercise, and does not deny that the use of data offers clear advantages; at the same time, is of the opinion that public trust in government action can only be maintained if provision is made for sufficient data protection safeguards, supervision and redress mechanisms;

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25. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the European Data Protection

Supervisor and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

EXPLANATORY STATEMENT

Background

The setting up of the Schengen area has entailed a new reflection on the concept of 'integrated border management' put forward by the Laeken European Council of December 2001 and pursued in a Communication of the European Commission from 2002¹ as well as in the Hague Programme under the format of the 'integrated management system for external borders'. In the 2002 Communication five mutually interdependent components have been emphasized as the basis of a common policy of integrated management of external borders: (1) common corpus of legislation, (2) common co-ordination and operational co-operation mechanism, (3) common integrated risk analysis, (4) staff trained in the European dimension and inter-operational equipment, (5) burden-sharing between Member States in the run-up to a European Corps of Border Guards.

The Commission, considering that the 'agenda set out in 2002 has now been completed'² (despite the fact that several legislative initiative and/or systems are still to be adopted and/or implemented³) and that 'further steps could be considered in order to reach a truly integrated border management with the aim of meeting the two objectives of enhancing security and facilitating travel for third-country nationals', has released a Communication to this aim in February 2008. Three tools which would apply with regard to third country nationals (TCNs) travelling to a Member State taking part in the Schengen cooperation or to a country associated to this cooperation are outlined in this Communication: (1) introduction of registration of entry/exit, (2) facilitation of border crossing for bona fide travellers and (3) an Electronic System of Travel Authorisation (ESTA). The Commission intends to be ready in 2009-2010 to present the legislative proposals in order to have the new measures on stream between 2012 and 2015.

Your rapporteur considers that the European Parliament should provide its views on this new block of measures envisaged by the Commission, even if they are still in the policy development stage, as they are likely to bring substantial changes in the way border management is conceived and can have a huge impact in terms of data protection.

The report builds upon the Round Table of 30 June 2008 'European Parliament-National Parliaments: Liberty and Security in the Integrated Management of EU Borders', LIBE meetings on this topic as well as upon contacts with representatives of the Commission, the European Data Protection Supervisor, Member States' representatives and the US Department of Homeland Security.

Position of your rapporteur

¹ COM(2002)0233. Towards Integrated Management of External Borders of the Member States of the EU.

² Consolidated legal framework, simplified rules for local border traffic (Regulation (EC) No 1931/2006), establishment of the FRONTEX agency covering the operational dimension, creation of the External Borders Fund providing financial support to Member States with responsibility for long and difficult stretches of the external borders and to help Member States faced with a sudden and unforeseen upsurge of immigrants.

³ Ex.: Community Code on Visas, VIS, SIS II.

Designing the future while carefully observing the present

From the outset the rapporteur would like to draw attention on a key element in order to assess the new proposed measures: in its impact assessment the Commission, after having reviewed several policy options (including the *status-quo*), has laid down a preferred option. This would be a combination of an entry/exit system for all TCNs, a Registered Traveller Programme (RTP) open to TCNs and a framework for the development of 'local' Registered Traveller schemes and Automated Border Control.

When referring to the comparative scoreboard, the impact assessment underlines that 'the baseline situation against which the ratings are made *assumes the successful implementation of the status-quo*'.¹

This aspect has to be emphasized as currently in the area of border management several instruments are not yet operational and comments on their performance are therefore not yet possible.²

Your rapporteur also considers that a clear assessment and evaluation of existing measures is absolutely necessary before proceeding to any new proposals in this field.

The specific measures, the foreign examples and the way forward

As specific comments have been already set out in the rapporteur's working documents, your rapporteur would like to (a) briefly summarise her views on the proposed measures, (b) to recall the experiences of other countries in this field and (c) to point out some of the actions that should be encouraged in this field.

Entry/Exit, RTP, ESTA and developments elsewhere

From an overall perspective your rapporteur considers that the development of a European model of integrated border management of the external borders of the EU is to be welcomed. However, the rhythm in which specific measures (contributing to the surveillance of movements of travellers) have been tabled has constantly accelerated. In the absence of a comprehensive master plan, explaining the objectives, the performances and the synergies to be required from the programmes and systems currently in place or to be adopted/proposed, it is rather difficult to correctly assess the absolute necessity of new systems, especially one like the proposed entry/exit system. Moreover, a clear definition of the concept of 'overstayer' and reliable data to uphold such a system must be provided.

On the RTP your rapporteur supports in principle the concept, but draws the attention on the terminology used in the Communication and on the necessity to provide precise criteria and motifs for registration/revocation (including possibilities for appeal). Finally, she advocates a harmonised approach.

¹ SEC (2008)0153 p. 45-46.

² It is also rightly pointed out that 'the failure of the VIS system for carrying out identity checks at EU external borders, and to operate efficiently and at all border crossing points would render the preferred option of limited benefit.', SEC (2008)0153, p. 52.

On the last measure included in the February 2008 border package, ESTA, your rapporteur considers that it is too early to comment on its utility or added value. She looks forward to the policy study, followed by a technical study of the Commission which will analyse the feasibility, the practical implications and the impact of such a system. It will only then be possible to further elaborate on this measure.

Your rapporteur is of the view that in the context of these measures a thorough reflection on the impact on the privacy rights of individuals must be conducted at the same time as the technical consultations also exploring less invasive technologies which can minimize the processing of personal data. It should also be recalled that the extensive reliance on biometrics which would be entailed by these new measures should be carefully observed.

When looking at foreign examples which have embarked in similar measures as those put forward in the Communication, especially the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Programme, a cautious approach must be adopted. The objective of US-VISIT is to enhance the security of US citizens and visitors, to facilitate legitimate travel and trade, to ensure the integrity of the US immigration system, and to protect the privacy of visitors. After a theoretical and 'on the ground' experience in Washington DC your rapporteur draws the conclusion that a programme like US VISIT can actually work from a technical point and that the programme as such is not by definition an obstacle to smooth travellers' flows. However, it should also be recalled that the United States Government Accountability Office (GAO)¹ raises many questions with regard to the cost-effectiveness of the system.²

The way forward

As outlined previously your rapporteur considers that a necessary first step should be to critically and thoroughly assess the functioning and effectiveness of existing systems and their respective interactions in order to further discuss the necessity of new measures.

At the same time the global framework for all the existing measures and proposed initiatives should be clearly outlined along with the issues on data protection and the necessary safeguards to be provided as soon as possible in the process.

She takes note of the questionnaire sent by the Presidency to the EU Member States' delegations as well as Iceland, Liechtenstein, Norway and Switzerland concerning the proposed entry/exit system, including their replies.

Your rapporteur is of the opinion that a more in-depth discussion on all three measures should be pursued with all the relevant actors, and stresses the need for public debates at national and European level.

¹ GAO, Testimony before the Subcommittee on Border, Maritime and Global Counterterrorism, Committee on Homeland Security, House of Representatives, June 28, 2007, "Prospects For Biometric US-VISIT Exit Capability Remain Unclear", GAO-07-1044T.

² The issue of the cost-effectiveness of such systems has been raised in the Preliminary Comments of the EDPS on COM(2008) 69 final, 3 March 2008, p. 4, see also (n 1).

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	10.2.2009
Result of final vote	+: 37 -: 4 0: 1
Members present for the final vote	Alexander Alvaro, Catherine Boursier, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Maddalena Calia, Michael Cashman, Giusto Catania, Carlos Coelho, Panayiotis Demetriou, Gérard Deprez, Armando França, Urszula Gacek, Patrick Gaubert, Roland Gewalt, Jeanine Hennis-Plasschaert, Wolfgang Kreissl-Dörfler, Henrik Lax, Roselyne Lefrançois, Baroness Sarah Ludford, Claude Moraes, Javier Moreno Sánchez, Sebastiano Sanzarello, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Renate Weber
Substitute(s) present for the final vote	Edit Bauer, Simon Busuttil, Marco Cappato, Charlotte Cederschiöld, Elisabetta Gardini, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Jean Lambert, Marian-Jean Marinescu, Antonio Masip Hidalgo, Bill Newton Dunn, Hubert Pirker, Eva-Britt Svensson, Rainer Wieland
Substitute(s) under Rule 178(2) present for the final vote	Gabriele Zimmer