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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Preparing the next steps in border management in the European Union

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1. INTRODUCTION

1.1. Policy context

The external borders of the EU are crossed every year by more than 300 million travellers, EU citizens and third country nationals combined. Europe is and will continue to be the world's most important tourist destination¹. This mirrors the importance of EU cultural heritage and the success of its political and social-economic model. In order to share its values and support economic growth, the EU must remain open and accessible to others.

The dismantling of the EU's internal border controls is one of the greatest achievements of European integration. An area without internal borders, which has expanded from 7 countries in 1995 to 24 countries at the end of 2007 – a unique, historic accomplishment –, cannot function, however, without shared responsibility and solidarity in managing its external borders.

The ambitious agenda set by the Commission and the Council in 2002, in the plan for management of the external borders of the EU Member States, has now been completed. The legislative framework has been consolidated. The Schengen Borders Code² entered into force in 2006. Simplified rules for local border traffic have been introduced³. An operational dimension has been added with the establishment of the FRONTEX Agency⁴. The concepts of burden-sharing and solidarity have been given real meaning by the European Border Fund which, for the first time, allocates substantial financial resources to these policy areas.

Migratory pressure, as well as the prevention of entry of persons seeking to enter the EU for illegitimate reasons, are obvious challenges facing the Union and, therefore, also its policies on borders and visas. The fundamental challenges of migration management must be addressed from the perspective of a comprehensive immigration policy (cf the Global Approach), including the EU's engagement with third countries in particular. There is therefore also a need to look from the perspective of immigration policy as a whole, at a number of horizontal issues that have an impact on the EU's ability to manage its external borders and to safeguard the Schengen acquis – the external dimension, the medium to long-term budgetary aspects related to financial solidarity and burden-sharing, and the impact of the new Treaty. In this wider context, the Commission will adopt in June a Communication on a comprehensive immigration policy.

While Member States remain responsible for controlling their own border, the Union's common policy in support of Member States' efforts should be continuously developed and strengthened in response to new threats, shifts in migratory pressure and any shortcomings identified, using new technology extensively and proportionately. The social and economic dimensions should be given equal weight. Crossing the external border should be simple and quick for third-country nationals fulfilling the entry conditions set by Community and national law. People-to-people contacts in border regions and between family members should be facilitated. Border management should support, not stifle, economic growth in

¹ World Tourist Organisation (WTO): Vision 2020 Volume 4 p. 48. 'Tourism' also includes travelling for the purposes of improving one's professional qualifications and health.

² Regulation (EC) No 562/2006.

³ Regulation (EC) No 1931/2006.

⁴ Regulation (EC) No 2007/2004.

border regions of neighbouring countries. For the same purpose, the EU has recently concluded visa facilitation agreements with eight neighbouring countries⁵, and is engaging several of them in a dialogue towards removing the visa obligation.

1.2. Integrated border management and current tools

The concept of an integrated border management involves combining control mechanisms and the use of tools based on the flows of persons towards and into the EU. It involves measures taken at the consulates of Member States in third countries, measures in cooperation with neighbouring third countries, measures at the border itself, and measures taken within the Schengen area. The key elements of this concept currently include the following measures, which apply with regard to third country nationals travelling to a Member State taking part in the Schengen cooperation or a country associated to this cooperation.

As defined in Community law travellers from certain third countries are subject to the visa obligation⁶. For this category, a first check of whether they fulfil the conditions of entry and stay takes place in conjunction with the visa application at the consulates of Member States in third countries.

Third country nationals requiring a short stay visa will be checked against the Visa Information System, which will be fully operational in 2012 at the earliest including the roll-out at consulates and border crossing points. The European Parliament and the Council reached a political agreement on the legal bases for the VIS in 2007 and it is expected to be formally adopted in the first half of 2008. The main purposes of the VIS are, on entry, to verify the authenticity of the visa and the identity of its holder. Biometrics – facial image and fingerprints - will be introduced from the start in the VIS. The Commission has presented a proposal to amend the Schengen Borders Code, making compulsory the verification of the identity of the visa holder at each entry.

For persons travelling by air to the EU, before or in relation with boarding data equivalent to what is contained in the passport is transmitted as Advanced Passenger Information (API) at request of the Member State of destination in order to alert the border guard authorities on risky passengers⁷.

API data cannot be used for the purpose of preventing a person from arriving at the border crossing point of the Member State of destination.

According to the Schengen Borders Code⁸, third country nationals must be subject, at entry, to a "thorough check", which in addition to the examination of the travel document involves verifying their purpose and length of stay and whether they possess sufficient means of subsistence, as well as a search in the Schengen Information System and in national databases to verify that they are not a threat to public policy, internal security, public health and the international relations of the Schengen States. Consequently, the checks involve a number of conditions that are verified by the border guard through questions put to the traveller. Also the

⁵ Russia, Ukraine, Serbia, Montenegro, Albania, Bosnia-Herzegovina, FYROM, and Republic of Moldova.

⁶ Regulation (EC) No 539/2001.

⁷ Directive 2004/82/EC.

⁸ OJ L 105, 13.4.2006, p. 1.

validity of the travel document needs to be inspected by the border guard in each case. Checks are the same regardless of whether persons are subject to the visa requirement or not.

Border guards are obliged to manually stamp – indicating the date and place of entry and exit – the travel documents of third country nationals crossing the external border.

At the consulates as well as at the borders the Schengen Information System (SIS) is consulted to verify that the person is not signalled by a Member State for the purpose of denying entry. The SIS and the future SIS II registers alerts, with respect to third country nationals, on persons to be refused entry to the Schengen area, wanted persons, and persons to be put under protection. All third country nationals entering the EU, whether under visa obligation or not, are checked systematically in the SIS.

For checks within the Schengen territory law enforcement authorities will have access to the VIS allowing for identifying undocumented persons if they have been previously issued with a visa.

Finally, reference should also be made to the Commission's proposal on the use of Passenger Name Records for persons arriving by air, essentially equivalent to the information contained in the flight reservation⁹. This information is also transmitted just before or in relation with boarding to law enforcement authorities. This system would apply to all Member States, as it is not linked to the Schengen cooperation as such. The transmission of PNR data takes place for the purpose of preventing terrorism and organised crime, not for border checks.

1.3. Possible new tools for the future development of an integrated border management strategy

If the EU wants to reach the objective of a truly integrated border management, with the aim of meeting the two objectives of enhancing security and facilitating travel for third-country nationals, further steps could be considered.

Starting with the measures taken at the consulates, and from the angle of facilitating travel and access to the EU's territory, the current visa policy is an all-or-nothing approach. While Visa Facilitation Agreements have been concluded with a number of third countries, the common visa policy does not allow for other options than putting the nationals of a given third country under the visa obligation or not.

From a security angle, third-country nationals not requiring a visa are currently not subject to any systematic check for border control purposes before arriving at the border itself.

As concerns measures taken at the borders, and from the angle of facilitating travel, the current legal framework for border checks is a one-size-fits-all approach, meaning that Community law as it stands today does not allow for simplifying checks for certain categories of travellers. The only exception are third-country nationals resident in border areas of neighbouring countries – as a general rule up to 30 km from the border – that can benefit from simplified border checks and an exemption from the visa requirement under the rules of the Local Border Traffic Regulation. Other third-country nationals who frequently travel to and from the Schengen area for legitimate reasons, for example persons travelling on business, and respect the conditions for their length of stay on each occasion, are subject to the same

⁹ COM(2007) 654.

thorough border checks at each entry. This applies also for those, subject to the visa requirement, that are issued with a multiple entry visa. By imposing a thorough check on all persons the current legal framework thereby prevents modernising the way border controls are carried out - new technology could allow for automating, and thereby substantially speeding up, border checks for bona fide travellers.

Looking at the measures that could be taken within the Schengen territory, the Union could reflect on the introduction of an efficient tool for identifying overstayers, as the dates for movements of third-country nationals across the external borders are currently not recorded. Overstayers present by far the biggest category of illegal immigrants in the EU¹⁰. Even if such data would be collected by individual Member States there are no any means for sharing such data between Member States. Border guards are neither able to calculate the length of stay when different travel documents are used to enter and exit the EU or when they are confronted with practical difficulties such as a passport full of stamps or when stamps are illegible. Against this background this Communication puts forward suggestions for new tools that could form an integrated part of the European border management strategy of the future. It proposes ways to look ahead and reflect on the next generation of border management tools, with the objective of preserving the integrity of the Schengen area while simultaneously facilitating the procedures and border crossings for those seeking to enter for legitimate reasons. The possible tools to reflect on, which would apply with regard to third country nationals travelling to a Member State taking part in the Schengen cooperation or to a country associated to this cooperation, could include:

- facilitation of border crossing for bona fide travellers¹¹;
- possible introduction of a registration of entry/exit; and
- examining the introduction of an Electronic System of Travel Authorisation (ESTA).

The Communication is based on an impact assessment which was carried out with the support of two studies from external contractors. A Commission staff working paper to be presented in March will assess in more detail issues related to the technical aspects of the implementation.

2. FACILITATING BORDER CROSSINGS FOR *BONA FIDE* TRAVELLERS

- *Low-risk travellers from third countries, including those that are subject to the visa requirement and those that are not, could be offered a pre-screening process, on a voluntary basis, with a view to being granted Registered Traveller status.*
- *When arriving at the borders of the EU Registered Travellers could benefit from a simplified and automated border check.*

¹⁰ Cf impact assessment on estimated numbers.

¹¹ The Commission included the creation of an entry-exit system and the introduction of a border-crossing facilitation scheme among possible developments in its Communication on enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs - COM(2005) 597, 24.11.2005 - and in its Communication on Policy Priorities in the fight against Illegal Immigration of Third-Country Nationals - COM(2006) 402, 19.7.2006.

The current legal framework regulating checks to be carried out on third-country nationals at the external borders could be amended to provide for relaxing the checks to be carried for certain categories of travellers, to be awarded the status of "Registered Travellers". Applicants for such a status could be subject to a pre-screening and the criteria would be defined so as to compensate for the lighter checks at the borders. The checks to be retained at the border itself could be defined in such a way so as to open the way for the use of automated gates.

In concrete terms, awarding the status of "Registered Traveller" and providing for automated checks for those persons would mean waiving the verification of certain entry conditions at the border (purpose of stay, means of subsistence, absence of threat to public order). Persons could be granted "Registered Traveller" status after appropriate screening on the basis of common vetting criteria. These could as a minimum include a reliable travel history (the person should not have exceeded the authorised stay at previous visits to the EU), proof of sufficient means of subsistence, and holding a biometric passport. Further criteria could be considered and the criteria for awarding Registered Traveller status to those under visa obligation could be aligned to the criteria applicable for the granting of multiple entry visas.

Third country nationals could apply for Registered Traveller status at any Member State. The application process could be organised at the consulates or at future common application centres.

To allow for the use of the same infrastructure and equipment, the same biometric identifiers (facial image and fingerprints) could be used as for visa holders. Information will be shared between Member States on holders of Registered Traveller status, as these persons should be able to benefit from a simplified check at the external borders of the Schengen area regardless of at which border crossing point they choose to enter.

Besides the criteria that have been waived for the purpose of allowing a simplified check of registered travellers at the borders, at the border itself, the introduction of automated gates could enable the automated verification of travellers' identity without the intervention of border guards. A machine would read the biometric data contained in the travel documents or stored in a system or database and compare them against the biometrics of the traveller.

Besides other positive aspects such as the satisfaction of travellers and the symbolic effect of showing the EU as open to the world, Automated Border Control systems could significantly increase cost-effectiveness as more passengers would be processed at the borders by a smaller number of border guards, thereby reducing overall costs for Member States faced with continuously increasing passenger flows. One border guard should be able to oversee up to ten automated border gates in operation. Automated border controls for bona fide travellers would provide major benefits in time savings on crossing the external border and allow border authorities to focus their resources on those groups of third country nationals that require more attention, thus improving overall security at borders.

A decision on the border crossing points at which facilitation measures are introduced should be taken by Member States individually, based on the flow of passengers and the traffic conditions. In practice one additional lane could be arranged at the border crossing point where automated border gates are used.

The use of automated gates by EU citizens

It should also be noted that EU citizens and other persons enjoying the Community right of free movement¹² could benefit from automated gates when crossing the external border. This category is subject to a "minimum check", at both entry and exit, consisting of the examination of the travel document so as to verify the identity of the individual. Border checks under the current legal framework can therefore be automated for EU citizens in possession of an e-passport already today. The automated gate systems envisaged for third-country nationals could be used by EU citizens also when crossing the external borders, performing the same functions, except that only random checks of the SIS and national databases can be carried out in accordance with the Schengen Borders Code¹³.

Member States have begun issuing biometric passports¹⁴ containing the digitised facial image of the holder since August 2006, and will from 28 June 2009 issue passports containing also the holder's fingerprints¹⁵. The introduction of biometrics in passports could be completed by 2016 for one biometric identifier and by 2019 for two identifiers, at the latest (assuming a maximum period of validity of passports of 10 years). All EU citizens would at that time be able to benefit from automated border crossings should they be taken up by Member States in a widespread fashion. Automated border crossings for EU citizens based on the biometric passports would use the same automated gates as for third-country nationals that are registered travellers.

In the run-up to the full introduction of biometric passports, the current legal framework allows for schemes based on voluntary enrolment to be deployed by Member States, under the condition that the criteria for enrolment correspond to those for minimum checks at the borders and that the schemes are open for all persons enjoying the Community right to free movement. Such schemes should be interoperable within the EU, based on common technical standards, which should be defined to support the widespread and coherent use of automated border control systems. The take-up of interoperable schemes by Member States could be promoted through financial support from the External Borders Fund.

3. THE CREATION OF A SYSTEM TO REGISTER THE ENTRY/EXIT OF THIRD COUNTRY NATIONALS

- *The automatic registration of the time and place of entry and exit of third country nationals, both those that require a visa and those that do not, to identify overstayers, could be introduced at the borders.*
- *An alert available to national authorities could be issued once the validity of an individual's stay in the EU has expired, and no exit data had been captured.*

An entry/exit system could apply to third country nationals admitted for a short stay (up to 3 months), covering both those that are subject to the visa requirement and those that are not. The system could include the recording of information on the time and place of entry, the

¹² Family members of EU citizens; other EEA and Swiss nationals, including family members.

¹³ Portuguese RAPID is an example of such system already in operation.

¹⁴ Council Regulation (EC) No 2252/2004 of 13 December 2004 on Biometrics in Passports.

¹⁵ Commission Decision C(2006) 2909 of 28 June 2006.

length of stay authorised, and the transmission of automated alerts directly to the competent authorities, should a person be identified as 'overstayer', both at the time this occurs and upon departure from the EU. In exceptional cases (e.g. a national visa granted due to flight cancellation, illness or other justifiable reason) or of a change of the status of the person (e.g. extended right of residence) the system information should be updated by the authorities responsible for taking the decision.

The alert information would allow for:

- Enabling national authorities to identify overstayers and take the appropriate measures;
- Deterring third-country nationals from overstaying;
- Providing information for operational purposes on patterns of overstaying (e.g. travel route, fraudulent sponsors, country of origin and reasons for travelling) as well as data on migration flows and overstayers for visa policy purposes.

All third country nationals requiring visas could provide their biometric data when applying for a visa at a Member State's consular post for the Visa Information System, and border crossing points could be equipped to allow for the verification of the identity of the visa holder on the basis of that data. In order to take full advantage of these investments and minimize the impacts to border checks, it would be reasonable to await the complete and successful rollout of the VIS to all consular posts and border crossing points before the entry/exit system is implemented in practice.

Third-country nationals not requiring visas could be subject to identical verification procedures as visa holders at the borders, with the help of the same biometric equipment. It would be necessary to enrol their biometric data at the first entry so that subsequent biometric checks on exit as well as within the Schengen area could be performed, which could potentially complicate the management of passenger flows, especially at certain land border crossing points.

An increase in the time required and longer queues due to the introduction of the entry/exit system could be offset by better management of the flow of passengers due to automated border crossings. For Registered Travellers, the enrolment of biometrics at the first entry for the purpose of the entry/exit system should be dispensed since the registration of dates for entry and exit is included in the automated border control process for such travellers.

An element to be considered in the reflection is whether a separate system is required to store the entry/exit data of third-country nationals, as well as their biometric data. This new system could use the same technical platform as SIS II and VIS thereby exploiting synergies with the Biometric Matching System (BMS) currently under development and which could form the common basis for the entry/exit system, the VIS and the SIS II. The Commission will present a more detailed technical analysis of these solutions, including whether the VIS could be extended for the specific purpose of storing the entry/exit data of third-country nationals requiring visas, and whether a separate system is necessary for the Registered Travellers scheme.

Costs flowing from the necessary investments to be made by Member States to equip the border crossing points would, as is the case for the investments currently made in relation to the implementation of the SIS and the VIS, be covered by the External Border Fund.

Estimates are provided in the accompanying impact assessment and will be further detailed in the forthcoming working document from the Commission services. No costs should be incurred by third countries as a result of the implementation of the entry/exit system and the Registered Travellers programme.

4. ELECTRONIC SYSTEM OF TRAVEL AUTHORISATION (ESTA)

The Commission will examine the possibility of introducing an **electronic system of travel authorisation**. Such a system would apply to third-country nationals not subject to the visa requirement who would be requested to make an electronic application supplying, in advance of travelling, data identifying the traveller and specifying the passport and travel details. The data could be used for verifying that a person fulfils the entry conditions before travelling to the EU, while using a lighter and simpler procedure compared to a visa. The Commission intends to launch a study in 2008 to analyse the feasibility, the practical implications and the impacts of such a system.

5. DATA PROTECTION ISSUES

Systems must comply with EU data protection rules including the requirements of necessity, proportionality, purpose limitation and quality of data. Particular care must be taken to ensure full compliance with the requirements of Articles 16 and 17 of Directive 95/46/EC on confidentiality and security, as well as the requirements related to network security and confidentiality laid down by Regulation (EC) No 45/2001.

The data protection rules for the VIS and the status quo including the retention of information for only five years would seem appropriate.

The data generated by the entry/exit system would be used by the competent immigration authorities. Individuals should have the right of access to information held on them and to challenge and correct this information as provided for in Community and national legislation. Provisions should be made for an appeal mechanism in cases where third country nationals are 'forced' to overstay.

The study to be launched by the Commission on the possibility of an electronic travel authorisation will also consider the relevant data protection issues arising from such a system.

6. CONCLUSIONS

Having regard to the progress made in agreeing upon and launching the Visa Information System, the EU should consider building on this achievement by reflecting on the necessary parameters for putting in place an **entry/exit system** for all third-country nationals admitted for a short stay. Should this reflection conclude on the opportunity to build such a system, it could be operational by 2015 and future proposals would be needed in order to:

- Amend the Schengen Borders Code to ensure that registration of dates of entry and exit is carried out systematically at all crossing points of the external border, and that the enrolment of biometrics at the border for third country nationals not requiring a visa becomes a compulsory entry condition. Also, if a "registered traveller" is created, the

Borders Code would need to allow for a simplified check of travellers awarded such a status at the borders;

- Decide the setting up of the new entry/exit system to register the entry and exit information and store biographic and biometric data of third country nationals. The system could build on the same technical platform as the VIS/SIS II.

Member States could also reflect on the need to use **automated border control systems for EU citizens**, based on the e-passport or national schemes. A discussion on the development of technical standards to achieve interoperability of national schemes not based on the e-passport should take place in the appropriate fora. In a wider perspective, developing global standards could be considered, with a view to coordinating enrolment, eligibility and technical interoperability features of such schemes at international level.

The Commission will report back to the European Parliament and the Council on the outcome of the study on an **electronic travel authorisation system** during 2009.

The Commission therefore invites the European Parliament and the Council to engage in a reflection on the future overall architecture of the EU's integrated border management and the use of systems, from the angle of enhancing security and facilitating travel. On the basis of this reflection, the Commission will assess the further development of these systems, including the presentation of the necessary legislative proposals.