

**Opinion of the European Economic and Social Committee on the ‘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’**

COM(2013) 95 final — 2013/0057 (COD),

**on the ‘Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)’**

COM(2013) 96 final — 2013/0060 (COD),

**and on the ‘Proposal for a regulation of the European Parliament and of the Council establishing a registered traveller programme’**

COM(2013) 97 final — 2013/0059 (COD)

(2013/C 271/18)

Rapporteur-General: **Cristian PÎRVULESCU**

On 14 March and 16 April 2013 the European Parliament and on the 27 March 2013 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

*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*

COM(2013) 95 final - 2013/0057 (COD)

*Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)*

COM(2013) 96 final - 2013/0060 (COD)

*Proposal for a regulation of the European Parliament and of the Council establishing a registered traveller programme*

COM(2013) 97 final - 2013/0059 (COD).

On 19 March 2013 the Committee Bureau instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Pîrvulescu as rapporteur-general at its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), and adopted the following opinion by 125 votes to 4 with 3 abstentions.

## 1. Introduction

1.1 The legislative proposal is part of the ‘next generation of border checks’ package, which is a strategic initiative in the Commission’s Work Programme for 2012. According to the European Commission, this package ‘responds to two major and interconnected challenges: how to efficiently monitor travel flows and movements of third-country nationals across the external border for the Schengen area as a whole, and how to ensure that border crossings are fast and simple for the growing number of regular travellers that constitute the vast majority of border crossers’.

1.2 In its communication of ‘Preparing the next steps in border management in the European Union’ of 13 February

2008, the Commission suggested the establishment of an entry/exit system (EES).

1.3 The proposal was endorsed in the Stockholm Programme agreed by the European Council in December 2009, which reaffirmed the potential for an entry/exit system that allowed Member States to share data effectively while safeguarding data protection.

1.4 The Conclusions of the European Council of 23 and 24 June 2011 called for work on “smart borders” to be speeded up. In response, the Commission adopted a new communication on 25 October 2011 on the various options and the way ahead.

1.5 The European Economic and Social Committee has drafted a number of opinions relevant to the implementation of the two complementary systems<sup>(1)</sup>. Its opinions have highlighted the added value of the EU's commitments and instruments in tackling the challenges of increasing cross-border mobility. The EU has a major role and responsibility in ensuring coordination between the member states. In view of the recent challenges related to mobility and migration the EESC has advocated the principles of proportionality and effectiveness. It has also promoted the central importance of ensuring the protection of fundamental rights in the design and implementation of policies and programmes.

## 2. General comments

2.1 Given the expected increase in mobility across EU borders, efforts to build reliable and effective systems of border management and control must be accelerated.

2.2 The EESC welcomes the underlying approach of the "smart borders" package, which aims to strike the right balance between the need to encourage mobility and to appease the security concerns that seem to have gained ground across the EU in recent years.

2.3 The EESC acknowledges the added value of an EU-level commitment, management and investment and hopes that the Member States will coordinate efforts in order to ensure a successful implementation of the envisaged programmes.

2.4 The EESC wishes to stress that the European Union's identity is explicitly and implicitly associated with openness and interconnectedness not only within but also across borders. The EU is a vibrant cultural, social, political and economic space and cross-border mobility is instrumental in maintaining its relevance in the global arena. With this in mind, the EU institutions and Member States should make sure that the new systems do not affect the travel and willingness to travel to the EU of third-country nationals.

2.5 By the same token, significant attention should be given to public perception of the two systems and their functioning, with rules being properly explained to third-country nationals. The EU and the Member States should engage with third-country authorities to ensure that prospective travellers have access to information and support, especially regarding their rights. The package needs a properly funded communication dimension.

<sup>(1)</sup> OJ C 88, 11.4.2006, p. 37–40, OJ C 128, 18.5.2010, p. 29–35, OJ C 128, 18.5.2010, p. 80–88, OJ C 44, 11.2.2011, p. 162–166, OJ C 376, 22.12.2011, p. 74–80, OJ C 299, 4.10.2012, p. 108–114.

2.6 The EESC invites all relevant actors and institutions to consider fundamental rights as the two systems are further developed and implemented. Despite the rather technical nature of the two systems, there is a significant impact on the fundamental rights and freedoms of individuals/all third-country nationals coming to the EU. The EESC welcomes the attention given to data protection/data privacy issues and hopes that the protection of all relevant fundamental rights will be given due attention and properly monitored.

2.7 The EESC draws attention to the significant differences in institutional frameworks and capabilities between Member States, several of which implement their own versions of the two systems. A transformation on such a scale, involving a significant number of institutions and people, is challenging if not risk-prone. The institutions involved should make sure that the transition does not affect travellers in any way.

2.8 In the light of previous experiences, the EESC would also like to draw attention towards the problem of costs and their estimation. Such systems are notably costly and we must ensure that spending here is proportional and effective. Moreover the initial estimates should be as accurate as possible.

2.9 The EESC wishes to invite further reflection on the differentiation of travellers, which is a key strand of the "smart borders" policy programme. It is possible that differentiation will result in practice in quasi discrimination. Access to the Registered Travel Programme (RTP) will depend on status, income, language skills and education. This risk can be mitigated if the relevant authorities take an inclusive view of the types of acceptable activities and affiliations of prospective travellers.

2.10 The EESC notes the lack of relevant and specific data on mobility. Apart from the absence of accurate figures on short-term travellers who become overstayers, there is a lack of qualitative data that could help in understanding this phenomenon. The policy should not rely only on the quantitative data to be gathered after the systems are in place. More resources are needed in order to research the uses and abuses of the current system.

2.11 The EESC encourages the EU and the Member States to pay proper attention to the training of personnel working directly with travellers, especially consular officials and border officers. These should be very well trained and able to assist travellers through procedures which are technically challenging and psychologically sensitive.

2.12 While acknowledging the advantages of collecting biometrical data, the EESC notes the impact that fingerprinting has on regular or non-regular travellers. The psychological impact is detrimental to the motivation to travel and generally to the individual's relationship with the host society. Moreover, fingerprinting is traditionally associated with criminal activities and with policing practices. The EESC calls for further consideration of biometrical data gathering as part of the two programmes and of ways to limit its adverse effects.

### 3. Specific comments

3.1 The EESC considers that the right to be informed should be made effective, especially where the use of personal data is concerned. Third-country nationals must be made aware of their rights. In certain situations, language barriers can play a role in impeding the effective use of this right. Existing and forthcoming justice and home affairs (JHA) data bases should provide for non-discrimination by default, which should be closely linked with ensuring that data protection principles are upheld (the right to information, effective remedies and individual consent for data processing) vis-à-vis third country nationals, with particular attention to vulnerable categories of third country nationals as data subjects.

3.2 The EESC considers that a more detailed picture is needed on JHA Databases and information schemes. The European Commission should provide on a regular basis, possibly yearly, a consolidated monitoring report of the activity of all schemes involving data and information exchange in the JHA policy domain indicating what kind of information is exchanged and for what purpose.

3.3 The EU should encourage national governments to properly support the institutions designated to exercise monitoring and overview responsibilities over the entry/exit system.

3.4 The EESC welcomes the gradual shift in granting access to the RTP from the country-based approach to the individual approach. It recommends that an interview with the applicant should be the rule, especially in situations where further clarifications are needed. The EESC also draws attention to the logic of profiling (automated decision making) and data-mining associated with JHA Databases and Smart Borders and considers that the potential use of race, ethnicity or other

sensitive grounds as a basis for statistical dataveillance is difficult to reconcile with non-discrimination principles, secondary legislation and fundamental rights obligations.

3.5 The EESC advocates a more inclusive definition of frequent travellers that covers any cultural, economic and social activity. It encourages the Members States to take into account the full diversity of social life. We should avoid giving preferential treatment to any socio-professional category.

3.6 Third-country nationals can request to be recorded in the RTP at consulates, common application centres and any border crossing point. This is helpful to the applicant, but is also a management challenge. All the staff involved should be informed and properly trained in how the systems work.

3.7 The EESC thinks that the proof of sponsorship and/or private accommodation could be burdensome. If it is maintained, it should at least have a minimal and standard format to be used across EU. This way Member States will not use the statement as a deterrent.

3.8 As a matter of principle, the issuing of the supporting documents needed to complete the RTP application should not entail unnecessary and excessive costs to the applicant and the organisations involved. The costs incurred by individual applicants and supporting organisations should be calculated as part of the interim evaluations.

3.9 Regarding the period in which the relevant authorities must make a decision, we recommend setting a maximum period of 25 days, while encouraging authorities to make a decision as soon as possible.

3.10 The criteria for rejecting an RTP application should be clarified. It is not clear on what grounds the level of threat to public policy, internal security and public health is assessed. This opens the way for arbitrary decisions. This evaluation is performed by thousands of individuals who have very diverse backgrounds, training and levels of information about the traveller, his activities and home country. Moreover, listing the threat to the international relations of a Member State as a reason for rejection is questionable.

3.11 It is very important that unsuccessful applicants (non-admissible application/rejected application) can effectively appeal against the decision. The EESC encourages the Commission and the Member States to assist individuals who are willing to exercise their right of appeal.

Brussels, 22 May 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---