

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System’

(COM(2016) 196 final — 2016/0105 (COD))

and 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 and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011’

(COM(2016) 194 final — 2016/0106 (COD))

(2016/C 487/10)

Rapporteur: **Mr Cristian PÎRVULESCU**

Consultation	European Parliament, 09/05/2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	09/09/2016
Adopted at plenary	21/09/2016
Plenary session No	519
Outcome of vote (for/against/abstentions)	155/2/0

1. Conclusions and recommendations

1.1. The European Economic and Social Committee considers that the entry/exit system (EES) in its new form is indeed needed, providing added value in terms of security at European level. As in other areas of policy and regulation, with its opinions the Committee promotes a balanced approach which reconciles security and proper law enforcement without ever departing from the fundamental values of the EU.

1.2. The Committee considers that the roll-out of the new entry/exit system must be accompanied by campaigns explaining as clearly as possible how the system works, emphasising the protection of personal data. It recommends organising information campaigns and educational campaigns targeting both authorities and third-country nationals.

1.3. The Committee considers that staff involved in running the system must be properly informed and trained, and recommends that such training be given significant financial and institutional support.

1.4. The Committee considers that compliance with fundamental rights will need to be monitored constantly by the competent EU institutions and open to civil society organisations at both European and national levels.

1.5. As regards personal data, the Committee stresses that the right to access, rectify and delete personal data must be clearly defined and safeguarded.

1.6. After the system is rolled out, the Committee would recommend carrying out an investigation similar to the one undertaken in the pilot phase, in order to explore the system's impact on passengers under 'real-life' conditions.

2. Introduction: background and grounds for setting-up a new EU entry/exit system

2.1. Given that the total number of regular border crossings in 2025 is forecast to rise to 887 million, of which around one-third are expected to be by third-country nationals travelling to Schengen countries for a short-term visit, there is a need to modernise the EU's borders in order to enable shared and efficient management of the flow of travellers.

2.2. The new entry/exit system (EES) covers border crossings by all third-country nationals visiting the Schengen area for a short stay (a maximum of 90 days in any period of 180 days), both visa-required and visa-exempt travellers or possibly travellers entering on the basis of a touring visa (up to one year).

2.3. The introduction of the EES aims to: 1. address border check delays and improve the quality of border checks for third-country nationals; 2. ensure systematic and reliable identification of 'overstayers'; and 3. reinforce internal security and the fight against terrorism and serious crime.

2.4. In February 2013, the Commission tabled a package of legislative proposals on smart borders to modernise the Schengen area's external border management. There have been a number of developments since 2013, which have facilitated the design and implementation of the EES:

2.4.1. the Visa Information System (VIS) became fully operational and the biometric verification of visa-holders against VIS at Schengen external borders has become compulsory;

2.4.2. visa liberalisation dialogues with countries in the Western Balkans and at the eastern and south-eastern borders of the EU were concluded or have been accelerated, which will lead to an increasing proportion of visa-exempt travellers to the EU;

2.4.3. the Internal Security Fund (ISF-B) was adopted, which earmarked EUR 791 million for the development of smart borders;

2.4.4. the *European Agenda on Migration* identified 'border management' as one of the 'four pillars to manage migration better'; and

2.4.5. the European Court of Justice judgment on the Data Retention Directive provided legal clarity on the conditions and safeguards that need to be respected for the storage and use of EES data.

3. General comments on the establishment of a new EU entry/exit system

3.1. The Committee believes that it is necessary to move from a non-integrated and cumbersome system, based on the stamping of travel documents by border staff, to a quasi-automated one, which facilitates access for third-country nationals. The added value of EU efforts here is obvious. The European Union needs a border system that can cope with both increased mobility and the need to ensure security across the EU — a system that facilitates mobility and, at the same time, manages to avoid impacting on fundamental rights.

3.2. The Committee is pleased that the system has been piloted and that it was possible to observe the effects of using different biometric identification systems on third-country nationals in practice (see report on the results of the pilot project)⁽¹⁾. The survey results show considerable confidence in the reliability of biometric technologies and reflect the existing consensus among experts on the most secure and reliable means of biometric identification for determining a person's identity.

⁽¹⁾ European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, 2015, Smart Borders Pilot Project. Report on the technical conclusions of the Pilot, Volume 1.

3.3. We should welcome the participation of the *Agency for Fundamental Rights*, which has carried out an opinion poll among third-country nationals who have encountered various biometric systems that could be used, in order to investigate, in different locations (airports, stations and trains, ports and sea borders, road border crossings) and under different conditions, the elements involved in biometric identification of third-country nationals; all systems used in this experiment are already available on the market ⁽²⁾.

3.4. The survey results show that providing biometric data is considered to be humiliating by some people, with an average of 45 % (North America — 30 %, Europe — 43 %, Latin America and the Caribbean — 46 %, Asia — 52 % and Africa — 58 %) ⁽³⁾. As regards the type of biometric data collected, iris scanning is considered to be humiliating by most respondents (32 %), followed by facial recognition (26,2 %). It is also worth pointing out that a considerable proportion of respondents (44,3 %) believed that the system would cause less discrimination.

3.5. In its opinions, the Committee has repeatedly sought to promote a balanced approach, in which the need for security and law enforcement always goes hand in hand with the stated values of the EU and its aim of being free, open and secure at the same time.

3.6. It is of crucial importance for the European Union and its Member States to facilitate the entry-exit system in order to attract, rather than to discourage, more visitors, from tourists to business people and professionals. Therefore the Committee has drawn attention to worrying trends in some Member States which are becoming increasingly reluctant to admit third-country nationals. 'The Committee is concerned that it will not be credible for the Member States to seek to make it easier for citizens of non-EU countries to enter the EU at a time when some Member States are threatening to send EU citizens back to their countries of origin, because they are unemployed, or quite simply preventing them from entering' ⁽⁴⁾.

3.7. In its opinion on smart borders, the EESC pointed out 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' ⁽⁵⁾.

3.8. In the same opinion the Committee stressed the importance of safeguarding fundamental rights and non-discrimination, and of using procedural and institutional means to ensure that data collected and stored in the system is protected and used appropriately.

3.9. It is as yet unclear to what extent the Member States must contribute on a budgetary and institutional level to implementing this system. It is necessary to clarify this issue and to find solutions to obtain a firm commitment from Member States to cooperate and contribute to implementing the system.

3.10. The Committee draws attention to similar experiments carried out by countries that have implemented the same type of systems. The expectations of the public and all stakeholders must be adapted according to the system's ability to achieve all the objectives set.

4. Specific comments

4.1. As regards biometric identification, the Committee is pleased that the number of fingerprints has fallen from 10 to four, the minimum for obtaining relevant data when combined with facial recognition.

⁽²⁾ European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, 2015, Smart Borders Pilot Project — Annexes, November 2015, pp. 307-335.

⁽³⁾ European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, 2015, Smart Borders Pilot Project — Annexes, November 2015, p. 322.

⁽⁴⁾ Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — An open and secure Europe: making it happen' — COM(2014) 154 final (OJ C 451, 16.12.2014, p. 96).

⁽⁵⁾ 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) (OJ C 271, 19.9.2013, p. 97).

4.2. As regards personal data, the Committee stresses that the right to access, rectify and delete personal data must be clearly defined and safeguarded.

4.3. It is essential that when using the EES, the competent authorities guarantee that they will uphold the human dignity and integrity of the people asked to provide data and that they do not discriminate on the basis of sex, colour, ethnic or social origin, genetic features, language, religion or belief, political opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

4.4. The operation of the EES has a strong impact on the exercise of the rights enshrined in the *Charter of Fundamental Rights of the European Union*: the right to human dignity (Article 1), the prohibition of slavery and forced labour (Article 5), the right to liberty and security (Article 6), respect for private and family life (Article 7), protection of personal data (Article 8), the right to non-discrimination (Article 21), the rights of the child (Article 24), the rights of the elderly (Article 25), the rights of persons with disabilities (Article 26) and the right to an effective remedy (Article 47). The Committee considers that compliance with fundamental rights will need to be monitored constantly by the competent EU institutions and open to European and national civil society organisations.

4.5. Although the pilot project used to test the running of the system in a number of locations did not give rise to any significant resistance or reservations by users, as is clear from the findings of the survey by the Agency for Fundamental Rights, some groups of people may have difficulties using the system and public opinion may not be favourable. There may also be people who have reservations about the collection of biometric data, either for cultural and religious reasons or because they do not trust the way in which the data will be used and safeguarded by the authorities.

4.6. The Committee therefore considers that the roll-out of the system should be accompanied by campaigns explaining as clearly as possible how the system works, emphasising the protection of personal data. All guarantees relating to the collection, storage and use of data must be disclosed, so that any reservations can be overcome and obstacles to mobility removed.

4.7. The Committee considers that staff involved in running the system must be properly informed and trained. The pilot project revealed that border staff have pointed out that they need to be trained for the new equipment and procedures⁽⁶⁾. The Member States are responsible for ensuring that the system works properly. Accordingly, rules and procedures should establish the Member States' liability in the event of harm arising from any infringement of the regulation.

4.8. The Committee considers that transferring or making personal data obtained by the Member States through the EES available to third countries, international organisations or private entities established in or outside the EU must be limited and fully justified.

4.9. The Committee considers that the appointed authorities and Europol should request access to the EES only when they have good reason to believe that this will provide information which will be of significant help in preventing, detecting or investigating a terrorist offence or another serious offence. The EES will be useful for police work but access must be strictly regulated.

4.10. The Committee is pleased that the anticipated costs of the system have been revised, with a significant drop (from EUR 1,1 billion to EUR 480 million).

Brussels, 21 September 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽⁶⁾ European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, 2015, Smart Borders Pilot Project. Report on the technical conclusions of the Pilot, Volume 1, p. 14.