



SOURCE Legal Card – The European Entry Exit System (EES)

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CONTEXT AND INSTITUTIONAL BACKGROUND

- The idea of developing a **European Entry and Exit System** dates back to February **2013** with a first proposal published by the European Commission on a “**Smart Borders Package**” to better manage **increased traveller flows** and efficiently respond to **security concerns**. It was composed of 1) an **Entry-Exit System (EES)** to replace the passport stamping and have a record of overstays, 2) a Registered Traveller Programme (**RTP**) for frequent travellers to benefit from a pre-screening procedure and be able to use Automated Border Control (ABC) gates like EU citizens and 3) amendments to the **Schengen Borders Code** to integrate the above-mentioned changes.
- In parallel, the effort was also being implemented at **national level** as the Commission reported that 13 Member States (Bulgaria, Cyprus, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Spain) were implementing national Entry-Exit systems to collect relevant records of third-country nationals (TCNs) crossing their external borders.
- When first assessing the 2013 proposals, the Council and the European Parliament raised **technical, operational and cost concerns**. The Commission decided to continue studying the Smart Borders Package and commissioned another study on the package’s feasibility (“Technical study” and Cost analysis) and a series of **pilot tests** to examine the solution live at border-crossing points (developed by eu-LISA).
- Due to criticisms on similar points, even after the additional study and test phase, the European Commission put forward a new Smart Borders Package in **May 2016**, abandoning the RTP. On **20th November 2017** the Council adopted the regulation for the EES and the regulation amending the Schengen Borders Code in relation to the EES. The system will be managed by **eu-LISA** and is expected to be operational in **2020**.



RATIONALE

- The current system of **manual stamping of passports** on entries and exits falls short in operational and counter-fraud aspects. Indeed, it was seen as a **time-consuming** and **error-prone**, as the stamps could be unreadable and easily counterfeit. Therefore, the calculation of a potential overstay would be done manually by the border guard.
- The EES thus proposes an **automated solution** to 1) **record entries and exits** and 2) **automatically calculate** the number of remaining days on a short-stay visa (and later on a travel authorization when ETIAS will be operational) and therefore detected persons who **overstayed** their legal stay in the Schengen area. It has three main objectives:
 1. *Facilitate the border crossing of bona fide travellers;*
 2. *Detect over-stayers;*
 3. *Identify undocumented persons in the Schengen area.*
- The system is also based on the concept of Smart Borders, even without the RTP component in its proposal as it tables on a more effective use of “smart” border solutions, such as **ABC gates** open to all travellers with a biometric passport and **self-service kiosks**. The automation would thus allowing a reduction of the number of border guards needed at the equipped border-crossing points, thus providing a smooth solution as regard the increased travellers’ flow.



HOW IT WILL WORK

- The system concerns all **TCNs coming for a short stay** in the Schengen area (maximum of 90 days in any 180 days period), including visa-required and visa-exempt travellers. The system will therefore exclude EU citizens and TCNs crossing the borders with national visas (long-stay visas such as student visas) and residence permits and cards.
- At operational level, the EES will register the **name, biometric data**, type of **travel document** and the date and place of entry and exit for all third-country nationals coming to the Schengen area for a short-stay (maximum 90 days in any 180 days period). The EES will be particularly useful for the multiple entry visas, allowing the holder to travel in and out of the Schengen area for the same period of time. The system will also record **refusals of entry**.
- It will therefore be used by border guards at entries and exits of the Schengen area and will also be checked against information contained in security databases, such as the Schengen Information System (**SIS**) and Interpol' Stolen and Lost Travel Documents database (**SLTD**). **Law enforcement authorities** have been granted a special access to the EES records in the course of an investigation for a serious crime, upon judicial authorisation. The access by law enforcement mirrors what is currently in practice for EURODAC and VIS and what is being tabled for ETIAS.
- EES will also be linked to the **Visa Information System (VIS)** and accessed by migration authorities and consular posts. The information it contains will be used to assess **new applications** (and determine whether an applicant poses a migratory risk given his/her overstay records). The information on overstay will also contribute to the future **ETIAS assessment** for delivering travel authorisation to the Schengen area.



MAIN POINTS OF ATTENTION

The EES has been criticised by a number of stakeholders on both its first and second proposals. The main concerns expressed are focused around the **necessity and proportionality** of implementing such system at EU level:

- No clear **statistics** on the exact number of **overstay**: common acceptance of the importance of the issue based on little data and **disproportionality** of creating such a system for an issue which is difficult to assess
- The studies contracted by the European Commission were based on technical and operational points and an in-depth analysis of **necessity and proportionality** of the system and the system within the existing JHA landscape is lacking;
- High **cost** (ten times more costly than the first 2008 proposals);
- **Large data collection** on all TCNs coming for a short stay: very **intrusive** proposal (Articles 7 and 8 of the Charter),
- Lack of proof that **law enforcement access** is needed, proportionate and that it should consist of a primary objective of the system (lack of evidence supporting the access)
- The **data retention** period of 5 years is considered **disproportionate**
- Incidence of Opinion 1/15 of the **Court of Justice of the European Union (CJEU)** on the Draft EU/Canada PNR Agreement on the EES **data retention**. As law enforcement is a secondary objective, it can therefore be considered unlawful to store the data of bona fide travellers after they exit the Schengen area within the period of authorised stay.



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