Smart Borders package

In anticipation of increased traveller flows and in response to the security concerns voiced by EU Member States, the European Commission put forward a Smart Borders package in 2013, consisting of three legislative proposals with the goal of making border control procedures faster and more reliable through applying interconnected advanced technologies throughout the Schengen area.

Background

The number of travellers crossing the EU's external borders is growing quickly as more people work, study and have relatives abroad. The Commission estimates that each year around 300 million people cross the EU's external borders and an increase of 80% is expected by 2030 as compared to 2009 for air passengers alone. Migratory pressures are also growing due, inter alia, to the political and economic crises of recent years.

The increased passenger flows raise fears that they will cause long queues at border crossings and as a result hamper efficiency. To speed up the checks, around half of Member States are already using automated border control systems, but these are not open to third-country nationals. Similarly, Member States' systems for recording the entry and exit of third-country nationals are not interconnected, which means that entry and exit records are not matched if a person enters the EU in one Member State and exits from another.

The border-management measures currently in place in the Schengen area of free movement include the Schengen Information System (SIS) and the Visa Information System (VIS). These databases must be consulted to allow a third-country national to enter, but not on their exit. However, these systems are not intended for recording border crossings but are instead used for law-enforcement purposes by the police, customs, visa and judicial authorities.

In view of the above and in response to a European Council call in 2011 to 'rapidly [push] forward' the work on smart borders in the aftermath of instability in North Africa, the Commission launched the Smart Borders initiative.

The Smart Borders package

Following its 2011 communication 'Smart borders – options and the way ahead', the Commission tabled in February 2013 a Smart Borders package consisting of three legislative proposals. Checks would be reinforced, to better control illegal immigration and ensure security. At the same time, border crossings would be made easier for frequent, pre-vetted non-EU travellers, moving from a 'country-centric' approach towards a 'person-centric' one. In order to increase capacity at border crossings, the focus would thus be shifted to more high-risk travellers, as identified in the annual risk analyses drafted by Frontex.

The Entry/Exit system (EES) would replace the current procedure of manually stamping the passports of third-country nationals when entering and exiting the Schengen area. Currently, there are no electronic tools to verify or share this information. The new electronic registration would allow the automatic calculation of authorised stays and alert authorities of those who have overstayed.

To offset the delays resulting from collecting the data required for the EES system, the Commission suggests adopting a Registered Traveller Programme (RTP) that would give frequent third-country travellers the option of pre-screening, so that they would be able to use the automated border control systems like Member States' nationals. The third proposal is aimed at amending the Schengen Borders Code accordingly.

The proposals did not achieve consensus support in the European Parliament or the Council, which requested further investigation of the feasibility of the systems as regards cost efficiency and fundamental-rights implications. In 2014, the Commission announced a two-step exercise, consisting of additional studies

and a pilot phase, to assess the technical feasibility of the proposals. In the light of this exercise, the Commission will review the proposals, bringing forward new ones by the end of 2015 or beginning of 2016 and simultaneously withdrawing the current proposals.

Criticism of the Smart Borders package

The initial proposals met with criticism both from the co-legislators and a number of stakeholders in respect of the feasibility of the systems as proposed.

Cost efficiency

The proposals prompted a debate about the need for these new tools, taking into account the estimated total cost presented in the Commission's costs study: development and operation in 2017-20 would amount to €381 million for EES and RTP if developed jointly. Statewatch referred to the potential of industrial influence and private-sector interests in the negotiation process. It also doubted the efficiency of the EES system in identifying overstayers since it would only catch those people actually leaving the Schengen area. For the same reason, a 2012 study prepared by the Centre for European Policy Studies (CEPS) considered the EES 'little more than an extremely expensive mechanism for gathering migration statistics'.

Fundamental rights

The main concern, regarding the EES in particular, is the holding of records containing large amounts of personal and biometric data. While the initial proposal does not provide for access of law-enforcement authorities to this data, this possibility would be considered two years after the launch of the EES. Some commentators warn that if the system becomes interlinked with other databases such as the VIS – estimated to expand to contain up to 70 million items of fingerprint data at a time – it might lead to a violation of the 'purpose limitation' principle, whereby data collected may only be used for the aims originally stated. The European Data Protection Supervisor (EDPS) noted in his 2013 Opinion the need to assess the lawful character of the system against the principles enshrined in the EU Charter of Fundamental Rights, in particular respect for private and family life (Article 7) and protection of personal data (Article 8). Statewatch questioned the compatibility of the system with the Charter following the ruling of the Court of Justice on the Data Retention Directive, which was declared invalid due to serious interference with the right to privacy. The Committee of the Regions (CoR) noted in its opinion that the system should not prevail over the right to asylum or the principle of non-refoulement.

Measures in response to concerns

European Commission

In 2014, following the requests of the Parliament and Council, the Commission proceeded with a proof of concept exercise to provide the co-legislators with the best technical and cost-efficient solutions to choose from, following the additional technical study and costs study. In 2015, the results of the studies will be tested by the Agency for the Operational Management of large-scale IT Systems in the area of Freedom, Security and Justice (eu-LISA), which has signed a Delegation Agreement on Smart Borders Pilot with the Commission. In March 2015, the pilot project moved to the execution phase as live tests started at Lisbon airport, Portugal being the first of the volunteer countries to allow pre-screened third country travellers to pass through the automated border control (ABC) gates.

Council

Following discussions among senior officials in JHA Counsellors/Mixed Committee meetings under the Greek Presidency, the Council agreed in February 2014 with the Commission's 'Approach for the way forward on the Smart Borders Package', to proceed with the proof of concept exercise. On 10 December 2014, Coreper adopted political guidelines for the pilot project. In the meantime Council has continued its detailed discussions on the initial proposals.

European Parliament

In 2013, the European Parliament commissioned a study, which criticised the lack of proper empirical verification of the models proposed and the sharp rise in estimated costs. Work continues in the Committee on Civil Liberties, Justice and Home Affairs (rapporteurs: Agustín Díaz de Mera García Consuegra, EPP, Spain and Tanja Fajon, S&D, Slovenia), which has published working documents on the Registered Traveller Programme, the Entry/Exit System and on the proposal amending the Schengen Borders Code. Moreover, the Committee is seeking details of the planned further proposals from the Commission and the Council, with the topic now due to be discussed in the June plenary, having been postponed in April.