

Next steps in border management in the EU

European Parliament resolution of 10 March 2009 on the next steps in border management in the European Union and similar experiences in third countries (2008/2181(INI))

The European Parliament,

- having regard to the Commission Communication of 13 February 2008 entitled 'Preparing the next steps in border management in the European Union' (COM(2008)0069),
- having regard to the Commission Communication of 13 February 2008 entitled 'Report on the evaluation and future development of the FRONTEX Agency' (COM(2008)0067),
- having regard to the Commission Communication of 13 February 2008 entitled 'Examining the creation of a European Border Surveillance System (EUROSUR)' (COM(2008)0068),
- having regard to the preliminary comments of the European Data Protection Supervisor of 3 March 2008 and to the joint comments of the Article 29 Data Protection Working Party and the Working Party on Police and Justice of 29 April 2008 on the three above mentioned communications,
- having regard to the Council Conclusions on the management of the external borders of the Member States of the European Union,
- having regard to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)¹,
- having regard to Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)²,
- having regard to Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)³ and to Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)⁴,
- having regard to the Commission Communication of 24 November 2005 on improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs (COM(2005)0597),

¹ OJ L 105 13.4.2006, p. 1.

² OJ L 218, 13.8.2008, p. 60.

³ OJ L 299, 8.11.2008, p. 1.

⁴ OJ L 299, 8.11.2008, p. 43.

- having regard to its resolution of 18 December 2008 on the evaluation and future development of the FRONTEX Agency and of the European Border Surveillance System (EUROSUR)¹,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0061/2009),
- A. whereas the dismantling of the EU's internal border controls is one of the greatest achievements of European integration,
 - B. whereas an area without internal borders cannot function without shared responsibility and solidarity in managing its external borders,
 - C. whereas attention should be paid to cooperation with the border security authorities of third countries' in line with general EU external policy,
 - D. whereas the EU external border is crossed every year by 160 million EU citizens, 60 million third country nationals (TCNs) not requiring a visa, and 80 million requiring a visa,
 - E. whereas measures to enhance border security must go hand in hand with facilitation of passenger flows and the promotion of mobility in an increasingly globalised world,
 - F. whereas within the framework of EU integrated border management, several instruments and programmes have already been established, are in the course of preparation or are at the stage of policy development,
 - G. whereas the Commission has stated that it intends to be ready in 2009-2010 to present legislative proposals for the introduction of an entry/exit system, a Registered Traveller Programme (RTP) and an Electronic System of Travel Authorisation (ESTA),
 - H. whereas similar systems exist in Australia and are being implemented by the USA as part of the US-VISIT programme,
 - I. whereas a comprehensive master plan setting out the overall architecture of the EU's border strategy as well as a thorough evaluation and assessment of existing systems and those under preparation are lacking,

Entry/exit system

1. Is aware that the so-called 'overstayers', who are central to the proposed entry/exit system, are supposed to represent the biggest category of illegal immigrants in the EU; requests, however, more information on the data collected by an external contractor estimating that 'there were up to 8 million illegal immigrants within the EU25 in 2006'²; insists, moreover, on a clear definition of the term 'overstayer', including the possible exemptions under specific conditions, and a closer qualitative and quantitative analysis of the threats/risks/costs they bring to European society;

¹ Texts adopted, P6_TA(2008)0633.

² SEC(2008)0153.

2. Points out that, although the proposed system and alert information might help to deter TCNs from overstaying, as well as provide data and information on patterns, further contact with law enforcement agencies is still necessary for an individual who overstays his or her period of admission to be apprehended, and therefore does not believe that the proposed system will put an end to the 'overstay' phenomenon as such;
3. Does not have sufficient information on how this system will be integrated in – and interact with – the existing framework, on the possible changes that might need to be made to existing systems and on the actual costs generated by it; is therefore of the opinion that the absolute need to implement such a system remains doubtful;
4. Recalls that the correct functioning of the entry/exit system will depend both materially and operationally on the success of the VIS and SIS II; points out that these instruments are not yet fully operational and that it has thus not yet been possible to evaluate them properly; stresses that the operability and reliability of the SIS II are being called into question;
5. Notes that, without a doubt and following the lessons learned in the USA, it is more challenging to implement exit capability than entry, and in particular with regard to sea and land exit; furthermore, following the same lessons learned, has considerable concerns about the cost-effectiveness of such a system; therefore calls on the Commission to provide additional information on the actual investment generated by such a system;

Registered Traveller Programme (RTP)

6. Supports in principle the concept of an RTP for TCNs, whether or not subject to visa requirements, which would help speed up traveller flows and prevent congestion at entry and exit points, and the possible use of automated gates by EU citizens, since Community law as it currently stands does not allow for the simplification of border checks except in the case of TCNs residing in border areas;
7. Criticises, however, the terminology used in the Communication entitled 'Preparing the next steps in border management in the European Union' ('low-risk'/'*bona fide*' travellers), as it would imply that a huge number of travellers are considered a priori as 'high-risk' or '*mala fide*', and recommends the term "frequent travellers";
8. Points out that several Member States have already set up or are preparing such an RTP for TCNs, and highlights the risk of ending up with a patchwork of twenty-seven systems based on different criteria, including those on data-protection and fees; is aware of the fact that the Netherlands, together with Germany, the UK and FRONTEX, are seeking to promote the 'International Expedited Traveller Programme' as a possible blueprint for other Member States;
9. Advocates a harmonised approach and therefore urges the Commission to speed up the process, on the basis of best practices in Member States, and to make sure that Member States continue to act in conformity with Community law;
10. Notes that, in fact, RTPs for TCNs are different from RTPs for Union citizens; stresses therefore that a clear distinction between the two must be made at all times;

Electronic System of Travel Authorisation (ESTA)

11. Acknowledges that it would be unwise to focus attention in terms of security measures only on TCNs travelling to the EU from countries with a visa requirement; questions, however, whether the proposed system is absolutely necessary and would like a thorough explanation of the rationale for it; is convinced that close cooperation between intelligence services in particular is the right way forward, rather than a massive collection of data in general;
12. Wishes to be informed on the exact timetable and the details of the study as envisaged by the Commission;

Data protection and biometrics concerns

13. Finds it unacceptable that the Commission failed to consult either the European Data Protection Supervisor (EDPS), who had nonetheless expressed a number of concerns, or the Article 29 Working Party prior to the adoption of the Communication entitled 'Preparing the next steps in border management in the European Union'; requests the Commission, therefore, to consult both in respect of any action to be taken under that Communication, as the proposed building blocks entail the processing of vast amounts of personal data;
14. Is aware that biometrics are theoretically effective personal identifiers because the characteristics measured are thought to be distinctive of each person; however, underlines the fact that the reliability of biometrics is never absolute and that biometrics are not in all cases accurate; therefore points out that fall-back procedures should be provided for at all times and that risk profiles should be better defined;
15. Insists on a standard protocol for the use and exchange of biometric information and interface control agreements to describe how the protocol will be used; is furthermore of the opinion that the use of biometrics should be subject to a quality standard in order to avoid divergences in acceptance between different systems used by Member States;
16. Considers a "privacy by design" approach to be an essential feature of any development which risks jeopardising the personal information of individuals and the public's trust and confidence in those who hold information about them;

Conclusions

17. Considers the objective of truly EU-integrated border management to be legitimate and agrees that it is important to continuously develop and strengthen the EU's common policy on border management;
18. However, is of the opinion that, within the framework of border and immigration management, far-reaching proposals are piling up at an amazing pace; therefore asks the Commission to think in terms of the need for, and the cost of, the border logistics;
19. Deplores, moreover, the notion that the EU's border management policy should be founded on the idea that all travellers are potentially suspect and have to prove their good faith;
20. Criticises the lack of a comprehensive master plan setting out the overall objectives and architecture of the EU's border management strategy as well as the absence of details showing how all related programmes and schemes (already in place, in the course of preparation or at the stage of policy development) are supposed to function together and how relationships among them can be optimised; takes the view that, when considering the

architecture of the EU's border management strategy, the Commission should analyse first of all the effectiveness of the existing border management systems of the Member States, in order to bring about the optimal synergies between them;

21. Stresses the need for an evaluation and assessment, first of all, of existing systems and those under preparation, and emphasises that the EU's ability to achieve its strategic goals depends to a great extent on its success in managing the interdependencies among related programmes, as duplication and inconsistency between them will have a negative impact on organisational performance and results as a consequence; is of the opinion that no new instruments or systems should be launched until the existing tools are fully operational, safe and reliable;
22. Is of the opinion that, before any investment is made, it is of the utmost importance to have a clearly defined operational context in which to align all the measures and emerging initiatives; points out, moreover, that it should be crystal clear what modifications are necessary in order to ensure that technology and processes work in harmony, and stresses that all investments should be economically justified;
23. Expresses doubts concerning the need for, and the proportionality of, the proposed measures, given their expense and the potential risks they pose for data protection; is therefore of the opinion that they should be assessed against those criteria before any formal proposal is envisaged;
24. Acknowledges that striking a balance between ensuring the free movement of a growing number of people across borders and ensuring greater security for Europe's citizens is a complex exercise, and does not deny that the use of data offers clear advantages; at the same time, is of the opinion that public trust in government action can only be maintained if provision is made for sufficient data protection safeguards, supervision and redress mechanisms;

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25. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the European Data Protection Supervisor and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).