Council of the European Union

NOTE

From:	French delegation
To:	Working Party on Frontiers/Mixed Committee
	(EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject:	Smart borders for all

TRANSLATION PROVIDED BY THE FRENCH DELEGATION

1.   New challenges

The Schengen area is today facing three challenges, the seriousness and scale of which continue to grow: a steady rise in passenger flows, unprecedented migratory pressure and increased terrorist threats, with the specific issue of trips to and from terrorist areas.

This context requires the creation of new tools to change the way in which we control external borders, and thus maintain the area of free movement within the Schengen area. Although it is only through a holistic approach that these challenges can be met, the fact remains that strengthening and modernizing external border controls will help in the overall response to the issue.

2. A partial response from the "Smart Borders" package

When presenting the "Smart Borders" package on 28 February 2013, the Commission set an objective to "enhance mobility and security"[1] based on the development of new technologies used to control third-country nationals at external borders. The Commission's proposal thus sought to ensure smooth border crossings by developing a specific programme for regular travellers[2] including the option to provide automated border controls (automatic doors) with increased security by basing checks on the collection of travellers' biometric data. Furthermore, this proposal would provide practical tools to identify "overstayers" at the borders and throughout the Schengen area and facilitate the return process to their countries of origin[3] (biometric data identification providing virtually irrefutable proof of nationality).

A number of issues arose during discussions at the Council and the European Parliament, and then at the technical study conducted in 2014, expert meetings, and pilot tests which are still underway:

– the project's added value in relation to its cost,

– the principle and conditions governing the access of law enforcement agencies to biometric data for investigative and/or informational purposes,

– the number of travellers affected, as third-country nationals holding a residence permit or card are currently exempt from the scope of the Commission's legislative proposal.

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[1] IP/13/162: 'Smart borders': enhancing mobility and security.
[2] Registered Traveller Programme.
[3] Doc 2013/0057 - Article 27.

In the meantime, terrorist acts have served as a chilling reminder of the threats posed by certain European nationals or people with the right of free movement upon their return from terrorist areas. In light of this, on 12 February 2015 the European Council asked that: *"full use be made of the existing Schengen framework to reinforce and modernise external borders' control: we agree to proceed without delay to systematic and coordinated checks on individuals enjoying the right of free movement against databases relevant to the fight against terrorism based on common risk indicators; the Commission should issue rapidly operational guidelines for this; we will also consider a targeted amendment to the Schengen Borders Code where necessary to provide for permanent checks, based on a proposal by the Commission".[4]*

At the Justice and Home Affairs (JHA) Councils of 12 March and 16 June 2015, the Member States pledged to carry out more systematic checks on people benefiting from the right of free movement based on the interpretation of Article 7.2 of the Schengen Borders Code presented by the Commission and on common risk indicators.[5] This increase in controls and their coordination between Member States will only be compatible with the objective of cross-border fluidity if more use is made of modern automated control technologies promoted by the "Smart Borders" package.

3.   Modernizing checks for all passengers

At a time when the Commission has launched a public consultation[6] to prepare the draft for its new "Smart Borders" proposal, and when the Presidency has put on the agenda of December JHA Council a debate on the future of the external border management policy, **the French delegation suggests broadening the scope of the "Smart Borders" package for all travellers, also including European nationals.**

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[4]   Doc 6112/15
[5]   Published by the Commission on 16 June 2015
[6]   http://ec.europa.eu/yourvoice/consultations/index_en.htm

We see several advantages to this:

– **in terms of the system's added value and return on investment**: physical infrastructure (automatic doors, pre-clearance kiosks, designated security channels at border crossing points), virtual infrastructure ("fast lane" procedure via remote pre-verification), European collected data operating systems, and entry/exit systems for frequent travellers already developed by Member States for their nationals, could, where necessary, be used by all travellers and not solely reserved for third-country nationals (who only account for 43% of border crossings). A proposal to standardize automatic doors and kiosks used in the Schengen area could be a first step, drawing on the lessons of the ongoing pilot.

– **in terms of smooth crossings**: minimum checks, currently used for people with the right of free movement and which entail a systematic check of travel document databases, will be automated, thus helping to shorten queues and ensure easier connections at airports.

– **In terms of fairness:** the automation of controls will help to guide travellers, based on their status (people enjoying the right to free movement, regular travellers who are third countries' nationals, other third countries' nationals), towards the level of checks required by the Schengen Borders Code. Furthermore, all people with the right to free movement will have access to the facilities set up by the "Smart Borders" project for regular travellers who are third countries' nationals(similar to the "registered traveller programme" or "fast lane").

– **In terms of human resources:** the job of border guard is becoming a twofold mission: supervising flows (creation of a new profile of "supervisor" border guard) and conducting high added value checks. Automation for all travellers will help to reduce the time staff spend on "*bona fide*" travellers so that they can focus on those who require detailed checks.

– Finally, **in terms of security for the area of free movement**: automation of controls will help to set up a reversible system which can adapt to the level of threat, while facilitating the coordination of checks without hindering fluidity. Furthermore, it will help to step up the fight against identity fraud.

The "Smart Borders" system should be carried out in strict compliance with personal data protection procedures. Extending the system to all travellers would also mean that people enjoying the right of free movement would be subject to:

− systematic verification of their travel document and checks in the databases for stolen, usurped, lost and invalidated documents;

− verification of biometric data available in their travel document;

− registration of their biometric data for subsequent swift verification via the "fast lane" (or any other system to speed up border crossings) or for those without a biometric travel document;

− registration of their most recent entry and exit in a specific log, with only those listed on the Schengen Information System (SIS) subject to full registration of their entry and exit record.

The challenges facing the area of free movement call for increased external border controls, which are essential to maintain the principle of free movement within the Schengen area in the absence of internal border controls. To implement this, modernizing border control procedures offers an opportunity to support mobility while maintaining internal security and thus the very principle of free movement.

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