COMMISSION STAFF WORKING PAPER

SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Establishing a Registered Traveller Programme

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1. PROBLEM DEFINITION

According to the most recent comprehensive data provided by the Member States, there were 669 million external border crossings in 2009, 675 million in 2010 and 700 million in 2011, including EU citizens and third-country nationals. Border crossings at the largest and busiest border crossing points have been increasing and will continue to do so in the future. Efficient and fluent management of increased passenger flows at the external border crossing points will be a challenge for majority of Member States.

EU law requires that systematic checks are carried out at the Schengen external borders on all travellers (both on entry and exit). Thorough checks are normally carried out on third-country nationals, and minimum checks on EU citizens and persons enjoying the right of free movement[1]. However, current rules for third-country nationals could be described as "one-size-fits-all" as the same checks apply regardless of any differences in risk between different travellers or their frequency of travel.

Border checks of EU citizens can be automated, based on the current legislation, if they hold an e-passport. However, for third-country nationals this cannot be done without changing the legal framework and establishing a specific programme to facilitate third-country nationals' border crossings. 26,5 % of travellers crossing the EU external borders are third-country nationals – many of them crossing the border several times per year, even per week. Fluidity of border crossings and throughput capacity of border crossing points can be greatly improved even if only small percentage of frequent third-country travellers were to join the Registered Traveller Programme (RTP).

The previous impact assessment accompanying the communication *preparing the next steps in border management in the European Union*[2] in 2008 suggested the establishment of a Registered Traveller Programme for frequent and pre-vetted third-country national travellers. The Commission's Communication published in 2011 discussed the various options and the

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[1]   OJ L 158, 30.4.2004.
[2]   SEC(2008) 154, 13.2.2008.

way ahead[3]. The present impact assessment examines different implementation options in order to find the *best possible way to implement the RTP*. However, the impacts of the whole RTP are analysed based on the specific options.

2. **ANALYSIS OF SUBSIDIARITY**

Under Articles 74, 77(2)(b) and 77(2)(d) of the Treaty on the Functioning of the European Union, the Union has the power to adopt measures relating to checks on persons and the efficient monitoring of the crossing of external borders.

The need for intervention at European level is clear. No Member State alone is able to build up an RTP providing facilitated border checks across the Schengen Member States. One individual Member State's decision to grant access to an EU-wide RTP would have an impact on all Schengen countries and must therefore be regulated at EU level. Any measures related to border control would have to apply to the Schengen area without internal border controls which currently includes all the Member States except Romania, Bulgaria, Cyprus, UK and Ireland and four other European countries (Norway, Iceland, Switzerland and Liechtenstein). Schengen states are committed to maintaining common EU borders and common standards for border controls. Checks are carried out only at the external border, after which the traveller can travel freely within the Schengen area. It is vital for the internal security of the Schengen area that all the binding rules linked to border control are decided at EU level.

Therefore, the objectives cannot be sufficiently achieved by the Member States acting alone but can be better achieved at EU level.

EU added value

The RTP needs to be implemented at all EU external border crossing points and will have implications on the border guard resources of all Schengen countries. The EU-RTP ensures that the EU has a common approach to the RTP based on common legislation and thus it guarantees that rules continue to be the same at all Schengen borders. For third-country national travellers, this means that the RTP is available to them at all Schengen border crossing points without separate vetting by another Schengen country. In other words, a person vetted by one Member State may benefit from facilitation when crossing the external borders of any other Member State. Without common rules this would not be possible.

3. **OBJECTIVES OF EU INITIATIVE**

The **general objectives** of the RTP are:

- To facilitate the crossing of EU external borders by third-country nationals;

- To maintain the current level of security.

The **specific objectives** are:

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[3]   COM(2011)680 final.

- To promote access to the RTP for certain categories of frequent, pre-vetted third-country nationals;

- To ensure protection of RT's fundamental rights, in particular their personal data;

- To avoid discrimination between different groups of travellers.

The **operational objectives** are:

- To decrease the time and costs of border crossings for frequent travellers and to increase the throughput capacity of border crossing points. Border checks of RTs should not take more than 20-40 seconds on average.

- To free up border control resources by 25% from checking cross border movements of frequent and pre-vetted travellers and to enable better focus on checking higher risk travellers[4] and/or serve other travellers.

4. POLICY OPTIONS

Five policy options linked to the implementation of the RTP were identified during the consultation with stakeholders. For each of these five policy options real practical implementation options have been defined. As regards the **Policy option 1** "lodging an application for an RTP", the best sub-option is so clear and evident that lodging an application at any external border crossing point and at any Member States consulate was selected without further analysis. The other four policy options and their sub-options are the following:

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[4]   Travellers who have decided not to join the RTP are not and shall not be considered, due to their non-participation in the RTP, as higher risk travellers.

4.1. Policy option 2: Data storage

4.1.1. An RTP based on data stored in a separate token[5] (sub-option 2a)

4.1.2. An RTP based on data stored in a centralised database (sub-option 2b)

4.1.3. An RTP based on data stored in a separate token combined with a repository (sub-option 2c)

4.2. Policy option 3: Vetting criteria

4.2.1 Same as for multiple-entry visa holders (based on current EU law) (sub-option 3a)

4.2.2 More thorough vetting with additional criteria (sub-option 3b)

4.2.3 Discarded sub-option: Involvement of third countries in the vetting (sub-option 3c)

4.3. Policy option 4: Automation of border control for Registered Travellers

4.3.1. Fully automated (sub-option 4a)

4.3.2. Semi-automated (sub-option 4b)

4.4. Policy option 5: Application fee

4.4.1 Fee of 20 EUR (sub-option 5a)

4.4.2 No fee (sub-option 5b)

5. ASSESSMENT OF IMPACTS

Table 1 – Assessment of policy options*)

Policy options and sub-options	To facilitate the crossing of EU external borders by third-country nationals	To maintain the current level of security	Costs	Protection of fundamental rights
Option 0 Baseline	0	0	0	0
Option 2 Data stored in a token (2a)	√√√	√√	-√√	-√
Data stored in a centralised database (2b)	√√√√	√√√	-√√	-√√√
Data (unique identifier number) stored in a token and (unique identifier, biometrics and data from application) in a central repository (2c)	√√√	√√√	-√√√	-√

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[5] In the context of a RTP, a token can be described as a physical device given to the authorised user to prove his/her identity electronically. The token acts like an electronic key to access something, in this case to the ABC system.

Options 3 and 4**)				
Same vetting as for multiple-entry visa holders, fully automated border crossing	√√√√	√	-√	0
Same vetting as for multiple-entry visa holders, semi-automated border crossing	√	√√	-√	0
More thorough vetting, fully automated border crossing	√√√	√√	-√√	-√√
More thorough vetting, semi-automated border crossing	√	√√√	-√√√	-√√
Option 5				
Application fee 20/10 euro (5a)	√√	-	0	-
No application fee (5b)	√√√	-	-√√√	-

*) The three sub-options of policy option 1 (lodging an application for an RTP) are not included in the table 1 as the best choice is already described at the beginning of chapter 4.

**) the impacts of sub-options with regard to the policy options 3 and 4 (vetting criteria and automation of border control) are directly linked, in the sense that the impact of the sub-options with regard to vetting cannot be assessed without knowing which is the preferred option with regard to automation, and vice versa. Consequently the available four sub-options (3a, 3b, 4a, 4b) from the two policy options have been combined into the four variations possible, and the impact of all four variations is assessed in an integrated way.

6. COMPARISON OF OPTIONS

Data storage

All three sub-options contribute significantly to the objectives as defined and are notably fully coherent with EU border policy: security and prevention of irregular immigration is not diminished during the border crossing, while the EU's openness to the world and its capacity to facilitate cross-border people-to-people contacts, trade and cultural exchange is boosted. The programme would be the first in the world which is open to all third countries, and which is operable across several states, in this case across the whole Schengen area. In this context, Europe can be seen as a pacesetter for the rest of the world.

The token-based sub-option allows for visibility and limits data protection concerns. The sub-option based on a centralised RTP is more secure and easier to implement in practice at the border crossing point. The latter is, however, counterbalanced by the need to develop a new centralised system in which all the data is available and subject to search.

The sub-option based on a token/central repository can be seen as a hybrid between the above two sub-options, combining their respective advantages. It minimises the use of personal data in an EU system and it avoids the main of the security drawbacks of the token-based system. It provides, however, for the most complicated integration into the border control process as it introduces both a verification of the token as well as a verification against a central repository.

Vetting criteria and automation of border control

The assessment showed that stricter vetting procedure does not have any real impact on the security of the border check itself, and also that the facilitation of border crossings of semi-automated border controls is too limited to bring added value. Furthermore, stricter vetting

procedure would increase significantly Member States' administrative costs and would have a significant effect on the protection of fundamental rights.

Application fee

By introducing a fee of 20 EUR, Member States administrative costs for examining applications would be neutralised. It would also be consistent with the approach chosen for the treatment of visa applications. However, no fee sub-option would better guarantee large number of participants in the programme. Downside of this option would be that many ineligible applications would be submitted.

7. PREFERRED OPTION

Lodging an application for an RTP

For **policy option 1** it is clear that allowing the traveller to choose the best place for him/her to lodge an application would guarantee a larger number of participants in the programme, thus helping Member States to manage their passenger flows at the external border crossing points. Therefore, the preferred sub-option is lodging an application for an RTP at any border crossing point and at any Member States consulate. The cost-effectiveness of this sub-option is clearly the best and it is fully coherent with existing border and visa policy.

Data storage

To identify the preferred option with regard to **policy option 2** is more complex as demonstrated in chapter 6. The total scoring of each sub-option in relation to policy option 2 is almost equal, but each sub-option displays distinctly different weaknesses: the token-based sub-option displays significant security issues, the central database sub-option displays significant fundamental rights issues, and the token/central repository sub-option significant cost issues. However, the cost benefit analysis shows that even the higher one-time costs and yearly operational costs of the token/central repository sub-option will be fully compensated in the long run by the economic benefits of the RTP as a whole for the Member States. This is therefore the preferred sub-option with regard to policy option 2. This sub-option provides for a proportionate balance between security, facilitation and data protection. The data stored in a central repository would be available for border guards only when assessing application, renewing/revoking access to the RTP, in case the token is lost or stolen or any problems occur with facilitating RTs border crossings. While performing border checks a border guard would receive only hit/no hit information. With this option "privacy by design" is implemented.

Vetting criteria and automation

For **policy options 3 and 4** it is clear that the total impact of combining the same vetting criteria as for multiple-entry visas with fully automated border control has the highest impact on facilitating RTs' border crossings. Furthermore, it offers a balanced approach to security and protection of fundamental rights. It is also the least expensive approach taking into account the costs associated with stricter vetting procedure and semi-automated border control.

It should however be noted that the implementation of fully automated border control requires that an Entry/Exit System is developed and implemented in parallel, which would allow for

replacing the stamping obligation with an electronic registering of entry and exit dates of all travellers including those having an RT membership.

Application fee

For **policy option 5** it is reasonable to accompany the RTP with a fee of 20/10 EUR that would cover the administrative costs of examining applications, which would be set at a level that should not discourage potential applicants.

In summary, the preferred option consists of

- The lodging of applications at consulates as well as border crossing points;

- The combination of a token and a centralised storage of anonymized biometric data of each applicant and the data from an application;

- Applying the same vetting criteria as currently defined in EU law for multiple-entry visas;

- Giving RT access to a fully automated border control process;

- Charging a fee of 20 euro per RT application. However, a reduced fee (10 euro) would be introduced in case a visa application and an RTP application are examined at the same time based on the same supporting documents.

The preferred option shall fully comply with the relevant legislation on the protection of personal data, in particular the data protection principles and the requirements of necessity, proportionality, purpose limitation and quality of data; and that safeguards and mechanisms are in place for the effective protection of the fundamental rights of the individual travellers and in particular the protection of their private life and their personal data. Staff and third-country nationals must be made aware of these rights.

Costs and financial support

The estimated total one-time costs of the preferred option of the RTP for the Agency to develop a centralised part would be 43 million EUR, spread out over 2-3 years and annual average costs for maintenance/operations would be 20 million EUR/annum. The total one-time costs for Member States to develop and set-up their national infrastructures would be 164 million EUR, spread out over 2-3 years and annual average costs for maintenance/operations would be 81 million EUR/annum. The above-mentioned costs include also administrative costs except the costs for examining the applications. The costs of automation would greatly vary depending on the number of automated gates that would be implemented.

The personnel and the investment costs for establishing and maintaining the RTP would be compensated within a reasonable timeframe in the form of released personnel resources and a lower unit price per border check.

The Commission's proposal for the next multi-annual financial framework (MFF) includes a proposal of 4,6 billion EUR for the Internal security Fund (ISF) for the period 2014-2020. In the proposal, 1,1 billion EUR is set aside as an indicative amount for the development of an EES and an RTP assuming development costs would only start from 2015. Moreover, outside the sope of the ISF, a separate amount of EUR 822 million is set aside for the management of

existing large scale-IT systems (Schengen Information System II, Visa Information System and EURODAC).[6] The Commission envisages entrusting the implementation tasks for these systems to the Agency. Providing financial support for national development costs would ensure that difficult economic circumstances at national level do not jeopardise or delay the projects.

For third countries, no costs would be incurred in the implementation of the RTP. After possible adoption of the RTP, third countries will be informed accordingly of the facilitation mechanism and that their citizens could apply for access to the RTP.

8. MONITORING AND EVALUATION

The Management Authority (the Agency) shall ensure that systems are in place to monitor the functioning of the RTP against the main policy objectives. Furthermore, the Commission shall produce an overall evaluation of the RTP. The impact assessment indicates potential indicators to monitor the extent to which the policy objectives have been met. The main information sources are the RTP repository and ABC systems.

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[6]   COM(2011)750 final.