



Brussels, 28.2.2013
COM(2013) 96 final

2013/0060 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System
(EES) and the Registered Traveller Programme (RTP)**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal aims to amend 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). The proposed amendments are due to the proposed establishment of an Entry Exit System (EES) and a Registered Travellers Programme (RTP) for which legislative proposals are presented simultaneously.

General context

The general context is explained in the explanatory memoranda for the legislative proposals on the establishment of an EES and an RTP and in the impact assessments accompanying those proposals.

Existing provisions

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) and the Convention implementing the Schengen Agreement of 14 June 1985.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The consultation with interested parties and impact assessments are described in the explanatory memoranda for the legislative proposals on the establishment of an EES and an RTP and in the impact assessments accompanying those proposals.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary

The main proposed amendments concern the following issues:

- Additional definitions of EES, RTP, Registered Traveller (RT), Automated Border Control (ABC) (Article 2)
- Entry of data for third-country nationals in the EES and exceptions thereof (Article 5a)
- Authenticity check of the chip in travel documents containing an electronic storage medium (Article 7(2))
- Replacement of the current stamping of the travel documents by the electronic recording and verification of data in the EES (Article 5a, Article 7(3)(a) and Article 7(3)(b)). Introduction of the obligation to check whether a person has been granted access to the RTP (Article 7(3) (aaa))

- Verification of the identity of a RT (Article 7(3)(b)(v))
- Information to the traveller on the remaining period of authorised stay (Article 7(8))
- Exemptions for RT from certain parts of the thorough check in Article 7a
- Obligation of entering data into the EES even in the event border checks are relaxed (Article 8(3))
- Extension of the use of the lanes indicated by the sign in parts A and B of Annex III (EU citizens lanes) (Article 9(2)(a))
- Indications/Pictogram for ABC gates (Article 9(6))
- Deletion of Article 10 (Stamping obligation)
- Presumption of an irregular stay in the absence of the appropriate records (Article 11)
- Change of Annex III
- Deletion of Annex II point (f), Annex IV and Annex VIII

Legal basis

Article 77 (2) of the Treaty on the Functioning of the European Union; as the proposal lays down provisions on border checks of persons crossing the external border.

This proposal amends 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) which was based on the equivalent provisions of the Treaty establishing the European Community, i.e. Articles 62(1) and (2)(a).

Subsidiarity principle

Article 77 empowers the Union to develop a policy with a view to ‘ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders’ and ‘carrying out checks on persons and efficient monitoring of the crossing of external borders’.

The current proposal is within the limits set by these provisions. The objective of this proposal is to make the necessary amendments of the Schengen Borders Code for the establishment of an EES and a RTP. It cannot be sufficiently achieved by the Member States acting alone, because an amendment to an existing Union Act (the Schengen Borders Code) can only be achieved by the Union.

Proportionality principle

Article 5 (4) of the Treaty on European Union states that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. The form chosen for this action must enable the proposal to achieve its objective and be implemented as effectively as possible.

The creation of the Schengen Borders Code in 2006 had to be in the form of a regulation, in order to ensure that it is applied in the same way in all the Member States that apply the Schengen *acquis*. The proposed initiative — amendment of the Schengen Borders Code — constitutes an amendment to an existing regulation and can only be achieved by means of a regulation. As to the content, this initiative is limited to improvements of the existing regulation and based on the policy orientations contained therein. The proposal therefore complies with the proportionality principle.

Choice of instrument

Proposed instrument: Regulation.

4. BUDGETARY IMPLICATION

The proposed amendment has no implications for the EU budget.

5. ADDITIONAL INFORMATION

Consequences of the various protocols annexed to the Treaties and of the association agreements concluded with third countries

This proposal builds on the Schengen *acquis* in that it concerns the crossing of external borders. The consequences for the various protocols and association agreements therefore have to be considered with regard to Denmark, Ireland and the United Kingdom; Bulgaria, Romania and Cyprus; Iceland and Norway; and Switzerland and Liechtenstein. The situation of each of these states is described in recitals 10-17 of this proposal and explained in further detail in the explanatory memoranda for the legislative proposals on the establishment of an EES and an RTP.

Succinct overview of the proposed amendments of the Schengen borders code

Article 2, Definitions

Additional definitions

Point 20: Definition of the new Entry/Exit System (EES)

Point 21: Definition of the new Registered Traveller Programme (RTP)

Point 22: Definition of 'Registered Traveller' (RT)

Point 23: Definition of "'Automated Border Control' (ABC)

New Article 5a Data to be entered into the EES

The general obligation for a third country national entering the Schengen area to be registered into the EES is added in a new Article 5a together with the exceptions concerning third country nationals that are exempted from border checks or from the obligation to cross external borders only at border crossing points or during the fixed opening hours.

Article 7, Border checks on persons

In Paragraph (2) the obligation to check the authenticity of the travel documents that contain an electronic storage medium using valid certificates has been added.

In Paragraph (3)(a)(iii) the obligation to check whether the third country national entering the Schengen area has not yet exceeded the maximum duration of authorised stay by checking the stamps in the passport has been replaced by an obligation to consult the EES.

The new Paragraph (3)(aaa) regulates the obligation for border guards to verify whether a third country national traveller has already been registered in the EES.

In Paragraph (3)(b)(iv) concerning the obligation for border guards to verify during the exit check whether a third country national exceeded the maximum duration of stay it is clarified that this check has to be made by consulting the EES.

In Paragraph (3)(b)(v) the verification of identity and participation in the RTP for a registered traveller is described.

The new Paragraph (8) foresees the obligation for borderguards to inform third country nationals on their request about the maximum number of days they are still allowed to stay within the Schengen area as set out in the EES and if applicable in the VIS.

Article 7a, Border checks on Registered Travellers and use of automated means for border checks

The new Article 7a Paragraph 1 describes the following derogations from thorough checks foreseen in Article 7(3)(a) applicable to a registered traveller at entry of the Schengen area.

- thorough check of the travel document (Article 7(3)(a)(ii))
- verification of point of departure and destination, the purpose of the stay including supporting documents (Article 7(3)(a)(iv))
- verification of the possession of sufficient means of subsistence (Article 7(3)(a)(v))

Finally it provides a procedure for travelers that are identified by the ABC gate as non registered travellers or for registered travellers that do not fullfill all entry conditions. In these cases the normal procedures (carried out by a border guard) foreseen in Article 7(3)(a) shall be applicable.

Paragraph 2 opens the possibility to use ABC means in combination with "self-service kiosks" by travellers where the fingerprints are stored in the VIS or in the travel document (biometric passport) and where these fingerprints can be accessed by the border guard authorities. The entry conditions determined in Article 7(3)(a) shall be fulfilled.

Paragraph 3 foresees the possibility to use ABC means for the exit checks of persons mentioned in Paragraphs 1 and 2. The checks foreseen in Article 7(3)(b) and (c) shall remain

applicable except the verification of travel documents for signs of falsification or counterfeiting (Article 7(3)(b)(ii)).

Paragraphs 2 and 3 are not technical amendments determined by the introduction of the EES and the RTP but additional provisions to further facilitate the border check procedures by using modern technologies. The entry and exit conditions for the travellers concerned as such remain unchanged.

Article 8 Relaxation of border checks

The existing text is adapted to the establishment of the EES and the abolition of the stamping of passports. The obligation to always enter the data of the traveller into the EES while exiting the Schengen area is highlighted. Even in situations of relaxation of border check procedures the registration in the EES shall be carried out.

Article 9 Separate lanes and information on signs

Paragraph 2(a) clarifies that registered travellers are allowed to use the lanes provided for EU-citizens.

A new paragraph 6 is added to take account of the introduction of ABC means. In order to have a harmonised approach Member States shall use for ABC lanes the signs contained in Annex III Part D shall be used by all MS at all border crossing points.

Article 11, Presumption as regards fulfilment of conditions for duration of stay

The existing text is adapted to the establishment of the EES. Today Article 11 regulates the procedures and assumptions in case of absence of entry or exit stamps. With the EES the stamping will be replaced by an entry in the EES.

Annex III Model signs indicating lanes at border crossing points

The signs contained in annex III are completed by adding new signs for the use of ABC means and the introduction of the RTP.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 77(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) 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 lays down the conditions, criteria and detailed rules for the crossing of the external borders of the Member States.
- (2) [Regulation (EU) N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union] aims at the creation of a centralised system for the registration of entry and exit data of third country nationals crossing the external borders of the Member States of the European Union for a short stay.
- (3) [Regulation (EU) N° XXX of the European Parliament and the Council establishing a Registered Traveller Programme] aims at facilitating the border crossing for frequent, pre-vetted and pre-screened third country nationals at the external borders of European Union optionally by using automated border crossing facilities.
- (4) In order to carry out checks on third-country nationals in accordance with Regulation (EC) No 562/2006, which include the verification that the third-country

¹ OJ L 105, 13.4.2006, p. 1.

national has not exceeded the maximum duration of authorised stay in the territory of the Member States, border guards should use all the information available, including data in the EES and the RTP.

- (5) To ensure full effectiveness of the EES and RTP, entry and exit checks need to be carried out in a harmonised way at the external borders.
- (6) The establishment of an EES and a RTP entails the need to adapt the procedures for checking persons when crossing the external borders laid down in Regulation 562/2006. This applies in particular to the replacement of the stamping of passports on entry and exit by the registration of alphanumeric and biometric data of certain third country nationals and the possible use of automated border crossing means.
- (7) Regulation (EC) No 562/2006 should therefore be amended accordingly.
- (8) Taking into account the different situation in the Member States and at different border crossing points within the Member States concerning the number of third country nationals crossing the borders, Member States should be able to decide whether and to what extent to make use of technologies such as automated border crossing facilities.
- (9) Since the objective of this Regulation, namely to provide for amendments to the existing rules of the Schengen Borders Code, can only be achieved at Union level, the European Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as also set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (10) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (11) This Regulation constitutes a development of the provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis ; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (12) This Regulation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis ; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (13) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom

of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement.

- (14) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2008/146/EC.
- (15) As regards Liechtenstein, this Regulation constitutes a development of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999, read in conjunction with Article 3 of Council Decision 2011/350/EU.
- (16) As regards Cyprus, as concerns the aspects related to the Registered Traveller Programme, this Regulation constitutes an act building on the Schengen acquis or otherwise related to it, as provided for by Article 3(2) of the 2003 Act of Accession.
- (17) As regards Bulgaria and Romania, as concerns the aspects related to the Registered Traveller Programme, this Regulation constitutes an act building on the Schengen acquis or otherwise related to it, as provided for by Article 4(2) of the 2005 Act of Accession.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 562/2006 is amended as follows:

- (1) in Article 2, the following points are added:

"20. 'Entry/Exit System (EES)' means the system established in accordance with [Regulation N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union];

21. 'Registered Traveller Programme (RTP)' means a programme as defined in Article 3 of [Regulation N° XXX of the European Parliament and the Council establishing a Registered Traveller Programme];

22. 'Registered Traveller ' means a third-country national as defined in Article 3 of Regulation XXX....[Regulation of the European Parliament and the Council establishing a Registered Traveller Programme];

23. 'Automated Border Control (ABC)' means a fully automated system which authenticates the travel document, establishes that the traveller is the rightful holder of the document, queries border control records and on this basis automatically verifies the conditions governing entry laid down in Article 5(1)."

(2) The following Article 5a is inserted:

"Article 5a

Data to be entered into the EES

1. Data on entry and exit of third-country nationals admitted for a short stay pursuant to Article 5(1) shall be entered into the EES in accordance with Articles 11 and 12 of [Regulation N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union].

2. By way of derogation from paragraph 1 data on the following categories of persons shall not be entered into the EES:

- (a) Heads of State and members of their delegation benefitting from the facilitation of border checks in accordance with Annex VII point 1;
- (b) pilots of aircraft and other crew members benefitting from the facilitation of border checks in accordance with Annex VII point 2;
- (c) seamen benefitting from the facilitation of border checks in accordance with Annex VII point 3;
- (d) crew members and passengers of cruise ships who are not subject to border checks in accordance with of Annex VI;
- (e) persons on board a pleasure boat who are not subject to border checks in accordance with Annex VI;
- (f) persons who are exempt from the obligation to cross external borders only at border crossing points and during the fixed opening hours pursuant to Article 4 (2).

3. Data concerning the entry and exit of holders of local border traffic permits in accordance with Regulation (EC) No 1931/2006 of the European Parliament and of the Council² may be entered into the EES taking into account the facilitations provided for border crossings as referred to in Article 15 of that Regulation."

(3) Article 7 is amended as follows:

(a) in paragraph 2, first subparagraph, the following sentence is added:

² OJ L 405, 30.12.2006, p. 1.

" If the passport or travel document contains an electronic storage medium (chip) the authenticity of the chip data shall be approved using the complete valid certificate chain, unless this is impossible, due to the non-availability of valid certificates or for other technical reasons." ;

(b) paragraph 3 is amended as follows:

(i) point (a)(iii) is replaced by the following:

"(iii) verification that the third country national has not already exceeded the maximum duration of authorised stay in the territory of the Member States, by consulting the EES in accordance with Article 15 of [Regulation N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union];"

(ii) the following point (aaa) is inserted after point (aa):

"(aaa) The thorough checks on entry shall also comprise verification of the identity of the Registered Traveller and access granted to the RTP, in accordance with Article 32 of [Regulation N° XXX of the European Parliament and the Council establishing a Registered Traveller Programme], if applicable.";

(iii) In point (b), the following points (iv) and (v) are added:

"(iv) verification that the third country national did not exceed the maximum duration of authorised stay in the territory of the Member States, by consulting the EES in accordance with Article 15 of [Regulation N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union.

(v) verification of the identity of the RT and access granted to the RTP, shall be carried out in accordance with Article 32 of [Regulation N° XXX of the European Parliament and the Council establishing a Registered Traveller Programme], if applicable.";

(iv) in point (c), point (ii) is deleted;

(c) The following paragraph 8 is added:

"8. Upon request, the border guard shall inform the third country national of the maximum number of days of authorised stay, having regard to the results of the consultation of the EES and the length of the stay authorised by the visa, as applicable. The third country national may also request a written record containing the date and place of entry or exit.";

(4) the following Article 7a is inserted:

"Article 7a

Border checks on Registered Travellers and use of automated means for border checks

1. By way of derogation from Article 7(3)(a) checks on Registered Travellers shall not include examination of the aspects referred to in Article 7(3)(a) (ii), (iv) and (v) of that paragraph. Checks on Registered Travellers may be carried out through automated border control means, under the supervision of a border guard.

Should the check carried out through automated border control means reveal that the third country national is not a Registered Traveller or that one or several entry conditions are not met the third country national shall be referred to a check according to Article 7(3)(a).

2. For third country nationals whose fingerprints are stored in the VIS or on a travel document from which fingerprints may be technically and legally accessed by the border guard, thorough checks on entry may be carried out through automated border control means in combination with self-service kiosks to examine the aspects referred to in Article 7(3)(a) points (ii), (iv) and (v) . The process shall be monitored and followed by an individual decision by the border guard to authorise or refuse entry.

3. By way of derogation from Article 7(3)(b)(ii), thorough checks on exit on Registered Travellers and for persons whose fingerprints are stored in the VIS, or on a travel document from which fingerprints may be technically and legally accessed by the border guard may be carried out through automated border control means under the supervision of a border guard."

(5) in Article 8, paragraph 3 is replaced by the following:

"3. Even in the event that checks are relaxed, the border guard shall enter the data in the EES both on entry and exit, in accordance with Article 5a. Where the data cannot be entered by electronic means it shall be entered manually.

By way of derogation from Article 5a in case of technical impossibility or failure of the system the entry and exit data may be stored locally and entered into the EES as soon as the impossibility or failure has been remedied."

(6) Article 9 is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

“(a) Persons enjoying the right of free movement under Union law and registered travellers are entitled to use the lanes indicated by the signs in parts A and B of Annex III. If they are holding biometric passports they may also use the lanes indicated by the signs in Part D of Annex III”;

(b) the following paragraph 6 is added:

"6. Where Member States decide to use automated border control means they shall use the signs provided for in part D of Annex III to identify the respective lanes."

(7) Article 10 is deleted.

(8) Article 11 is replaced by the following:

"Article 11

Presumptions as regards fulfilment of conditions of duration of stay

1. If a third-country national present on the territory of a Member State does not have an entry record in the EES, or the entry record of the third-country national does not contain an exit date following the date of expiry of the authorised length of stay, the competent national authorities may presume that the third country-national does not fulfil, or no longer fulfils, the conditions relating to duration of stay on the territory of the Member States.

2. The presumption referred to in paragraph 1 may be rebutted where the third-country national provides, by any means, credible evidence, such as transport tickets or proof of his or her presence outside the territory of the Member State, that he or she has respected the conditions relating to the duration of a short stay.

The presumption may also be rebutted where the third-country national provides, by any means, credible evidence, that he or she enjoys the right of free movement under Union law.

In such cases the competent authorities shall create an EES file for that person, if necessary, and create an entry record, update the latest entry record by entering the following data in addition to the data referred to in Articles 11 and 12 of [Regulation N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union] or delete an existing file:

- (a) the date on which, and the border crossing point where, the third-country national crossed the external border of one of the Member States for entry or exit;
 - (b) the authority that entered the data;
 - (c) the date of entering the data;
 - (d) the new expiry date of the authorisation to stay.
3. Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be expelled by the competent authorities from the territory of the Member States concerned.

A third-country national who claims to enjoy the right of free movement under Union law but fails to establish that, may only be expelled by the competent border and immigration authorities of the territory of the Member State concerned in accordance with Directive 2004/38/EC.";

- (9) in Annex II, point (f) is deleted;
- (10) Annex III is amended in accordance with the Annex to this Regulation;
- (11) Annex IV is deleted;
- (12) Annex VIII is deleted.

Article 2

The Decision of the Schengen Executive Committee of 21 November 1994 (SCH/Com-ex (94) 16 rev.) is repealed.

Article 3

This Regulation shall enter into force on the dates indicated in Article 48 of [Regulation N° XXX of the European Parliament and of the Council establishing the Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union] and in Article 64 of [Regulation N° XXX of the European Parliament and the Council establishing a Registered Traveller Programme]. [concrete dates will be inserted when possible]

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*

Annex

In Annex III to Regulation (EC) No 562/2006, the following part D is added.

"PART D

Part D1: ABC lanes for EU/EEA/CH citizens



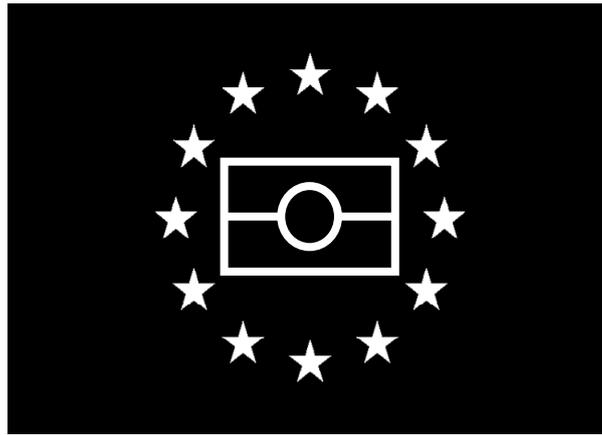
Stars are not required for Switzerland, Liechtenstein, Norway and Iceland

Part D2: ABC lanes for third-country nationals



Stars are not required for Switzerland, Liechtenstein, Norway and Iceland

Part D3: ABC lanes for all passports



ALL-PASSPORTS

Stars are not required for Switzerland, Liechtenstein, Norway and Iceland"