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From:	Presidency
To:	JHA Counsellors (Visa, Frontiers, Schengen)
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing an application for the electronic submission of travel data ("EU Digital Travel application") and amending Regulations (EU) 2016/399 and (EU) 2018/1726 of the European Parliament and of the Council and Council Regulation (EC) No 2252/2004, as regards the use of digital travel credentials - The DTC workflow

Delegations will find attached a Presidency paper assessing the positions of the co-legislators in relation to the DTC workflow. In case of disagreement with the assessment of the Presidency, please send your comments by Tuesday 24 March cob to the following email addresses: frontiers@consilium.europa.eu, cy-pres.frontiers@police.gov.cy, gartemiou@police.gov.cy, lzinoviou@police.gov.cy, constanconstantinou@police.gov.cy, maevangelou@police.gov.cy and mbeys@papd.mof.gov.cy.

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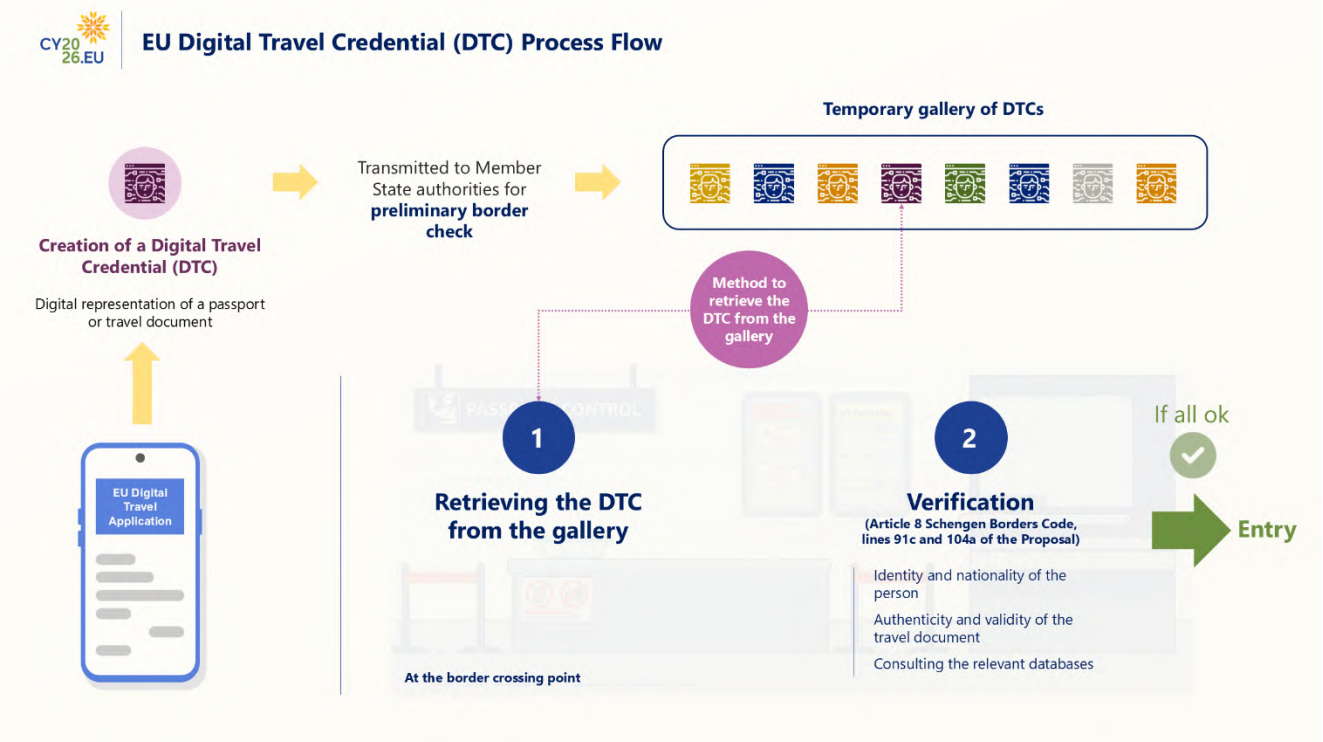
EU Digital Travel Application

Positions of the co-legislators on the DTC workflow

Following the JHA Counsellors meeting on 17 March, this note clarifies the views of the Presidency in relation to key elements in the proposal for an EU Digital Travel Application (the 'Proposal') in view of the ongoing interinstitutional negotiations. The views expressed in this note are not binding nor endorsed by the Council. The scope of this note is to assess the positions of the co-legislators in relation to the creation and use of digital travel credentials ('DTC') for the purpose of preliminary border checks. The Council's mandate has extended the possible use cases for the EU Digital Travel Application ('EU DTA'). For this reason, the positions of the Council in this Note are also applicable to the use of pre-enrolled data in the Entry/Exit System.

The Presidency overall considers that the mandates of the Council and the European Parliament are largely aligned on this particular matter and follow the spirit of the Commission's proposal. It is nevertheless the Presidency assessment that the negotiations are currently focusing heavily on technical elements that could be addressed in implementing acts or during the implementation phase at national level.

The image below provides an overview of the process flow described in this note:



I. Creation of a DTC by travellers using the EU Digital Travel Application

The co-legislators coincide on the main elements of the Commission's proposal.

Under both mandates, persons enjoying the right of free movement under Union law and third country nationals have the possibility of voluntarily using the EU DTA to create a DTC (lines 63 and 71).

Before the creation of a DTC, the EU DTA must verify the integrity and authenticity of the storage medium (the 'chip') of the travel document and match the facial image of the person seeking to create the DTC against the facial image stored on the chip (line 72).

The Council's mandate clarifies in line 58w that this matching is carried out in particular by the backend validation service. Line 88c sets out the immediate deletion of any personal data processed in the backend validation service as soon as these operations have been carried out.

II. The process at the border crossing point

This section describes the process at the border crossing point for a traveller that has previously created a DTC and transmitted it together with the self-declared travel data to the competent authorities for the purpose of carrying our preliminary border checks. The Presidency considers useful to regard this process as comprising two consecutive steps.

1. Step 1: retrieving the DTC for the temporary gallery

The first step is to retrieve the DTC of the traveller from a 'temporary gallery', i.e. a local database in the competent Member State populated with the pre-submitted DTCs of travellers. This temporary gallery is a logical requirement for the workflow to function. Setting up such a temporary gallery is not against EU law, as these data are already stored today at the existing e-gates and kept as long as necessary before being deleted. Safeguards can moreover be added if needed.

The Commission's proposal does not contain explicit provisions defining or regulating this temporary gallery. The Council mandate refers in line 91b to the obligation for Member State authorities to *'temporarily and securely store the travel data and EES pre-enrolment data'* previously transmitted. The European Parliament's mandate has in turn included a definition of 'national database' in line 56c[1].

The disagreement between the co-legislators at the ongoing interinstitutional negotiations lays on the **concrete method used to retrieve the DTC from the temporary gallery**. Different methods could be envisaged in this regard, which would be necessary,

[1] Line 56c: *"'national database' means a database in a Member State specifically dedicated to the temporary storage of the pre-submitted digital travel credential and the self-declared data sent by the traveller to the competent border authority of that Member State in accordance with and for the purpose of this Regulation"*.

proportionate and in line with the requirements of the General Data Protection Regulation. Two common examples are:

- Using a **live facial image** of the traveller at the border crossing point to retrieve the image pre-submitted with the DTC. This is not tantamount to remote biometric identification within the meaning of the Ai Act (Regulation (EU) 2024/1689).
- Using a **QR code** that would be scanned by the user at the border crossing point. This QR would be matched against the DTC. This method would involve using an additional device (e.g. a mobile phone or a printed form of the QR code).

The Council's mandate follows the Commission's proposal and is silent about the concrete method used to retrieve the DTC from the gallery. Therefore, in legal terms, Member States would be able to determine in their national law the concrete method to be used. This also means that no method to retrieve is explicitly prohibited. This would enable the possibility of using any solution without prescribing one in the legislative text, thus making it also flexible to adopt possible new solutions in the future.

In the Presidency's view, the European Parliament's mandate follows this same approach by not prescribing nor banning any concrete method to retrieve the DTC from the temporary gallery. Against this background, during the interinstitutional negotiations it has however been suggested that line 104a of the Parliament's mandate would be limiting the choice of instruments to 'one-to-one solutions', which would mean a *de facto* ban of other possibilities. The Presidency, based on initial legal assessments, does not share this view because line 104a refers exclusively to *'one-to-one verification [...] for the purpose of carrying out border checks'*, which has a legally defined meaning within the Schengen Borders Code, as explained in the next section.

For the avoidance of doubt, the Council's lines 91c and 91d are not related to the method used to retrieve the DTC from the temporary gallery and relate instead to different matters. Line 91c is explained in the next section. The Council's line 91d on 'identification' (which is defined as a one-to-many check in line 56o) creates the legal basis to search relevant databases using the facial image submitted by travellers as part of travel data and EES pre-enrolment data in accordance with national or EU law. These searches come into play in the context of Article 13 of the Proposal (amending the Schengen Borders Code) in relation to the security checks to be carried out at the moment of crossing the external borders against relevant databases, such as the SIS, Interpol's databases with biometric data, and national databases containing information on stolen, misappropriated, lost and invalidated travel documents.

In summary, the Presidency considers that the Council's and the European Parliament's mandate should be read as being aligned by not prescribing nor banning any concrete method to retrieve the DTC from the gallery.

2. Step 2: one-to-one verification (Council's line 91c and Parliament's line 104a)

Once the correct DTC of the traveller has been retrieved at the border crossing point, the next step is to verify the identity and nationality of the traveller, as well as the authenticity and validity of their travel document. This verification is part of the border checks on persons and is mandatory under the Schengen Borders Code[2].

In practice, this involves a comparison of the live facial image of the traveller (either by a border guard or through technical means) against the facial image in their passport or travel document to establish the validity of their claimed identity. The current practice involves optically scanning the passport or travel document to read the machine-readable zone (MRZ) of the document. With the Commission's Proposal, and based on the Commission's explanations during the ITMs, 'tapping' (and not scanning) the passport or travel document would be sufficient to gain access to the contents of the chip because the DTC would act as the 'key' (in technical terms, 'access control' or 'password authenticated connection establishment').

In this regard, the Council's mandate (line 91c) establishes that, for the purpose of verification, *'the competent authorities shall be able to compare the live facial image of the traveller with the facial image submitted by travellers as part of the travel data and EES pre-enrolment data'*. The 'facial image submitted by travellers as part of the travel data and EES pre-enrolment data' is the one that the traveller has previously submitted with the DTC to the competent authorities. This verification in the Council's mandate is strictly a one-to-one check, as defined in line 56n. The Council's mandate remains otherwise silent about the exact practical modalities to carry out this verification (e.g. scanning vs tapping the passport). In line with the comments of some delegations following the JHA Counsellors meeting on 17 March, line 91c could be slightly re-drafted to clarify its meaning by, e.g. referring to 'traveller' in singular.

In the Presidency's view, the European Parliament's mandate follows a similar approach by establishing in line 104a the responsibility of Member States to *'ensure the one-to-one verification through e-gates, as defined in Article 2, point (24), of* [the Schengen Borders Code]*, or through any other infrastructure, between the individual traveller's identity and their travel document for the purpose of carrying out border checks'*. This line is therefore connected with the general obligation in the Schengen Borders Code to carry out the verification as part of the border checks. Conversely, in the Presidency's view, this line cannot be understood as determining (or banning) a concrete method to retrieve the DTC from the temporary gallery, on which the European Parliament's mandate remains silent.

The main difference between the co-legislators' mandates in relation to verification is therefore the element against which the comparison is made: (a) the image pre-

[2] Article 8(2)(a) of the Schengen Borders Code for persons enjoying the right of free movement under Union law and Article 8(3)(a)(i) for third country nationals respectively.

submitted with the DTC for the Council; or (b) the travel document for the European Parliament.

III. Conclusion

Based on the positions of the co-legislators, the Presidency considers appropriate to maintain silence on the concrete method used to retrieve the DTC from the temporary gallery. As such, the Presidency will aim to achieve a compromise that does not limit the possible solutions in the legislative text, leaving more technical elements to be defined in implementing acts or in the implementation phase at national level.

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