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From: Presidency

To: Permanent Representatives Committee/Mixed Committee

Subject: Approach for the way forward on the Smart Borders Package

I INTRODUCTION

The Commission suggested orally an approach for the way forward on the Smart Borders Package at the meeting of the Working Party on Frontiers/Mixed Committee on 5 November 2013 and in SCIFA/Mixed Committee on 21 November 2013. The approach proposed by the Commission, which involved a proof of concept by the carrying out of a study and a pilot project, were generally supported by delegations, but delegations stated that they needed the suggested approach in writing in order to pronounce themselves.

JHA Counsellors/Mixed Committee examined on 10 January 2014 the outcome of the proceedings in SCIFA/Mixed Committee, which is set out in doc. 17127/13, and examined on 21, 27 January and 4 February 2014 revised texts suggested by the Presidency. At the meeting on 4 February 2014, agreement was reached on the approach set out in the present note and its Annex.

Delegations confirmed that they generally could support the approach suggested by the Commission in order to deal with a number of technical, cost related and operational questions regarding the Entry Exit System (EES) and the Registered Traveller Programme (RTP). However, a number of delegations underlined the importance of transparency and of the involvement of the Council in the process.

II BASIS FOR THE APPROACH

The revised text is in particular based on the following:

The Commission is free to define and carry out a feasibility study on a particular subject. However, in the case of the Smart Borders Package, the relevant legislative proposals have been formally submitted by the Commission in February 2013 and are currently being examined in the legislative process. A number of questions have come up in that process and the Commission's approach was proposed in that light, within the remit of its right of initiative, for the purpose of providing a better basis for deciding on the different elements of the proposals. In these circumstances, and having in mind the important political, financial and technical implications of the proposals, it is politically highly desirable that the approach to follow regarding the envisaged study and pilot project is endorsed in Council. In continuation of proceedings under the LT Presidency, the Presidency on this basis aims at the endorsement by Coreper of the approach to follow.

Regarding the importance of transparency and of the involvement of the Council in the process, as well as the continued examination of the legislative proposals during the implementation of the study and the pilot project, the Presidency has introduced certain changes in the text to meet concerns expressed.

Regarding the time schedule, although some delegations considered that the envisaged time schedule could be shortened, delegations agreed that it would be unfortunate to have to prolong a too optimistic time schedule and agreed to keep the time schedule envisaged in the Annex. The Commission indicated that the time schedule could be revisited at some point in the process and did not exclude the possibility of reviewing the duration of the pilot project once the study had been completed, depending on the scope of the pilot project. Delegations at the same time underlined the need to make progress on smart borders without undue delay and recalled that the European Council on 24 June 2011 called for pushing forward work on “smart borders”.

The Commission has invited experts of Member States as well as representatives of the EP to a meeting on 7 February 2014 to establish the objectives of the study. Based on comments made by delegations and the Commission, there appears to be consensus on including 1) interoperability between EES and RTP and other existing systems used during border checks, 2) the technical aspects of law enforcement access, 3) biometrics and 4) feasibility of the token and other possible options. Other issues which have been mentioned by delegations include: 1) detailed and updated cost analysis of different options and technical solutions, including in relation to costs at national level, 2) integration of the national systems in the future EES and RTP, and 3) processing time at the border. The Presidency invites the Commission to take this into consideration at the meeting on 7 February and when presenting the paper to the Working Party on Frontiers and to the European Parliament on the scope of the study.

The Presidency invites Coreper to endorse the approach set out in the present note and its Annex.

Approach for the way forward on the Smart Borders Package

The Commission has stated its intention to proceed with a **proof of concept** which would test both a detailed design of the technical architecture and the underlying operational processes. The purpose would be to ensure that the best possible choices are made both from a technical and cost-benefit point of view. The proof of concept will schematically consist of two main phases: a **study** to be conducted by the Commission and a **pilot project** to be entrusted to eu-LISA.

Without prejudice to the institutional prerogatives of the Council and the Commission, the following phased approach should be followed to validate the core assumptions underpinning the Smart Border Package:

a. Completion of the preliminary examination of the package (November 2013 - February 2014)

The on-going preliminary examination of the package by the Council should be pursued and completed in order to reach a comprehensive overview of those issues and concerns that could warrant a more in-depth analysis. The first reading of the EES proposal has been finalised under the Lithuanian Presidency. Regarding the RTP proposal, more time is necessary. However, it is expected that, on the basis of progress made by February 2014, it will be possible to determine the relevant issues to be analysed in the study also regarding the RTP.

b. Agreement on the scope of the Study (February – March 2014)

The Commission intends to carry out a study to analyse in-depth a limited set of key issues that have emerged during the previous phase and that are deemed to require further investigation. To ensure that all stakeholders take ownership of this exercise, the Commission intends to convene Member States and representatives of the European Parliament to a meeting on 7 February 2014 to reach the broadest possible consensus on the main themes of the study. Member State's expertise on the actual operational needs of the future users of the systems will be critical for a right scoping of the objectives of the study.

Following that meeting, the Commission will present a paper to the Working Party on Frontiers and to the European Parliament on the scope of the study. Following discussions, the Presidency will inform Coreper on the issue.

c. Realisation of the Study (March 2014 - September 2014)

The study will explore the main options and solutions for addressing each pre-selected issue. For that purpose, available technical, cost and timing data will be collected and analysed with a view to providing a basis to the Commission and the co-legislators to make informed decisions and choices in the legislative process. The Commission, assisted by eu-LISA, will use the relevant expertise of Member States since the operational input of Member States' experts is of paramount importance for ensuring the quality of the output. In particular, the Presidency and as appropriate future Presidencies will closely liaise with the Commission regarding the implementation of the study.

A clear emphasis will be put on costs, efficiency and operational practicality, taking into account the need for a high level of data protection.

The expected output of this preparatory phase is a thorough analytical document that will identify a limited subset of the most promising options and solutions.

d. Identification of the key features of a pilot project (September 2014- December 2014)

The outcome of the study should then be presented to the Member States and the European Parliament.

In that regard, the Commission should present its recommendations to the Working Party on Frontiers and to the European Parliament in order to determine the choices to be the subject of the pilot project by the end of 2014. The issue of the continuation or discontinuation of certain aspects of the project may be discussed in this context. Following discussions, the Presidency will invite Coreper to provide political guidelines on further steps.

Based on the choices determined, the Commission should prepare the terms of reference for a pilot project aiming at testing and validating the retained technical solutions for EES and RTP.

e. Implementation of the pilot project (January 2015- end 2015)

The Commission would entrust eu-LISA with the implementation of the said pilot project. The pilot project should at least seek to validate the retained concepts for both ABC and manual checks.

The Working Party on Frontiers should regularly be informed by the Commission on developments in the pilot project.

f. Proceedings in Council and with the EP during the carrying out of the study and the pilot project

As a matter of principle, the study and the pilot project should not involve an interruption of negotiations on the Smart Borders Package.

The examination of the legislative proposals should therefore continue within the Council and in contacts with the European Parliament, in particular regarding those aspects that are not directly linked to the proof of concept.

The Presidency and the European Parliament will be regularly informed on developments in the pilot project.

g. Further proceedings with a view to finalising negotiations on the Smart Borders Package (by mid-2016)

The Commission should submit a paper on the outcome of the pilot project to the Council and the European Parliament. The proof of concept should provide the co-legislators with the necessary reassurances on the feasibility, the operational nature as well as the cost impact of the retained solutions.

The legislative process for the adoption of the Smart Borders Package should, on the basis of the results of the pilot project and the progress made in negotiations on the legislative proposals, be continued with the aim of reaching agreement in first reading by mid- 2016.
