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COMIX 53

OUTCOME OF PROCEEDINGS

From: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

On: 23 January 2015

Subject: Summary of discussions

1. Work Programme of the Latvian Presidency
– Presentation by the Presidency

The Presidency submitted to the Working Party its work programme, putting special emphasis on its objectives concerning the Frontiers Policy. In this context, it highlighted as priorities: i) the work which needs to be pursued in the context the Smart Borders Package (SBP); ii) the issue of the foreign fighters in particular in relation to the Schengen Borders Code and the preparation of risk indicators; iii) the improved information-sharing on temporary reintroduction of border controls at internal borders; iv) the ILO network activities and the planned report on the situation in the Russian Federation; v) the Presidency's initiative regarding overstayers in the EU and the relevant Presidency activity called "AMBERLIGHT 2015".

2. Smart Borders Package:

- Progress report on the preparation of the pilot project and Smart Borders Proof of Concept Testing Phase Terms of Reference
- Information by eu-LISA

The Presidency debriefed delegations about to the state-of-play regarding the Smart Borders Package (SBP), highlighting the most recent developments in the European Parliament and the concerns expressed by the two Rapporteurs of the current proposals, which comprise the SBP. In this context, **the Presidency** invited delegations to invest resources on an awareness-raising exercise about the potential benefits of the SBP with all the stakeholders involved.

The eu-LISA submitted to the Working Party a progress report on the preparations for the Pilot Project, which constitutes the second phase of the Proof of Concept for the SBP. The Agency representative focused his presentation on the activities that had been carried out to this effect and the decisions taken in the last meetings with the Member States (MS) participating in the Pilot Project. In this vein, he pointed out that the final Terms of Reference had been received by the Agency and the roadmap reflecting the relevant preparations' steps was in the process of being updated by MS. He further gave an overview of the decisions taken on the selection of the border crossing points (BCP) and the mapping of the Test Cases, as two indispensable elements of the design of the Pilot Project.

In the same decision-making framework, the Agency representative outlined the steps to be taken - and their relevant deadlines - regarding the financial contribution from eu-LISA to MS for the running of the said Project (mainly in the form of grant arrangements for the MS), the nomination of national project managers, the field visits schedule, the choice of equipment and the further convocations of groups of experts.

The Presidency underlined its intention to have this update by eu-LISA as a standard item in the agenda of the subsequent Working Party meetings. **PT, DE** indicated their commitment to the Pilot Project and their intention to be further involved in the above preparations. **DE** also pointed out that certain issues regarding the Test Cases and the delegation agreements to be concluded with the Agency were still outstanding and needed to be more clarified. In reply to **FI**, **the eu-LISA** further explained the procedure of the distribution of the financial contribution to MS.

- Access for Law Enforcement purposes to the EES
 - Information by the Presidency and possible discussion

With regard to the issue of access for law enforcement authorities (LEA) to the future EES, **the Presidency** thanked the former IT Presidency for its work, as well as the other delegations for their contributions. It also pointed out that it would consider it politically advisable to wait for further developments in the European Parliament, especially in the context of the upcoming Hearing the latter is going to organize in late February, before pursuing work on this subject-matter in Council. **The Presidency** invited delegations to submit their relevant contributions by 13 February 2015, in particular in relation to their experience regarding access for LEA in other large IT systems, such as the VIS. In the same vein, **the Commission** underlined the importance of evidence-based argumentation in favour of such access, especially because of the concerns of the European Parliament. **The Commission** also recalled its plea for an evaluation of the impact that this access could have on the fundamental rights of the persons concerned.

FR, DE asked for the position of the Commission on this issue and on the security at the Schengen Area in general, especially after the early January tragic events in Paris. **DE** also pointed out to the Commission that the statistics sometimes do not show the whole picture and that the reasons why LEA do not take often recourse to VIS could be the high complexity of the procedure and the fact that the system in relation to the security authorities may not yet be fully operational. **The Presidency** concluded that the work on this issue will be resumed after the Hearing with the national Parliaments in the European Parliament, in order to take into account its conclusions.

- The consequences of the abolition of the stamping
 - Information by the Presidency and possible discussion

With regard to the proposed abolition of stamping of the travel documents, **the Presidency** outlined the anticipated impact on the decision-making procedure at the borders. **The Commission** pointed out that the whole range of concerns is essentially related to the need of a tool to verify the length of stay outside the Schengen Area of residence permit holders and recalled that the EES proposal deals with stays inside the Schengen Area, therefore the legal basis of the two issues is different.

Moreover, **the Commission** indicated that as regards the absences which could trigger off the withdrawal of a residence permit (or of a long-stay visa), there seem to be a need for a harmonised approach among MS. **The Commission** also suggested examining the tools that MS may have in order to verify the length of stay outside the Schengen Area.

AT suggested reflecting on the need for the air carriers to know if the third-country national concerned has overstayed, as well as on the need to have a clear picture of how long he/she is allowed to stay outside the Schengen Area. **FR** did not entirely agree with the concerns expressed by **AT** about the difficulties that the carriers may face, because it considered that they would still have the necessary information to carry out their work. **The Commission** pointed out that the carriers do not have an obligation to verify the scope of the stay based on a residence permit, and that the EES proposal does not include any provision regarding the abolition of stamping in case of refusal of entry.

FR, supported by **NL**, **ES**, also highlighted further particular problems that could be linked with the lack of clarity regarding the residence permits' regime, such as the social benefits to which the holder may be entitled, and stressed that a uniform solution should be found to address these concerns. **NL** added that the stamping may also be useful for the work of the ILOs and therefore suggested to give them access to the EES. **NL** also indicated that the issue of the relation between the touring visas and the EES should be addressed in this context.

The Commission acknowledged that the challenges that may emerge from the abolition of the stamping should be thoroughly examined. **The Presidency** concurred about the importance of these concerns and indicated its intention to prepare a document for further work on the basis of the above discussion, which will elaborate on the questions and identify potential problems. **The Presidency** also asked for written contributions by delegations so as to have a more comprehensive picture of the situation in practice.

- Fall back procedures in case of unavailability of the systems
 - Information by the COM and possible discussion

With regard to this issue, **the Commission** debriefed the WP about an experts meeting that took place on 22 January 2015 and pointed out that - drawing on the experience from the VIS and SIS - a unified procedure will be needed to address it effectively. **The Commission** pointed out that during the above experts' meeting some first conclusions were reached in relation to the likely needs of the national administrations, where no recourse (or partial recourse) to the systems may occur. It was agreed in this meeting that a "desk research" by the eu-LISA could be carried out during the running of the pilot project and that further work should be pursued in order to identify different scenario and explore possible solutions. **The Presidency** asked for written comments to the Commission and to itself and indicated that it would inform the WP on the future developments on the issue.

- The organisational aspects of the RTP application processing
 - Information by the COM and possible discussion

With regard to the organizational aspects of the future RTP applications (such as on-line distant applications), **the Commission** indicated its intention to submit to the next meeting of the WP its analysis on the management of such process. **FR, FI** expressed their support to a flexible approach regarding the procedural requirements for RTP applications and pointed out that such an approach would be needed with regard to the choice of the border crossing points and the Consulates at which such applications could be submitted. **The Presidency** invited delegations to send written comments on the issue by 6 February 2015.

3. Improved information sharing on temporary reintroduction of border control at internal borders

The Working Party agreed on doc. 5193/15, which set up a mechanism for improved information sharing in cases where a Member State decides to reintroduce border control at the internal borders in accordance with Articles 24 and 25 of the Schengen Borders Code.

The Commission reminded delegations to keep updated the list of contact points which was already available in CIRCA.

The Presidency concluded that it would submit this item for approval to Coreper at one of its forthcoming meetings.

4. Overstayers in the EU

The Presidency presented its initiative regarding the phenomenon of overstayers set out in doc. 5194/15. The Presidency suggested to further examine the current legislation and practice in Member States regarding cases where third country nationals exceed the maximum duration of authorised stay in the territory of the Member States, with a view to considering the possibility of a certain level of harmonisation of rules, sanctions and procedures for such cases. Such measures could supplement the provisions of the future Entry Exit System leading to a more efficient management of the migration flows.

The **delegations** which intervened considered the initiative as interesting, but expressed concerns regarding a possible harmonisation of the sanctions.

The Commission also considered this initiative as interesting and asked the Presidency to take into account the work currently being done on the Return Handbook.

The Presidency concluded that it would submit to delegations a revised version of doc. 5194/15 in order to identify the targets and set the level of ambition for this initiative. The Presidency invited delegations to send their comments by 16 February 2015.

5. Presidency activity "AMBERLIGHT 2015"

The Presidency presented its activity so-called "AMBERLIGHT 2015" set out in doc. 5195/15 and invited delegations to send their replies to the questions included in that document by 6 February 2015.

The Commission supported the initiative and invited delegations to take part in such activity.

6. AOB

- Foreign Fighters:
 - a) Application of the Schengen Border Code – Follow-up
 - b) Update on progress on the preparation of risk indicators

The Presidency briefed delegations on discussions at the Terrorism Working Party and in COSI. In addition, this issue would be discussed at length at the informal JHA Council to be held in Riga on 29 January 2015.

The Commission informed delegations that it would organize a meeting on 9 February 2015 for the purpose of:

- Learning from Member States how they were implementing the informal recommendations agreed last December as well as possible problems encountered and their impact (16880/15), and
- Hearing from Member States if they wish to amend the Schengen Borders Code and if yes, in which way. The Commission made clear that it would just gather information and would not put suggestions at this stage.

In addition, the Commission announced that it would adopt the changes to the SIRENE Manual on 29 January 2015.

FR insisted there was a need for a well targeted amendment of the Schengen Borders Code as soon as possible. **FR** also argued there was a need to review civil security aviation rules for intra-Schengen flights to reinforce security controls before boarding passengers while underlining the need to find solutions to improving traffic flows. **ES** supported **FR** and asked the Commission what other legislative texts would be appropriate to amend given the current terrorist threat.

AT, FI, BE, NL and **CZ** were open to discuss a possible amendment of the SBC but they did not see it as the priority because the SBC already offered several tools to strengthen checks for EU citizens or people enjoying the right of free movement. **CZ** recalled the usefulness of using the Advanced Passenger Information. **DE** asked if the Commission intended to include the above-mentioned recommendations in the Schengen Handbook.

The Commission updated delegations on the preparation of risk indicators but without indicating a date for their adoption. A first meeting was held on 15 January 2015 with national focal points on counterterrorism, Europol, Frontex and Interpol. The aim of that meeting was to take stock of the existing expertise. The Commission said that there was a strong consensus to go very fast with risk indicators. A large part of the information to elaborate such risk indicators would come from the law enforcement community, but border guards would be the implementing actors, and both communities should work together. The Commission underlined regarding access to risk indicators the need to find the right balance between protecting the information and ensuring a user friendly environment for border guards.

FI considered that border guards should use risk indicators in combination with consultations of the Interpol database to make information flow. **SI** agreed with all the work done so far by the Commission. While underlining that some risk indicators were still missing, **SI** considered that Member States had at their disposal a good number of risk indicators adapted to their own circumstances.

The Presidency concluded the discussion by inviting delegations to send their comments in writing to the Commission for the purpose of supporting the work to be done before the meeting on 9 February 2015.

- Report on relaxation of border controls in accordance with Article 8 of the Schengen Borders Code

The Commission reminded delegations that according to Article 8 of the SBC, Member States were obliged to report each year on the cases where border checks were relaxed as a result of exceptional and unforeseen circumstances.

- Codification of the Schengen Borders Code

The Commission informed delegations that it had adopted on 20 January 2015 a proposal for a technical codification of the Schengen Borders Code (doc. 5470/15 CODIF 4 CODEC 77 SCHENGEN 2 FRONT 21 COMIX 45 VISA 24).

- Verification of the fingerprints in the VIS at the external borders

The Commission reminded that from 11 October 2014 the verification of the fingerprints in the VIS at the external borders was obligatory for those visas issued in the regions where the VIS had been rolled out. Nevertheless, the Commission noted that the rate of this kind of verification was very low compared to the actual number of visas issued. The Commission indicated that there might be different reasons for this such as different travel routes, different practices among border crossing points, etc. The Commission therefore suggested to remind all border guards of this obligation and to check with them if there were any technical details which rendered this verification difficult or not impossible.

- Report on " MOS MAIORUM"

IT presented the final report of Joint Operation "MOS MAIORUM".