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Interinstitutional Files:

2016/0106 (COD)

2016/0105 (COD)

2016/0357 (COD)

LIMITE

FRONT 108

VISA 90

SIRIS 43

DAPIX 74

DATAPROTECT 33

CODEC 332

COMIX 175

NOTE

From: Presidency
To: Permanent Representatives Committee/Council / Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject: Information Technology (IT) measures related to border management
a) Entry/Exit System (EES)
b) EU Travel Information and Authorisation System (ETIAS)
= Progress report

I. INTRODUCTORY REMARKS

A strong and efficient border management is an essential component of a well-functioning Schengen Area. It needs to be built on a solid information technology architecture, which, on the one hand, helps enhancing the security of the Schengen Area and, on the other hand, increases the efficiency and the rapidity of border checks.

With a view to meeting these objectives, two legislative proposals - the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS) - have been presented by the Commission in April and November 2016 respectively, and have been discussed in the Council preparatory bodies over the recent months, with the European Council periodically recalling their importance and setting ambitious timeframes for their adoption.

The present report, tabled by the Presidency, aims at taking stock of the progress made in the examination of the abovementioned files and indicating the next steps.

II. ENTRY/EXIT SYSTEM

Considerable progress has been made on the EES file, composed of two draft Regulations, one setting up the EES and the other amending the Schengen Borders Code (Regulation (EU) 2016/399) to reflect the introduction of this new system. Building on the work carried out by the two previous Presidencies, the remaining outstanding issues have been addressed, and a mandate to enter interinstitutional negotiations (doc. 6960/17) was granted by Coreper on 2 March 2017 by a very large majority. On that occasion, a Council declaration on the broader issue of law enforcement access to JHA databases was attached to the minutes of Coreper.

The mandate represents a solid basis to enter into negotiations with the other co-legislator. It responds to the main concerns voiced by delegations during the 11-month discussions which led to the adoption of the mandate, notably the issue of the territorial scope of the Regulation, the calculation of the duration of stay, the conditions of access to the database by law enforcement authorities, the coexistence of bilateral agreements with the EES and the transfer of data to third countries or to Member States not applying the Regulation or not operating the system.

The European Parliament has also defined its position on this file: on 27 February 2017, the LIBE Committee adopted its Report and decided by a large majority to enter into negotiations with the Council on the basis of that Report (the EP plenary has confirmed this outcome through a silent procedure ended on 14 March 2017).

A calendar for the trilogues has been tentatively agreed upon. Four political and seven technical trilogues have been planned, with the opening political trilogue scheduled to take place on 23 March 2017. The overall objective shared by the two co-legislators and the Commission is to come to a political agreement by the end of June 2017, as indicated last December by the European Council, and reiterated by the President of the European Council in his Conclusions of 9 March 2017. The Presidency - which is determined to keep delegations regularly informed of the evolution of the negotiations and to ask, as appropriate, for a revised mandate - will deploy its best efforts to meet this ambitious target.

III. ETIAS

The Working Party on Frontiers examined the provisions of the ETIAS proposal at its meetings on 20-21 December 2016, 9-10 January 2017, 6-7 and 27-28 February 2017.

In the framework of this first reading, the Commission made a comprehensive presentation on the budgetary aspects of the proposal. Following the comments and questions raised by delegations concerning some elements of that presentation, it was agreed that further information and clarifications would be provided by the Commission on certain aspects of the costs and revenues of ETIAS.

The Presidency identified other key issues that needed to be clarified and decided upon before revised text proposals could be submitted to delegations. The Presidency therefore prepared a discussion paper on which delegations were invited to comment. The issues outlined by the Presidency related to the division of competences between Frontex and the Member States, the definition of 'responsible Member State' as regards the decision to grant a travel authorisation, and the duration of a travel authorisation.

The discussions at Working Party level made clear that a large majority of delegations could accept the division of competences included in the Commission proposal, while no conclusion could be drawn at this stage on the preferred duration of a travel authorisation, as this issue is linked to other elements of the proposal which have not been cleared yet (such as the amount of the travel fee or possible regular reassessments of travel authorisations).

With respect to the definition of the 'responsible Member State', delegations were divided into two groups, one in favour of the Member State of first entry, as proposed by the Commission, while the other stressed the key role played by the Member State at the origin of an alert triggering a "hit".

As this issue needed to be solved in order to make progress on several key provisions of the proposal, including on the issue of the appeals lodged against the Member State's decision, the Presidency formulated a way forward taking into account concerns and reservations expressed by Member States. It was discussed at the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 14 March 2017 with the objective of establishing a clear and simple system for allocation of responsibility between Member States. A majority of delegations indicated that the proposal made by the Presidency was going in the right direction.

It should be noted that several other issues are also the object of extensive debates at Working Party level, including:

- the scope of the regulation;
- the ETIAS watchlist and the screening rules;
- the access to the ETIAS data;
- the interoperability of ETIAS with other systems and databases.

In line with the Conclusions by the President of the European Council of 9 March 2017, the Presidency intends to speed up the work on this file with a view to reaching an agreement between Member States on this file by June 2017.

IV. CONCLUSIONS

The Presidency invites the Council to take note of the above progress report.
