



Council of the
European Union

Brussels, 8 March 2017
(OR. en)

6929/17

**Interinstitutional File:
2016/0357 (COD)**

LIMITE

**FRONT 101
VISA 84
DAPIX 71
CODEC 311
COMIX 164
DATAPROTECT 27**

NOTE

From: Presidency
To: Strategic Committee on Immigration, Frontiers and Asylum/Mixed
Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)

No. Cion doc.: 14082/16 FRONT 426 VISA 351 DAPIX 198 CODEC 1586 COMIX 725

Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing a European Travel Information and Authorisation System
(ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399,
(EU) 2016/794 and (EU) 2016/1624

Background

The Commission presented its proposal for a Regulation establishing a European Travel Information and Authorisation System ("the ETIAS proposal") on 16 November 2016.

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

Following a first examination of the articles, certain key issues that needed to be clarified and decided upon in order for revised text proposals to be submitted to delegations, were discussed at the working party meeting of 27/28 February.

Among these is the question as to the Member State responsible to decide on an application for travel authorisation that is referred to manual processing. The Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) is invited to consider the compromise solution set out in this paper, in order to provide direction for further work.

The issue

The issue of which Member State is responsible to decide on an application for travel authorisation only arises when there is a "hit" in the context of the automated processing and the application is therefore transferred to manual processing. If there are no "hits" when the application is submitted, the travel authorisation is issued in an automated manner and no Member State needs to be involved.

If there are one or more "hits", it is the ETIAS National Unit of the responsible Member State which will issue or refuse the travel authorisation. That Member State is responsible to carry out any consultations that may be necessary with other Member States that entered alerts giving rise to a "hit". It is also relevant as a decision by the responsible Member State denying a travel authorisation can be appealed in the Member State that has taken that decision, in accordance with the national law of that Member State. The administrative/budgetary burden on the Member State responsible, in terms of consulting other Member States, deciding on applications, and handling appeals, is another consequence.

According to Article 22(1) of the ETIAS proposal, the Member State responsible to issue the decision on an application for travel authorisation is the Member State of first entry as declared by the applicant. However, some delegations consider that a different rule should be established to designate the Member State responsible, with many making a link with the alert which gave rise to the "hit" and therefore led to the manual processing.

It should be noted that designating the Member State that entered the alert in the system as the responsible Member State, creates a complex situation when:

- there is more than one Member State which enters such alerts giving rise to multiple "hits".

- the alert giving rise to the "hit" was not entered by a Member State, eg. when the "hit" results from crosschecking the ETIAS watchlist or applying the ETIAS screening rules; when a person is flagged as an over-stayer by the Entry Exit System etc.

Member States favouring the link between the alert resulting in a "hit" and the responsible Member State had different views as to which Member State should be responsible in these cases.

Way forward

The need for a system that applies uniformly and that is clear, straightforward and unambiguous is evident, and it is essential to preserve this aspect, whichever method is selected in order to identify the responsible Member State. It would therefore be important to have clear rules in the legislation itself setting out the responsible Member State. However, efficiency also applies to the subsequent steps of examining and deciding on the application. Reducing the extent of consultation needed, would also contribute to efficiency.

A hybrid system could therefore be considered in which:

- a link would be established, for certain cases, between the Member State that entered the alert and the Member State responsible, thereby reducing the number of cases where consultation is necessary, or the extent of consultation that is needed, and reducing the number of cases where the Member State issuing the decision is not among those that had entered an alert resulting in a "hit" for the specific case. The responsibility of the Member State of first declared entry would be maintained as a default rule; and
- a distinction is made between
 - “hits” that result in an immediate **obligation** to refuse the travel authorisation (i.e. “hits” against alerts referring to a travel document that has been reported lost, stolen or invalidated in the SIS or SLTD and refusal of entry alerts recorded in SIS¹; and

¹ Article 18(2)(a) to (c) read in conjunction with Article 22(4)(a).

- “hits” that result in an **assessment** as to whether or not to grant the travel authorisation, following consultation with the Member States that entered the alert(s) (the latter Member State(s) also having to submit a reasoned opinion).

Priority is given to “hits” resulting in an obligation to refuse the travel authorisation, over other “hits”, provided it results from an alert entered by a Member State.

Against this background, SCIFA is invited to consider the way forward proposed below:

- A. Where there is only one "hit" against an alert entered by a Member State, that Member State would be the Member State responsible (irrespective of other "hits" with alerts not entered by a Member State);
- B. Where there is only one "hit" against an alert entered by a Member State which leads to an obligation to refuse travel authorisation, the Member State that entered this alert would be the Member State responsible (irrespective of other "hits" against other alerts, including “hits” against alerts entered by a Member State but which do not correspond to Article 18(2)(a) to (c));
- C. Where there are various "hits" leading to an obligation to refuse travel authorisation, against alerts that were entered by more than one Member State, the Member State that entered the most recent "hit" would be the Member State responsible (irrespective of "hits" against any other alert);
- D. In other cases, the default rule of Member State of first entry would apply, i.e.
 - when there are no "hits" against alerts entered by a Member State which lead to an obligation to refuse the travel authorisation (Article 18(2)(a) to (c)), and
 - there are multiple "hits" against alerts corresponding to the other paragraphs, or
 - where there are only "hits" against alerts that were not entered by a Member State.

This would ensure certainty and objectivity.