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OUTCOME OF PROCEEDINGS

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

On: 23 September 2016

Subject: Summary of discussions

- 1. Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders**
 - **Information by the Presidency**

The Chair presented the state of play of the file and the next steps.

In particular, the Chair informed the Working Party that a further technical trilogue with the Parliament had taken place on 7/9/16 without however making much progress; a compromise still needs to be found on four key points: 1. regarding air borders, the possibility to apply a derogation from the systematic checks for a six-month period, which the Parliament considers too short; 2. the question whether reference should be made in the text to consultation of national data bases (which the Parliament does not want to be mentioned in the text, despite the fact that they have a different scope from the EES) along with the checks that should be carried out against the SIS (primary consultation, which the Parliament wishes to promote even further) and other relevant Union databases; 3. the wish of the Parliament to broaden the scope of categories of persons to be exempted from systematic checks under certain conditions; 4. The sunset clause that the Parliament wants in order to have the application of this Regulation terminated after a given time.

Informal contacts with the Parliament took place in order to explore further compromise suggestions, with a view to reaching an agreement with the European Parliament as soon as possible.

2. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 2016/399 as regards the use of the Entry/Exit System

– **Presidency revised text**

– **12178/16 + ADD 1 FRONT 343 VISA 287 CODEC 1254 COMIX 593**

The following points of the Presidency revised compromise were accepted without comments: (1), (1a), (2), (5), (7), (10), (13), (14) and (16).

On the remaining points, a few drafting comments were put forward by the Commission representative (COM) and by some delegations in particular on issues such as the choice of biometrics in the relevant controls (i.e. the facial image vs the fingerprints) and the cases where the stamping of the travel documents would still be required. The Chair committed to have a closer look at them and possibly come back with a slightly revised version of the proposal.

3. Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of, entry data of third country nationals crossing the external borders of Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011

– **Presidency revised text**

– **12176/16 FRONT 342 VISA 286 CODEC 1253 COMIX 592**

Draft Regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008

– **Presidency note on the validity of bilateral agreements in relation to the legislative proposals on the EES and the Touring Visas**

– **12114/16 VISA 285 CODEC 1238 FRONT 345**

The Chair suggested focusing the discussion on the two major outstanding issues, namely the compatibility of bilateral visa waiver agreements with the EES and the calculation of stay in the four Member States not yet fully applying the Schengen *acquis*.

On the issues of the bilateral agreement (Art. 54), the Chair presented the drafting proposal by the Presidency. It sets up a procedure which allows to keep those agreements into force while making the EES work. The COM rejected this proposal on the basis of different counts. Firstly, it held that such a complex arrangement was set up only for a few agreements, excluding those which provide for a stay less than 90 days, creating more problems than it was deemed to solve. Secondly, the solution outlined was too cumbersome both for Member States and third country nationals concerned and had the practical consequence of extending the effects of bilateral agreements to Member States that were not party to them. In the same vein, eu-LISA also took the floor to note that such a change to the Commission proposal would change the specifications of the EES system and its budget.

NL, PL, AT, ES, EL, FR, RO supported the Presidency compromise as a good basis to pursue work, while asking, at least some of them, to further study it (notably the issue of transit through other States - i.e. the procedure to be followed where the third-country national would exit from the external borders of another Member State) and its financial implications. SE, CZ, NO, DK and FI echoed the Commission's concerns. DE insisted on the difficult implementation. AT, ES, BE and LV put a scrutiny reservation on Art. 54. Some delegations wanted this issue to be discussed in parallel in the Visa Working Party. The CLS intervened to confirm the legality of the solution proposed by the Presidency and to reply to some questions by delegations. The Legal Service of the Commission noted that the Commission did not know how many bilateral agreements were concerned by these provisions and invited Member States to share this information with the Commission. It also drew the attention of delegations to the fact that, should these agreements be renegotiated, that would be an EU competence now.

The Chair concluded that there was a general support to the Presidency solution and that, as a compromise, the Presidency would delete the paragraph on the transit through other Member States. It was also agreed that further work was to be closely liaised with the Visa Working Party.

On the use of the EES and the calculation of stay in the four Member States not yet fully applying the Schengen *acquis*, the Chair explained and defended the compromise put forward by the Presidency, which provided for a common calculator of the authorised stay (which shall then include the time spent in BG, RO, CY and HR). The COM and its Legal Service expressed their concerns at the solution proposed, that had, in their views, important practical implications on the current practice in the visa policy which could now, as a consequence, be considered wrong. In particular, the COM expressed concerns on three issues: on the partial access to the VIS by the Member State not yet fully applying the *acquis*, on the provisions mentioning the fact that stays in these Member States would be included in the maximum length of authorised stay which is currently applicable to stays within the area without controls at internal borders, as well as on the provisions providing for a change in the terminology used for the designation of the borders between a Member State fully applying the Schengen *acquis* and the Member States not yet fully applying the Schengen *acquis*. The CLS considered that the Presidency proposal offered a workable solution that would not burden the system.

BG, RO and HR supported the Presidency compromise proposal. HU put a scrutiny reservation on the whole Art. 3a, voicing concerns that investments in the EES at internal borders would not be covered by EU funds. EL put a scrutiny reservation on Art. 3a(2) because of the economic and administrative burden that it considered would be created by this provision.

The Working Party then thoroughly examined Art. 1 to 30 of the Presidency compromise proposal. The following Articles did not raise any question from delegations: 1, 2, 4, 5, 7, 8, 9, 16, 18, 21, 22, 23, 25, 26 and 27. The discussions focused mainly on the definition of "authorised stay", the quality of biometrics to be used in the EES, the use of the facilitated transit document, the conditions for using stamps on travel documents, the access to data to examine applications for international application and the conditions for access to EES by Europol.

For lack of time, the recitals and Article from 31 to 65 were not discussed. The Chair invited the delegations to submit written contributions until 7 October 2016. The next Working Party meeting is scheduled for 26 October 2016.

4. A.O.B.

None.