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from : German delegation
to : Working Party on Frontiers/Mixed Committee
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No. Cion prop. 6970/08 FRONT 28 VISA 72 CODEC 300 COMIX 165 (COM(2008) 101 final)

Subject: **Draft Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code**

In continuation of the discussions in the Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland) on 20/21 May 2008, the delegations will find attached a German suggestion for an additional wording for Article 1 of the draft Regulation amending the Schengen Borders Code, as regards the use of the Visa Information System (VIS).

Germany holds the view that it must be mandatory to systematically use and implement the VIS for entry checks on persons who wish to cross the EU's external borders to enter the EU and hold a Schengen visa. This is so in particular because the future VIS will be the safest and most modern tool to establish identities during entry checks.

Germany acknowledges that already at this stage there may be longer processing times or queues at the external European land borders especially during holiday periods. With all due respect for the difficulties this entails, these circumstances are predictable and plannable and do not require any further risk analysis. For this reason, Germany understands why some Member States are considering how to reduce waiting times.

However, Germany holds the view that we should not seek to define exceptions to solve the problems in hand, also against the background of the envisaged exit-entry system.

Germany has reservations with regard to all general exceptions from the systematic use of the VIS which go beyond what Article 8 of the Schengen Borders Code provides (relaxation of border checks as a result of exceptional and unforeseen circumstances).

Rather, we think that the infrastructure at the external borders should be developed and upgraded on an ongoing basis and in a purposeful manner in order to avoid permanent exceptions. This is what Germany and many other countries have been doing for many years, both at the land borders and at airports. The dynamic upgrading of the infrastructure in place refers in particular to staffing levels, the construction of, for instance, new lanes for EU citizens and persons with travel facilities, and the procurement of border control technology equipment (i.a. mobile readers and scanners).

In this context, the External Borders Fund provides financial means. High priority is given to measures to upgrade infrastructures. All Member States should make intensive use of these funds.

However, as measures to upgrade infrastructure cannot be implemented at short notice, Germany suggests:

- to allow exemptions from the systematic and mandatory use of the VIS in line with the proposal of the Slovenian Presidency for up to three years after the expiry of the period referred to in Article 18 (2) of the VIS Regulation and in compliance with the special provisions for specific groups of persons in line with Articles 18, 19 and Annex VII of the Schengen Borders Code. That would not require any amendment of the VIS Regulation.
- After the expiry of the above-mentioned period, the systematic and mandatory use of the VIS shall apply to checks on Schengen visa holders at the EU's external borders.

This compromise proposal would give Member States enough time to initiate and implement the relevant measures to upgrade their infrastructure. This circumstance could also be taken into account in the upcoming negotiations with the EU Parliament.

Therefore the German delegation suggests to add the following wording based on the Presidency's proposal:

Article 1
Amendment

In Regulation (EC) No 562/2006, Article 7(3) is amended as follows:
the following point (aa) is inserted:

- “(aa) if the third country national holds a visa referred to in Article 5(1)(b), the thorough checks on entry shall also comprise verification of the identity of the holder of the visa and of the authenticity of the visa, by consulting the Visa Information System (VIS) in accordance with Article 18 of Regulation (EC) No xx/2008 of the European Parliament and of the Council;

*By way of derogation, where traffic of such intensity arises that the waiting time at the border crossing point becomes excessive and all resources have been exhausted as regards staff, facilities and organisation and where, on the basis of an assessment of the risk related to internal security and illegal immigration, it is established that **based on Article 18, 19 and annex VII of this regulation** the consultation in the Visa Information System need not be systematic, such consultation may be carried out on a random basis for as long as these conditions are met. Consultation of the*

Visa Information System (VIS) shall, in all cases, be carried out in accordance with Article 18 of Regulation (EC) No xx/2008.

The second subparagraph shall be applied only for a maximum period of three years, following the transition period laid down in Article 18 para. 2 of the VIS Regulation.

the following sentence is added at the end of point (c)(i):

“such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No xx/2008;”

the following point (d) is added:

“(d) for the purpose of identification of any person who may not fulfil, or who may no longer fulfil, the conditions for entry, stay or residence on the territory of the Member States the VIS may be consulted in accordance with Article 20 of Regulation (EC) No xx/2008.”
