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NOTE

From:	French delegation
To:	Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject:	Note from the French authorities on Article 54 (bilateral agreements) of the draft Regulation establishing an Entry/Exit System

Article 20(2) of the Convention implementing the Schengen Agreement (CISA) provides that if a Member State concluded a bilateral visa waiver agreement with a third country on the list in Annex II of the Visa Regulation before the entry into force of the CISA (or the date of the Member State's later accession to the Schengen Agreement), the provisions of that bilateral agreement may serve as a basis for that Member State to extend a visa-free stay for longer than three months in its territory for nationals of the third country concerned.

Nationals of those third countries (which benefit from a visa waiver) may stay in such Member States for the period provided for by the bilateral visa waiver agreement in force between the Member State and the aforementioned third countries beyond the ordinary duration of 90 days in any 180-day period, usually for three additional months in the Schengen area.

For the record, France has concluded such agreements with seven third countries:

- Canada: agreement between France and Canada in the form of an exchange of notes of 6 and 7 April 1950;
- South Korea: agreement of 11 February 1967;
- United States: agreement in the form of an exchange of letters of 16 and 31 March 1949;
- Israel: agreement between France and Israel of 28 November 1969;
- Japan: arrangement of 18 November 1955;
- New Zealand: agreement in the form of an exchange of letters of 22 November 1947;
- Singapore: agreement in the form of an exchange of letters of 29 April 1985.

Practice has shown that beneficiaries of bilateral agreements in two or more Member States can therefore stay in the Schengen area legally by combining successive stays in different Member States that are parties to bilateral agreements with the same third country.

That is why, in the context of the discussions on the draft Regulation on the Entry/Exit System (EES) to register border crossings, the European Commission has proposed that such bilateral agreements be revoked.

The French authorities and the authorities of a number of other Member States opposed the amendment to this effect in Article 54 of the draft EES Regulation, on the grounds that it would damage the bilateral diplomatic relations which existed prior to the CISA.

On 20 September 2016 the Presidency therefore presented a compromise proposal on Article 54, allowing those Member States that wished to do so to maintain the bilateral agreements concluded before the CISA. However, this proposal, which is a step in the right direction, prompts the following two observations:

- The beneficiary of the bilateral agreement would have to contact the competent authorities to extend their stay: this condition would contravene the provisions of the bilateral agreements currently in force. The French authorities cannot accept this, because we consider that it is necessary to comply with all the provisions of bilateral agreements without changing them in order not to undermine relations between Member States and the third countries concerned;
- The beneficiary would have to exit by the external borders of the Member State that is the signatory to the bilateral agreement with the beneficiary's country of origin: this requirement seems superfluous, given that the current application of the agreements does not involve compliance with this condition. We are therefore opposed to this.

We therefore suggest reconciling the functioning of the entry/exit system necessary for ensuring the security of the area of free movement with the bilateral agreements concluded before the CISA as follows:

- Member States' bilateral agreements should be taken into account in the configuration of the EES, with, as proposed by the Council Legal Service at the meeting of the Working Party on Frontiers on 23 September 2016, the addition of a first display field on the screen indicating the extension period authorised by one or more bilateral agreements and a second display field specifying the Member States that are parties to those agreements. Thus, the system will automatically calculate the length of stay by integrating the details of the bilateral agreements;
- Member States should provide information on all their existing bilateral agreements, within three months of the entry into force of the EES Regulation, to enable them to be taken into account in the configuration of the system.

The French authorities are fully aware of the need to avoid beneficiaries of bilateral agreements being falsely identified as overstayers by the EES.
