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WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Frontiers
Subject:	Border Screening Regulation - Questionnaire on Article 4

Delegations will find enclosed a questionnaire from the Presidency on Article 4 of the Border Screening Regulation.

Deprivation of liberty and movement restrictions

Written consultation of the Working Party on Frontiers

Introduction

EU Member States (MS) and Schengen-associated States (SAC) use deprivation of liberty and restrictions on freedom of movement at the external borders to various degrees and for several, often-combined reasons, among which:

- 1) to control new arrivals and to prevent unauthorized entry;
- 2) to determine or verify identity;
- 3) for reasons of national security or public order or health;
- 4) to secure the presence and to prevent absconding during the processing of an asylum claim;
- 5) and/or to facilitate the return and removal.

In order to contribute to the discussions on the practical implementation of the proposed screening regulation (article 4), the current border control practice should be considered, to see how MS/SAC comply already now with the obligation to prevent unauthorized entry according to Article 14 (4) of the Schengen Borders Code (SBC). Moreover, it should be considered how these practices might also be applicable during the proposed screening phase.

When assessing the practical impacts, taking into account their degree or intensity, it is key to consider deprivation of liberty and restrictions on freedom of movement as well as other suitable measures below this threshold. Moreover, geographic conditions, the applicability in different situations (migratory pressure) or the respective law must also be considered. With this in mind, delegations are asked to fill out the following questionnaire.

It should become clear what possibilities and potential limits exist in this regard.

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:
 - a. Air Borders
 - b. Land Borders
 - c. Sea Borders
2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.
3. What specific legal limits or practical challenges are associated with the aforementioned measures?
4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?
5. Which of the above-mentioned measures are most commonly used at your external borders?
6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?
7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?
8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

We are also grateful for any other relevant information.