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LIMITE

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NOTE

from: General Secretariat
to : Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

Subject: **Presidency project for a system of electronic recording of entry and exit dates of third-country nationals in the Schengen area**

Delegations will find attached a compilation of the replies to the questionnaire on the Presidency project for a system of electronic recording of entry and exit dates of third-country nationals in the Schengen area, as set out in doc. 12251/08 FRONT 70 COMIX 612.

BULGARIA

1.1 Do you feel the aims envisaged are appropriate?

Bulgaria considers that the above mentioned aims of the system are appropriate and will ensure an effective counteraction to the illegal migration.

1.2 Do you feel the aims envisaged are adequate?

The creation of a such system would contribute to more effective management of the legal migration.

2.1 Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?

Bulgaria holds the view that as far as Article 10 of the Schengen Border Code refers to all third-country nationals crossing the border, all of them should be recorded in the system upon entry or exit, including persons checked on the “risk analysis” procedure and those whose documents are not subject to stamping (Article 10, paragraph 3).

2.2 Should derogations be allowed, and if so, what kind?

Derogations should not be allowed.

2.3 With regard to your border crossing points, what is your estimate of how many persons are concerned at entry and exit?

In 2007 4 700 000 third country nationals, 900 000 EU citizens and 8 000 000 Bulgarian nationals were checked at the Bulgarian borders.

3.1 What data do you feel should be collected?

All data collected for carrying out a control when crossing the border: vehicle data; date; hour; entry/exit; identifying personal data (name, sex, date of birth, travel document data); outcome of checks in the control registers (hit/no hit); biometric personal data as well.

3.2 Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?

Biometric data of third country nationals, who are not subject to a visa requirement, should be captured at the border crossing points.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

The alert will allow the national authorities to identify persons who exceeded the permitted term of their stay and to take the provided legislative measures regarding such persons, namely the provisions of Article 41, point 2 of the Law for the Foreigners in the Republic of Bulgaria envisaging compulsory taking to the border of a foreigner who did not leave the country till the expiration of the permitted term or in 7 days term after the notification about the refusal the stay to be extended. The decision for taking to the border is executed unless there are certain legal conditions for postponing its execution (Article 44 b, paragraph 1 of the Law for the Foreigners in the Republic of Bulgaria).

4.2 *Should an alert file be issued in the SIS?*

Yes. Bulgaria considers that the issuing of the alert in the SIS would bring added value in the fight against the illegal migration within the Schengen area.

4.3 *What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?*

- The person entered into the country with his own valid document and visa but this document was not presented during the identity check;
- The person entered into the country with a valid document but under somebody else's identity (false identity) and during the check he/she uses their own or other document, different from the one presented upon their entry;
- The person was not registered into the information system.

4.4 *Can you identify other situations that should be taken into account? And/or other repercussions?*

5.1 *Should the law prescribe sanctions in the situations described under 3 above?*

Yes. Sanctions should be imposed in the mentioned situations.

5.2 *In your view, would it be desirable for sanctions to be harmonised?*

Yes. It would be desirable the sanctions to be harmonized.

6.1 *What do you consider an appropriate period for holding data?*

Bulgaria thinks that the data should be stored for a period of 1 year, archived for a period of 5 years and after that to be deleted.

6.2 *Which authorities could have access to it and under what circumstances?*

The Ministry of the Interior, the judicial authorities, the Prosecutor's Office, the investigation services, the Ministry of Finance, State Agency "National Security" following consideration which of them are direct and which indirect users of the system.

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

"Border control" automatic information system registers all data of third country nationals (information about checked persons, their documents and vehicles). After Bulgarian accession to the EU data on border crossings of EU citizens (including Bulgarian nationals) are not recorded/collected, in accordance with Regulation 562/2006.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

The implementation of pilot project would be useful for examination of the functioning of such system. In the same time Bulgaria considers that the experience of Member States in registering of persons upon entry/exit should also be used.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

Bulgaria would participate in such pilot project however it is appropriate to consider the possibility of its implementation at the borders with most intensive migration pressure.

CZECH REPUBLIC

1.1 *Do the proposed aims seem adequate to you?*

Yes.

1.2 *Do the proposed aims seem sufficient to you?*

Yes.

2.1 *Do the persons concerned have to be the same as those referred to in Article 10 of the Schengen Borders Code in terms of the stamping of the travel documents of third-country nationals?*

Yes, the persons concerned have to be the same.

2.2 *Should any exceptions be allowed and, if so, what kind?*

Exceptions in general may cause difficulties.

2.3 *As regards your border-crossing points, how many persons do you estimate are involved on entry and on exit?*

There are five main air borders crossing points (international airports) in the Czech Republic. Our assessment of persons on entry/exit is about 4 millions per year.

3.1 *What data do you think should be collected?*

The Czech Republic is in favour of collecting both, alphanumeric and biometric data. The interoperability of the system with SIS and VIS is very important.

3.2 *Which do you think is the appropriate place for recording the biometric data of third-country nationals not subject to a visa?*

It could be VIS, the same place as place for nationals with visa obligation. The Czech Republic is in favour of 4 fingerprints collection on regional and central level. The place for biometric data collection should be any embassy of the Schengen state.

4.1 *Is the alert sufficient to provide a legal basis for the removal decision?*

It should be one of the conditions for administrative expulsion.

4.2 *Does an alert have to be entered in the SIS?*

Not automatically, possibly only in expulsion cases.

4.3 *What conclusions are to be drawn from the fact that a person checked within a Member State was not registered on entry (see presumed illegal presence in the event of date-stamping)?*

All circumstances of the case should be examined, it depends on the case type.

4.4 *Are you aware of other situations to be taken into account? And/or other conclusions?*

Misuse of the same document should be taken into account.

5.1 *On the basis of the situations described in point 3, should the legal instrument provide for sanctions?*

Probably yes.

5.2 *Do you think that such sanctions should be harmonised?*

The Czech Republic recommends harmonisation of sanctions.

6.1 *What do you think is an appropriate period for storing data?*

Generally 5 years with possibility to prolong the period in serious cases.

6.2 *Which authorities could have access to such data and under what conditions?*

Competent police authorities and representatives of embassies abroad maintaining conditions of security protection and security interests.

7.1 *Do you already have experience of or a project for registering entry-exit data? If so, can you give a short description?*

The Czech Republic has experience with document "State Border Crossing Report". It was registration form used before Schengen accession which contained personal data. It had to be fulfilled before entry and exit of the territory and it was stamped by border authority. It concerned foreigners with visa obligation. The data were stored at Directorate of Alien Police. Recently this system was abolished due to Schengen enlargement.

8.1 *Do you think that a pilot project would provide added value to the discussions taking place?*

If this project will be managed properly with great enthusiasm from all participants the Czech Republic is convinced that it will bring added value.

8.2 *If so, what type of project should be adopted (types of borders, target persons, etc.) and would you like to be involved?*

The Czech Republic appreciates our participation in the project. It should include all types of border crossing points.

DENMARK

- 1.1 *Do you feel the aims envisaged are appropriate?*
1.2 *Do you feel the aims envisaged are adequate?*

Denmark finds the aims outlined in the questionnaire both adequate and sufficient.

- 2.1 *Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?*
2.2 *Should derogations be allowed, and if so, what kind?*

As the entry-exit system is following the same purpose as the stamping of travel documents of third-country nationals, Denmark generally seen finds it adequate if the system is in accordance with both the Schengen Borders Code and the VIS regulation as regards to categories concerned and exceptions from registration. However it is too early in the process to eliminate a possible need for limiting the categories of individuals exempted from registration in an entry-exit system.

- 2.3 *With regard to your border crossing- points, what is your estimate of how many persons are concerned at entry and exit?*

Denmark does not hold statistic information on the number of third-country nationals entering Denmark by the external borders.

An unknown number of third-country nationals enter Denmark through Copenhagen Airport, particularly during the tourist season and especially Japanese and American citizens.

As part of the preparation of the implementation of VIS in Denmark, the Danish Police has completed a counting on the number of third-country nationals required to hold a visa entering Denmark through Copenhagen Airport during two randomly chosen weeks (third week in May and second week in August 2008).

The result showed a flow of 2.916 persons (dispersed on 85 different nationalities) and 2.561 persons (dispersed on 754 different nationalities), respectively during the two weeks.

The number of third-country nationals entering Denmark by other border-crossing points than Copenhagen Airport is estimated quite small.

- 3.1 *What data do you feel should be collected? Question 3.2: where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*
3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

In order to make the system as efficient and operational as possible, and at the same time reduce costs, Denmark finds that the optimal solution would be to store the data in an existing system where the interoperability is already secured e.g. SIS or VIS.

Regarding the type of data to be collected different elements should be considered. On the one hand, it is important that the entry-exit system is underlining the security-issue pursued in the Council conclusions on the management of the external borders, and using biometrics seems the most secure data to use. On the other hand, another objective on the entry-exit system is efficiency, and it should be considered whether the use of biometrics and the possible workload as a consequence is adequate, bearing in mind that the risk of illegal stay has already been estimated when deciding on whether or not a third-country national is required to hold a visa or not, and that the countries estimated high-risk are already thoroughly checked according to the VIS regulation.

4.1 Is the alert sufficient as a legal basis for the deportation decision?

The establishment of an entry-exit system is from the Danish point of view a tool in order to secure border management and the alert serves as a useful instrument for the national authorities in order to detect persons residing illegally. Whether an alert provides a legal basis for a removal decision should be decided on the basis of already existing regulation, and not be a part of the regulation on the system it-self.

4.2 Should an alert file be issued in the SIS?

As already mentioned above Denmark finds it useful to utilize already existing systems, and for this reason and in order to assure that information goes to all relevant sections, it seems reasonable to enter alerts in the SIS. This does however raise some practical issues. (See below, question 4.3 + 4.4).

4.3 What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?

4.4 Can you identify other situations that should be taken into account? And/or other repercussions?

It has to be considered how to handle situations where persons has not been registered on entry or exit due to temporary breakdown of systems or modification to border control according to Article 8 in the Schengen Borders Code. As the situation is similar to that of a foreigner who has not had his/her travel document stamped when crossing the border, a similar approach could be taken.

Another situation that should be taken into account is that of a third country national who has been registered entering the EU for a short period and afterwards obtains permission to a longer stay on a new basis. It has to be considered how to ensure that information about the legal stay appears in the system and who is responsible for doing such up-dates. It is important that time is not wasted on searching for persons supposedly residing illegally who are actually residing legally.

- 5.1 *Should the law prescribe sanctions in the situations described under 3 above?*
5.2 *In your view, would it be desirable for sanctions to be harmonised?*

As described above in the comments on question 4.1. Denmark regards the set-up of an entry-exit system as a tool in order to secure the external borders in the fight against illegal immigration and not as a legal instrument in order to sanction illegal stay, as this is already contained in existing regulation. Therefore Denmark does not find it appropriate to include sanctions in the regulation regarding the entry-exit system, nor to harmonize national legislation regarding this issue.

- 6.1 *What do you consider an appropriate period for holding data?*
6.2 *Which authorities could have access to it and under what circumstances?*

Denmark considers it extremely important that any regulation regarding common databases and sharing data complies with principles on data protection and human rights as stated in the Councils conclusions on management of the external borders.

For further discussions on this topic it seems natural to take into account discussions regarding the VIS, in order to ensure at least the same level of security when storing data on third-country nationals in an entry-exit system as with regards to the VIS.

- 7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

Denmark has no experience on entry-exit systems so far.

- 8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*
8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

It is difficult to imagine a pilot project that would actually show a realistic image of Schengen with a functional entry-exit system without involving all Schengen member states, since entry and exit can happen from/to all the member states. In general it seems relevant and necessary to use experience from the set-up and preparatory work on the VIS.

GERMANY

1.1 *Do you feel the aims envisaged are appropriate?*

In principle, Germany considers the aims envisaged appropriate. It is only unclear to what extent the management of economic migration can be improved by an entry/exit system. Here it should be made clear that the aim is to prevent abuses in the area of labour migration, in particular with regard to short stays for work purposes (seasonal workers).

1.2 *Do you feel the aims envisaged are adequate?*

Yes.

2.1 *Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?*

In principle yes, depending on the final form of the entry/exit system. All third-country nationals entitled to free movement should be recorded.

2.2 *Should derogations be allowed, and if so, what kind?*

Germany takes the view that derogations complicate the system and reduce its usefulness. Only derogations under Article 10(3) of the Schengen Border Code should therefore be provided for.

2.3 *With regard to your border crossing points, what is your estimate of how many persons are concerned at entry and exit?*

Number of travellers at German external Schengen borders in 2007			
Border	Entry	Exit	Total
Land borders	222 530 534	224 491 197	447 021 731
Sea borders	1 771 631	1 735 656	3 507 287
Airports	36 704 366	32 250 853	68 994 958
Total	261 006 531	258 477 706	519 523 976

Following the enlargement of the Schengen area to include the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic on 21 December 2007, a reduction in traveller numbers at Germany's external Schengen borders is forecast for 2008.

3.1 *What data do you feel should be collected?*

Alphanumeric: apart from the date and place of entry and the authorised maximum period of stay, all passport data and all data relevant to residence rights, including visa details should be collected.

There are no objections to gathering biometric data.

3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

In order to minimise the technical effort, the biometric data of third-country nationals not subject to a visa requirement could be collected at the same place as the biometric data of those who are subject to a visa requirement. Where technically feasible, one possible solution might be to extend the VIS accordingly.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

No. In Germany the requirements for deportation are governed by §§ 53 et seq. of the Residence Act. An alert showing that the authorised length of stay has been exceeded is neither a legal basis nor a sufficient condition for a deportation decision.

4.2 *Should an alert file be issued in the SIS?*

No, not automatically or necessarily. However, there should be an entry in the SIS where the applicable criteria/conditions are fulfilled.

4.3 *What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?*

From the legal viewpoint, this concerns a refutable presumption that the person (to the extent that he or she is a third-country national not entitled to move freely) is staying in the Member State unlawfully (cf. Article 11 of the Schengen Border Code).

The file in the entry/exit register should be supplemented later if and when the assumption of illegal stay is confirmed.

4.4 *Can you identify other situations that should be taken into account? And/or other repercussions?*

No.

5.1 *Should the law prescribe sanctions in the situations described under 3 above (N.B.: presumably they mean 4)?*

No. Some sanctions ensue from existing laws in the Member States; no provision should be made for new sanctions.

5.2 *In your view, would it be desirable for sanctions to be harmonised?*

No. See above under 5.1.

6.1 *What do you consider an appropriate period for holding data?*

Five years (similar to the Visa Filing System, cf. § 19, AZRG-DV (regulation implementing the Central Aliens Register) and to the VIS, cf. Article 23, VIS Regulation).

6.2 *Which authorities could have access to it and under what circumstances?*

The competent authorities in the Member States which need the data to perform their tasks should have access to it (in Germany this applies in particular to the border authorities, the aliens departments, the police and the Federal Office for Migration and Refugees).

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

No.

8.1 *Do you think the implementation of a pilot project would be helpful in the examination of this matter?*

Yes. Before starting a pilot project, however, it would if possible be better to wait until the VIS actually enters operation, so that the findings based on running a Europe-wide database with third-country nationals' biometric data can be taken into account.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

For practical reasons, a pilot project can usefully be carried out only at selected border crossing points. If the legal conditions have still to be laid down when the pilot project starts, the only possible option is for travellers to participate voluntarily. For this purpose German law would require a written declaration of consent, which can only be properly requested in the framework of a visa application procedure for example. It therefore seems appropriate to focus on third-country nationals from selected countries of origin who are subject to a visa requirement. The objective should be to test the essential processes and functions envisaged.

Based on the EU BIODEV project, a central database could be created at national level in which the least necessary movement data (time/place of entry/exit) could be stored, for example under a visa sticker number. As under this project, there could also be interfaces with links to visa data. The extent to which the EU BIODEV project might be developed further along these lines would need to be examined.

Germany would be prepared to participate.

ESTONIA

1.1 Do the proposed aims seem adequate to you?

Estonia agrees in general with the aims of the system. However, concrete tasks should be defined in more detail as a result of the forthcoming discussions in the Council.

1.2 Do the proposed aims seem sufficient to you?

In order to ensure smooth implementation of the entry-exit system it is important to keep its tasks as limited as possible and to focus on the main objective (to ensure that third country nationals are leaving on time). However, as an addition, we would propose for discussion following aims (preliminary ideas):

- to enable national authorities to supervise/control voluntary return and take appropriate measures;
- to provide information for criminal investigations (for example the system could help to determine whether the person concerned was in the EU or not etc);
- to facilitate information exchange regarding to circular migration (for example the system might help migration authorities with the calculation of residence- periods mentioned in the forthcoming Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment).

2.1 Do the persons concerned have to be the same as those referred to in Article 10 of the Schengen Borders Code in terms of the stamping of the travel documents of third-country nationals?

Estonia believes that the persons concerned should be the same as those referred in Article 10 of SBC.

2.2 Should any exceptions be allowed and, if so, what kind?

Estonia does not expect any exceptions from the Article 10 of the SBC.

2.3 As regards your border-crossing points, how many persons do you estimate are involved on entry and on exit?

According to preliminary estimation it will involve around 3 million persons per year.

3.1 What data do you think should be collected?

Relevant data should include at least: entry/exit date and time, border check point name, name and family name, date of birth, citizenship alphabetic symbol (according to ISO-3166), document type, document number, alphabetic symbol of state who issued document (according to ISO-3166), gender (male, female), fingerprint(s). In case of land borders it might be also useful to include type of transport (car, lorry, bus).

3.2 *Which do you think is the appropriate place for recording the biometric data of third-country nationals not subject to a visa?*

It requires thorough analyses, however, it is important to ensure that the solution will be user-friendly and practical. As a first reaction we would prefer a separate data bank for third-country nationals not subject to visa.

4.1 *Is the alert sufficient to provide a legal basis for the removal decision?*

Estonia does not believe the alert as such could be a sufficient basis for removal decision, but on the other hand it is definitely sufficient for starting relevant procedures (investigation to determine whether the person has a right for legal stay in EU territory etc).

4.2 *Does an alert have to be entered in the SIS?*

Estonia believes that alerts should be entered in the SIS.

4.3 *What conclusions are to be drawn from the fact that a person checked within a Member State was not registered on entry (see presumed illegal presence in the event of date-stamping)?*

There is a need to clarify whether the person has a right for legal stay or whether the problem is deriving from the administrative or technical errors. However we admit that it might be complicated in case of EU-wide system.

4.4 *Are you aware of other situations to be taken into account? And/or other conclusions?*

Similar situations might also rise during the entry to EU, if there is no indication in the system that a person has left from the EU territory previously (in case when the system includes a reference to previous entry but no information regarding to his exit).

5.1 *On the basis of the situations described in point 3, should the legal instrument provide for sanctions?*

Estonia does not believe that sanctions might be the best way of solving the problem. It would be better to think about establishing an information exchange mechanism for technical errors, sharing best practices on possible internal control mechanisms over border officers in charge (log files etc) etc.

5.2 *Do you think that such sanctions should be harmonised?*

Estonia does not believe that there is a need for harmonised sanctions. Every member state has its own administrative practices.

6.1 *What do you think is an appropriate period for storing data?*

It depends on the purposes of data collection and use, but 5 years might be a general rule.

6.2 *Which authorities could have access to such data and under what conditions?*

Depending on the aims and functions of the final system all relevant law enforcement authorities (Border Guard, Police, Criminal Police, Migration Board) and also consulates should have a limited access to the system, provided that they have a justified need for information.

7.1 *Do you already have experience of or a project for registering entry-exit data? If so, can you give a short description?*

Estonia has been collecting entry/exit data since 1997. Our domestic database (Border Information System) is integrated with our national visa register and enables to inquire necessary personnel data directly from the visa register. Visa register on the other hand is linked to several domestic databases that provide additional information regarding to person concerned. The system has proved very useful for determining violators, however, it has lost some of its additional value in Schengen conditions, since we cannot obtain an overview of all entries and exits.

8.1 *Do you think that a pilot project would provide added value to the discussions taking place?*

Estonia supports the idea of launching a pilot project, especially as comes to land borders. However this issue should be examined more thoroughly.

8.2 *If so, what type of project should be adopted (types of borders, target persons, etc.) and would you like to be involved?*

Estonia would be interested in taking part of a pilot project focusing on land borders and visa-holders as a main target group.

GREECE

1.1 Do you feel the aims envisaged are appropriate?

Greece considers that this system should also aim to:

- (a) comply (in a practical manner) with the aim pursued in Article (5)(1)(e) of the Schengen Borders Code;
- (b) confirm that a third-country national has been checked on entry at the border;
- (c) provide information on when, how, by which border guard and how many times the alien was checked on entry into and/or during his stay on the territory of a particular Member State;
- (d) facilitate the implementation of checks in cases of corruption, and inform foreign citizens of third countries where the imprint of the entry stamp is not clear, with the result that other administrative procedures within the country cannot be carried out;
- (e) create up-to-date records of persons entered in the database, as well as the travel documents produced by them, vehicles used by them (apart from means of public transport) and objects carried by them (e.g. weapons, banknotes, etc.).

1.2 Do you feel the aims envisaged are adequate?

2.1 Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?

In our opinion, all persons subjected to detailed checks at external borders (citizens of third countries and/or the EU, in cases set out in Article 7(2) of the Schengen Borders Code), irrespective of whether or not their travel documents are stamped, should be included.

2.2 Should derogations be allowed, and if so, what kind?

Exceptions may be made only for:

- Heads of State or dignitaries whose arrival has been officially announced in advance through diplomatic channels;
- Pilots and/or aircraft crew members, subject to periodic checks on such persons;
- Seamen who are present on the territory of a Member State only when their ship puts in and in the area of the port of call, subject to periodic checks on such persons.

2.3 With regard to your border crossing points, what is your estimate of how many persons are concerned at entry and exit?

The number of persons concerned at our border crossing points depends on the volume of entry or exit travel movement taking place at each individual point. In any case, the total number of staff involved in the procedure is 1560 persons.

3.1 What data do you feel should be collected?

Greece considers that alphanumeric and biometric data should be collected for, on the one hand, checking the national databases and the Schengen Information System and, on the other (using biometric data), checking the forensic databases. For the type of alphanumeric and biometric data, Articles 20 and 24 of Regulation (EC) No 1987/2006 (SIS II) could be taken as a basis.

3.2 Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?

Since the way in which this question is phrased leaves scope for broad interpretations, Greece considers that, if "appropriate place" means the border crossing points, then the biometric data of third-country nationals not subject to a visa requirement should be recorded at the first line of control. If, however, "appropriate place" is interpreted as the more general database recording the information relevant here (biometric data of third-country nationals not subject to a visa requirement), then this database may be the one which serves the needs of the Schengen Information System, insofar as the use of the future VIS database will be intended for third-country nationals subject to a visa requirement.

4.1 Is the alert sufficient as a legal basis for the deportation decision?

Yes, if the Schengen Information System is used. Otherwise a new legal basis would have to be created.

4.2 Should an alert file be issued in the SIS?

See reply 4.1.

4.3 What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?

It would have to be inferred that this person is illegally in the Schengen single area.

4.4 Can you identify other situations that should be taken into account? And/or other repercussions?

No.

5.1 Should the law prescribe sanctions in the situations described under 3 above (N.B.: presumably they mean 4)?

In our view, in the new regulatory framework there should be provision for sanctions against third-country citizens who overrun the period for which they are entitled to stay.

5.2 *In your view, would it be desirable for sanctions to be harmonised?*

These sanctions could be harmonised, particularly if the idea of issuing a fine is adopted.

6.1 *What do you consider an appropriate period for holding data?*

In our view the data should be stored, in accordance with Article 29 of Regulation (EC) No 1987/2006.

6.2 *Which authorities could have access to it and under what circumstances?*

The authorities responsible for carrying out entry and exit border checks, as well as those involved in checking the legality of residence of aliens within each Member State and those which carry out investigations into the activities of aliens (e.g. participation in a criminal organisation, search for false documents, etc.). The possibility of access to the entry/exit database by the authorities working within the country would have to be confined solely to the verification of the legality of entry and residence.

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

In Greece entries and exits are monitored electronically in the case of all persons subject to detailed examinations, in accordance with the Community acquis at the external borders. The databases for this procedure contain information concerning entries made under the computerised passport control procedure at all authorised entry/exit points, together with police checks from all the police stations in Greece. The data entered at the moment includes information on individuals, travel documents, vehicles, motorcycles, weapons and banknotes which have undergone a passport, police, traffic or archive check. Through this procedure, a search is possible using information on the individual, passport number, general police investigation register number, authorised entry/exit point, nationality and search period. Finally, it is possible to print out searches using this national procedure.

8.1 *Do you think the implementation of a pilot project would be helpful in the examination of this matter?*

Greece believes that the implementation of a pilot project would have added value for the development of an integrated entry/exit system in the EU.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

In our opinion the aims of this project should first be defined and adopted, Greece can then show their willingness to participate in this project.

SPAIN

As a preliminary point, the Spanish delegation considers that establishing a system for the electronic recording of entry and exit dates of third-country nationals is a very ambitious project, which will involve a major change from the current system of checks on persons crossing external borders and will entail a considerable effort by all Member States in terms of increasing both technical means and human resources.

If such an expensive system is put in place, its use should not be limited solely to checks on stays by third-country nationals. The Spanish delegation would like it also to be used under the Third Pillar and for there to be access to the system for the prevention, detection and investigation of terrorist offences and other serious offences, adopting an appropriate legal instrument under the Third Pillar.

1.1 Do you feel the aims envisaged are appropriate?

Under the First Pillar, the aims envisaged do seem appropriate.

1.2 Do you feel the aims envisaged are adequate?

Under the Third Pillar, the prevention, detection and investigation of terrorist offences and other serious offences should be included.

2.1 Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?

In our view, the persons concerned should be the same as those referred to in Article 10 of the Schengen Borders Code in connection with the stamping of travel documents.

2.2 Should derogations be allowed, and if so, what kind?

The persons exempted should be the same as in the Visa Information System (VIS). Account also needs to be taken of the special measures for checks on persons in local border traffic and the special system in place in Ceuta and Melilla (Article 26 of the Schengen Borders Code).

2.3 With regard to your border crossing-points, what is your estimate of how many persons are concerned at entry and exit?

As statistical data are currently collected in Spain, the number of persons crossing the external borders at authorised border crossing-points (entries and exits) includes the figures for both EU citizens and third-country nationals. It is not possible to determine the respective numbers of third-country nationals and of EU citizens, but there are estimated to be several million third-country nationals.

3.1 What data do you feel should be collected?

As regards the data which should be collected, in the entry and exit records the alphanumeric data should be those which appear in the machine-readable area of travel documents.

The collection of biometric data from third-country nationals will mean that entry checks will take more time, which could be highly problematic at some (especially land and sea) border crossing-points.

3.2 Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?

The data collected should be stored in a shared database.

4.1 Is the alert sufficient as a legal basis for the deportation decision?

A system which issues an alert when a person has exceeded the authorised length of stay is not sufficient as a basis for immediate deportation in Spain. In Spain, an individual administrative procedure has to be completed once the person has been found.

4.2 Should an alert file be issued in the SIS?

It would be an advantage if, when the data collection system is consulted, it indicates whether the person concerned has exceeded the authorised length of stay on previous occasions.

4.3 What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?

It should be borne in mind that there may be times when the entry and exit recording system is not operational, owing to some technical failure. It will not be possible, in our view, to close one or all border posts in these situations.

Consequently, presuming illegal residence in every case where an entry is not recorded is a complicated issue. If the travel document does not contain an entry stamp and the entry is not recorded, then the presumption of illegal residence can be made.

4.4 Can you identify other situations that should be taken into account? And/or other repercussions?

5.1 Should the law prescribe sanctions in the situations described under 3 above?

The recent Return Directive already prescribes sanctions for illegal residence.

5.2 *In your view, would it be desirable for sanctions to be harmonised?*

The Directive already contributes to the harmonisation of Member States' legislation.

6.1 *What do you consider an appropriate period for holding data?*

Data should be held for 5 years.

6.2 *Which authorities could have access to it and under what circumstances?*

The authorities which should have access to the system under the First Pillar are those responsible for:

- checks on persons at authorised border crossing-points
- immigration controls within the country
- identification of persons
- handling asylum applications,

as well as those specified by each Member State for purposes covered by the Third Pillar.

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

Spain has no experience of collecting entry and exit data.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

In our view, a pilot project on the implementation of this system could indeed be helpful

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

At the moment it is not possible to say whether Spain would participate in a pilot project of this kind. Spain would consider our participation when the time came.

FRANCE

1.1 Do you feel the aims envisaged are appropriate?

Yes.

1.2 Do you feel the aims envisaged are adequate?

- The system should also enable the legal entry of a third-country national via a BCP to be verified during checks within the territory of the Member States.
- It should help identify any person within the territory of the Member States who does not fulfil, or no longer fulfils, the conditions for stay or residence.
- It should facilitate the implementation of Regulation (EC) No 562/2006 establishing the Schengen Borders Code and Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
- Consideration could also be given to using it to prevent threats to Member States' internal security and to combat terrorism and organised crime.

2.1 Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?

Yes, for the sake of consistency with the Community instruments.

2.2 Should derogations be allowed, and if so, what kind?

Yes, the same derogations as listed in Article 10(3) of the Schengen Borders Code.

2.3 With regard to your border crossing-points, what is your estimate of how many persons are concerned at entry and exit?

On the basis of the data recorded at the main border crossing-points in 2007, France estimates that at least 35 million persons of all nationalities coming from a country outside the Schengen area are concerned at entry, while 38 million coming from France (within the Schengen area) are concerned at exit.

3.1 What data do you feel should be collected?

The biometric data that are collected should be the same and should be collected under the same conditions as those laid down in the VIS Regulation. With regard to third-country nationals subject to a visa requirement, a single fingerprint should allow consultation of both the VIS and the entry/exit system.

Apart from a person's alphanumeric and biometric data, consideration could also be given to including in the file other types of data whose collection is also provided for under Article 9 of the VIS Regulation, e.g. the address of the accommodation provider or place of residence, the final destination and the purpose of the trip or stay.

3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

As the legislation stands at present, the border would seem to be the appropriate place for recording the biometric data of third-country nationals not subject to a visa requirement.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

While an alert is equivalent to a presumption of illegal residence, it must give rise to a case-by-case examination.

4.2 *Should an alert file be issued in the SIS?*

Pursuant to Article 24 of Regulation No 1987/2006 on SIS II, files issued for the purposes of refusing entry or stay must be entered on the basis of a national alert resulting from a decision taken by the competent administrative authorities or courts, based on a threat to public policy or public security or to national security. Consequently, unless the SIS Regulation is amended (which does not seem advisable), it is not the overstays which would be entered in the SIS, but rather the resulting expulsion orders, insofar as they are accompanied by a deportation order (see the Return Directive, which is currently in the process of being formally adopted).

4.3 *What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?*

Presumption of illegal residence and, where appropriate, initiation of an expulsion procedure.

4.4 *Can you identify other situations that should be taken into account? And/or other repercussions?*

Establishment of an infringement must give rise to an active search for the person concerned.

5.1 *Should the law prescribe sanctions in the situations described under 4 above?*

National sanctions must be implemented under the conditions referred to in the Return Directive, which is currently in the process of being formally adopted.

5.2 *In your view, would it be desirable for sanctions to be harmonised?*

Yes, within the meaning of the Return Directive.

6.1 *What do you consider an appropriate period for holding data?*

Five years from the date on which the file was created, in line with Article 23 of Regulation No 767/2008 concerning the Visa Information System (VIS).

6.2 *Which authorities could have access to it and under what circumstances?*

In view of the aims referred to in point 1.2, the authorities responsible for carrying out checks at the BCPs, those responsible for monitoring the conditions for entrance or stay within the territory and those responsible for preventing, detecting and investigating terrorist offences and other serious criminal offences, and for the purposes of investigating such offences.

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

Yes, France is developing a project to establish an experimental file (GIDESE) on the island of Réunion to record the entry and exit of third-country nationals.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

Yes.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

The pilot project could be implemented at the air borders of several Member States within a defined geographical zone, taking account of the VIS deployment plan. Only the entry and exit of third-country nationals subject to a visa requirement would be recorded in such an experimental file.

France would like to be involved in such a project.

IRELAND

Ireland is not part of Schengen but would like to keep in touch with developments in Schengen and in order to be of assistance in respect of the Presidency questionnaire, provides the following information on its entry/exit controls.

At present, Ireland does not operate systematic exit checks. Persons are recorded on entry only if they are arriving to reside or are from high risk nationalities.

Non-EEA nationals residing in Ireland for a period in excess of 90 days are required to register with the Garda National Immigration Bureau and are issued with an ID card containing biographical information. In a recent development, the ID Card includes a print of their fingerprints.

Ireland is currently developing an electronic border information system, called IBIS. Phase 1 of IBIS will involve the collection of passenger data on all air and sea passenger journeys between Ireland and destinations outside the Common Travel Area with the UK. The system will operate initially on the basis that passenger information collected by carriers prior to departure will be sent to an Irish Border Operations Centre (I-BOC) where it will be screened against immigration, Garda, customs and other watch-lists. In the event that a match occurs between information provided by carriers and that contained on a watch-list, the relevant agency concerned would be alerted immediately, facilitating time to take appropriate measures to monitor, intercept, question, stop or arrest the individual concerned. It is similar to the UK system, but not as sophisticated.

Phase 2 of IBIS, involving the capture of data on passenger travel within the CTA, the expansion of the system to capture and analyse reservation data, as well as building profiling and intelligence gathering functionality, is dependent on the success of Phase 1 and will be examined at a later stage.

The Visa Information System (VIS) is not relevant to Ireland at present as it is meant to handle applications for short-stay Schengen visas only. It has been agreed in principle that Ireland (& the UK) will eventually have limited access to VIS. Any eventual Irish connection to VIS will need to be via a single national interface, most likely to be the Garda Síochána (the Irish police force).

ITALY

1.1 *Do you feel the aims envisaged are appropriate?*

Yes, they are.

1.2 *Do you feel the aims envisaged are adequate?*

Yes, they are.

2.1 *Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?*

Yes, they should.

2.2 *Should derogations be allowed, and if so, what kind?*

Italy deems it premature, at this stage, to answer this question.

2.3 *With regard to your border crossing- points, what is your estimate of how many persons are concerned at entry and exit?*

87.313.752 third-country nationals.

3.1 *What data do you feel should be collected?*

3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

At border crossing points, on condition that it is compatible with the VIS AND SIS procedures, which are going to be implemented in the near future.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

No, it is not at this stage of legislation.

4.2 *Should an alert file be issued in the SIS?*

Yes, it should be.

4.3 *What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?*

No definite inference can be drawn. Italy deems a thorough analysis necessary.

4.4 *Can you identify other situations that should be taken into account? And/or other repercussions?*

If all the procedures required are carried out (stamping of documents, alert entered in the SIS, data registration) no abnormal situation should ensue.

5.1 *Should the law prescribe sanctions in the situations described under 3 above?*

Italy does not have any proposal to put forward.

5.2 *In your view, would it be desirable for sanctions to be harmonised?*

Yes, in any case.

6.1 *What do you consider an appropriate period for holding data?*

According to the data protection legislation.

6.2 *Which authorities could have access to it and under what circumstances?*

Public officers who can access SIS and other national data banks.

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

No, Italy has not.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

Yes, it would be helpful.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

Italy thinks the project should be carried out at air borders.
Yes, in principle Italy would like to participate.

LATVIA

1.1 Do the proposed aims seem adequate to you?

Latvia considers that the aims mentioned above are adequate for preventing and reducing opportunities for third-country nationals to exceed the authorized period of their stay.

1.2 Do the proposed aims seem sufficient to you?

Yes, the proposed aims are sufficient.

2.1 Do the persons concerned have to be the same as those referred to in Article 10 of the Schengen Borders Code in terms of the stamping of the travel documents of third-country nationals?

Latvia supposes that the order should be the same as referred in Article 10 of the Schengen Borders Code.

2.2 Should any exceptions be allowed and, if so, what kind?

The allowed exceptions are defined in Article 10 of the Schengen Borders Code.

2.3 As regards your border-crossing points, how many persons do you estimate are involved on entry and on exit?

Approximately 4.2 million persons were checked on entry/exit on 2007.

3.1 What data do you think should be collected?

The Electronic Information System (hereinafter – REIS) of the State Border Guard of Latvia contains data on persons - non-citizens of the European Union, the European Economic Zone and Swiss Confederation - *crossing the state borders*:

- on crossing the state borders: place, date, time, direction (entering or exiting),
- on person crossing the state border: name(s), surname, sex, date of birth, nationality, ID number (if it is pointed in the travel document), purpose of travel (if person entering the Republic of Latvia), address of the place where person plans to stay in Latvia (if person entering the Republic of Latvia),
- on travel document of person crossing the state border: type, issuing state, series and number, date of issue, expiry date,
- on visa of person crossing the state border: number, type, expiry date, issuing state,
- on residence permit of person crossing the state border: number, type, expiry date, issuing state.

From 2009 it is also planned to collect biometric data (if this information is placed in travel document).

3.2 *Which do you think is the appropriate place for recording the biometric data of third-country nationals not subject to a visa?*

A separate section for recording the biometric data of third-country nationals not subject to a visa is necessary.

Currently data of all persons is collected in one database.

4.1 *Is the alert sufficient to provide a legal basis for the removal decision?*

The alert concerning lapse of period of stay is not sufficient to provide a legal basis for the removal decision.

4.2 *Does an alert have to be entered in the SIS?*

Yes, alerts have to be entered in the SIS.

4.3 *What conclusions are to be drawn from the fact that a person checked within a Member State was not registered on entry (see presumed illegal presence in the event of date-stamping)?*

From the fact that a checked third-country national was not registered on entry there could be drawn a conclusion that a third-country national has illegally entered the state and therefore should be detained in order to clarify the way how this person entered the state or why an official, responsible for registration, due to some reasons had not registered this person.

4.4 *Are you aware of other situations to be taken into account? And/or other conclusions?*

Latvia is not aware of other situations to be taken into account, however Latvia recognizes that such situations could be possible in the future.

5.1 *On the basis of the situations described in point 3, should the legal instrument provide for sanctions?*

Sanctions are determined under national legislation.

5.2 *Do you think that such sanctions should be harmonised?*

Harmonization of such sanctions is not necessary.

6.1 *What do you think is an appropriate period for storing data?*

Appropriate period for storing data in active database could be a period which is necessary for fulfilment of purpose, for which data was collected and updated.

6.2 *Which authorities could have access to such data and under what conditions?*

The security institutions of all Member States, which are responsible for control of the observation of residence regulations concerning third-country nationals, should be provided with access to such data.

REIS is organized in accordance with user group's approach, therefore there is a possibility for state authority's to get access to data which is necessary for fulfillment of their duties. All REIS users activities are registered. The following persons have the right to view and search data in REIS:

- State Border Guard's officers in order to fulfil theirs duties,
- other authorities for whom access to such system is stated in legislation.

7.1 *Do you already have experience of or a project for registering entry-exit data? If so, can you give a short description?*

The system REIS-2002 is created for the State Border Guard of Latvia. With support of this system it is possible to control the period of stay on the territory of the Republic of Latvia. Currently it is possible to receive report from REIS on:

- control of period of stay in accordance with authorized period of stay,
- calculation of period of stay for a person chosen by chance,
- control of period of stay in accordance with the end of the visa's expiry date,
- control of period of stay in accordance with accomplishment of period of stay,
- control of period of stay in accordance with the end of non-visa period of stay.

In accordance with the decision of the European Council on abolition of checks at the European Union internal borders (with the Republic of Lithuania and the Republic of Estonia) the State Border Guard of Latvia from 21 December 2007 carries out border checks only at border crossing points of European Union external borders, therefore the correct results are not obtained with the mentioned above reports.

8.1 *Do you think that a pilot project would provide added value to the discussions taking place?*

Latvia considers that a pilot project should be implemented at the external borders of the Schengen zone.

8.2 *If so, what type of project should be adopted (types of borders, target persons, etc.) and would you like to be involved?*

Latvia would agree to participate in the project realization.

LITHUANIA

- 1.1 *Do you feel the aims envisaged are appropriate?*
1.2 *Do you feel the aims envisaged are adequate?*

Lithuania thinks that the proposed aims of this system are adequate and sufficient.

- 2.1 *Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?*
2.2 *Should derogations be allowed, and if so, what kind?*
2.3 *With regard to your border crossing- points, what is your estimate of how many persons are concerned at entry and exit?*

Lithuania agrees that entry-exit system should be applied to third country nationals admitted for a short stay (up to 3 months), covering both those that are subject to the visa requirement and those that are not. Lithuania thinks that in principle there should be no exceptions.

Statistics on the flows of third country nationals in the year 2007

Direction	With visas, residence permits	With FTD	With FRTD	Total
To the Republic of Lithuania	1463037	31795	521859	2016691
From the Republic of Lithuania	1352337	30138	519653	1902128
Total	2815374	61933	1041512	3918819

FTD - Facilitated Transit Document

FRTD - Facilitated Rail Transit Document

- 3.1 *What data do you feel should be collected?*
3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

Lithuania suggests collecting only alphanumeric data.

Lithuania suggests collecting these data: name, surname, date of birth, number of travel document, type, number of visa, type, citizenship, sex, data and place of crossing the external EU border, biometrical data.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

The only fact of the alert would not be not sufficient providing a legal basis for the removal decision according to national law. According to the Article 126 of the Law on the Legal Status of Aliens, an alien shall be obligated to depart from the Republic of Lithuania if:

- 1) the alien's visa has been annulled;
- 2) the alien's temporary residence permit or permanent residence permit has been withdrawn;
- 3) the alien is staying in the Republic of Lithuania after the expiry of validity of the visa;
- 4) the alien is staying in the Republic of Lithuania after the expiry of the temporary residence permit;
- 5) the alien lawfully entered into the Republic of Lithuania, but is staying in the Republic of Lithuania without possessing a temporary or a permanent residence permit where he is obliged to possess one;
- 6) the alien has been staying in the Republic of Lithuania for a period exceeding the period of visa-free stay set for aliens.

According to the Article 126 of the Law on the Legal Status of Aliens, an alien shall be expelled from the Republic of Lithuania if:

- 1) the alien has failed to comply with the requirement obliging him to depart from the Republic of Lithuania within a set time period;
- 2) the alien has entered in or is staying in the Republic of Lithuania illegally;
- 3) the alien's stay in the Republic of Lithuania constitutes a threat to state security or public policy;
- 4) a decision has been taken to expel the alien from another state to which the Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.

According to the Article 126 of the Law on the Legal Status of Aliens, aliens, including minor aliens under the age of 18 who stay unlawfully on the territory of the Republic of Lithuania may be returned voluntarily or by force to the country of origin or to a foreign country to which they have the right to depart. The question of the alien's return shall be decided in cooperation with foreign countries and international organizations according to the concluded international treaties.

Lithuania would like to draw attention to the Article 11 of the Schengen border code (Article 11 "Presumption as regards fulfilment of conditions of duration of stay"). In part 1 of this Article the general principle is foreseen – if the travel document of a third-country national does not bear an entry stamp, the competent national authorities may presume that the holder does not fulfil, or no longer fulfils, the conditions of duration of stay applicable within the Member State concerned. In part 2 and 3 of this Article, besides other norms, it is foreseen that – the presumption may be rebutted where the third-country national provides, by any means, credible evidence, such as transport tickets or proof of his or her presence outside the territory of the Member States, that he or she has respected the conditions relating to the duration of a short stay. Should the presumption not be rebutted, the third-country national may be expelled by the competent authorities from the territory of the Member States concerned.

So, Lithuania thinks that the principle could be adopted and applied to the question of alert and the legal consequences of it and removal decision.

Especially it is important that the presumption of illegal stay may be rebutted not only where the third-country national provides credible evidences, but as in the Communication it is foreseen that in exceptional cases (e.g. a national visa granted due to flight cancellation, illness or other justifiable reason) or of a change of the status of the person (e.g. extended right of residence) the system information should be updated by the authorities responsible for taking the decision, and such information could be by mistake not updated and the alert could be shown.

4.2 Should an alert file be issued in the SIS?

Duplication of the systems – entry-exit system and SIS should be avoided. As an alert is the structural part of an entry-exit system and logically it should be entered into entry-exit system. The access to entry-exit system will have not only state border guards, but other institutions too (institutions, taking decision on removal, on change of the status of the person and etc.) and the alert should be directed to the competent institutions.

4.3 What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?

If a person checked within a Member State was not registered on entry the illegal presence can be presumed. In addition to that, see answer to question 4.1.

In this case in the entry-exit system there should be foreseen comments/remarks box, where, taking account to all the evidences, state border guard could enter additional information about the fact that person entered Schengen territory (entry data and place) and information, that such person was not registered on the entrance.

4.4 Can you identify other situations that should be taken into account? And/or other repercussions?

No.

5.1 Should the law prescribe sanctions in the situations described under 3 above?

5.2 In your view, would it be desirable for sanctions to be harmonised?

Lithuania thinks that if the person broke the law sanctions have to be applied.

According to national law the sanctions could be applied. For example Article 206 of the Code of Administrative Offences violation of the procedure of aliens' entry / stay in / passing in transit through / exit from the Republic of Lithuania carry on warning or fine.

Yes, Lithuania thinks that sanctions should be harmonized by providing minimal standards.

- 6.1 *What do you consider an appropriate period for holding data?*
6.2 *Which authorities could have access to it and under what circumstances?*

Lithuania thinks that such a period should be not less than 1 year.

Looking to the aims set for this system Lithuania thinks that such authorities could be the authorities responsible for executing border checks, fight with illegal migration, implementing migration control (issuing of visa, taking decisions on removal and etc.), also police, migration units and security services.

- 7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

Yes. State Border Guard Service under the ministry of the Interior has set up and administers its internal databases (VSATIS information system). With the aim of exchanging information other law enforcement agencies have access to databases administers by the SBGS on the basis of inter-agency agreements. In VSATIS data on persons and transport vehicles that crossed state border of the Republic of Lithuania are stored. Besides other data such date on persons are collected: data, direction and place of crossing state border; citizenship; sex; number and type of persons document; personal code; title of border crossing point; connection with transport vehicle and etc.

This system works on *on-line* regime.

- 8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*
8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

Yes, Lithuania thinks that a pilot project would be useful and would provide added value.

Yes, Lithuania would like to participate. SBGS could share its experience and it would be useful to discuss with other EU Member States and EU institutions about what to expect from this project, what we would like to see and etc.

The pilot project first of all could be organized in airports applying to all third country nationals. The possibility of adopting this project in several EU member states should be considered

LUXEMBOURG

1.1 *Do you feel the aims envisaged are appropriate?*

Yes.

1.2 *Do you feel the aims envisaged are adequate?*

Yes.

2.1 *Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?*

Yes.

2.2 *Should derogations be allowed, and if so, what kind?*

On the face of it, an exception could be envisaged for holders of diplomatic or service passports.

2.3 *With regard to your border crossing-points, what is your estimate of how many persons are concerned at entry and exit?*

In 2007 +/- 500 000 passengers crossed the Schengen external border in Luxembourg. About 1/10 of these passengers were third-country nationals. There are therefore +/- 50000 persons concerned.

3.1 *What data do you feel should be collected?*

The data to be collected should be: Surname, first name, date and place of birth, nationality and fingerprints. For third-country nationals subject to a visa requirement, data on the visa issued could be recorded: visa number, validity, place issued and type of visa.

3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

Either at the border, where an IT system would have to be installed, or else an application would be made before travelling. This would be comparable to the system already in place in Australia or the system which is to be established in the United States in January 2009.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

Yes, after consulting the Minister responsible.

4.2 *Should an alert file be issued in the SIS?*

Yes.

4.3 *What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?*

Either the person is already residing within EU territory illegally or else they entered it illegally (crossing the border without authorisation). In either case, a detailed investigation is required in order to establish what the third-country national's situation is.

4.4 *Can you identify other situations that should be taken into account? And/or other repercussions?*

Not at present.

5.1 *Should the law prescribe sanctions in the situations described under 3 above?*

Sanctions must of course be prescribed.

5.2 *In your view, would it be desirable for sanctions to be harmonised?*

Yes, in principle, but not necessarily!

6.1 *What do you consider an appropriate period for holding data?*

The data collected should be held for a period of at least 5 years; otherwise the system cannot function properly.

6.2 *Which authorities could have access to it and under what circumstances?*

In addition, the Minister responsible, embassies and other bodies which can issue visas.

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

No.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

A pilot project is unnecessary, as a fast react is necessary to combat illegal immigration.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

If a project of this kind were set up, our external border should be chosen.

In order to participate in such a project, Luxembourg would have to take a decision at a later stage, but Luxembourg is in principle in favour of starting without a pilot project, since it would delay the project for several more years.

HUNGARY

1.1 *Do the proposed aims seem adequate to you?*

1.2 *Do the proposed aims seem sufficient to you?*

Yes, the proposed aims are adequate and sufficient.

2.1 *Do the persons concerned have to be the same as those referred to in Article 10 of the Schengen Borders Code in terms of the stamping of the travel documents of third-country nationals?*

Hungary suggests that all third country nationals should be included.

2.2 *Should any exceptions be allowed and, if so, what kind?*

No exceptions should be allowed, since the main purpose of the system is to establish the period of stay and detect persons overstaying within the Schengen area.

2.3 *As regards your border-crossing points, how many persons do you estimate are involved on entry and on exit?*

The figures of the first 6 months of 2008 in Hungary show about 30 000 third country nationals per day at the Hungarian external borders. Hungary already registers the entry and exit of all third country nationals.

3.1 *What data do you think should be collected?*

- First and family name
- date and place of birth
- sex
- nationality
- the type and serial number of the travel document
- the type and the number of the visa
- data on the vehicle used by the person

3.2 *Which do you think is the appropriate place for recording the biometric data of third-country nationals not subject to a visa?*

This question has to be taken into consideration very carefully. The only place where the fingerprint of such third country nationals could be taken is the border crossing point at first entry (external border), but at land borders it may cause extra waiting times. It should be examined whether biometric data is necessary at all for registering entry and exit and whether it represents added value. The biometric data of the third country nationals who are not exempt from visa requirement shall be stored in the VIS and not in the entry-exit system, so why include biometric data of third country nationals enjoying visa free regime.

4.1 Is the alert sufficient to provide a legal basis for the removal decision?

The alert itself establishes the fact of the overstay, therefore the sanctions applied by Member States in case of overstay may be applied without further formalities.

At Community level, however, it could also be included in the (draft) Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (still to be adopted). When the legal basis for entry and exit system is discussed it might be necessary to examine whether the above mentioned Directive has to be modified.

4.2 Does an alert have to be entered in the SIS?

It could be entered into the SIS if the overstay is a basis for an alert of ban on entry and stay at the same time.

4.3 What conclusions are to be drawn from the fact that a person checked within a Member State was not registered on entry (see presumed illegal presence in the event of date-stamping)?

Same conclusions as in those cases when the travel document does not include entry stamp (authorities may presume, that the person stays illegally and this presumptions could be rebutted).

4.4 Are you aware of other situations to be taken into account? And/or other conclusions?

5.1 On the basis of the situations described in point 3, should the legal instrument provide for sanctions?

Hungary can not interpret this question since under Point 3 there is no such act which could be sanctioned.

If the question refers to Point 4, the answer is yes. The legal instrument on entry and exit system however, should take into consideration that overstay might already have harmonised sanctions under the Directive mentioned at 4.1.

5.2 Do you think that such sanctions should be harmonised?

No.

6.1 What do you think is an appropriate period for storing data?

At least 6 month, since the lengths of the legal stays always fall within a six-month period.

6.2 *Which authorities could have access to such data and under what conditions?*

- Authorities carrying out border checks and for checks on third country nationals within the territory of Schengen
- Investigative authorities in case of crime prevention and crime detection
- Courts (related to a case under trial)
- Prosecution services (related to particular cases)
- Aliens policing authorities when dealing with applications for stay
- Asylum authorities in connection with applications

7.1 *Do you already have experience of or a project for registering entry-exit data? If so, can you give a short description?*

Yes, Hungary has been applying border register system since 1989. Automatic entry and exit system has been applied since 1999. The system - by reading the travel document, visa, residence permit or local border traffic permit (any of them) - automatically registers the entry and exit of third country nationals. The query goes to various data bases at the same time (national and Schengen databases) and the answer arrives within 10 sec. while the registration is also done automatically.

First and family name, date and place of birth, sex nationality, the type and serial number of the travel document, the type and the number of the visa and the data on the vehicle used by the person is stored for 6 months. Biometric data is not stored under this system. Apart from the border control authorities,

- investigative authorities in case of crime prevention and crime detection
- Courts
- the Prosecution services
- the Aliens policing authority
- the Asylum authority and
- the national security authorities

may request data from the border register while carrying out their duties stated by law.

The system is supported by an automatic number plate reader system at the border crossing points. Register at railway, boats and coaches may also be done by using mobile devices (document readers) with mobile gprs or wi-fi connections.

The database supports preliminary checks at aircrafts and the migration related checks within the territory of the country as well. By making query in the system (online by mobile devices or via radio communication) it could be established whether the person overstayed or not.

During border checks, the system recognises the category of the third country nationals so when making query on persons enjoying the right of free movement in databases the system does not register their data.

8.1 *Do you think that a pilot project would provide added value to the discussions taking place?*

Yes. Especially, if biometric data is to be applied as well.

8.2 *If so, what type of project should be adopted (types of borders, target persons, etc.) and would you like to be involved?*

Special attention should be paid to land BCP-s.

POLAND

1.1 Do the proposed aims seem adequate to you?

At present the proposed aims seem to be adequate. They are staying at the large level of generalization and they could take more precise nature in the future, pointing out possible ways of their implementation. Among others, the mutual relation between such systems as entry-exit, SIS and VIS will require to be specified more precisely, especially in the context of both the aim and the way of collecting and processing the data.

1.2 Do the proposed aims seem sufficient to you?

The above mentioned aims may be complemented with the following item:
“increasing safety and facilitating travelling for third-country nationals, with use of the effective technologies for automatisation.”

Additionally it is worth to consider complementing the system with functionality supporting local border traffic.

Additional editorial mark:

Poland suggests to make the first mentioned item more specific by replacing the word “persons” with the following phrase “third-country nationals who are both subject and exempted from visa requirements”.

2.1 Do the persons concerned have to be the same as those referred to in Article 10 of the Schengen Borders Code in terms of the stamping of the travel documents of third-country nationals?

Yes. Data of the persons referred to in Article 10 of the Schengen Borders Code should be entered to the system, however without abandoning registration in the system cases that are described in the last part of paragraph 3.

“Exceptionally, at the request of third-country national , insertion of an entry or exit stamp may be dispensed with if insertion might cause serious difficulties for that person.”

Moreover, the type of persons whose data will be registered in the system should be indicated, in particular regarding to so called “registered travellers” and bona fide travellers. Categories required to achieve a status of Registered Traveller should also be determined. The rest of the criteria could be similar to these which consider the persons applying for a multi-entry visa.

2.2 Should any exceptions be allowed and, if so, what kind?

In order that the system be efficient, that is to count the length of stay of the third-country nationals in the EU territory, it is not recommended to make any exceptions form the rules of entering the alphanumerical data to the system, including particularly these data which are referred to in Article 8 of the Schengen Border Code (SBC) (relaxed border checks). As it was mentioned in 2.1 an exception should not be made in the circumstances described in Article 10, sec. 3 SBC (the last paragraph)-that is dispensing on request of the person.

However, the possibility of exceptions from entering and checking the biometric data in the system should be taken into consideration. Also protection of rights of certain groups of travellers for whom this procedure might create disproportionate burdens in relation to the probability of overstay should be considered.

2.3 *As regards your border-crossing points, how many persons do you estimate are involved on entry and on exit?*

In 2007, 50 m. persons, including 26 m. aliens crossed external national border of Poland:

- entry: around 25m., including around 13m. aliens,
- exit: around 25m., including around 13m. aliens.

In the first half of 2008, 18m. including 6.5m. aliens crossed the external national border of Poland:

- entry: around 9m., including around 3m. aliens,
- exit: around 9m., including around 3m. aliens.

Significant drop in border traffic that was reported in the first half of 2008, was connected with the fact of Poland's joining the Schengen zone (*inter alia* abolition of border controls at the internal borders of the EU, introduction of paid Schengen visas for the nationals of the third countries adjacent to Poland).

3.1 *What data do you think should be collected?*

Following data should be collected in the system:

alphanumeric:

- nationality,
- first name/names,
- surname/s,
- birth date,
- gender,
- time and place of crossing the national border (entry, exit),
- type and number of the travel document/visa

biometric

- fingerprint data,
- face image.

When designing the basic guidelines for the system, the number of fingers from which fingerprints would be collected should be determined (in particular it concerns the nationals of the countries which are exempted from visa requirements, national visa holders, long term visa holders). In the Polish Border Guard's point of view, fingerprints of 10 fingers should be taken from the persons who are crossing the EU border for the first time and their data have not been yet registered in the VIS system. During the next entries, rules similar to these introduced in VIS should be applied (1 to 4 fingerprints), if it has not passed enough time after which these data are deleted (see question 6).

It should be noticed that these data has to be taken from some persons at the border, at least at first time. Situations like this can significantly prolong the border control duration.

3.2 *Which do you think is the appropriate place for recording the biometric data of third-country nationals not subject to a visa?*

In our opinion at present, the possibilities within the functioning databases should be checked, and then on such basis, introduction of possible changes or building new databases should be considered. It is vital that placement of the database be the most economical solution and at the same time effective and convenient for the Member States.

4.1 *Is the alert sufficient to provide a legal basis for the removal decision?*

An alert signals the necessity of carrying out the further stipulations. The information received from the system may not be the only ground to refusal decision. It happens sometimes that prolonging of the alien's stay occurred not through his/her fault (i.e. stay at hospital, failure of means of transport, other objective circumstances). A traveller should have a chance of giving an explanation on circumstances of overstay. This information should be used to initiate an explanation proceeding in such case. Only on the basis of the gathered materials, a refusal decision may be issued in well-grounded cases. It is highly important to work out the procedure or the mechanism, which allow to effective verification of controversial cases, moreover the process of explanation can not negatively influence on the realization of the system aims.

A commonly applied national or community law should be used as a ground for imposing any sanctions.

4.2 *Does an alert have to be entered in the SIS?*

Taking into consideration above mentioned legal issues, information received from the system about elapsing of the time of an alien's stay, may not be the basis for entering this person's data to SIS on equal conditions as an alert. As it was already mentioned before, it is important to define the mutual relation between those systems, as well as VIS.

Presented so far documents do not indicate whether the entry/exit system will be available for other authorities (apart from border services) who perform control within the territory of their country. If such an option will not be considered, it would be justified from the practical point of view, to enter to the SIS records on overstays in the form of just information, in order to support the control of aliens' right to reside within the Schengen territory.

4.3 *What conclusions are to be drawn from the fact that a person checked within a Member State was not registered on entry (see presumed illegal presence in the event of date-stamping)?*

Each case should be considered separately. It is the Member State who examines the circumstances on the basis of which takes appropriate decisions.

The explanatory proceedings should be initiated in a case when a person whose data are not present in the system (but he/she has a border control stamp in the passport) is revealed in the EU territory, in order to exclude stamp forgery (contact with the border crossing point). The system should be able to enter new data, if it turns up that this lack of data in the system arose not due to the alien's fault. The system should link in pairs, entries and exits of aliens and inform the operator on the lack of a particular record, i.e. entry after entry ("exit" is missing) and vice versa. It should also count duration of alien's subsequent stays and inform on expiry of a visa (as well as on approaching of its expiry date), and on the fact that 3-month of stay per half a year has been already used up (as well as on number of days left to be used within the given half a year). The system should automatically inform on expiration of allowed stay duration, only when a given alien is undergoing the border control.

However, detecting, during control within the Schengen territory, that data of the checked person has not been entered to the system during entry should not be decisive on placing the blame on the traveller. In such cases it will be necessary to make additional checks and explanations.

4.4 Are you aware of other situations to be taken into account? And/or other conclusions?

Over 10 years of Poland's experiences in usage of a border control support system and registration of the travellers different categories have shown that in practice that some cases and circumstances might occur sometimes which are difficult to predict and consequently could not be anticipated during creating the system and which the system cannot operate. This argument indicates there is a need for the system to be flexible as much as possible having regard to objectives of its creation, the users' needs and the legal provisions. In order for the system to fulfil its objectives it is vital to clearly and precisely define what categories of travellers are subjected to registration. Collecting incomplete data may cause various difficulties - the system should be able to obtain 100% of information on the persons who underwent border control, in particular on persons who crossed the national border.

An example of such an unexpected situation can be a case when entry takes place on the basis of a short term visa, but the given person extends his/her stay in accordance with the national law, e.g. obtains a temporary residence permit. In such case the best solution would be if the system, before it generates an alert, consulted with other systems- in this case, with the national administrative decisions register.

It is also important to mention the specific situation of some of third country citizens, who are not subject of the visa requirements. They are not obliged to obey the limit of stay to 90 days in every 180 days without visa. Bilateral agreements between some of the third countries and one of the Member States foresee the possibilities of stays to 90 days without any additional requirements. European Commission, on the basis of Article 20 point 2 Schengen Convention, expressed the opinion, that people, who are subject to those agreements, can leave the country after 90 days and the next day they can come back to the country, starting the new 90 day period. They are not obliged to leave the Schengen zone, if the country of origins signed this kind of bilateral agreement with more than one Member States. The cases concern inter alia the citizens of USA, Israel and the South Korea. So those people are able to stay in the Schengen area for longer time in the conditions of the short stay without the visa requirements.

In those cases the system should be filled up with the functionalities which concern the citizens of the listed third countries and allow to received this information in the consultation process before launching the alerts.

5.1 On the basis of the situations described in point 3, should the legal instrument provide for sanctions?

Yes, there is need for appropriate legal instruments which would concern sanctions. These may be guidelines for Member States, indicating the way of constructing new national legal provisions, as well as community's law concerning sanctions against aliens.

5.2 Do you think that such sanctions should be harmonised?

Yes, such sanctions should be harmonized, in particular the criteria of imposing sanctions should be uniform for all Member States.

6.1 What do you think is an appropriate period for storing data?

The period of storing data in the system should be verified dependent on a particular case.

In the case when an alien had entered the Schengen territory and left this territory without infringing any provisions, his records can be stored through a shorter period.

The period of storing data in the system in controversial situations should be longer. In general while determining the periods of storing data on the third-country nationals who cross the border, one may use an analogy to the VIS system where the period of storing the data is at least 5 years.

6.2 Which authorities could have access to such data and under what conditions?

The authorities involved in protection of public order should have an access to the system and the registered data. The process of collecting data should be in conformity with provisions of Article 6 of Directive 95/64/EC. Moreover, the border services should have the most extended access to the system (entering, modification, cancellation of records) and the other appropriate services should have an access to the system on the "hit - no hit" basis - the police, immigration services, a ministry competent in the field of foreign affairs, authorities dealing with prevention, detection or prosecution of terrorist crimes and other serious offences, provincial offices/local authorities of the analogical competences which justify such access/, labour offices.

7.1 *Do you already have experience of or a project for registering entry-exit data? If so, can you give a short description?*

For over 10 years the Polish Border Guard have been using an electronic system supporting control of the border traffic that operate on the basis of premises similar to these of the entry/exit system. Apart from the border control of persons, this system enables checks and registration of motorized vehicles crossing the national border. For a year the system has been also used for the national border surveillance and control of residence legality in the Polish territory. Besides the border traffic control, its basic objectives include: enabling to determine the time, place and circumstances of border crossing in a case when search, investigative or operational activities are taking place, and passing the evidence for broad analyses. The Border Guard (BG) collect in the system all data that have been entered by a BG officer during the border control.

Currently a new system is being built which will constitute the BG Central Database in the future. The former functionality will be developed *inter alia* with an option for the system to communicate with other EU external systems (VIS and SIS II) and other national systems. It will also enable the persons' border control in local border traffic and supporting the second line control, including actions regarding visa application procedures, removal procedures and other administrative border procedures. The system will enable the persons' biometric control (e-passports, visas).

In our point of view, our system is similar to the designed entry-exit system in many ways and functionalities. Therefore Poland will be glad to share our experience and information in this field.

8.1 *Do you think that a pilot project would provide added value to the discussions taking place?*

Yes, from practical/technical point of view an introduction of a pilot project would be a good idea. At the same time one must think of how to solve the issue of organization of the pilot project in a limited number of states, in the situation of lack of the border control between the countries that will participate in the project and those which will not participate (i.e. in a case when entry or exit occurs in the country which is not participating in the project).

8.2 *If so, what type of project should be adopted (types of borders, target persons, etc.) and would you like to be involved?*

The pilot project (if it is possible to be achieved) should include all types of border crossing points, especially those, where implementation of the system would be the most difficult one. At the same time it is important that the pilot project will allow eliminating the bugs and errors. Moreover it should also check the effectiveness of the system.

The Polish BG is interested in active participation in works on the entry/exit system, including using our own experiences from the national system.

ROMANIA

1.1 *Do the proposed aims seem adequate to you?*

Yes.

1.2 *Do the proposed aims seem sufficient to you?*

Yes.

2.1 *Do the persons concerned have to be the same as those referred to in Article 10 of the Schengen Borders Code in terms of the stamping of the travel documents of third-country nationals?*

Yes. However, it is necessary to clarify the legal status of third country citizens, family members of an EU citizen, under the application of the provisions of EU Directive 38/2004, who are in possession of the residence permit mentioned in Article 10 of the above-mentioned directive.

2.2 *Should any exceptions be allowed and, if so, what kind?*

Control activities performed on third country citizens provide no exceptions from thorough investigations, thus there should not be any exceptions in the instrument of implementing this request for thorough control.

2.3 *As regards your border-crossing points, how many persons do you estimate are involved on entry and on exit?*

Below the traffic values for all citizens crossing the Romanian borders during the last 3 years is listed. An increase of these values for 2008 can be estimated.

TRAFFIC VALUES FOR INDIVIDUALS IN ALL BCPs	
2007	36.619.238
2006	29.344.757
2005	25.500.535

3.1 *What data do you think should be collected?*

Alphanumeric. The system in itself will be made up in order to supplement the border control capacities, and should only extract the necessary data in order to achieve its purpose. Adding to the data already being collected in border crossing points, allowing checking of data bases involved by border control proceedings, the system should only extract the necessary data for the calculation of the period of stay, which will be afterwards corroborated with the identification data.

3.2 *Which do you think is the appropriate place for recording the biometric data of third-country nationals not subject to a visa?*

Biometrical data should not be collected in the purpose of the implementation of the system stated by point 1 of the present document – only alphanumeric data is required for the functioning of this system.

4.1 *Is the alert sufficient to provide a legal basis for the removal decision?*

No alerts should be issued after the authorized period of stay has lapsed, as there are many occasions stated by Romanian law (as well as legal provisions of other Member States), stating the possibility of prolongation of the period of stay; situations may also arise where the individual's exit has not been properly implemented, as a result of a human or a technical mistake – thus, even if the person left the Member State during its legal period of stay, a subsequent alert may be mistakenly issued. The individual is to be discovered upon exit, and the necessary measures will be taken according to the national legislation of the Member State, as well as the European legal framework

4.2 *Does an alert have to be entered in the SIS?*

No, as stated by the previous point (4.)1.

4.3 *What conclusions are to be drawn from the fact that a person checked within a Member State was not registered on entry (see presumed illegal presence in the event of date-stamping)?*

According to Article 11 of SBC, if the travel document of a third country citizen does not have an entry stamp, the competent national authorities are entitled to assume that the holder of the document does not fulfil, or no longer fulfils, conditions related to the length of the stay.

4.4 *Are you aware of other situations to be taken into account? And/or other conclusions?*

- the person is severely ill and hospitalized,
- the person has been imprisoned,
- the person has crossed the border illegally,
- the death of the person.

5.1 *On the basis of the situations described in point 3, should the legal instrument provide for sanctions?*

This system can check data related to entry/exit, the lapse of the period of stay or illegal entries. If these acts are punished by the national law, this is sufficient condition. However, it has to be taken into account that in the Schengen area it is possible to enter a certain Member State, leave the Schengen area from another Member State, and exceed the validity of the visa on the territory of another state. In this situation, the law enforcement agent having acknowledged the lapse of the period of stay or the fact that the individual has exceeded the validity of his visa can undertake the necessary measures only if these crimes have been committed on the national territory (according to the principle of the territoriality of the penal law), and this fact is particularly hard to prove. Thus, it is necessary to establish sanctions at European level, in order to avoid the conflict between national and European laws.

5.2 *Do you think that such sanctions should be harmonized?*

Yes.

6.1 *What do you think is an appropriate period for storing data?*

Between at least 1 year and maximum 3 years (as in the case of the personal data registered in the SIS, according to the CAAS).

6.2 *Which authorities could have access to such data and under what conditions?*

The authorities with competences at the border, public order and public safety and in the field of immigration.

7.1 *Do you already have experience of or a project for registering entry-exit data? If so, can you give a short description?*

Entry/Exit Aliens Register – is a database managed by the Romanian Intelligence Service, which contains flow records of alien citizens (except citizens from EU, Norway, Switzerland and Iceland) at the borders.

Entry/Exit Romanian citizens Register – is a database managed by the Romanian Border Police, which contains the flow of Romanian citizens in the period 01.01.2002 – 31.12.2006.

8.1 *Do you think that a pilot project would provide added value to the discussions taking place?*

Yes, it might help identifying and countering the weak points.

8.2 *If so, what type of project should be adopted (types of borders, target persons, etc.) and would you like to be involved?*

SLOVAKIA

1.1 Do you feel the aims envisaged are appropriate?

In our opinion, the aims envisaged are appropriate

1.2 Do you feel the aims envisaged are adequate?

Yes, the aims envisaged are adequate, but Slovakia recommends fulfilling this aims as follows: to improve return policy, especially by easier identification of aliens who submit emergency documents, and by identifying the point of entry.

2.1 Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?

Slovakia agrees that the persons concerned should be the same as those referred to in Article 10 of the Schengen Borders Code in terms of the stamping of the travel documents of third-country nationals.

2.2 Should derogations be allowed, and if so, what kind?

Without exceptions.

2.3 With regard to your border crossing- points, what is your estimate of how many persons are concerned at entry and exit?

In the period from 1 January 2008 until 30 June 2008, a total of 2 769 083 persons legally passed the border crossing points (BCPs).

3.1 What data do you feel should be collected?

The data collected and registered would be as follows:

- name,
- surname,
- date of birth,
- number of travel document,
- number of other documents /visa, residence permit/,
- travel itinerary,
- date of entry or exit,
- the name of border crossing point

3.2 Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?

Considering the nature of railway BCPs some problems may occur as regards recording of biometric data

4.1 Is the alert sufficient as a legal basis for the deportation decision?

Slovakia thinks that the alert is not sufficient as a legal basis for deportation decision.

4.2 Should an alert file be issued in the SIS?

There is no need to enter an alert in the SIS.

4.3 What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?

Each of these cases should be handled separately, and on the ground of finding of facts in order to adopt adequate measures.

4.4 Can you identify other situations that should be taken into account? And/or other repercussions?

5.1 Should the law prescribe sanctions in the situations described under 3 above?

Yes.

5.2 In your view, would it be desirable for sanctions to be harmonised?

In our view, the sanctions should be harmonized.

6.1 What do you consider an appropriate period for holding data?

Slovakia thinks that an appropriate period for storage of data is from 3 to 5 years.

6.2 Which authorities could have access to it and under what circumstances?

Law enforcement authorities dealing with migration.

7.1 Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?

The Slovak Republic has relatively long-time experience with the entry/exit system. As of 2002 until 1 September 2007 an information system BORIS (Border Information System) was used. This system served to control persons and vehicles to search evidence and concurrently to register exit and entry. After the entry of the Slovak Republic to the Schengen Area the IS BORIS was replaced by a new information system – Central query console (CLK). This information system, except registering information about third-country nationals, makes possible to screen in national IS and SIS.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

Slovakia believes that the implementation of a pilot project would be helpful in examining this matter.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

The project should be adopted at BCPs (land and air borders), and Slovakia would like to be involved.

SWEDEN

1.1 Do you feel the aims envisaged are appropriate?

Yes.

1.2 Do you feel the aims envisaged are adequate?

Yes.

2.1 Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?

Yes.

2.2 Should derogations be allowed, and if so, what kind?

If the persons concerned will be the same as those referred to in Article 10 of the Schengen Borders Code, it must be clarified what the meaning of the exception in the last paragraph of Article 10.3 will be in relation to the entry-exit registration.

Registering a person in the entry/exit system will not leave traces in his or her travel documents, and thus the traveller will not suffer any consequences as a result of the enrolment in the system. Therefore there is no obvious reason why derogations due to a traveller's request, as in Article 10.3 of the Schengen Borders Code, should be allowed.

Further, some form of derogation must be allowed for persons who are physically prevented from having their fingerprints enrolled and/or matched (in line with the discussions on introducing fingerprints in passports).

2.3 With regard to your border crossing- points, what is your estimate of how many persons are concerned at entry and exit?

Unfortunately, Sweden is unable to provide information on the number of persons that may be concerned by an entry/exit system. However, a reference could be the figures used for the distribution of funds from the External Borders Fund. For that purpose, Sweden in 2007 was registered for 5 616 000 border crossings at the air borders and 4 418 000 border crossings at the sea border.

3.1 What data do you feel should be collected?

The collected data should align as far as possible with the data collected for the Visa Information System (VIS). It should include the following data in particular.

Regarding alphanumeric data, the following is necessary: name, nationality, gender, birth date, document type(s), document number(s), validity period for document(s), location for entry/exit, date for entry/exit, optional note field.

Regarding biometric data, fingerprints and a facial photo should be captured when enrolling in the system.

It might also be useful to be able to record scanned images of relevant travelling documents in the system.

3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

At the moment the border crossing point seems like the only plausible option.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

No. Alerts may help the national authorities to find overstayers, but once an overstayer is found in a member state further investigation together with applicable legislation will decide if a deportation is to be carried out. The alert alone cannot be sufficient as a basis for deportation.

4.2 *Should an alert file be issued in the SIS?*

Yes. If the entry/exit system is to reach its full potential, it is important that the relevant authorities have tools to find the overstayer once an alert has been issued. By then the overstayer could reside in any EU/Schengen state. Integrating the entry/exit system with the wide spread SIS (or the future SIS II) will make the information available to a large number of users across the EU/Schengen area, and facilitate the dissemination of information between member states. Hopefully this will increase the chances of detecting overstayers within the EU.

4.3 *What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?*

This fact alone should not lead to any direct measures against the traveller. The entry/exit system could for example have been inaccessible at the time of entry into EU territory, or the passport controller may have failed to register the entry for some other reason. However, a lack of annotation in the system could lead to a second line inspection of the traveller, if the border official deems it appropriate with regard to the circumstances of the case. Moreover, the border official should always be able to make a note in the system of the stated reason why entry was not registered.

4.4 *Can you identify other situations that should be taken into account? And/or other repercussions?*

Yes. If a person is identity-checked and registered as he or she enters into the EU, but leaves the area without registering an exit in the entry/exit-system for some reason, the system will imply that the person already in the EU (potentially as an overstayer) if the same person tries to enter EU territory again.

5.1 Should the law prescribe sanctions in the situations described under 3 above?

Obviously, there are different types of sanctions. Under current acquis, border control matters fall within the first pillar. Sweden is of the opinion that penal sanctions may be used within the first pillar only in very exceptional cases. In no case, penal sanctions within the first pillar may be described more detailed than to be effective, proportionate and deterrent. Instead, Sweden would on this issue be open to discuss other types of sanctions.

5.2 In your view, would it be desirable for sanctions to be harmonised?

Sweden would appreciate a needs analysis on the harmonization of sanctions, describing the current situation of sanctions in the Member States and possible advantages and disadvantages of a harmonization, before we take a position on this.

6.1 What do you consider an appropriate period for holding data?

Data may be kept for as long as needed. Data from a third country national who has entered and left the territory in accordance with the rules is no longer needed for the purposes of the system and could therefore be deleted directly following the exit of the traveller. In parallel, data from a third country national who has entered but not left the territory, is needed until he/she has been found, identified and Member States procedures have been finalized, regardless if this takes six months or five years. Sweden therefore proposes different holding periods for different data, depending on the need for that specific data. Sweden realizes that this means that third country nationals who travel frequently to the EU will have to be enrolled each time in the system, but still Sweden considers that the advantages with differentiated holding periods in line with directive 95/46/EC outweigh the advantages of not enrolling for each travel the frequent travellers.

6.2 Which authorities could have access to it and under what circumstances?

Migration and law enforcement (Police, Secret Service, Customs, Border control and Coast Guard) authorities should be given access to the system to an appropriate degree (reader's access may suffice for some authorities). The authorities should have access to the system at the border crossing points as well as within the Member State's territory.

7.1 Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?

The Swedish system WILMA (Web-based Information System Linking Migration Authorities) has been developed by Swedish Migration Board. It is a system used for managing visas and resident permits for third-country nationals subject to the visa obligation. Border guards at Swedish border crossing points record all Schengen entries/exits made by travellers, who have been granted a visa or a resident permit by a Swedish consulate or embassy, in WILMA.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

Pilot projects for VIS have already been carried out and were found to be useful. Since this system resembles VIS in many ways, a pilot project might be valuable in this case as well.

However, if a pilot project is envisaged, it might be beneficial to take a holistic approach and not limit it to the entry/exit system alone. Instead the passenger flows of both third-country nationals and EU/Schengen-citizens could be studied, in order to optimise the use of resources and minimise the waiting time for all passengers.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

A pilot with the aim of evaluating mobile devices for accessing the entry/exit system would be very welcome from our point of view. Mobile devices could be used for:

- entry/exit registration of third-country nationals at border control points,
- identification/verification of third-country nationals within EU territory,
- enrolment of third-country nationals not subject to the visa obligation.

UNITED KINGDOM

1.1 *Do the proposed aims seem adequate to you?*

Yes.

1.2 *Do the proposed aims seem sufficient to you?*

Yes. "to provide general Management Information" could also be added.

2.1 *Do the persons concerned have to be the same as those referred to in Article 10 of the Schengen Borders Code in terms of the stamping of the travel documents of third-country nationals?*

Not applicable for UK to answer as not part of Schengen.

2.2 *Should any exceptions be allowed and, if so, what kind?*

Not applicable for UK to answer as not part of Schengen.

2.3 *As regards your border-crossing points, how many persons do you estimate are involved on entry and on exit*

c 300 million pa.

3.1 *What data do you think should be collected?*

Not applicable for UK to answer as not part of Schengen.

3.2 *Which do you think is the appropriate place for recording the biometric data of third-country nationals not subject to a visa?*

Not applicable for UK to answer as not part of Schengen.

4.1 *Is the alert sufficient to provide a legal basis for the removal decision?*

Not necessarily. A further examination with the person may be required.

4.2 *Does an alert have to be entered in the SIS?*

Not applicable for UK to answer as not part of Schengen.

4.3 *What conclusions are to be drawn from the fact that a person checked within a Member State was not registered on entry (see presumed illegal presence in the event of date-stamping)?*

It would need to clarify whether the lack of entry record automatically signifies an illegal entry.

4.4 *Are you aware of other situations to be taken into account? And/or other conclusions?*

Not applicable for UK to answer as not part of Schengen.

5.1 *On the basis of the situations described in point 3, should the legal instrument provide for sanctions?*

Yes (if this question refers to point 4 and not point 3 as stated).

5.2 *Do you think that such sanctions should be harmonised?*

A standard range for a fine would be a helpful benchmark.

6.1 *What do you think is an appropriate period for storing data?*

Five years.

6.2 *Which authorities could have access to such data and under what conditions?*

Immigration, Police, Customs and departments related to employment and benefits.

7.1 *Do you already have experience of or a project for registering entry-exit data? If so, can you give a short description.*

Not exclusively although the UK e-Borders system will provide for a linked travel record based on biographical data. The UK has undertaken a de-risking pilot, Project Semaphore, to test a number of technical issues around the electronic capture and storage of passenger data. Working trials captured data on air, sea and rail routes into and out of the UK. The trial ran from November 2004 until 31 March 2008 and provided valuable lessons to be adopted as part of the UK's wider e-Borders programme. It has trialled the use of a multi-agency Joint Border Operations Centre which processed the data and issued alerts to the front line law enforcement officers to decide the level of intervention that was appropriate. From one carrier and two routes at the outset, at closure Project Semaphore received data from over 100 air and sea carriers on passengers travelling to and from more than 180 non-UK departure points. Semaphore captured data on over 50 million passenger movements, at its peak processing data at an annualised rate of 30 million per year. Over 22,000 alerts were issued resulting in more than 1800 arrests. Following project closure the operational hub of Semaphore, the JBOC, continues to function as business as usual.

8.1 *Do you think that a pilot project would provide added value to the discussions taking place?*

Yes.

8.2 *If so, what type of project should be adopted (types of borders, target persons, etc.) and would you like to be involved?*

The project should test and potentially de-risk the processes for collecting biometric data on entry and exit and linking arrivals to departures.

The UK would be willing to share our experience of Project Semaphore.

ICELAND

1.1 *Do you feel the aims envisaged are appropriate?*

Yes.

1.2 *Do you feel the aims envisaged are adequate?*

Yes.

2.1 *Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?*

Yes, Iceland considers that appropriate.

2.2 *Should derogations be allowed, and if so, what kind?*

Yes, again as mentioned in Article 10 of the Schengen Border Code, Paragraph number 3.

Derogations might have to apply to third country citizens who can prove they have a permit to stay in Europe (no real purpose to log their border-crossings). Also, problems that may rise from multiple citizenships, when one of them is within Europe but the person does not use that passport when border-crossing on exit and/or entry, must be addressed (the system might start to give many false alarms of overstay, which might lead to less credibility of the alarms, depending on the proportional number of such problems. From our experience the proportionality of such problems is considerable).

2.3 *With regard to your border crossing- points, what is your estimate of how many persons are concerned at entry and exit?*

An estimated number of 500.000 third country citizens cross the external borders in Iceland each year.

3.1 *What data do you feel should be collected?*

Personal data, name, job, nationality of the person, nationality of the document, passport number – in fact all data from the MRZ. Also, the point of entry/exit, country of entry/exit and type of border. Image of the bio data page of the travel document used would surely be very valuable for the control. It needs to be addressed how in practice it is best to capture the data when there is no MRZ available or reading of it is unsuccessful. In fact, images of data pages of such documents at entry points for later manual information filling might be a practical solution to the problem stemming from no MRZ.

3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

At the border-crossing points.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

An alert only would not be sufficient for deportation decision without further look into the matter. The alert would be a warning message to the control to look into the suspected person's matter. Several reasons may be for the system to give a false alarm. For example a third country citizen may have exited and entered through external borders at a place where data has not been collected, after his previous and initial enter through some other border-crossing-point where his border-crossing was accurately registered. Thus, in such a case the amount of time of staying in the area would not be measured correctly in the system.

4.2 *Should an alert file be issued in the SIS?*

The general police, when controlling foreigners' stay within the area, should have access to the information in the border-crossing information system – it makes the control tighter and the system more valuable and effective. It is believed, generally, that the SIS system is for other categories of issues and that it should not be used for this purpose. It still depends on technical possibilities. For example, if it is possible to use the channels of the SIS to extract automatically the information from the new border-crossing system, it might be a valuable solution.

4.3 *What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?*

The same as in Article 11 of the Schengen Border Code.

4.4 *Can you identify other situations that should be taken into account? And/or other repercussions?*

There has to be room for flexibility for example in emergency situations. Another example is that when a crew-member crosses the border as such but leaves as a normal passenger. Other situations are still both conceivable and part of reality.

5.1 *Should the law prescribe sanctions in the situations described under 3 above?*

5.2 *In your view, would it be desirable for sanctions to be harmonised?*

No comment.

6.1 *What do you consider an appropriate period for holding data?*

Twelve months from entry when the person has not over-stayed, or longer until deportation or other conclusion has occurred.

6.2 *Which authorities could have access to it and under what circumstances?*

Border crossing points must have active and constant access to the system at both entry and exit points. Also, it seems highly appropriate that the SIRENE office in each country has access to the system by special requests and Europol in cases where national security is at stake.

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

Iceland does not have experience of recording third country nationals when entering or exiting the borders.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

Yes.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

To build up a system which can serve as a centralised database of all third country nationals entering or exiting through the external Schengen borders, is a project that has to be very well prepared and organized. It is a huge task to make sure that all entries and exits of appropriate third country citizens are recorded. Also, the problem for the pilot project is to record both entering and exiting of the same person. It thus might be good to choose only one destination country to focus at and citizens of that country only. It would be important, valuable, and actually necessary, to have calculation or estimation of how much increase in manpower at border-crossing points such a system will call for.

NORWAY

Norway welcomes the initiative taken by the French Presidency to launch a broad discussion on the creation of an entry/exit system and hereby submits its replies to the questionnaire. It has to be pointed out that our replies are preliminary as Norway is still at an early stage of this process.

1.1 Do you feel the aims envisaged are appropriate?

Yes.

1.2 Do you feel the aims envisaged are adequate?

Yes.

2.1 Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?

Yes. Norway believes that operating with the same categories of persons as referred to in Article 10 of the Schengen Borders Code is the most practical way forward.

2.2 Should derogations be allowed, and if so, what kind?

Norway supports the inclusion of derogations to the entry/exit system and considers the exceptions listed in Article 10 of the Schengen Borders Code to be adequate and sufficient.

2.3 With regard to your border crossing- points, what is your estimate of how many persons are concerned at entry and exit?

In 2007 nearly 4,5 million border crossings were registered. Passengers on cruise ships and pleasure boats are not included in this estimate.

3.1 What data do you feel should be collected?

In the case of third country nationals who are subject to a visa requirement, Norway suggests that the date and place of crossing the Schengen external borders on entry and exit should be collected. In addition to that, Norway believes that it would be important to have access to all the information available in the VIS database, such as alphanumeric data on the third-country national and on visas requested, issued, refused, annulled, revoked or extended; photographs; fingerprint data; and links to previous applications for visas. This information could play a central role in the event of a breach of the entry/exit rules, when assessing proportionality (see our answer to question 4).

As an entry/exit system will presumably be launched after the Visa Information System (VIS) is fully rolled out and operational, the entry/exit system could be either conceived as an extension of the VIS or linked to the VIS. In that case, only the entry and exit dates and places would have to be collected, without the need to reproduce the information stored in the VIS.

When it comes to third-country nationals not subject to a visa-requirement, Norway suggests that entry/exit dates and places, biometric data (fingerprints and photographs), and alphanumeric data (the data registered in the travel document) are collected. Information on third country nationals who are not subject to a visa requirement could be stored in a separate database.

3.2 *Where do you feel is the appropriate place to capture the biometric data of third country nationals not subject to a visa requirement?*

The entry/exit system will require non-visa nationals to register their biometric data for the first time. Norway believes that the most practical solution would be to capture such data at border crossing points at entry, even though we are aware of the possible negative impact this would have upon waiting times for travellers. Norway also suggests exploring the possibility of capturing biometric data at consular posts.

4.1 *Is the alert sufficient as a legal basis for the deportation decision?*

According to Norwegian legislation the detection of unlawful stay is not sufficient to automatically issue a deportation order. Unlawful stay is punished with either a financial penalty, imprisonment, or a combination of both. Norwegian legislation does not provide for an obligation to issue a deportation decision against a foreigner who is lacking a residence permit; a deportation order *may* be issued, but only after an assessment of the individual case, in which Norwegian authorities shall observe the proportionality criteria.

In accordance with our national legislation Norway believes that an alert in the entry/exit system *per se* is not a sufficient legal basis to automatically issue a deportation decision. Norway is of the opinion that each case should be assessed individually and that proportionality principles should be taken into account.

4.2 *Should an alert file be issued in the SIS?*

Norway believes it could be a practical arrangement to register alerts in the Schengen Information System (SIS).

4.3 *What inferences should be drawn from the fact that the details of a person identity checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?*

If the details of a third-country national identity checked within the Schengen territory have not been registered on entry, the police may presume that the third-country national has entered the Schengen territory illegally. However, Norway is of the opinion that the third-country national should have the opportunity to rebut such presumption, by providing credible evidence that he or she has respected the conditions relating to the entry into the Schengen-territory. This approach would be in line with Article 11 of the Schengen Borders Code, which provides for the right of a third-country national whose travel document does not bear an entry stamp, to rebut the presumption of illegal entrance by providing credible evidence (such as transport tickets or proof of his or her presence outside the territory of the Member States) that he or she has respected the conditions relating to the duration of a short stay.

Norway therefore suggests that, if the third-country national provides credible evidence demonstrating legal entry into the Schengen territory, the competent authority should register or indicate this in the entry-exit system at that stage.

4.4 Can you identify other situations that should be taken into account? And/or other repercussions?

If border checks are relaxed in accordance with Article 8 of the Schengen Borders Code, border guards should register the third-country nationals in the entry-exit system, in order to avoid situations as described in question 4.3.

5.1 Should the law prescribe sanctions in the situations described under 3 above?

Building upon our answer to question 4.1 and 4.3, Norway believes that the lack of a registration of entry in the entry/exit system *per se* is not a sufficient legal basis to automatically prescribe a sanction. Norway is of the opinion that each case should be assessed individually and that proportionality principles should be taken into account.

5.2 In your view, would it be desirable for sanctions to be harmonised?

In principle, it would be desirable that an entry/exit system provided for harmonised sanctions for overstayers, so that an overstayer detected in country X would undergo the same penalty than an overstayer detected in country Y. However, Norway is aware of the difficulties attached to the possible harmonisation of such sanctions. As a starting point Norway would therefore suggest that the choice of sanction (type of sanctions, lengths, etc) is left to the single member states.

6.1 What do you consider an appropriate period for holding data?

As a general remark, Norway would suggest exploring the possibility of foreseeing two different time-periods for storing data in the entry/exit system, one for third-country nationals who are subject to a visa requirement and a different (shorter) period for third-country nationals who are not subject to a visa requirement.

When it comes to third-country nationals who are subject to a visa-requirement, retaining their entry and exit dates over the Schengen area for a period of time that extends the actual exit date might prove to be useful for example when assessing future visa-applications (in order to verify whether the third-country national has previously left the Schengen area within the visa period) or when assessing proportionality in the case of overstaying (for example in the case of a third-country national who on previous occasions had always left the territory within the visa period). Regarding third-country nationals who are subject to a visa-requirement, one might refer to the VIS-regulation, which provides for data to be stored in the VIS-system for a period of five years, and consider whether the entry/exit system should reproduce such time-frame.

When it comes to third-country nationals who are not subject to a visa-requirement, Norway is inclined to suggest a shorter period for storing the data inserted in the entry/exit system, evidently provided that the third-country national has left the territory.

However, Norway would like to point out that there are several implications with regard to this issue in terms of the protection of personal data and privacy rights. These aspects have to be taken due account of when determining the period for holding data.

6.2 Which authorities could have access to it and under what circumstances?

Access to the entry/exit system should be reserved to the staff of the border control authorities and immigration authorities to the extent they are required to in order to perform their tasks in applying immigration laws.

7.1 Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?

Norway has no previous experience with recording entry/exit data.

8.1 Do you think the implementation of a pilot project would be helpful in examination of this matter?

As a general remark, Norway believes that the implementation of a pilot project on the entry/exit system would be useful, as it would help in assessing how the new system would function and in identifying its added value and its administrative costs.

8.2 If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?

A pilot project which is not fully rolled out to all entry and exit points in the Schengen area has limited utility in detecting overstayers, as travellers often use different entry and exit points. Possible pilot projects could therefore be limited to registration tasks, in order to assess the system's performance, time-requirements and costs. A possible pilot project could be targeted at capturing biometric data of third-country nationals who are not subject to visa requirements: this would help assessing waiting times. Alternatively, it would be possible to envisage a pilot project aimed at registering entry and exit dates at some major airports in Europe. As for Norway's participation in a potential pilot project on the entry/exit system, Norway would like to take this possibility further into consideration, also depending on the type of pilot project.

SWITZERLAND

- 1.1 *Do you feel the aims envisaged are appropriate?*
1.2 *Do you feel the aims envisaged are adequate?*

Yes, the aims seem to be appropriate and adequate. It may nevertheless also be appropriate to mention the will to combat illegal migration explicitly (even if this idea seems to be contained in the second and third point). The future entry/exit system could also be used to a certain extent to combat terrorism and other serious forms of criminality. Indeed, a thorough check, including consultation of the SIS, is made by border control authorities at entry. However, and especially regarding persons not entering the Schengen area by air (where they may be identified through the PNR and API systems), and who are not subject to a visa requirement (so that they do not appear in the VIS), there is a real interest for police and national security authorities to be able to access data pertaining to their entry and exit from the Schengen area, as this type of data is not available at present, with the exception of national programs in some Schengen states.

- 2.1 *Should the persons concerned be the same as those referred to in Article 10 of the Schengen Border Code in connection with stamping the travel documents of third-country nationals?*

Yes, the persons concerned should be the same.

- 2.2 *Should derogations be allowed, and if so, what kind?*

Some derogation could eventually be allowed to take into account special situations, under the condition that the state in question grants reciprocity if applicable.

- 2.3 *With regard to your border crossing- points, what is your estimate of how many persons are concerned at entry and exit?*

All third-country passengers who are passing through the main airports (Zürich, Geneva, Basel) are concerned. The total number of passengers (EU/EFTA and third countries nationals) is about 32 millions per year.

- 3.1 *What data do you feel should be collected?*

The data of third-country nationals subject to visa requirements are already recorded in the VIS system. These data could be available for the entry/exit system (possible extension of the VIS). It might therefore be reasonable to collect the same data of third-country nationals not subject to visa requirements. Moreover, the date of the entry, the port of entry, the date of exit and the port of exit should also be collected.

- 3.2 *Where do you feel is the appropriate place to capture the biometric data of third-country nationals not subject to a visa requirement?*

At the external borders of the Schengen area (appropriate installations at the counter or kiosks).

4.1 Is the alert sufficient as a legal basis for the deportation decision?

No, a complete procedure is necessary for the central national authority to take a formal deportation decision.

4.2 Should an alert file be issued in the SIS?

An entry ban can be issued in case of a deportation decision. In these cases the entry ban is already in the SIS. Eventual penal or administrative sanctions could also be pronounced in case of an overstay.

4.3 What inferences should be drawn from the fact that the details of a person identity-checked within EU territory have not been registered on entry (cf. the presumption of illegal residence in the case of date-stamping)?

The date-stamping proves the date of entry, even if the person has not been registered in the entry/exit system. This means that the duration of the residence in the Schengen area could be established. These situations might be linked to eventual derogations of systematic recording (see Q 2.1).

4.4 Can you identify other situations that should be taken into account? And/or other repercussions?

5.1 Should the law prescribe sanctions in the situations described under 3 above?

The possibility to issue an entry ban is already foreseen. When the authorized length of stay has been exceeded, a procedure is open in order to examine the possible issue of an entry ban/a deportation decision. Switzerland does not see any other possible sanctions in this context at the moment.

5.2 In your view, would it be desirable for sanctions to be harmonised?

Guidelines could be useful.

6.1 What do you consider an appropriate period for holding data?

In principle, data should be processed and stored only as long as necessary for the realisation of the aims enumerated in point N° 1. Therefore, data should be deleted as soon as a third country has left the Schengen area in due time (or after a certain pre-defined transition period). If the duration of stay has been exceeded, data should be stored as long as a penal or administrative procedure is open. If the system entry/exit and the containing data could also be used to prevent criminality, it could be interesting to keep them for about 3 years.

6.2 *Which authorities could have access to it and under what circumstances?*

- Migration authorities: to issue an eventual entry ban
- Border guard authorities: for the execution of border control tasks
- Police and national security authorities: for identification of persons

7.1 *Have you already developed experience or a project for recording entry/exit data? If so, can you give a brief description?*

No.

8.1 *Do you think the implementation of a pilot project would be helpful in examination of this matter?*

Yes. A pilot project is always very useful to collect experiences and information about a new system.

8.2 *If so, what type of project should be adopted (types of border, persons targeted, etc.) and would you want to participate in it?*

Switzerland supports the idea of an entry/exit system and the conduct of a pilot project but is at the moment concentrated on the realization of different projects related to the implementation of Schengen/Dublin Agreements. Switzerland could have an interest to participate to a pilot project later.
