



Brussels, 13 November 2015
(OR. en)

12527/1/15
REV 1

LIMITE

**JAI 701
FRONT 202
COMIX 451**

NOTE

From:	Presidency
To:	Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
No. prev. doc.:	12527/15 JAI 701 FRONT 202 COMIX 451
Subject:	The consequences of the abolition of stamping

A. INTRODUCTION

Following the political guidelines approved by COREPER on 10 December 2014 (16542/14), the Working Party on Frontiers has discussed the consequences of the abolition of the stamping of travel documents under the future EES system when third-country nationals enter or leave the Schengen area.

During the Latvian Presidency, the Working on Party on Frontiers discussed thoroughly the consequences of the replacement of the current stamping of the travel documents by the electronic recording and verification of data in the EES. The result of these discussions is reflected in 9778/15 and in the outcome of proceedings of the Working on Party on Frontiers (10469/15).

At the meeting of this Working Party on 10 September 2015, the Presidency presented a new set of questions focusing on three issues that needed to be further examined. These three issues are the possible inclusion of holders of residence permits in the EES, the possible recording of the refusals of entry in the EES and the carrying out of the checks within the territory of a Member State after the abolition of stamping.

18 delegations have sent their replies to the questions set out in 11627/15. A compilation of these replies can be found in the Annex.

Delegations can find below a summary of these replies.

At the meeting of the Working Party on Frontiers on 13 October 2015¹, some delegations reiterated their call to the Commission to consider the possible inclusion of the residence permits holders in the EES and highlighted several reasons in favour of such extension of the scope of the EES. The Commission Legal Service (Cion LS) submitted its considerations regarding the legal basis, the principle of proportionality in relation to such a measure, all this in the light of the recent case-law and in particular, the Schrems case (C-362/14). In particular, it noted that effective residence could be checked more adequately by “pointage” and that stamping of the passport is current practice and seems much less intrusive from the point of view of data protection than inserting all the Schengen area entries and exits of all the residence permit holders in the EES. Cion LS also indicated that adding the to the EES the objective of checking the respect of conditions of residence would imply adding Article 79 TFEU which is a legal basis for immigration and which has a different variable geometry to that of Article 77 TFEU. The two legal bases are thus incompatible and it would therefore seem difficult to combine the measures if the one is not ancillary to the other.

The CLS shared the view of Cion LS that less intrusive means such as “pointage” and stamping of passports seemed to be better than inserting data in a centralised database.

Delegation took due note of these considerations.

In the light of positions expressed by a large majority of delegations, the Presidency invites the Commission to further explore legal ways for allowing the inclusion of the residence permit holders in the EES or to propose alternative solutions which would be capable of addressing the concerns expressed by the Member States in their replies. Concerning the possible inclusion of the refusals of entry, a large majority of delegations are in favour. Therefore, the Presidency invites the Commission to give further consideration to this possibility in the preparation of the future legislative proposals.

As regards the use of mobile devices, the Presidency invites the Commission, when preparing the legislative proposals, to take into account the potential problems and solutions identified by delegations in their replies.

¹ See outcome of proceedings set out in 13193/15.

B. SUMMARY OF THE REPLIES

I. Possible inclusion of holders of residence permits in the EES

A majority of delegations do not record systematically the entries and exits of holders of residence card holders referred to in Directive 2004/38/EC and of residence permit holders. However, several delegations control the absence from the host Member State using different ways: questioning the person concerned, verification of foreign entry and exit stamps, information by the municipality or interviewing the employer. As those methods are considered time consuming and administratively complex, all delegations considered that it would be more effective to record the entry and exit of those third-country nationals in the EES.

Therefore, a large majority of the delegations which have replied are in favour of including in the EES the holders of residence permits with few of them wishing also to include holders of residence cards referred to in Directive 2004/38. Delegations see this option as the most effective and they have not suggested any other alternative to this inclusion. One delegation has expressed its opposition against such inclusion.

As drawbacks of including the residence permit holders in the EES, some delegations mentioned the increase of the costs of the Smart Borders Package, the potential complication to manage the system and procedures as well as the administrative burden.

For delegations, there are three main purposes:

- a) to improve border control as border guards would retrieve data from the EES and therefore verification of the travelers and their authorisation to enter or stay in the Schengen area could be done in a smarter way. The registration of the data of residence permits holders in the EES can also be used to facilitate the border crossing by means of - automation of the border checks However the Commission believes that it is not necessary for residence permits to be registered in the EES to use ABC gates. It would suffice to have an electronic passport and an electronic residence permit, (along with the relevant adaptation of the SBC).

- b) to prevent illegal immigration or illegal stay as the inclusion of residence permit holders in the EES would be relevant to calculate their absence from the territory of the host Member State and could serve as a basis for the withdrawal of the residence permit and to verify if the third-country national qualifies for the EU long-term residence status. Two delegations highlighted that the information recorded in the EES would also be useful to combat social fraud. One delegation also indicated that information on exit when a residence card holder was issued a return decision and was executing a decision on return would also be useful for immigration authorities.
- c) for law enforcement purposes

Three delegations pointed out the added value of recording entries and exits for blue card holders or for seasonal workers. In addition, to deal with situations where short-stay visa holders or visa exempted (both registered in the EES) would apply for a residence permit or where long-term visa holders would wish to add a short stay residence, without first leaving the Schengen area. One delegation also pointed out to the added value in the process of obtaining citizenship.

Only one delegation keeps statistics on the residence permits withdrawn following controls of the stamps in their travel documents. Such delegation indicated that, in 2014, around 1000 residence permits were withdrawn.

For delegations the EES should contain the data concerning the validity period of the residence permit and register the entries and exits but a majority of delegations consider that it is not necessary to provide for a specific functionality to calculate the time spent outside the Schengen area by residence permit holders.

Regarding the impact on procedural matters, many delegations replied that the data should be registered when the residence permit holders cross the border and two of them were of the view that it would be better when the residence permit is granted as it would reduce waiting time at the borders. For a majority of the delegations which have replied the data to be recorded in the EES should include the residence permit number, the issuing authority, issue date, date of expiry. The general view is that access should be allowed for border guards, immigration authorities, municipalities and law enforcement authorities. As per the retention period for the data of residence permit holders, opinions are divided some delegations preferred 5 years, whereas others suggested providing for the same period as the period of validity of the residence permits. Only few delegations consider that there should be a revision clause on this aspect.

II. How to handle entry refusals after the abolition of stamping

All delegations considered that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry. A majority of delegations do not consider that stamping should be kept if the refusals of entry are recorded in the EES whereas few delegations consider useful to continue the stamping of the passports in particular for visa authorities or for carriers and in cases where the EES is not available during border checks. Some delegations wished to keep the stamping during a transitional period.

As drawbacks of maintaining the obligation to stamp the refusals of entry in the passport, views expressed pointed out the costs of maintenance of the stamps and to the obligation for each border crossing point to be in possession of the stamps.

The main added value of such an inclusion would be to allow border guards to carry out more effective border checks as they will dispose of coherent information on refusals of entry. In addition, it would be particularly useful in case of automated border control scenarios. Furthermore, it would help border guards where passports are renewed in order to hide border crossing history or when the third-country national uses different passports because in such cases previous refusals of entry stamps cannot be detected by checking the passport only. One delegation also explained that the system could provide statistics and a thorough assessment could be available for Member States but also for the Commission regarding the number of refusals of entry broken down by reasons. This would reveal possible trends or threats for each border crossing point or possible deficiencies in the verification of the conditions of entry. The data of the refusal of entry would be registered at the border crossing when the decision to refuse entry is taken and implemented. Delegations considered that data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry). As per the retention period, opinions vary from 1 year to 5 years or the same retention period foreseen for the entry/exit records in general and some delegations have not position yet on this issue. Delegations generally agreed that border, visa and immigration authorities should have access to this data. Some delegations also considered appropriate to give access to this data to asylum and law enforcement authorities. Only few delegations considered that there should be a revision clause on this aspect.

III. The issue of checks within the territory of a Member State after the abolition of stamping

A majority of delegations welcomed the idea to develop a mobile application that could be installed on devices which are already in use and generally opposed to invest in uniform mobile devices. Delegations generally agree that such mobile devices are secure enough to carry out such tasks. Delegations do not see any alternative solutions. For delegations the purpose of the access to the EES when carrying out checks within the territory should be clearly defined in the legislative text as well as the authorities (as for the VIS). Concerning the necessity for such access, some delegations indicated that if the stamping of the passports is abolished, the only way to enforce regulations would be through remote access to data.

Delegations have provided some examples on how access to the Schengen Information System is managed when there is no connectivity in a remote area, or when a mobile device is defective. For example the connection to the SIS is ensured by means of a password-protected telephone connection with the operative centre of the respective region. In other Member States the queries of the SIS are made by contacting the police command centre via radio or via the 0-24 duty officers border managing authorities can be informed by means of phone calls. For some delegations it would be necessary to have fall-back procedures for those cases.

IV. Conclusion

The Presidency invites the Commission to take note of the above comments in the preparation of the Smart Borders proposals.

QUESTIONS

I. Possible inclusion of holders of residence permits in the EES

1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?
2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?
3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?
4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?
5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?
6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?
7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:
 - when would the data of the residence permit holders be registered?
 - would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?
 - who could have access to this data?
 - what would be the retention period for the data of residence permit holders?

8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

II. How to handle entry refusals after the abolition of stamping

1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?
2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?
3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?
4. The inclusion of the entry refusal would have an impact on procedural matters, namely:
 - when would the data be registered?
 - would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?
 - for how long would this data be retained?
 - who could have access to this data?
5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

III. The issue of checks within the territory of a Member State after the abolition of stamping

2. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?
3. Do Member States see any alternative solutions which have not been developed yet?
4. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?
5. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?

BELGIUM

As mentioned in document 7592/1/15 REV 1, Belgium is in favour of the idea of the abolition of stamping and believes that the abolition of stamping is a logical step forward in the future EU border management. However, as the technologies are not developed to that extent, and traditional ways of border crossing methods are still in use, a transition period is necessary. In that view, Belgium urges for further investigation on the cost-efficiency ratio, the feasibility and the practical and logistical impact on the existing procedures and consequences for end-users such as municipalities, consulates, police and administrative services.

I. Possible inclusion of holders of residence permits in the EES

1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?

Yes, the resident card for type A, B, C, F card holders is withdrawn if they have been absent from the Belgian territory for more than 12 months in a row, without having informed the authorities beforehand of this long absence.

The residence card for type E+ and F+ holders is withdrawn if they have been absent from the Belgian territory for more than 24 months in a row.

This control takes place on the basis of the exit stamps in the passport. It can also be based on information by the municipality or by declarations of the foreigner himself/herself.

2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?

Yes, same controls are done as in question 1.

3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?

Referring to question 1, it is an effective manner to control the absence from the Belgian territory. In case of a unannounced absence from the Belgian territory, the residence permit can be withdrawn.

4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?

To improve border control by checking whether the conditions of the residence cards are still fulfilled – including residence cards from other EU Member States.

It will enable to detect social fraud on residence permit holders who are absent from the Schengen zone for a long time and still enjoying social benefits.

5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?

There is no exact number of residence permit withdrawals for absences from the Schengen area. Belgium is of the opinion that stamps are not exclusively important at the external borders, but also inside the national territory.

6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?

Yes.

7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:

- **when would the data of the residence permit holders be registered?**

At the moment of grant application process of the residence permit in the municipalities.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Residence permit number, issue date, date of expiry.

- **who could have access to this data?**

In first instance the authorities with access to the EES, more specific law enforcement services and administrative services (Immigration Office and municipalities).

- **what would be the retention period for the data of residence permit holders?**

In analogy with the issue of ‘overstayers’, Belgium believes the retention period is preferable 5 years.

- 8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

No.

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

Belgium is of the opinion that if law enforcement and administrative services have access to the EES, entry refusals and the corresponding reason should not be necessarily stamped in the passports. However, Belgium believes that a transitional period should be put in place to evaluate if all end-users have efficient access.

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

Belgium does not see drawbacks to the obligation of stamping. Though Belgium thinks there is a need for a cost-benefit study into the effects of additional access to the EES at the moment of the abolition of stamping.

- 3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

- 4. The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**

At the moment of refusal.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

Date and time of refusal of entry, reason for refusal of entry.

- **for how long would this data be retained?**

5 years.

- **who could have access to this data?**

The form of access to the EES should be properly assessed. Whereas governmental administrations, municipalities and police services should have full access, the access for carriers could be limited to a GO / NO GO.

- 5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

No.

III. The issue of checks within the territory of a Member State after the abolition of stamping

- 1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

Belgium is in favour of the investment in mobile devices. The choice between a new uniform interface and/or the use of apps on existent mobile applications should be properly assessed and developed after preliminary consultation by the Member States.

- 2. Do Member States see any alternative solutions which have not been developed yet?**

No.

- 3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**

For law enforcement access: Belgium believes this should be met in analogy with VIS. Services charged with border control and other relevant services such as the immigration office should have full access to the EES.

For passengers: a particular set of data to check their status in the EES.

- 4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

No opinion.

BULGARIA

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?**

The absence from the territory of Bulgaria can be controlled through the national entry/exit system which includes the travels of third country nationals.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

The absence from Bulgaria can be controlled regarding all third country nationals regardless of the travel document stamps and regardless of the type of residence permit.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Bulgaria considers that the residence permits need to be included in the Entry/Exit System.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

The added values are:

- in the legislation (i.e. Directive 2004/38) a permissible duration of absence is regulated which could not be controlled if there are no stamps in the travel documents, as well as records with information on the travels of the person.
- for the purpose of the check in relation to Art. 38, Para 2(e) of the Council Decision on the establishment, operation and use of the second generation Schengen Information System (SIS II) – alerts on objects for seizure or use as evidence.
- for the purpose of the checks carried out on the territory, with the purpose of establishing the accordance of the grounds for entry and stay of the person in the Member State.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

Bulgaria does not calculate the stay on the territory of Schengen, respectively the absence from the Schengen area.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

In case every entry/exit in/from the Schengen area of a third country national, holder of residence permit, is entered and stored in the entry/exit system (a check can be made on the stay on/outside the territory of Schengen), we do not consider it necessary to provide such functionality.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
- **when would the data of the residence permit holders be registered?**

On each entry/exit in/from the Schengen area, the grounds for entering the country/Schengen area need to be entered in the entry/exit system following the entering of the data for the person and passport – i.e. at this stage the data for the residence permit need to be entered.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Yes.

- **who could have access to this data?**

The authorities allowed to access the EES.

- **what would be the retention period for the data of residence permit holders?**

Such as the retention period for the data in the EES.

- 8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

Bulgaria does not consider it necessary to have a revision clause.

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

Yes. In case of an issued refusal for entry the travel documents need to be stamped with reference to the reason for refusal.

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

Other solutions are not necessary when refusals for entry are entered into the entry-exit system and stamping the travel documents in case of refusal for entry.

- 3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

The border authorities of the Member States will have information on the issued refusals to third country nationals when they have changed their travel documents and there is no information from the stamps placed on refusal for entry.

- 4. The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**

When issuing the refusal.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

The standard information needs to be included (which shows at which BCP the entry was refused) and data for the reasons for the refusal in accordance with the form for refusal.

- **for how long would this data be retained?**

Such as the retention period for the data in the EES.

- **who could have access to this data?**

The authorities allowed to access the EES.

- 5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

Bulgaria does not consider it necessary to have a revision clause.

III. The issue of checks within the territory of a Member State after the abolition of stamping

- 1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**
- 2. Do Member States see any alternative solutions which have not been developed yet?**
- 3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**
- 4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

When using mobile devices, sufficient level of security can be reached. Additional investment for purchasing mobile devices is not necessary. The experience from carrying out checks in SIS during checks inside the territory should be used.

DENMARK

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?**

No, The State Administration and The Danish Immigration Service only control registrations in The Civil Registration System. The Danish National Police is responsible for control at the borders.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**
- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**
- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

According to § 17 in the Danish Aliens Act, a residence permit may lapse if the holder leaves Denmark.

If a holder of a residence permit has resided legally in Denmark for less than 2 years, he or she may leave Denmark for a maximum of 6 months in a row.

If a holder of a residence permit has resided legally in Denmark for more than 2 years with a view to permanent residence, he or she may leave Denmark for a maximum of 12 months in a row.

When the Danish Immigration Service assesses the duration of the stay outside Denmark, it would add value if the information in EES was available.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

No, the information is not available.

6. **Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

It would be enough that the system reflects the validity period of the residence permit and registers the entries and exits.

7. **The inclusion of the residence permit holders would have an impact on procedural matters, namely:**

- **when would the data of the residence permit holders be registered?**
- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**
- **who could have access to this data?**
- **what would be the retention period for the data of residence permit holders?**

8. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

II. How to handle entry refusals after the abolition of stamping

1. **Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**
2. **Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**
3. **What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**
4. **The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**
 - **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**
 - **for how long would this data be retained?**
 - **who could have access to this data?**

5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?
 2. Do Member States see any alternative solutions which have not been developed yet?
 3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?
 4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?
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CZECH REPUBLIC

I. Possible inclusion of holders of residence permits in the EES

1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?

- The absence from the Schengen area (EU territory) is not systematically controlled in the case of residence card holders referred to in Directive 2004/38/EC. The absence nevertheless impacts e. g. on gaining the status of permanent resident. This control usually takes place during the application procedure or the procedure on cancellation the status of permanent resident. As the passports of these persons are not stamped, it is necessary to arrange other proof of evidence that is usually not unequivocal, however (e. g. information from the employer, hearing of witnesses).

2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?

The absence from the Schengen area (EU territory) is not systematically controlled neither in the case of holders of other residence permits. In case the stamping of travel documents is abolished, the control of the absence would need to be addressed ad hoc.

3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?

It is more desirable to register the residence permit holders in the EES. The purpose (as well as the collection and the treatment of personal data) should be based on directive 2003/109/ES and on directive 2004/38/ES.

4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?

- In order to gain the resident status in accordance with directive 2003/109/ES it would be easy, unequivocal and effective to control the length of continuous stay on the territory in the EES.

By the inclusion of residence permit holders into the EES the cases of replacing the travel documents in order to conceal the information on the absence on the territory would be prevented.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

There is no relevant statistics on this issue available.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

– A functionality to calculate the time spent outside the Schengen area would be very beneficial.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**

- **when would the data of the residence permit holders be registered?**

The data of the residence permit holders should be registered during border check.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

It is not necessary to record additional data in the EES, nevertheless they could be useful for determining the Member State responsible for examining an application for international protection (Art 12 of Dublin III).

- **who could have access to this data?**

Access to this data should be possible for border, immigration and asylum authorities as well as for law enforcement authorities.

- **what would be the retention period for the data of residence permit holders?**

The retention period for the data of residence permit holders should be in line with the respective directives, i.e. minimum six years (five years of continuous residence and six months reserved for decision making).

- 8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

Entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry. Refusals of entry should not be stamped in the passports in addition to registration in the EES.

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

- 3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

- In case the passport is absent during a control on the territory, it is possible to find out (by the use of biometrics) whether the person has been refused entry or not.
-
- Replacing the travel documents in order to conceal the information on previous entry refusals would be prevented.

- 4. The inclusion of the entry refusal would have an impact on procedural matters, namely:**

- **when would the data be registered?**

The data should be registered during the border check.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

Additional data would need to be recorded – especially date and time of refusal of entry, entry BCP and reason for refusal of entry.

- **for how long would this data be retained?**

This data should be retained as long as the record on entry/exit.

- **who could have access to this data?**

Access to this data should be possible for border, immigration and asylum authorities as well as for law enforcement authorities.

5. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. **To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

The idea to develop a mobile application that could be installed on devices which are already in use is more preferable.

2. **Do Member States see any alternative solutions which have not been developed yet?**
3. **To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**
4. **Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

The access to the Schengen Information System in these cases is ensured by means of a password-protected telephone connection with the operative centre of respective region.

GERMANY

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?**

No.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

These kinds of controls only apply to resident permit holders which authorization of stay is not covered by Directive 2004/38/EC. The check is then carried out evaluating entry and exit stamps of third countries or by simply interviewing the traveler.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

The question is still under internal consideration.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

– To include travelers with these kinds of permits provides, among others, the following benefits:

1. The inclusion of residence permit holders into the EES is relevant to calculate the absence of holders of permanent residence permits from Germany because according to German legislation after a certain time of absence the residence permit expires.
2. It allows security authorities to analyze the entries and exit of each TCN for the fight against international terrorism and other serious crimes, independent of the type of visa or other permit the TCN is using.
3. To register the data of residence permit holders can also be used to facilitate the border crossing by the means of further automation of the border checks. All necessary data could be retrieved from the EES. Thus the verification of the travelers and their authorization to enter or stay in the Schengen area would allow for a smarter borders passage.

5. **For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

N/A

6. **Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

– Border checks would clearly benefit from an automated calculation of the period of absence from the Schengen area.

7. **The inclusion of the residence permit holders would have an impact on procedural matters, namely:**

- **when would the data of the residence permit holders be registered?**

Upon border checks.

- **what happens in case the residence status changes during a stay within the Schengen area? Who corrects the data in the EES?**

If the residence status changes during the stay in the Schengen area, the corresponding responsible authority (immigration authorities) should correct or update the EES.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Residence permit number and date of expiry as well as the three letter code of the issuing country would need to be registered.

- **who could have access to this data?**

The same access right as with other TCN.

- **what would be the retention period for the data of residence permit holders?**

The retention period should be in line with the validity of the residence permit.

8. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

No.

II. How to handle entry refusals after the abolition of stamping

1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?

– A refusal of entry as well as the reason for it should be registered in the EES. An additional stamp in the passport could offer a benefit to the country the TCN is refused to. So Germany suggests to also put a stamp in the passport. This would also cater as a fallback in cases the EES is not available during the border checks. Information on refusal of entry in the form of a stamp in the passport would also be useful for visa authorities.

2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?

No.

3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?

– In the case an EES is in place the check of stamps in the passport will most likely not happen. In that cases the added value is, that it can be seen in the EES itself and a border guard will recognize the refusal of entry immediately.

– This applies especially for automated border control scenarios.

4. The inclusion of the entry refusal would have an impact on procedural matters, namely:

- **when would the data be registered?**

At the time of refusal.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

All the data mentioned above needs to be registered in the EES.

- **for how long would this data be retained?**

The retention period is still under internal consideration.

- **who could have access to this data?**

Border police, immigration and asylum authorities, police, visa authorities.

5. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

No. This data is in any case important for the border guards and the authorities within the country.

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. **To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

Mobile devices (in our case in secure police networks) can be secured according to the needs. Thus it seems to be secure enough. An uniform software may hinder the integration in national networks or equipment. An important point is that maintenance of uniform mobile devices could cause a challenge. Also if a uniform mobile device is defect it could be more difficult to replace it. Taking the above mentioned points into account the functionalities should be integrated on national level.

2. **Do Member States see any alternative solutions which have not been developed yet?**

No.

3. **To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**

A list of authorities (like for the VIS) could be developed to give the authorities access according to necessity. The purpose of a possible access should be defined.

4. **Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

Yes, of course. There is always the opportunity to use the SIS II in these cases. Queries in the SIS II can even be made by contacting for instance the police command centre via radio. The colleagues in the command centre can check very quickly, if there is an alert in the system and they are able to give the correct instructions to the police officers in the field.

ESTONIA

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?**

No. Border guard official performing border checks do not control the absence from the Schengen area of residence cards holders referred to in Directive 2004/38/EC.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**
- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Estonia does not support the idea to register residence permit holders data in the EES.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**
- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

Note: Starting from 17.12.2012 Estonia does not stamp travel documents of third-country nationals who are in possession of a valid residence permit issued by a Schengen Member State.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

In case the data of residence permits will be registered in EES, it would be enough to reflect the validity period and register entries and exits.

7. **The inclusion of the residence permit holders would have an impact on procedural matters, namely:**

- **when would the data of the residence permit holders be registered?**
- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**
- **who could have access to this data?**
- **what would be the retention period for the data of residence permit holders?**

8. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

II. How to handle entry refusals after the abolition of stamping

1. **Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry?**

Yes. This prevents the entry of the same person via another BCP. Additional information about the reasons of refusal of entry in EES gives to another Member State, through which border same person tries to enter, the possibility to decide, are those reasons still existing or not, so another Member State has the possibility to make a decision whether or not to allow the persons entry to the Schengen area.

Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES?

Refusals of entry should be stamped in the passports and registered in the EES. Information in passport is valuable for example in the next visa application process. Also such information in the passport is crucial in case of breakdown of the EES.

Should refusals of entry only be stamped in the passports?

No. Refusals of entry should be stamped in the passports and registered in the EES.

2. **Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

3. **What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

From the passport is possible to remove the stamps of the refusals of entry or destroy passports. Useful background information for the first line control (risk assessment).

- 4. The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**

From the moment the refusal of entry is made.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

Additional data is needed: the exact date of refusal, the name of the BCP, reason for refusal of entry (the list of which is given on the standard form for refusing entry). Also there should be the possibility to add additional information to the EES about the reasons of refusals because the list on the standard form may not be sufficient for the profiling.

- **for how long would this data be retained?**

The overall retention period.

- **who could have access to this data?**

Information is needed for the units who perform border checks.

- 5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

III. The issue of checks within the territory of a Member State after the abolition of stamping

- 1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

The mobile devices can be secure enough in order to be used for the purpose nevertheless it should be ensured that the mobile devices are reliable in any circumstances. In order to secure uniform security level it is inevitable that the mobile devices should be developed centrally for all Member States.

- 2. Do Member States see any alternative solutions which have not been developed yet?**

3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?

The access to the data should be defined based on the necessity. The access to different data should be granted based on the concrete tasks of the official.

4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?

Fall-back procedures are essential element of the reliability of the system. These procedures should be similar in all Member States.

SPAIN

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?**

Spain has not any specific procedure.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**
- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Spain supports the inclusion of resident permits referred to in Article 2 (15) of the Schengen Borders Code according to article 10.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

The control of absence from the Schengen area.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

Spain cannot provide official data.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

It would be very useful to know the period of absence in the system.

7. **The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
- **when would the data of the residence permit holders be registered?**

At the time of crossing the border.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

It would be very useful, in any case all additional data should be analysed.

- **who could have access to this data?**

Border authorities and Immigration authorities.

- **what would be the retention period for the data of residence permit holders?**

For period of validity of the resident permit.

8. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

II. How to handle entry refusals after the abolition of stamping

1. **Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

Spain supports that entry refusal should be registered in the EES as well the corresponding reason(s) for refusing entry. Regarding refusals of entry, the stamping of passports should be analyzed in a specific way.

2. **Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**
3. **What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

The inclusion will provide technical security.

4. **The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**

At the time of entry refusal.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

It would be very useful.

- **for how long would this data be retained?**

For period allowed for a new entry.

- **who could have access to this data?**

Border authorities and Immigration authorities.

5. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. **To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

Both possibilities should be analysed.

2. **Do Member States see any alternative solutions which have not been developed yet?**
3. **To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**
4. **Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

FRANCE

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?**

No, the absence is not checked, and this is particularly problematic as prolonged absence from the territory is supposed to give rise to the withdrawal of the permit (Article 11 of Directive and L122-2 CESEDA).

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

Yes.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Yes. It is essential. In their capacity as third-country nationals, their exits and entries must be registered.

In addition:

- Leaving national territory for a prolonged period may lead to loss of the right to residence and entail the withdrawal of the permit.
- the payment of certain welfare benefits is subject to the condition of actual residence in the territory (Regulation 883-2004, Regulation 1408-71, Judgment of the Court of Justice in case C265-05).

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

Regularity of residence: leaving national territory for a prolonged period may lead to loss of the right to residence and entail the withdrawal of the permit.

Public finances check:

- the payment of certain welfare benefits is subject to the condition of actual residence in the territory (Regulation 883-2004, Regulation 1408-71, Judgment of the Court of Justice in case C265-05).
- Recouping the cost of developing the EES.

Alternative to inclusion in the EES:

It is the only viable and reliable solution. It should be noted that, in addition to registration in the EES, a 2D bar code on the passport would enable the length of residence in the territory to be checked.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

A study is required to determine whether this figure is available.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

The period of absence from the territory is a particularly important element of data in the light of the factors indicated above. The system should include this functionality (calculation of the time spent outside the territory, continuously and cumulatively). The marking in the 2D bar code of the number of days spent outside the Schengen area at the last entry or exit would also allow for a connectionless calculation.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**

- **when would the data of the residence permit holders be registered?**

On exit, and then on entry.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Recording the full information avoids disputes. With this in mind, the more data recorded the more this benefits the traveller (reducing the risk of error).

Unless it is intended to (re-)register the biometrics of a residence permit holder, the reference to the uniform residence permit no. is essential: it protects the link between, on the one hand, the biometric secure permit issued by a Member State - and therefore highly reliable - and the individual, on the other.

- **who could have access to this data?**

The authorities concerned within the scope of their duties:

- Border guards
- Consulates
- Authorities responsible for residence matters
- Police and intelligence services
- Judicial authority

- **what would be the retention period for the data of residence permit holders?**

Three years after the end of validity of the residence permit.

8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

There is no need to provide for specific revision of this aspect as the project as a whole must be periodically assessed. This aspect will therefore be taken into account along with all the issues relating to the system.

II. How to handle entry refusals after the abolition of stamping

1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry?

Yes.

Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES?

Not necessarily. Registration in the EES is sufficient. Furthermore, travellers may change their passport (renewal, loss, etc.) or travel on several passports (ordinary, service, etc.), which negates the effects of stamping the document.

Should refusals of entry only be stamped in the passports?

No. See reply above: renewal of travel document, etc.

2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough?

No. It is the only viable and reliable solution. A registration in SIS has sometimes been mentioned, but this is a bad idea: this automatic processing lists those individuals who are the subject of an alert, together with action to be taken. The aim of marking the refusal of entry is solely to inform border guards and consulates, in the context of the study conducted at the time of the visa application or its presentation at the border.

What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?

Travellers may change their passport (renewal, loss, etc.) or travel on several passports (ordinary, service, etc.), which negates the effects of stamping the document

3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?

Travellers who change their passport (renewal, loss, etc.) or travel on several passports (ordinary, service, etc.): information on previous refusals of entry is available to all border guards and consulates.

4. The inclusion of the entry refusal would have an impact on procedural matters, namely:

- **when would the data be registered?**

At the time of refusal of entry (no change compared to current practice).

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

Yes, the reason for refusal (letters A to I) must be shown, along with information on the authority which refused entry, the BCP, date and time, etc.

- **for how long would this data be retained?**

Five years seems the minimum period acceptable.

- **who could have access to this data?**

The authorities concerned within the scope of their duties:

- Border guards
- Consulates
- Authorities responsible for residence matters
- Police and intelligence services
- Judicial authority

5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

There is no need to provide for specific revision of this aspect as the project as a whole must be periodically assessed. This aspect will therefore be considered along with all the issues relating to the system.

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?

Access to a centralised database on individuals via a radio relay system presupposes that the mobile device and gateway have a high level of certification under the national reference framework for information systems security. As yet, there is only a limited number of mobile solutions available. <http://www.ssi.gouv.fr/administration/qualifications/produits-recommandes-par-lanssi/les-produits/>

The specifications of mobile solutions differ between Member States. They relate not only to ergonomic aspects of the equipment but also to the securing of networks, the development of applications and funding. While developing a single, uniform solution does not seem appropriate, European funding could be useful in supporting developments at national level.

2. Do Member States see any alternative solutions which have not been developed yet?

France had suggested using 2D stickers instead of stamping documents. Such a solution offers access to entry/exit data without requiring access to a radio relay system, and drastically reduces requirements in terms of information systems security and, consequently, costs.

3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?

Cover cases of use in connection with checks involving stamping.

The authorities concerned within the scope of their duties:

- Border guards
- Consulates
- Authorities responsible for residence matters
- Police and intelligence services
- Judicial authority

4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?

Mobile devices are not used in controls in France at present. Use of a 2D bar code would offer access to entry/exit data without requiring access to a radio relay system; it can be seen as a permanent fall-back solution.

CYPRUS

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?**

Cyprus is not yet a full member of Schengen area. Due to this, all passports of persons' (TCN) who are EU's family members and visiting Cyprus, are stamped and their entries/exits are registered in our National Entry/Exit System (NEES). As concerned the persons who are married or they are family members of Cypriot citizens', their data are also registered in our national registry and also their travel documents are stamped during their entry/exit in order to control their absence from our territory.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

As mentioned above Cyprus is not a full member of Schengen area . Furthermore the same procedure takes place for all holders of other residence permits. Their data are also registered including their entries/exits from our territory in order to control however they remain legally according to their residence permit.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Cyprus considers that all residence permit holders should be registered into the EES, in order to be checked for their absence from the Schengen area (EU territory), and also be checked whether they comply with the conditions of their permits. In addition, checks may be carried out in order to check the validity of the residence permit and whether there is any change of the status.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

By the inclusion of holders residence permit holders into the EES, will become feasible for all Member States to identify (detect) those persons whose residence permit has expired, when they will attempt to enter or exit the Schengen area (EU territory) from/to another Member State than from/to the Member State of which they have obtained the residence permit.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

As mentioned above Cyprus is not a full member of Schengen area but we are in position to indicate the number of permits withdrawn for absences from our territory based on our national registry and our NEES.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

Cyprus' opinion is that, yes, the system should provide for a functionality to calculate the time spent outside the Schengen area, as that will be a useful tool for border guards to check throughout all the residence permits that are obtained by any Member State.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
- **when would the data of the residence permit holders be registered?**

Right after the residence permit is obtained.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Yes, all the above mentioned and also the type of the residence permit.

- **who could have access to this data?**

All border guards must have access to these data in order to achieve checks (controls).

- **what would be the retention period for the data of residence permit holders?**

At least 6 months after the expiry of their permit.

- 8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

II. How to handle entry refusals after the abolition of stamping

1. **Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

Cyprus is of the opinion that the refusals of entry must be registered in the EES and also to maintain stamping passports. This will be helpful for the guards, as they will be in position at first and immediately to identify that the traveller they have before them has been denied entry to other Member States as well as the reason for refusal. It will also be helpful in cases of system unavailability. The possibility - for refusal of entry cases - to be stamped only in passports and not registered in the EES, adds no value as there is possibility for a traveller to change or renew his passport in order to conceal that his entry has been denied.

2. **Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

Cyprus sees no disadvantages in keeping the obligation of stamping passports at entry refusals.

3. **What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

Control by border guards will be more detailed, thorough and best investigation will take place before an entry will be permitted, subject in mind that the passenger has already been refused entry to another Member State.

4. **The inclusion of the entry refusal would have an impact on procedural matters, namely:**
 - **when would the data be registered?**

Immediately (same time). Upon refusal of entry, in order to avoid the traveller to attempt to achieve entry into the Schengen area via another Member State.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

For travellers that the entry is denied additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry).

- **for how long would this data be retained?**

For the same period as data for travellers registered in EES will be retained.

- **who could have access to this data?**

All border guards and users of the system.

5. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. **To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

Cyprus, for the time being, has not any mobile(portable) devices or equipment available for the check of aliens and their entries/exits in the Republic.

2. **Do Member States see any alternative solutions which have not been developed yet?**
3. **To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**

All authorities related to the control of aliens.

4. **Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

As mentioned above Cyprus has not any mobile devices available. Not yet in SCHENGEN area and also no access to SIS II yet.

LATVIA

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?**

The competent authority in Latvia carries out non-systematic control of persons holding the residence permit in their absence from the territory of Latvia. The control process is difficult and therefore in our opinion, the time limits set in the Directive for the absence from the Schengen area cannot in practice be verified. In some cases, the absence can be established on basis of information from other sources or data provided by the same person; however, in this way only a small percentage of those persons who have violated the set term of absence can be identified.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

– As mentioned above, currently control is not effective, it is administratively complex, expensive and time consuming, and in this way it is possible to detect only an insignificant percentage of persons violating terms of absence; therefore more effective approach should be found.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Yes, the data should be registered including all types of residence permit holders. And although it would increase the administrative burden for competent authorities carrying checks at the EU external borders and within the country, without registering all holders, it will be impossible to ensure adequate control of conditions of person's residence in the territory. Lack of single control mechanism increases the risk for violations of terms of entry and residence by third country nationals.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

As one of the key benefits is the prevention and fight against illegal immigration. In addition, the potential benefit could be not only the collected information that would serve as basis for the withdrawal of the residence permit, but also as verification whether a person qualifies for the EU long-term residence status (DIRECTIVE 2003/109/EC) or the national permanent residence permit.

5. **For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

No data.

6. **Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

Yes, it would be useful if the system would provide for functionality to calculate the time spent outside the Schengen area. And it is essential to be able to check in the system the person's entry/exit fact.

7. **The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
- **when would the data of the residence permit holders be registered?**

At the time of the first crossing of the Schengen border.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**
- **who could have access to this data?**

Migration services, border guards, immigration control authorities, as well as law enforcement authorities could have access to this data.

- **what would be the retention period for the data of residence permit holders?**

The validity period of the residence permit.

8. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

The stamp to refuse entry is universal in those cases when for different reasons it does not work in the EES and a border guard has no other option to make sure that a person was refused the entry. If the refusals are entered only into the EES, then there is a risk that other state border guards may not receive information that a person was refused to enter another Member State. Similarly, it is not clear when a person is refused to enter into one Member State (for example, does not have sufficient financial resources), how then the competent authority in another Member State will be able to remove the refusal in the EES if this person fulfils all conditions for entry? Will the border guard in another Member State will have the authority to remove the refusal of entry if the person fulfils all the entry conditions or is the refusal automatically removed in the EES if the person meets the conditions of entry?

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

Latvia does not find any drawbacks.

- 3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

When a person uses ABC or self-service kiosks then the EES automatically detects if a person last time did not meet the entry conditions.

- 4. The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**
 - **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

Latvia believes that the time, reason and border-crossing point at the time of refusal must be registered.

- **for how long would this data be retained?**

Until the next entry time when the person fulfils all the entry conditions.

- **who could have access to this data?**

Border guard and immigration control services could have access to this data, as well as it would be useful to provide access to appropriate Visa issuing authorities.

5. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. **To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

In Latvia secure data transmission is ensured for all data exchange devices. If the devices in place are out of date and would not support new applications then investment would be needed.

2. **Do Member States see any alternative solutions which have not been developed yet?**

No research for solutions has been carried out.

3. **To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**

The objective is to ensure control of conditions for person's entry and residency inside the Member state territory. Access to data should be described in detail – purpose, authorities that have access to carry out checks, thus enabling to assess the validity and compliance with legislation for the access of data.

4. **Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

A fall-back procedure is needed if the system cannot be accessed or if it is out of order. Currently, where there is no network coverage or the system does not work, the checks are carried out by communicating with an institution where the data can be verified or the person is taken directly to this institution.

HUNGARY

I. Possible inclusion of holders of residence permits in the EES

1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?

Hungary adopted the 2004/38/EK directive in the Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence and implemented this in Government Decree 113/2007. (V. 24.). According to Article 16 (1) permanent residence status shall be granted to EEA nationals who have resided legally and continuously within the territory of Hungary for five years. In order to issue the residence card the legal and continuous residence shall be controlled by the immigration authority (Office of Immigration and Nationality) and it. The competent authority shall monitor the register of the personal data and addresses of citizens and the Border Management and Registration System. Since according to Article 10 (3) of the Regulation 562/2006/EK, Regulation (EC) No 562/2006 of the European Parliament and the of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) travel documents of those third country nationals who present their residence card given according to directive 2004/38/EK, shall not be checked, we regard it necessary to record data of those citizens' entry and exit in the EES. If this is not the case, then it is difficult to find out whether these persons stayed legally in Hungary or not. Residence permit is provided to family members as well of those persons who have the right to free movement and residence proven by residence card, so it is important to know whether the residence card owner made family reunification or not. In this way it would be easier to verify whether the person who is legally residing in the territory of a member state is no longer entitled to stay.

2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?

Rules of the residence of third country nationals that exceeds ninety days within a period of one hundred and eighty days are written in Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007. (V. 24.) about its implementation. In case of application for other residence that is out of the scope of Directive 2004/38/EK (immigration or establishment) the applicant should prove that directly before the submission he/she has stayed in Hungary for a longer period of time (3 or 5 years depending on the type of permit) resided in the territory of Hungary legally and without interruption. In order to verify these, the competent authority (Office of Immigration and Nationality) can make a search in the central alien policing register, in the national Border Management and Registration System and check the stamps of entry and exit in the travel documents. So according to the above mentioned, the main tool for the verification of a legal longer period of stay is to verify data in the national Border Management and Registration System, therefore we regard it important to register third country nationals in the EES.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Hungary supports the collection and handling of personal data of third country nationals under the scope of Directive 2004/38/EK and that of owners of other permits in EES, in order to make the legal and uninterrupted residence verifiable.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

If the stamping of travel documents of third country nationals will be terminated by the entry into force of EES and the data of their entry will not be registered in EES, then we cannot examine that third country nationals when and for how long interrupt their stay or no longer exercise the right to residence. According to that, handling of residence permits in EES has a major added value in decisions about residence permits and/or its revised.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

No statistics are available.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

Hungary thinks that the calculation function is supportable; however, the lack of it will not cause obstacles in border policing procedures. Taking into account cost efficiency Hungary thinks it sufficient if the system traces the validation time of the permit and registers dates of entry and exit.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
- **when would the data of the residence permit holders be registered?**
 - **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**
 - **who could have access to this data?**
 - **what would be the retention period for the data of residence permit holders?**

In Hungary's opinion the holder's data should be registered at the first entry with the residence permit and it would be beneficial to register the residence permit number in EES and the date of issuing and termination too. Access to data should be provided at least to authorities responsible for border management of member states. Hungary supports to store data for five years according to national legislation.

- 8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

Hungary supports that a revision clause should be made depending on working group discussions and consultation with the co-legislator

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

Hungary supports that the refusal of entry and its reasons should be registered in EES as well as in the travel document. It is necessary to register it in the travel document too, because third country nationals could not be able to take advantage from the system failures and could not be able to entry at another border crossing point.

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

N/A

- 3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

Data on the refusal of entry can be searched in the system when a passport is replaced or passenger using parallel passports.

4. **The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**
 - **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**
 - **for how long would this data be retained?**
 - **who could have access to this data?**

With regard to the fact that remedy submitted at the time of refusal of entry has no suspensive effect to the implementation of decision, it is beneficial if the registration is done at the beginning of the procedure. Hungary supports that listing in the Schengen Borders Code Annex V. Part B should be recorded in connection with the data to be registered. Hungary supports to store the data in the system for five years. Access to data should be provided at least to authorities responsible for border management of member states.

5. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

Hungary supports that a revision clause should be made depending on working group discussions and consultation with the co-legislator.

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. **To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

Mobile devices used by Hungary are capable of requesting information from the national Border Management and Registration System. Mobile devices used during in-depth checks are safe. Hungary does not regard it necessary to use unified mobile devices.

2. **Do Member States see any alternative solutions which have not been developed yet?**

N/A

3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?

Hungary regard it especially important that alien policing authorities could verify legal stay on the territory of member states via access to data.

4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?

Via the 0-24 duty offices border managing authorities could be informed from the system by means of phone calls.

THE NETHERLANDS

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?**

The Netherlands controls the absence of residence card holders on the basis of the stamps in their passport or travel document.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**
- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Yes. The principle of purpose limitation: the usage of data in order to find out:

- how long a holder of a residence permit has been absent from the Member States.
- if somebody that has been given a ‘period for voluntary return of x days (e.g. when the validity of the residence has ended) to leave the Netherlands, actually has left the Netherlands, and Schengen.
- if the residence permit is still valid and has not been administratively retracted.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

Registration in EES of residence permit holders is relevant in order to be able to check and find out whether a person with a residence permit possibly has changed his permanent location of stay. (Dutch legislation states that if a holder of a residence permit has stayed outside the Netherlands for more than a certain, than a residence permit could be withdrawn).

Registration in EES of residence permit holders is relevant in order to be able to check and find out whether a person, from which the residence permit is not valid anymore, has actually left the territory of the Netherlands, and/or Schengen.

- 5. For those Member States which stamp residence permit holders’ passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

Information is not available.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

Preferably both.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**

- **when would the data of the residence permit holders be registered?**

The data should be registered at entry and exit of the Schengen area.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Date of expiry; v-number.

- **who could have access to this data?**

The Royal Marechaussee, the Immigration and Naturalisation Service, the National Police and the Consulates and Embassies.

- **what would be the retention period for the data of residence permit holders?**

Preferable at least 9 months.

- 8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

Further elaboration is needed.

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

The Netherlands considers that entry refusals should be registered in the EES as well as the reason for refusing entry. If the refusal of entry is stamped in the passport registration in the EES is still necessary. Refusals of entry should not only be stamped in a passport. A refusal stamped in the passport will serve as a tangible notification to the person in question.

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**
- 3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

Passports may be lost. False Identities may be acquired. The entry into the system can serve as an incorruptible beakon.

- 4. The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**

As soon as possible after the refusal.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**
- **for how long would this data be retained?**

As refusal of entry is also reason for the entry into SIS, it would stand to reason that the length of data retention is the same as the SIS entry.

- **who could have access to this data?**

The Royal Marechaussee, the Immigration and Naturalisation Service, the National Police and the Consulates and Embassies.

5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. To what extent are mobile devices secure enough to carry out such tasks?

Mobile devices can be made secure enough to carry out such tasks.

Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?

The Netherlands prefer the idea to develop a mobile application that could be installed on devices which are already in use.

2. Do Member States see any alternative solutions which have not been developed yet?

The Netherlands is of the opinion that the use of mobile devices is the best solution.

3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?

The Netherlands is of the opinion that the same procedure, conditions and safeguards could be defined as defined in the Eurodac regulation and EU VIS regulation.

4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?

Yes, a fall back procedures is needed. This procedure can be organized by access to the system at the local police office.

POLAND

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?**

Border guards do not collect information about each entry and exit of residence cards holders, nor residence cards issued in accordance with Directive 2004/38/EC.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

See answer below.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

- Currently it is practically impossible to monitor the length of stay holders of residence permits in each Member State (lack of controls at internal borders). The inclusion of this category of travelers into EES system, without tools allowing to register their residence in each Member State, does not have added value.

It should rather be considered to take into account in the EES persons who directly after the long-term residence in Member States begin their short-term stay in the Schengen area without departure (despite the fact that we are not dealing with a classical entrance, the current interpretation of the Article 5 SBC allows for such a situation). Without resolving this issue in the EES, there could be an alert indicating illegal stay of such a person due to the absence of registration of entry. In addition, such a person may also be of interest for LEA.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

Placing into EES information about the possession of a residence permit would facilitate calculation of the period of authorized stay during border control (see case described in the question above).

Information on exit when a residence card holder was issued a return decision and was executing a decision on return would be also beneficiary.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

N/A (Poland does not stamp residence permit holders' passports.)

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

The system should include: the validity period of the residence permit, the dates of entry and exits on the basis of the residence permit. The time spent on the territory of Schengen on the basis of the residence card should be excluded from the calculation algorithm of the stay on the basis of visa free movement or Schengen visa.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
- **when would the data of the residence permit holders be registered?**

When the person is crossing the border on entry and on exit.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Yes.

- **who could have access to this data?**

Authorities indicated in the EES proposal and LEA.

- **what would be the retention period for the data of residence permit holders?**

The same retention period as for other data stored in EES.

8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

It should be considered during the discussion on the proposal.

II. How to handle entry refusals after the abolition of stamping

1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?

– The refusal of entry should be stamp into the passport in addition to the registration into EES. This information is also important for other than border guard authorities - e.g. for carriers.

2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?

There are no obstacles to stamp passports in such situation.

3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?

– In the case of doubts, the stamp in the passport provides the first immediate and simplest information that the person e.g. is not allowed to enter the Member States` territory (e.g. the refusal of entry was issued by one Member State and the person has moved to another one). Registering in the EES data on refusing entry as well as the reason of the refusal of entry (according to the form set out in the Annex V, Part B of SBC) will allow for more efficient borders checks activities.

4. The inclusion of the entry refusal would have an impact on procedural matters, namely:

- **when would the data be registered?**

Shortly after the decision on refusal is issued.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

Time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry.

- **for how long would this data be retained?**

The period of storage of this data should be the same as for other data.

- **who could have access to this data?**

The access to this data could have access (next to the authorities referred to in the draft EES proposal) also carrier unless it would be maintained a stamp for the purposes of refusing entry.

5. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

It should be considered during the discussion on the proposal.

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. **To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

Our mobile terminals meet such requirements. In our opinion, instead of creating a dedicated application for this purpose, the central system should provide service web service that should be handled by applications to control border traffic of Member States. At the discretion of Member States (supported by adequate funding) it should be to align their application for this purpose.

2. **Do Member States see any alternative solutions which have not been developed yet?**
3. **To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**

All authorities entitled to the access to other data stored in EES should have also an access to the data on refusal decisions. The decision on previous refusals of entry is sort of supplementary information that can be used in other proceedings.

4. **Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

In the case of communication problems or damage to the mobile terminal it is possible to consult the SIS through the appropriate module. Details of the person and of documents are transferred to the Shift Manager via radio or other means of communication, who performs the necessary checks and forwards the answer to the border guard officer.

ROMANIA

I. Possible inclusion of holders of residence permits in the EES

1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?

All entries and exits of third country nationals, including family members of EU nationals, holders of a residence permit (card), are recorded in the Romanian Entry / Exit System.

The system is capable of establishing if such a holder of a residence permit is absent for more than 6 months in a year (for establishing a continuous residence) or absent for more than 2 years (leading to automatic withdrawal of the right to permanently reside on the Romanian territory, as established by Directive 38/2004).

According to the Schengen Borders Code, the travel documents of holders of residence permits (cards) benefitting from the regime provided for in Directive 2004/38/CE (other than family members of Romanian citizens) are not stamped only if they present the residence permit and are accompanying or joining the EU national.

Taking into account that Directive 38/2004 applies to all EU nationals moving to or residing into another Member State he/she is a national of and to their family members accompanying or joining them, the family members of Romanian nationals residing into Romania cannot benefit from the facilitation provided for by Directive 38/2004 and consequently their passports are always being stamped.

2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?

The same type of control cannot be applied because residence card holders and holders of other types of residence permits represent two different categories. In addition, Romanian authorities benefit from the facilities of the Entry/Exit System, but, in the same time, from the existence of border controls at all borders.

From the legal point of view, the Schengen Borders Code clearly provides for the categories of persons whose travel documents are not stamped and the third-country nationals for whom Directive 2004/38/CE does not apply are not included (regular third country nationals, but also TCN, family members of a Romanian national).

In the context of amending SBC, as part of the Smart Borders Package, Romania can agree with the abolition of stamping of travel documents, including family members only in connection with their registration into EES, while the elimination of stamping should be clearly stipulated for all applicable categories.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Romania considers that residence permit holders, including those referred to in Directive 2004/38/EC should be registered in the EES, especially from the perspective of establishing the authorized periods of residence with a view to granting right of residence on long term, as provided for by Directive 109/2003 concerning the status of third-country nationals who are long-term residents.

As for the secondary purpose of EES, the registration of residence permit holder could represent a valuable instrument in the process of preventing and countering criminal offences for law enforcement agencies.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

See the answer to the previous question. In addition, for the Blue card holders, the inclusion into the system would bring added value as their mobility would be facilitated, since the calculation of the authorized periods of stay would be possible.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

No such statistics can be provided as it is not kept.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

EES should provide for a functionality to calculate also the time spent outside the Schengen area, but also information on the validity of the residence permit could provide useful information if included in the system.

7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:

- **when would the data of the residence permit holders be registered?**

The data of the residence permit holders could be registered together with the creation of the individual file or, if the TCN does not hold a residence permit upon the date of creating the individual file, at the moment when the information is available, but this would be an additional administrative burden for the border guard and it could lead to increasing waiting time. Another option would be their registration by the issuing authority upon issuing the permit by creating in the EES a file of the concerned person.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Additional data should be registered in the EES such as residence permit number, the issuing authority, issue date, expiry date.

- **who could have access to this data?**

To these data the border, visa and immigration authorities, as well as law enforcement authorities should have access, while fully observing the data protection rules.

- **what would be the retention period for the data of residence permit holders?**

Romania propose that the data of residence permit holders be retained 5 years.

8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

A revision clause could be introduced, in direct connection to the transition period that Romania considers necessary from the moment the EES comes into operations until the moment the stamping is abolished.

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

Romanian authorities do consider useful to register the refusal of entry in EES, as well as the reason(s) for refusing entry, using the corresponding letter according to the annex V, part B, SBC, in order to be easy to be identified by any border guard. If the refusal of entry is registered in EES, there is no need to stamp the passport as an additional measure. In case the stamping is abolished, there is no justification to keep it only for refusing the entry.

As provided above, RO favours a transitional period for abolishing the stamping, no matter the categories to which the rules are applied, in order to evaluate in practice the feasibility of such a measure.

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

From practical point of view, it is not reliable to keep the stamp only for the refusal of entry, taking into consideration the costs relating to maintenance of stamps (drying ink for random use). The expert-level meetings organized in the framework of Smart Borders package could also tackle this issue.

- 3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

The registration of the refusal of entry in EES and a connected facility showing the border guard upon querying the system that the passenger was refused previously would be very useful for assessing the behaviour of the passenger, taking into account especially the reason he/she was previously refused. Even if every situation the passenger and the border guard are facing is to be evaluated objectively, having information regarding, for instance, a previous attempt to enter with a false document would alert the border guard leading to a corresponding examination of the conditions.

Furthermore, the system could provide instant statistics and a thorough assessment could be available for each Member State, but also for COM, regarding the number of refusals broken down by reasons. This would also reveal the threats for each BCP or even possible deficiencies in verification of conditions of entry, training, etc.

For the Schengen evaluation visits, the system would be of a key importance in this regard, as each visited location is required to provide statistics on the number of refusals, at least for the last 3 years.

- 4. The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**

In case the passenger complies with the entry conditions, EES facility could allow the entry in the first line, while in case of non-compliance, the system would send the passenger to the second line. Consequently, data regarding the refusal of entry could be registered in the second line, where the measure is actually taken.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

In order to have a relevant and complete informational picture, all the additional data mentioned should be added to the respective TCN' EES personal file: the date and time of the refusal and the BCP (to be automatically registered by the application), the authority which refused the entry, the reason for refusal.

- **for how long would this data be retained?**

The respective data should be retained for 5 years.

- **who could have access to this data?**

The authorities for border, visas and migration and also LEA should be entitled to access those data.

- 5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

A revision clause could be introduced, in direct connection to the transition period that Hungary considers necessary from the moment the EES comes into operations until the moment the stamping is abolished.

SLOVENIA

Slovenia would like to inform the Presidency that in Slovenia the absence from the Schengen area of the residence card holders (according to the 38 Directive) is not (systematically) controlled.

Slovenia also does not consider that the residence permit holders should be registered in the EES and do not see any particular added value of such inclusion. Also, in Slovenia's opinion there is no need to register the refusals of entry into EES as they are already registered in SIS and passports are appropriately stamped; the additional registration into EES would only be an unnecessary duplication.

The decision about the mobile devices to be used for performing checks within the territory should be left to the Member States, which would probably in any case try to upgrade as much as possible the existing equipment they use or buy such new equipment that would be the greatest possible extent compatible with the existing systems.

SLOVAKIA

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?**

No, the absence from the Schengen area (EU territory) in the case of residence card holders referred to in Directive 2004/38/EC is not controlled.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

The Slovak republic does not carry out such controls.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**
- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

Yes. Slovakia considers the inclusion of residence permit holders into the EES as added value. As an example could be mentioned a case when the third country national enters the Schengen area on the basis of valid visa for temporary residence permit, the residence permit is granted to him/her in the other member state of the European Union and s/he does not leave the Schengen area, s/he will be after the expiration of the residence permit recorded in EES as “overstayer” (a person with unauthorized residence in Schengen area). If residence permit holders are included into EES, relevant authorities will have in such case the possibility to create a record to such person, in which they will state the fact that residence permit was granted to this person. Likewise contrary, if third country national does finish the residence on the basis of residence permit and s/he will switch to the regime of temporary residence, it will be possible to identify the date when the residence permit expired and from which time the person resides temporary in the territory of member state.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

6. **Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**
7. **The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
 - **when would the data of the residence permit holders be registered?**

This data would be registered at every entry of the external border (if there is a new datum that is not recorded in the system) and at every grant of residence permit (or also in case of its prolongation).

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

Yes, all additional data would need to be recorded in the EES.

- **who could have access to this data?**

The access to this data should have the border guard, intranational immigration authorities, law-enforcement agencies, diplomatic missions of member states of the EU.

- **what would be the retention period for the data of residence permit holders?**

The retention period for the data of residence permit holders would be 5 years.

8. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

II. How to handle entry refusals after the abolition of stamping

1. **Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

Yes, the entry refusals should be registered in the EES. If the entry refusals was registered in the EES, the stamping of passports (travel documents) would not be necessary.

2. **Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**
3. **What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**
 - The border guard will have an overview of attempts of person to enter the Schengen area and another attempts to enter this area without fulfillment of conditions, e.g. through border crossing point in neighbor member state, could be stopped. A record on entry refusal in the EES will not in any way restrict the possibility to enter the Schengen area after the fulfillment of conditions.
4. **The inclusion of the entry refusal would have an impact on procedural matters, namely:**
 - **when would the data be registered?**

The data would be registered at every entry refusal; immediately after the completion of the act.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

Yes, all the above mentioned data should be registered.

- **for how long would this data be retained?**

This data would be retained for the period of 1 year.

- **who could have access to this data?**

The border guard.

5. **Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

III. The issue of checks within the territory of a Member State after the abolition of stamping

- 1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

Yes, the mobile devices should be used. Hungary considers them as safe and secure. The Slovak republic does use these mobile devices during border controls. As far as the mobile devices compatible with new system will be used, there should exist the possibility for member states of the EU for their further using.

- 2. Do Member States see any alternative solutions which have not been developed yet?**

- 3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**

Border guard, international immigration authorities, law enforcement agencies, diplomatic missions and embassies of the member states of the EU.

- 4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

FINLAND

General comment:

There might be certain value added if resident card and resident permit holders (except for those referred to in Directive 2004/38/EC) would be registered in the EES; inter alia due to new directive on Seasonal Workers (2014/36/EU). On the other, this might complicate the system and used procedures. Moreover, it would most probably increase the costs of the system. Therefore, Finland invites the Commission to make thorough assessment on this issue in its foreseen IA.

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?**
- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**
- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**
- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**
- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**
- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**
- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:
 - when would the data of the residence permit holders be registered?
 - would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?
 - who could have access to this data?
 - what would be the retention period for the data of residence permit holders?**

8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

II. How to handle entry refusals after the abolition of stamping

1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry?

Yes.

Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES?

No. (In that case if entry refusals are systematically recorded in the EES.

Should refusals of entry only be stamped in the passports?

No.

2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?

No.

No major drawbacks. However, passports can be renewed in order to hide border crossing history. In such cases, previous refusals of entry stamps cannot be detected by checking the passport only.

3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?

When information is recorded directly in the EES, information on refusals of entry is found even in cases when passports have been renewed in order to hide a previous refusal of entry stamp. Further and importantly, coherent information on refusals of entry (incl. reason for refusing entry) in the EES provides, where appropriate, added information for border guards to carry out effective border checks.

4. The inclusion of the entry refusal would have an impact on procedural matters, namely:

- when would the data be registered?

Data should be recorded directly once the refusal of entry has been implemented (put into practice).

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

In order to draw full benefit from the inclusion of entry refusals into the EES, date of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry) should be compulsory information.

- **for how long would this data be retained?**

5 years.

- **who could have access to this data?**

Border guards (border control authorities), authorities who are carrying out checks within the territory (alien surveillance), and visa authorities.

5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

Yes, once all the answers have been compiled.

III. The issue of checks within the territory of a Member State after the abolition of stamping

1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?

Mobile devices in use are secure enough to carry out such tasks, but investment in uniform mobile devices is something not to take into consideration. The idea of development of a mobile application that could be installed on existing devices needs further consideration but is welcomed.

2. Do Member States see any alternative solutions which have not been developed yet?

No, but nationally new applications are under development for remote access to relevant systems.

3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?

Necessity of the access to the data is crucial for the authorities competent to carry out checks within the territory. After the possible abolition of stamping of travel documents, remote access to data is the only way to enforce regulations.

4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?

Access to SIS and other relevant systems is managed usually by contacting regional or national SPOC. This is done by using radio communications or mobile telephones.

SWEDEN

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control take place, given that the passports of these persons are not stamped?**

Today, Sweden does not record the entries or exits of these individuals. It would be useful if the issue of residence card holders, especially taking into account those who bear the same rights but have not yet received their cards, could be elaborated further in the document.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

If a person with a Swedish residence permit leaves or enters the Schengen area from Sweden a registration in the central database for foreigners will be made. This only applies when the person in question travels to a third country directly from Sweden.

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

In case residence permit holders are to be included in the EES, the relevant data would also have to be registered as listed in the document. As is the case for other travel documents recorded in the EES, a new file will have to be created when the permit expires. The retention periods would then be the same.

Sweden has previously stated in the Working Party discussions that there seem to be both positive and negative aspects of including the residence permit holders in the EES. On the one hand, it would probably mean a greater administrative burden on Member States authorities and in consulates if the residence permit holders were to be included in the EES, since it would make them eligible for RTP. On the other hand, it would probably simplify the work of the border guards if the citizenship would be the decisive factor as to whether a person was to be included in the EES or not. In any case, it is important that the question is thoroughly examined and answered in detail as to exactly which types of residence permits that would either exempt and exclude a TCN from being registered in the EES.

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present? Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?**

Please see the previous answer. Information relating to time spent outside the Schengen area is relevant when handling applications for citizenship as well as when deciding whether or not a residence permit should be revoked as the holder no longer resides in the Member State.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

By reviewing the stamps in the holder's passport it is estimated that around 1000 residence permits were withdrawn in 2014. The number of issued residence permits during 2014 was approximately 100 000.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area? Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?**

Sweden has no official position regarding this issue. However, it raises a number of questions, as identified by the presidency below.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
- **when would the data of the residence permit holders be registered?**
 - **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**
 - **who could have access to this data?**
 - **what would be the retention period for the data of residence permit holders?**

Sweden has no official position regarding this issue.

- 8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

Sweden has no position regarding this issue.

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

As regards the handling of refusals after the abolition of stamping, Sweden makes the interpretation that the only stamping to be abolished is recording of entry and exit. Sweden is not abolishing the travel document itself so there is still a possibility to stamp the refusal. However, it would be preferred that an electronic record of the refusal should be done. The search for relevant information on a traveler should be limited to as few places as possible. An electronic record would also be in line with having other information stored in the same way. The retention period for a refusal decision should be tied to the person on which it was inflicted and follow this person during the entire retention period regardless of the travel document expires/is lost/stolen and a new EES file is created. A perfectly normal action that could be taken by a refused person, and whose travel document has either been stamped physically or electronically, would be to apply for a new one. Such an action should not lead to the refusal information being lost.

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough? What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?**

Please see the previous answer.

- 3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?**

Please see answer above.

- 4. The inclusion of the entry refusal would have an impact on procedural matters, namely:**
- **when would the data be registered?**
 - **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**
 - **for how long would this data be retained?**
 - **who could have access to this data?**

Please see answer above.

- 5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

Sweden has no position regarding this issue.

III. The issue of checks within the territory of a Member State after the abolition of stamping

- 1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

On the issue of checks on the territory, SE sees no great obstacles in performing controls over mobile devices. A set of minimum standards on these devices could be issued.

- 2. Do Member States see any alternative solutions which have not been developed yet?**

No.

- 3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**

In general, the issues of rule of law, clarity on information access and data protection and human rights are of great importance to Sweden in the continued discussions.

- 4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

N/A

SWITZERLAND

I. Possible inclusion of holders of residence permits in the EES

- 1. Is the absence from the Schengen area (EU territory) controlled in the case of residence card holders referred to in Directive 2004/38/EC? If yes, how does this control takes place, given that the passports of these persons are not stamped?**

In Switzerland, holders of a residence permit are subject to border checks on persons. However, without Schengen entry and exit stamps in the travel document, the absence from the Schengen area and especially from Switzerland can only be determined by means of questioning the traveller or verification of the foreign (non-Schengen) entry or exit stamps.

In principle, Switzerland does not check the absence from the Schengen area thoroughly. Without an electronic record of the entry and exit, the time needed for this kind of check would be quiet long.

- 2. If Member States carry out controls on residence card holders referred to in Directive 2004/38/EC to verify their absence from the Schengen area, without stamping their passports, could this kind of controls apply to holders of other residence permits?**

- 3. Do delegations consider that the residence permit holders (except for those referred to in Directive 2004/38/EC) should be registered in the EES, knowing that the collection and the treatment of personal data is governed by the principle of purpose limitation? In what terms should such purpose (inclusion of residents or certain categories thereof) be defined accordingly?**

Considering the principle of purpose limitation and of proportionality, such a collection and treatment of personal data would have to be consistent with the purpose of the EES (which will need to be defined clearly).

- 4. What examples of added-value of the inclusion of residence permit holders into the EES can delegations present?**

The inclusion could have an added-value in case of an automatic expiry of the residence permit in case of a too long absence from the issuing Member State or in the fight against terrorism (cf. French non paper sent by mail on 21.09.2015).

Do delegations see any alternatives to this inclusion, which the Working Party on Frontiers has not yet discussed thoroughly enough?

Switzerland does not have an alternative at this time.

- 5. For those Member States which stamp residence permit holders' passports, can they indicate the number of permits withdrawn for absences from the Schengen area based on the checks at the external borders, if possible in comparison with the number of residence permits issued per year?**

Switzerland does not affix an entry or exit stamp in residence permit holders' travel documents.

- 6. Should the inclusion of residence permits in the system provide for a functionality to calculate the time spent outside the Schengen area?**

For Switzerland, this kind of functionality could constitute a useful tool. This kind of functionality would allow to detect "understayers" (third country nationals who are absent from the Schengen area for a certain amount of time). Such persons lose their right of "resident status" and could therefore be irregularly staying in the Schengen area. As one of the purposes of the EES is to fight against irregular migration, this functionality could enter into the scope of the EES.

However, the check of the stay in other Member States, which could also lead to a loss of the right to a resident status is not possible.

Or would it be enough that the system reflects the validity period of the residence permit and registers the entries and exits?

For Switzerland, this kind of record could be in principle necessary for the border checks on persons (cf. art. 1 of the Proposal for a Regulation regarding the EES states that "[the EES] is established for [...] the calculation of the duration of stay [of third country nationals cross-ing the external borders of a Member State] and for the generation of alerts to Member States when authorized periods for stay have expired"). This proposition would be closer to the initial idea of EES, whose aim is, among others, to detect overstayers.

- 7. The inclusion of the residence permit holders would have an impact on procedural matters, namely:**
- **when would the data of the residence permit holders be registered?**

A possibility is that the issuing authority does the registration when issuing the residence permit (the first time) or when the authority extends the residence permit.

- **would additional data need to be recorded in the EES, i.e. the residence permit number, the issuing authority, issue date, date of expiry?**

The date of expiry of the residence permit should be mandatory.

- **who could have access to this data?**

The access is in relation of the defined purpose according the legal base, which is still missing. The purpose would define the authorities which could be e.g. the border guards, police or migration authorities.

- **what would be the retention period for the data of residence permit holders?**

It is mandatory, that the retention period takes into account the principle of proportionality.

- 8. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?**

In principle, a revision clause makes sense.

II. How to handle entry refusals after the abolition of stamping

- 1. Do delegations consider that entry refusals should be registered in the EES as well as the corresponding reason(s) for refusing entry? Do delegations consider that refusals of entry should be stamped in the passports in addition to registration in the EES? Should refusals of entry only be stamped in the passports?**

The Swiss border guards are of the opinion that the entry refusal should be registered in the EES. The stamping should be further considered, unless there is an alternative solution which is covered by the defined purpose in the legal base and in line with the principle of proportionality.

Switzerland highlights art. 4 of the proposal for a Regulation regarding the EES: Information regarding the reasons why a third country national was denied entry could be of interest, in particular as regard to the purpose of “assist[ing] in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, or stay on the territory of the Member State”.

- 2. Do delegations see any alternatives to the proposed solution, which the Working Party has not yet discussed thoroughly enough?**

Switzerland does for the moment not have an alternative.

What are the drawbacks, if any, of maintaining the obligation to stamp the refusals of entry in the passport?

Each border crossing point would have to be in possession of the stamps. The storage as well as the use of them should then be in line with the recommendations and best practices of the EU Schengen Catalogue “External borders control / Return and readmission”.

3. What examples of added-value of the inclusion of entry refusals into the EES can delegations present?

The person, whose entry was refused, can try to enter using a different border crossing point (especially on the land borders). Without registration, the border guards cannot do a correct thorough check on persons.

4. The inclusion of the entry refusal would have an impact on procedural matters, namely:

- **when would the data be registered?**

The authority ordering the entry refusal should immediately do the registration in the EES.

- **would the same data be registered into the system as for any other third-country national or would additional data need to be recorded such as date and time of refusal of entry, authority which refused the entry, entry border-crossing point (BCP), reason for refusal of entry (the list of which is given on the standard form for refusing entry)?**

The registered data should be in accordance with the standard form for refusal of entry at the border (annex V, part B Schengen Borders Code).

- **for how long would this data be retained?**

It is mandatory, that the retention period takes into account the principle of proportionality.

- **who could have access to this data?**

The access is in relation of the defined purpose according the legal base, which is still missing. The purpose would define the authorities which could be e.g. the border guards, police or migration authorities.

5. Do delegations consider that there should be a revision clause on this aspect (added-value, possible drawbacks, etc.)?

In principle, a revision clause makes sense.

III. The issue of checks within the territory of a Member State after the abolition of stamping

- 1. To what extent are mobile devices secure enough to carry out such tasks? Would there be a need to invest in uniform mobile devices taking into account the relevant financial impact or would Member States welcome the idea to develop a mobile application that could be installed on devices which are already in use?**

For Switzerland, it is mandatory to have mobile devices to check the stay when a person is controlled within the territory.

For the moment, Switzerland does not have enough information to form a final opinion. However, the relevant data should also be “readable” on existing devices.

- 2. Do Member States see any alternative solutions which have not been developed yet?**

For the moment, Switzerland does not have alternative solutions.

- 3. To what extent has the objective and the necessity of the access to the data to be defined (purpose, which authorities should have access to the data, in which cases, etc.)?**

The *purpose limitation principle* foresees that personal data may only be collected for specified, explicit and legitimate purposes. Once data are collected they may not be further processed in a way that is incompatible with those purposes. Therefore, it is necessary to define, in a clear legal provision (in the future EES Regulation), which authorities can have access to such data and for which purpose.

In addition, this point is relevant for the development and construction of the IT-system.

- 4. Are there any fall-back procedures needed in the short term as for example when there is no connectivity in a remote area, or when a mobile device is defective? How is the access to the Schengen Information System managed in these cases?**

A fall-back procedure makes sense.
