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From: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

On: 19 September 2013

Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing a Registered Traveller Programme

1. At its meeting on 19 September 2013, the Working Party continued the examination of the proposal, covering Articles 14(2) to 19 thereof. The **Cion** provided answers to certain queries related to preceding Articles, which had been submitted by delegations during the previous meetings. These answers are going to be incorporated in the consolidated text, which will reflect the discussions on the proposal in their entirety.
2. The text of the above provisions (including the entire Article 14 for facilitating its reading) is included in the Annex to this Note. Member States' comments are set out in footnotes.

Grant and extension of access to the RTP

1. Initial access to the RTP shall be granted for one year. Access may be extended for two years upon request, followed by a further two years without a new application in the case of travellers who have followed the rules and regulations laid down for crossing the external border and for staying in the Schengen area.¹ The period of access granted shall not exceed the validity of the travel document(s), visa, residence permit or residence card, if applicable, and shall be based on the examination conducted in accordance with Article 12.²

¹ **SK**: the term “Schengen area” is not defined in a legislative instrument; it could be replaced by “where not internal borders are checked”. **Cion**: concurred that this term has to be defined or amended. **DE** queried why only at the second possible extension there is reference for the first time to the compliance with the rules for crossing the external borders and for staying in the Schengen area, as a prerequisite for obtaining such extension. **Cion**: confirmed that these rules shall be observed also on the occasion of the first crossing. **SE** asked the following questions: whether one MS would be entitled to extend the RTP originally granted by another MS; **Cion** replied that it would be possible, with the appropriate distribution of the administrative burden; b) how the option “upon request”, regarding the first extension could be implemented in practice; and c) what would be the consequences if the TCN concerned misses a deadline, in the context of the RTP procedure. **Cion** confirmed that, (in relation to the third question), a new RTP application would then have to be submitted.

² **CH, FR, HU**: it should be provided that a TCN applying for extension shall appear in person for security reasons. **Cion** indicated openness regarding this request; however, it suggested avoiding disproportionate measures, pointed out that the biometric data would be the same and that the relevant documents could be verified easily. At any rate, examination of the conditions laid out in Art. 12 would have to take place. **LV, NL**: expressed concerns about the added value of extending a RTP beyond the five years (which is a facilitation mechanism). **LV** suggested providing in the Regulation for the form regarding the extension application and the relevant procedure to be followed. In the same vein, **NL** suggested clarifying that the RTP should not be valid beyond the duration of the visa or the relevant travel doc. **Cion**: this issue needs to be further examined. **RO, SI**: queried about the procedure to be followed for extending the validity of an RTP beyond the five-year period. **Cion** pointed out that the criteria of Art. 12 have to be checked anew.

2. Access to the RTP shall be granted without further procedural requirements,¹ subject to fulfilment of the substantive requirements set out in this Regulation, to persons holding or being issued a multiple-entry visa or D-visa valid for at least one year, persons holding a residence permit and family members of citizens of the Union.
3. The data set out in Article 26 shall be entered into the Central Repository when a decision granting access to the RTP has been taken.

¹ In reply to **SE** (which pointed out that wording "further procedural requirements" is too vague, **Cion** indicated that it could consider deleting paragraph 2 and instead, specifying in Arts 5 and 9 of the proposal the procedural requirements for persons holding or being issued multiple entry visas or D - visas valid for at least one year as well as residence permit holders and family members of Union citizens. **ES**: could support in principle the deletion, as the wording is not clear, but preferred to further scrutinise the issue; however, **ES** pointed out that RTP should not be granted to persons in the process of obtaining a multiple-entry or a D-visa.

4. The data set out in Article 27 shall be entered into the token when a decision granting access to the RTP has been taken.¹
5. The data set out in Article 30 shall be entered into the Central Repository when a decision extending access to the RTP has been taken.

¹ **BE, BG, CH, DE, DK, FR, NL, AT, PL, SI:** reiterated their reservations in relation mainly to the use of a token in the RTP procedure. **BG, DE, FR** (which referred to its proposals comprised in doc. 1306/13), indicated that the use of e-passports could probably constitute a less costly alternative to the token. **FR** also, pointed out that the physical separation between the alphanumeric and the biometric data could be guaranteed through the use of e-passports. **Cion:** given the concerns of the EP and EDPS regarding the data protection safeguards, the discussion should not only focus on the costs of the token (which **Cion** considers neither overly expensive, nor bureaucratic), but it should be seen as a balancing tool providing further guarantees to this effect. In this sense, **Cion** underlined that the use of the token would counterbalance the fact that for the RTP (which, unlike VIS and EES, would be voluntary and with a smaller number of records) would not have to use the biometric data, (which would be introduced in the system), for a reliable matching procedure. Moreover, **Cion** pointed out that the token (which could be read by the same scanners used for passports and visa stickers), could also ensure the storage of anonymised data, related to biometrics.

BE, DK, SI: reliable and less expensive alternatives should be studied thoroughly. **SE** suggested replacing the token with a four-digit PIN code (to be used along with the country code and the passport number); **SE** invoked as advantages the significant yearly savings regarding the cost of the token and the cost for refurbishing the ABC gates, as well as the alleviating of the extra administrative burden linked to the physical handling of the token. Without prejudice to its final analysis, **Cion** expressed initial concerns about this suggestion, regarding additional administration requirements (back office in case where the PIN is forgotten), additional infrastructure, etc. **FR** also indicated that the use of a PIN code system would entail extra equipment and costs.

In agreement with **FR**, **Cion** proposed launching a pilot project, which could be entrusted to eu-LISA to examine the technical options for the RTP system and qualify the best to meet its objectives. **DE:** endorsed this proposal and suggested resuming the discussion on the token when examining the pilot project's findings.

Moreover, **BE, BG, FR, AT, NL, PL** pointed their concerns about the extra administrative burden of the Consulates' staff who will be involved in the RTP procedure (especially for those TCN who are exempted from visa requirements). **BE, AT, PL:** suggested asking the Visa WP to scrutinise this proposal regarding issues linked to the Visa Policy. **Cion** agreed with this suggestion, acknowledging the impact that this proposal could have on Visa issues.

Refusal of access to the RTP

1. Access to the RTP shall be refused if the applicant:¹
 - (a) presents a travel document which is not valid or it is false, counterfeited or forged;
 - (b) does not have a valid residence permit, residence card or a visa, if required pursuant to Council Regulation (EC) No 539/2001² and does not fulfil the requirements to be issued therewith;³
 - (c) does not prove the need or justify the intention to travel frequently and/or regularly;⁴

¹ **FR, LV:** a refused RTP applicant should be entitled to repeat his/her application only after the lapse of a deadline, not immediately (**FR** suggested imposing a two-year ban, to tally with the data retention period). **DE, NO, Cion** disagreed with this suggestion, pointing out that such sanction would be disproportionate especially, e.g., where no irregularity was committed by the applicant, where no visa would be required, a wrong SIS II alert would be taken into account, or for applications from which simply a supporting doc. would be missing.

DK: the list of the refusal grounds should not be exhaustive. **Cion** stressed that these grounds have to be exhaustive. In reply to **DE**, **Cion** pointed out that, alike the structure of the Visa Code, the conditions to be fulfilled by the applicants are listed twice in the RTP (Arts 9 and 15).

² OJ L 81, 21.3.2001, p. 1.

³ **RO** suggested deletion of the last part of the sentence “and does not fulfill the requirements to be issued therewith”, because of its vagueness (not clear whether the issuing conditions of all the docs. referred to in this provision should be met each time) and inasmuch as this Regulation is aimed at facilitating travelling for the TCN and not replacing the assessment that is entrusted to MS. **DE:** suggested adding reference to D-visas for coherence with Art. 14(2) of this proposal. **Cion** will further reflect on these suggestions.

⁴ In reply to a query from **NL** (about the scope of the wording “travel frequently and or regularly”), **Cion** pointed out that this terminology has been taken from the Visa Code regarding the multi-entry visas and that relevant quantitative examples from the Visa Code could also be inserted in this proposal. **NO** considered that the rules in the context of this proposal for visa-exempted travelers should be more flexible than those which will be applicable to those who are subject to visa. **Cion:** such a differentiation could be further reflected.

- (d) has previously exceeded the maximum duration of authorised stay in the territory of the Member States and he/she does not prove his/her integrity and reliability, in particular his/her genuine intention to leave the territory in due time;¹
 - (e) does not provide justification of the purpose and conditions of the intended stays;
 - (f) does not prove his/her financial situation in the country of origin or residence and does not possess sufficient means of subsistence both for the duration of the intended stay(s) and for the return to his/her country of origin or residence, or he/she is not in a position to acquire such means lawfully;²
 - (g) is a person for whom an alert has been issued in the SIS;
 - (h) is considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where an alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds;
- or
- (i) if there are reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their contents or the reliability of the statements made by the applicant.³

2. A decision on refusal and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex IV.

¹ **FR, NL** pointed out that it would be very difficult to prove the elements of integrity and reliability and suggested deleting or amending the relevant part of this provision. In the same context, **SK** queried what would be the consequences in case of a brief violation of the relevant doc's validity period (e.g. for hospitalization of the TCN) and suggested providing for a minimum period of time beyond the above validity period, which, if breached, would entail banning from the RTP system. **Cion** pointed out that in case of a justified overstay, point (d) could be used to avoid being banned from the RTP. The terminology of this provision should be construed in the light of the Visa Code, given that has been taken from that instrument.

² In reply to **CH** and **SI**, **Cion** noted that the discrepancy of this provision with Art. 9(1)(b) – which provides that the applicant shall present proof of sufficient means of subsistence for the next two trips - could be addressed by making reference in this provision to the next two trips criterion.

³ **NL**: too much leeway in this provision; if it is retained, a handbook would be needed, in order to have a common understanding thereof.

3. Without prejudice to the right to judicial review, in accordance with the procedural law of the Member State that has taken the final decision on the application, the applicant whose access has been refused to the RTP shall have the right to review of the refusal for challenging or correcting potential errors in accordance with the Right to effective remedy¹. Appeals shall be conducted against the Member State that has taken the decision on the application and in accordance with the national law of that Member State. Member States shall provide applicants with information regarding the procedure to be followed in case of review, as specified in Annex IV.²
4. Where an application for access to the RTP is refused, data shall be added to the Central Repository in accordance with Article 28.³

¹ Article 47(1) of the Charter of Fundamental Rights of the EU.

² **NL** (which suggested drawing on the Visa Code), **AT**: scrutiny reservations on the provision. **EE** pointed out that the deadlines for the relevant procedures will be too short; **EE, AT, SI**: RTP does not constitute a right for the TCN concerned (who can still travel, even if refused an RTP status); therefore, remedies may not always be sine qua no in this context. **Cion** recalled that the right to an effective remedy was recognised in the EU Charter of Fundamental Rights and thus, it should also be granted to the RTP applicants, along with the other relevant rights and obligations. In reply to **FI**, **Cion** pointed out that the procedure under Arts 15(3) and 16(3) of the RTP proposal was not different in essence from the one provided for in the Visa Code, but clearer and more detailed. In reply to **PL**, **Cion** clarified that the appeal procedures should be carried out in accordance with the national law of the MS concerned.

³ In reply to **DK**, which expressed concerns about potential problems arising from the five-year storage of the data on refusal, which could be incorrect at a later stage, **Cion** recalled that this provision aims at prevent RTP shopping. **Cion** also pointed out that the data related to refusal could be corrected upon a new, with positive outcome this time, application by the same TCN.

Article 16

Revocation

1. Access to the RTP shall be revoked:
 - (a) when it becomes evident that the conditions for granting access to the RTP were not met;¹
 - (b) when it becomes evident that the conditions for granting access to the RTP are no longer met;
 - (c) at the request of the registered traveller.²
2. Access may be revoked by the competent authorities of any Member State at any time pursuant to paragraph 1.³
3. If authorities other than competent authorities have evidence to suggest that access to the RTP should be revoked pursuant to paragraph 1, they shall inform the competent authorities without delay.⁴
4. A decision on revocation of access to the RTP and the reasons on which it is based shall be notified to the registered traveller by means of the standard form set out in Annex IV.⁵

¹ **RO**: suggested clarifying the provision, by adding at its end "at the time it was issued".

² **CH** queried whether the request should be done in person and / or in writing.

³ In reply to **DE**, **Cion** clarified that the competent authorities to carry out the revocation of an RTP would be the same ones which would be originally competent to grant it. **Cion** further clarified that the competent authorities of **any MS** could make the revocation. In order to make the provision of para. 2 more comprehensive, **Cion** suggested providing in it that the authorities which revoked the RTP should inform the authorities of the MS which originally granted access to the RTP.

⁴ **NL** queried about: i) which authorities had to inform the competent ones about the evidence suggesting that the access to RTP should be revoked, ii) whether passing this information to the competent authorities would be obligatory and iii) how these "other" authorities would know that a TCN has an RTP access. In support to **NL**, **SE** pointed out that it would be exceedingly demanding to expect that all authorities in a MS would be aware of such an obligation and wondered whether private companies could also provide such information. In the same vein, **NO** suggested replacing "shall" with "should", in order to provide some flexibility in the implementation of the provision. **Cion** clarified that the intended scope of the provision was the law enforcement authorities and, acknowledging that not all the national authorities could transfer the information under this provision, suggested seeking alternative wordings.

⁵ In reply to **NL**, **Cion** recalled that the notification of the decision on the revocation could be sent to the domicile given upon the application. **LV** suggested that the reference made to the residence permits in the first point of Annex IV should be modified as follows: "a **Member State's** residence permit".

5. Without prejudice to the right to judicial review, in accordance with the procedural law of the Member State that has revoked access to the RTP, a registered traveller whose access to the RTP has been revoked shall have the right to review of the revocation for challenging or correcting potential errors in accordance with the Right to effective remedy¹ unless the access has been revoked at the request of the registered traveller in accordance with paragraph 1(c). Appeals shall be conducted against the Member State that has taken the decision on the revocation and in accordance with the national law of that Member State. Member States shall provide applicants with information regarding the procedure to be followed in case of review, as specified in Annex IV.²
6. Where the access to the RTP is revoked, data shall be added to the Central Repository in accordance with Article 29.
7. Where the revocation of access was requested by the registered traveller, the registered traveller shall have the right to ask for immediate deletion of his/her data. Member States shall inform the registered traveller about this right.³

¹ Article 47(1) of the Charter of Fundamental Rights of the EU.

² **NL, AT**: scrutiny reservations on the provision - as for Art. 15 (3).

³ **DK, NO**: queried whether, following a revocation asked by the registered traveller, all his/her data should be deleted from the Central Repository. In this context, **NL** suggested keeping some data for statistical purposes. **Cion** stressed that all the relevant data should be deleted, as the intention / principle is to maintain the minimum necessary. It also recalled that, according to draft Art. 26(6) a trace could be kept for statistical purposes, but no personal data, i.e. only the application number should be retained with mention that the status was revoked.

NL queried about the time the RTP holder should be informed about the possibility to request for the revocation of the access and have his/her data deleted from the Central Repository and about which MS would be responsible to carry out the deletion. **LV** indicated that this information should be given upon reception of the token. **Cion**: the relevant information about his / her rights regarding revocation and deletion of personal data, could be given to the RTP holder at different times, e.g. upon application, when the token would be given (through a leaflet, etc). **Cion** also pointed out that the deletion should in principle be made by the MS which issued the RTP status.

In reply to **AT**, **Cion** pointed out that the RTP may keep the token even after revocation, given that it would be unusable.

CHAPTER V

Administrative management and organisation

Article 17

Administration¹

1. The competent authorities shall keep archives of applications. Each individual application file shall contain the application form, copies of relevant supporting documents, a record of checks² made and the reference number of access granted to the RTP³, in order for staff to be able to reconstruct, if needed, the background for the decision taken on the application.
2. Individual application files shall be kept as long as access is granted to the RTP.⁴

¹ By way of general query to **Cion**, **IT** asked why in this Chapter there is no explicit provision entitling MS to use the services of commercial providers in their administration. **FR** supported **IT** and suggested providing for the option of externalisation of the services in the context of Art. 18(1). **Cion** a distinction has to be made between the visa and the RTP application processes. While for the visas the interview of the applicant was not mandatory, for the RTP it would be compulsory and could not be part of an outsourcing exercise. Hence, service providers could be used to collect RTP applications, but not hold the required interviews.

² **NL** queried about the notion of "record of checks" and about the form of the archives (in paper / electronically). In this context **DE**, **PL** suggested clarifying whether the RTP docs could be archived electronically, instead of keeping the originals. **Cion** confirmed that electronic storage would be possible. **NL** also asked if RTP could provide for a central archive function for all MS. **Cion** recalled that VIS has had such an option, but it has never been used and indicated that this issue could be examined in the aforementioned Eu - LISA pilot project. **EE**, **FI** supported carrying out such an analysis and looked positively at a central archiving system, given that different authorities could be involved during the course of an RTP.

³ **FI**: suggested amending "the reference number of access granted to the RTP with "the application number" in order to cover cases where the RTP will be revoked.

⁴ **NO**: scrutiny reservation on the provision, in relation with its national legislation on archives. In reply to **PL** (asked about archiving on RTP extensions) and **DE** (asked whether keeping the archives longer in cases of forged or counterfeited identity) **Cion** confirmed that files should be kept for as long as access would be granted to RTP (**PL**) and that in cases of faked identity the files should be kept for a maximum of two years. In reply to **SE**, **Cion** considered that an appeal against a decision on refusal or revocation should not have an impact on the retention period, given the sufficiently lengthy deadlines under this provision.

3. Where access to the RTP is refused or revoked, the application files shall be kept for a maximum of two years. That period shall start on the date of the decision of the competent authority to refuse or revoke access. Applications withdrawn by the applicants shall be deleted without delay. Member States may store the application files including supporting documents in an electronic form.¹

Article 18

Resources for examining applications, issuing tokens, monitoring and statistics

1. Each Member State shall be responsible for organising the procedures related to submission and examination of applications as well as issuing tokens.
2. Member States shall deploy appropriate staff² in sufficient numbers to carry out the tasks relating to the examination of applications, in such a way as to ensure reasonable and harmonised quality of service to the public.
3. The competent authorities shall provide adequate training to their staff and shall be responsible for providing them with complete, precise and updated information on the relevant Union and national law.

¹ **CH, LV** suggested moving the last sentence of para. 3 ("Member States may store..." to para. 2. **Cion** could agree with this suggestion. **NO**: scrutiny reservation on the provision, in relation with its national legislation on archives.

² **PL**, supported by **DE, NO**, scrutiny reservation on the provision, pointing out that it would be problematic to implement it (especially for certain Ministries), without taking recourse to outsourcing. **NL**, supported by **DE, NO**, suggested deleting "in sufficient number", as this concept could be interpreted in different ways. **Cion** recalled that this provision reflects Art. 38 of the Visa Code.

4. The competent authorities shall ensure frequent and adequate monitoring¹ of the conduct of examination of applications, issuing tokens and take corrective measures when deviations from provisions and procedures of this Regulation are detected.
5. Member States shall compile annual statistics on the RTP, in accordance with the table set out in Annex V.² These statistics shall be submitted to the Agency by 1 March of each year. The Agency shall publish them.

Article 19

Conduct of staff

1. The competent authorities shall ensure that applicants are received courteously.
 2. The competent authorities shall, in the performance of their duties, respect human dignity. Any measures taken shall be proportionate to the objectives pursued by such measures.
 3. While performing their tasks, the competent authorities shall not discriminate against applicants or registered travellers on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
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¹ **NL** considered the drafting of this provision vague and queried about the role of the **Cion** in the monitoring exercise. **Cion** clarified that the monitoring would be up to the national authorities, which should make sure that it would be "frequent and adequate", based on the best-efforts / professionalism criterion (although these notions would be difficult to quantify).

² **DK, EE, NO, SE, SI** suggested that Annex V should be discussed in depth, as some of the data listed in it could not be obtained by the MS, but by eu-LISA. These **delegations** suggested dividing Annex V to two parts: one would list the data that could be obtained by the national administrations and the other those which could be retrieved by the central system. **Cion** agreed that Annex V should be revised and acknowledged that most of the statistics should be produced by the central system (while some should be compiled at national level).