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LIMITE

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COMIX 385

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 18 July 2014
To: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject: Summary of discussions

1. Smart Borders Package

- State of play of the ongoing Smart Borders Study
- The Smart Border Pilot Project for 2015 – Possible implementation approaches. Results of the meeting with the eu-LISA held on 19 June 2014
 - Presentation by Commission

Cion submitted to the Working Party an updated state-of-play on the progress made and the steps to take for the completion of the Smart Borders Study. **Cion** invited delegations to communicate their comments on the draft final report of the Study (which had been circulated on the eve of the WP meeting) by 30 July 2014. It further informed the WP that it intends to focus on the chapter dedicated to the Costs (which shall be the final piece of the Study) by mid-August 2014 and indicated that it was looking forward to completing the final report on the Study by the end of September 2014. **Cion** also informed the WP about its intention to hold a meeting, in October 2014, at which the results of the Study will be presented in detail to all the stakeholders concerned.

Cion also debriefed the WP about the results of a meeting organised by it and eu-LISA on 19 June 2014, in order to introduce to MS the possible approaches for the Smart Border pilot project (which is scheduled to run throughout 2015). **Cion** reminded delegations that the objective of the ongoing reflection on the advantages and disadvantages of each option is to agree on the most beneficial one for the implementation of the pilot project, in compliance with the approach agreed by Coreper, in February 2014.

Cion considered that, on the basis of the conclusions the Agency and itself drew from the 19 June 2014 meeting, the "third" option, based on piloting limited prototype(s) together with key scenarios, was preferable as it would provide the necessary flexibility to test a range of varieties, but at the same time would avoid to focus on things for which there is past experience from other similar IT systems.

FR, BE expressed concerns about this approach, which - in their view - would not give a safe enough estimate to help the decision making process on the Smart Borders proposals. They advocated for the "second" option, which is about implementation of an end-to-end prototype, comprising national systems and a central one. They considered that the investment of extra money and time this would imply would be worthwhile, given the magnitude of the Smart Borders. In the same context, **DE, ES** stressed that, in their view, the overarching goal of the Study (over a possible extension of the anticipated time-line) shall be to have reliable results. **BE** indicated that it could consider accepting the "third" option, as long as a second pilot of an end-to-end scale would also be taking place before the implementation of the Smart Borders package.

NL, FI shared the analysis of **Cion**. **NL** considered that the suggestion of **BE** for a second pilot project at a later stage could be taken on board. **FI** invited **Cion** to provide a clear timetable and budget estimate, in order to substantiate its acknowledgement that the third option should be preferred as more viable.

PL queried whether costs such as those that will be generated by the participation of national experts in the Study could be covered by the general allocations from the ISF Borders, or should be incurred by a different funding channel.

Cion reminded delegations of the deadline (30 July 2014) for their final comments on this exercise for the choice of approach and informed those delegations which have volunteered for the running of the pilot project that they will be notified accordingly by the beginning of October 2014. Furthermore, **Cion** informed about eu-LISA's intention to hold a meeting, after the conclusion of the study, aiming at reaching a decision on the preferable scenario for the running of the pilot.

The Pres. concluded by inviting delegations to pursue their reflection on this very important exercise and indicated that the issue will be addressed again by the WP in due time.

2. Smart Borders Package

– Access for law enforcement purposes to the EES

– Summary by the Presidency of the answers provided by the Member States to the questionnaire of the former Hellenic Presidency and discussion on the ways forward

– 11670/14 FRONT 144 VISA 169 ENFOPOL 210 CODEC 1591 COMIX 366

Pres. recalled the Note by the former **EL Pres.** which was drawn up with a view to making progress in the questions around the access for law enforcement purposes (LEA) to EES. That Note contained a questionnaire, which was intended to highlight the particular views of the MS for the implementation of the access for LEA to the EES, in due respect of the relevant acquis, including the recent case-law.

Pres. submitted to the WP the conclusions it had reached on the basis of the contributions it received from delegations regarding the aforementioned questionnaire. The presentation was based on the analysis, set out in doc. 11670/14, of the above contributions, with emphasis on the way forward towards the negotiations with the European Parliament on this highly important issue. **Pres.** invited **Cion** to take note of the delegations views in the preparation of the Study on Smart Borders.

CLS drew the particular attention of the delegations to the implications of the recent case-law (the tests of necessity and proportionality - "the need to know" principle) for the final shaping of the Smart Borders legislative package. **Cion** reiterated its position that no sufficient evidence has been gathered so far, which would justify the access to LEA in the light of the two above tests. In this vein, **Cion** asked delegations to report on possible experience with regard to LEA for VIS, which would be useful to assess the relevant requests in the context of the EES.

EL pointed out that for some MS it could be vital to provide for flexible solutions in anticipation of possible negative developments. **AT, FR** expressed their intention to check for past cases, although - as they acknowledged - there might not be many given the short period of access for the data banks.

The **Pres.** invited those delegations which had not submitted their contributions on the Questionnaire to do it by 30 July 2014; moreover, it asked them to provide their past experience on the access for LEA to other data banks and identify their relevant experts who could participate in the September meeting of the WP.

- **"Question E – Other issues", doc. 10720/14**
- **Presentation by the Presidency and first exchange of views on the issues contained under Question E**

Delegations had a first debate on these issues (which had not been analysed in doc. 10720/14), with particular emphasis on the possible need to carry out prior checks in other data bases (VIS, SIS II, etc.) before gaining access to the EES. The **Pres.** invited delegations to submit their opinions on these issues by 30 July 2014.

3. Joint Operation "Mos Maiorum"

- **Presentation by the Presidency**
- **11671/14 FRONT 145 JAI 598 ENFOPOL 214 COSI 65 COMIX 367**

The **Pres.** made a presentation to the WP of its proposal for a Joint Operation (JO) under the name "Mos Maiorum", the parameters of which (as set out in doc. 11671/14) represent a continuation of past joint operations, in the context of the Guide for Joint Operations (doc. 16825/10).

The **Pres.** focused on the objectives of the JO and its intended added value, gave its time table, as well as practical modalities for its implementation and invited all delegations of Member States and Schengen Associate Countries to actively participate, in close cooperation with Frontex.

SE made a proposal to provide for collective reporting for future operations, with the support of Frontex, in order to reduce the administrative burden.

Pres. invited delegations to confirm their participation in the JO and submit the contact details of the national coordinator by 5 September 2014.

**4. "FRA Handbook on European law relating to Asylum, Borders and Immigration",
Second Edition**
– **Presentation by European Agency for Fundamental Rights**

The Representative of the Agency (FRA) presented to the WP the updated (regarding the recent case-law) version of the Handbook, giving an outline of the objectives of the publication and of its contents.

5. AOB
– **Information provided by the NL delegation regarding the request of the US to
introduce a border preclearance facility at the Schiphol airport**

NL informed delegations about the above request, which is about allowing the US authorities to operate such a border preclearance facility at Schiphol. The objective of this pre-boarding inspection is to treat the travellers, once they arrive in the US, as domestic travellers and to streamline their internal procedures. **NL** emphasised the need to reach a common EU approach on this issue, by virtue of the relevant *acquis*. **NL** raised certain concerns in relation to the possible establishment of such a facility, e.g. whether it would be permissible under the Schengen Borders Code, as well as under a fundamental rights perspective; it also asked a series of practical questions such as the treatment of those refused entry to the US (and if they are entitled to legal remedies), of those who may seek international protection there, etc.

Cion pointed out that it would address these questions following internal consultations and advised delegations to submit their views to this effect.

IE shared its experience from the functioning of such a facility by the US at two of its airports. It acknowledged positive results and pointed out that before take-off the Irish legal jurisdiction is applicable, the US authorities may question or search the passengers (with their permission), deny them boarding, but not arrest them. **IE** further pointed out that it is up to its own competent authorities to collect those transit passengers who are refused boarding and apply the relevant procedures.

Several other delegations notified that they have informally been approached by the US authorities for the same objective without taking any concrete steps yet.

Pres. invited the other delegations to share with the WP any similar experience, with a view to working on a common EU & Schengen Associate Countries approach regarding the matter.

- Request by NO to discuss the issue of prolongation of validity of the ID cards and passports beyond ten years

NO suggested confirming a **common approach** by MS on the issue of extension of the validity of travel documents (including ID cards), both of EU citizens and of third-country nationals (TCN), beyond the ten-year limit. **NO** indicated that such an approach could include procedural issues such as the ways to inform other MS about the new expiry date. **AT** pointed out that under the Schengen acquis the validity of the travel documents of TCN cannot be beyond ten years. As regards the EU citizens, **AT, BE** stressed that any prolongation has to be clearly notified to the Border Guards, especially if the new expiry date is not clearly noted / stamped on the travel document. **Pres.** asked **Cion** to revert to the issue in one of the coming meetings with a comprehensive feedback.
