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LIMITE

VISA 31
COMIX 63

OUTCOME OF PROCEEDINGS

From: Visa Working Party/Mixed Committee
(EU/Iceland, Norway and Switzerland, Liechtenstein)

On: 17 January 2017

Subject: Summary of discussions

1. Draft Council Decision on the putting into effect of certain provisions of the Schengen acquis relating to the Visa Information System (VIS) and of remaining provisions of the Schengen Information System (SIS) in the Republic of Bulgaria and in Romania

The Chair presented 15764/16, in which the latest changes suggested by the Presidency to the draft Council Decisions had been included.

HR and ES supported the text as set out in 15764/16. ES asked for some technical clarifications. RO said that their previous comments had only been partially reflected in 15764/16 and said they would send some more comments after the meeting.

CZ wondered whether the draft Decision could be legally based on the evaluation of Bulgaria and Romania, since that had been carried out more than five years ago. CZ also regretted the lack of a roadmap to the full application to those Member States of the Schengen acquis. Finally, CZ asked what the consequence for the other Member States would be if Bulgaria and Romania entered an entry ban in the SIS. FR, while not opposing the draft Decision in principle, stated that it was premature to adopt it given the uncertainty regarding the entry into force of the Entry/Exit System (EES). Furthermore, FR found the replacements in the text with 'consultation and use' not opportune. BE shared the concerns expressed by CZ and FR. Moreover, BE said it could not agree with the idea that stay in Bulgaria and Romania had to be counted as stay in the Schengen area. BE warned that 'use of the VIS' in the text of the draft Decision could imply that the length of the stay in the Schengen area was to be calculated that way. , BE said that lifting the remaining provisions of the SIS was going too far, since Bulgaria and Romania were not yet Member States applying the Schengen acquis in full. IT, while agreeing with 15764/16, supported BE and FR as regards their legal concerns.

BG recalled that the issue had already been raised in the context of the EES proposals. In that context, BG was of the opinion that consultation of the VIS was necessary. Furthermore, BG said that a roadmap concerning interoperability with VIS had been agreed at ministers level during the Netherlands Presidency. BG also stressed the need for security to be reinforced at external borders.

FI entered a scrutiny reservation. DE, while open as to whether passive access to the VIS should be allowed, asked the Council Legal Service (CLS) to give clarification on what access to the VIS for Bulgaria and Romania would mean and how it would be reconcilable with the fact that those two Member States do not issue yet Schengen visas. SE wondered about the legal and practical implications of the draft Decision and pleaded for a consistent interpretation in relation to SIS, VIS, EES, etc. SE also warned that the solution adopted in the draft Decision could prejudice how the issue could be dealt with in the future.

CLS stated that there are two aspects as regards access to data: read access only, and the ability to introduce such data. In 15764/16, CLS explained that 'use' meant only that first aspect, i.e. read only, so Bulgaria and Romania would be allowed to have access to data stored in VIS. The term 'use' implies access only for limited objectives which are precisely defined by the acquis, i.e. the VIS Regulation¹. When the EES enters into force, it will be automatically extended on the objectives related to the EES. The possibility for adoption of Council decisions on rendering the different parts of the Schengen acquis applicable to the new Member State is provided for by the Accession Treaties. As a global decision on the application of all parts of the Schengen acquis to the two Member States had not been taken yet, CLS said that it was possible to proceed by steps. The Council could decide unanimously on a transitional situation regarding VIS and/or SIS, which would not prejudice the remaining parts of the acquis, as stated in Recital 6 of the draft Decision.

The Commission's representative (COM) expressed doubts as regards the solution set out in 15764/16. COM still had concerns regarding the term 'use', since it is not defined in this Decision, nor in the VIS Regulation, nor in the EES proposal. Consequently, the term could leave room for a broad interpretation, going beyond the agreed understanding that 'read-only' access is granted to Bulgaria and Romania under this draft Decision. Furthermore, COM stated that a two-step approach could be implemented whereby Bulgaria and Romania would be granted 'read-only' access (consultation) in the first instance, and the notion of 'retrieval' of data would only be introduced at the same time as the introduction of EES.

COM also recalled that Bulgaria and Romania were not obliged to refuse entry to persons for whom an entry ban had been entered in the SIS by another Member State. On the other hand, Bulgaria and Romania were not allowed to enter national entry bans in the SIS.

¹ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)

Finally, COM suggested deleting the reference to Regulation (EU) No 1077/2011² from the list in the Annex, as COM considered that this Regulation has been fully applicable to Bulgaria and Romania since 2013.

The Chair said that the comments were noted and announced that some further questions would be forwarded to delegations with a deadline of 24 January 2017 for replies.

2. Visa Information System (VIS)

COM reported on the comments by delegations following the presentation of the evaluation of the VIS at the Visa Working Party at the end of 2016 (see 13530/16 VISA 329 FRONT 391 COMIX 589 + ADD 1 + ADD 2). COM also reported on the exchange of views on that matter at the Visa Committee on 16 January 2017. In addition, eu-LISA informed delegations on some technical issues related to the possible modification of the VIS.

COM announced that the Commission would table a proposal by the end of 2017 with a view to amending the VIS Regulation.

3. Draft Regulation of the European Parliament and of the Council amending Regulation (EC) No 1683/1995 of 29 May 1995 laying down a uniform format for visas

The Chair presented the solution suggested by the Presidency, as set out in 15766/16.

COM disagreed with the legal opinion of CLS as set out in 15698/16. Moreover, COM stressed that the technical specifications related to the visa sticker were classified (EU secret) and could not be handed over to any Member State not participating to the adoption or application of the Regulation.

² Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

IE and UK, supported by DE, EL, ES, CY, defended their right to participate and agreed, together with CZ, SE, EL, LV, NL, PL, LT, CH, SI, EE, NO, BG, COM, on the way forward, as suggested in 15766/16, to revert to the original Commission's proposal. BE and IT were of the opinion that this was a political issue, to be discussed in another forum.

FR expressed concerns as regards the solution suggested in 15766/16, as it could go against several rulings of the Court of Justice and impact any negotiations with the UK if they decided to withdraw from the EU in accordance with Article 50 TEU. PT said it could be flexible as regards the legal basis.

As regards the implementation period referred to in Article 3 of the proposal, IE favoured 15 months but could also agree to 9 months. DE, FR, CZ, IT, EL, PL, LT, RO, PT, SI, EE, DK were in favour of 15 months. LV, NL, CH could agree on 12 or 15 months. BG said it could agree on 12 months if six months were replaced with nine months in Article 2 of the proposal. However, SE, ES, AT, CY, NO wanted the shortest implementation period possible, because of the numerous cases of forgery of the current visa sticker. COM insisted that the period of 9 months must be retained.

The Chair concluded that a vast majority of delegations wanted to revert back to the Commission's proposal and expressed support for 15 months. The Chair invited delegations to send their comments by 27 January 2017, on the basis of which the Presidency would decide how to move forward with the file.

4. Draft Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast)

The Chair reported on the informal meeting the Presidency had had with the Rapporteur for the Visa Code recast in order to see how best to move the file forward. The Chair said that the Presidency would continue contacts with the EP over the coming weeks, with a view to a further trilogue in the near future.

AT, supported by FR, SK and CZ, reported that the EP had not yet given up on the idea of the humanitarian visa and strongly invited the Presidency to make it clear during the negotiations with the EP that this was a red line for the Council. Therefore, as long as the humanitarian visa was included in the compromise amendments, they stressed that the Council would not be in a position to agree on anything.

The Chair took note of the comments and said that the Presidency would inform delegations on further contacts with the EP.

5. Draft Regulation of the European Parliament and of the Council amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (revision of the suspension mechanism)

The Chair reported on the tentative time frame concerning the adoption of the draft Regulation by the EP and the Council.

6. AOB

a) Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries

FR reported on issues faced by France following the Visa Liberalisation process for Western Balkan countries and asked COM to provide information on when the next report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries would be issued by the Commission, and whether other countries having recently been visa-waived would be included.

COM replied that the date for the next report was still unknown.

b) Misuse of national visas by some employers in the Schengen Area

SK reported on the misuse of national visas issued to employees from third countries for the purpose of work in a specific Member State, who then move and work in another Member State.

CZ, EE, FR, AT said they were confronted with the same situation and asked for a common solution. AT was of the opinion that the situation stemmed from legal loopholes in the Services Directive (Directive 2006/123/EC) and that the issue therefore ought to be discussed in the forum dealing with that Directive.

The Chair invited delegations to send any comments they might have in order to determine any further action.

c) Georgia - Visa liberalisation

On a question raised by DE, COM presented the figures concerning the number of biometric passports issued by Georgia.
