COUNCIL OF
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NOTE

from:	General Secretariat
to :	Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject:	**Presidency project for a system of electronic recording of entry and exit dates of third-country nationals in the Schengen area**

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

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PORTUGAL

1.1   Do you feel the aims envisaged are appropriate?

Yes.

1.2   Do you feel the aims envisaged are adequate?

Yes.

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

Yes.

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

N. º 3 of Article 10ºof the Schengen Borders Code includes a number of categories of persons whose documents do not have to be stamped when crossing the External Borders. If there should be any exceptions concerning registration at entry or exit of third countries nationals, those should be the same as previewed in Article 10.

Nevertheless Portugal considers that a reduction of those categories should be envisaged, for example on what concerns seafarers and civil aviation crew members.

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

Around 5 millions a year.

3.1   What data do you feel should be collected?

Data collected should be similar to data required for APIS, such as complete identity of the passenger (data on the MRZ of the passport and biometric data when available), visa information when applicable and data concerning origin or destination (Country or City and identification of the operator – flight number, name or record number of ship, etc..)

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

The biometric data to be collected should be the one available in documents (electronic passports).

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

No. Actual situation of the third country national must be verified at the moment of detection, to verify if an extension of the staying or any kind of work or residence permit have been granted by a Member State in the meantime.

4.2   Should an alert file be issued in the SIS?

Yes.

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

This situation is foreseen in Article 11ºof the Borders Code, and this procedure should be applicable in such cases.

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

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

Portugal needs further information to answer this question, namely what kind of sanctions is refered to and to whom these sanctions would be applicable.

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

N/A

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

10 year's maximum (maximum validity of a travel document).

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

Border Control Authorities should manage collected data. At National Level each Member State should determine witch authorities will need this kind of information and ensure its access to the data.

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

Yes. In Portugal the entry and exist of third country nationals is registered at Air Borders. This procedure has permitted the abolition of the traditional embarkation and disembarkation cards used before. The registration includes flight information (number, origin or destination) and the data included in the MRZ area of the passport, or similar in case of no existence of MRZ information.

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

Yes. In order to create a useful and friendly user system at European level Portugal considers that a pilot project is essential. For this pilot project systems already in use should be evaluated and considered for further adoption with the necessary up-grading.

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

A pilot project could be asked to Frontex Research and Development Unit in a determined period of time. Existing systems should be always considered for such project. Portugal would like to be included in such pilot project, and for that purpose Portugal considers that third country nationals crossing air borders could be the population / environment target of such study.

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