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NOTE

From: Presidency

To: Friends of Presidency Group on the application of Article 10 of Protocol 36 to the Treaties (PROAPP)
Working Party for Schengen Matters (SIS/SIRENE)/Mixed Committee (EU Iceland/Norway and Switzerland/Liechtenstein)

Subject: Preparation for the accession of the UK to the SIS II
- Report of discussions of the Working Party for Schengen Matters (SIS/SIRENE) on 9 April 2014

1. At the meeting of the Working Party for Schengen Matters (SIS/SIRENE) on 9 April 2014, Member States held a discussion on UK's technical preparation for accession to SIS II, addressing in particular the issues raised in document 8025/14 SIRIS 27 SCH-EVAL 46 COPEN 94 COMIX 188. More specifically, the Working Party was invited to examine the response given by the UK focusing on the following questions:
 - what is the Member States' assessment of the organisational arrangements for the implementation of the UK's accession to SIS?
 - as regards the potential operational gap, would Member States be satisfied with the commitment that all data loaded on a provisional basis, in case a provisional putting into effect of the Council Decision allowing participation of the UK to the SIS II acquis were to be unanimously agreed, would be destroyed by the UK after 30 November 2014?

- what is the assessment of the delegations concerning the arrangements for the validation procedure envisaged by the UK for exchange of SIRENE forms for alerts related to a European Arrest Warrant (Article 26 alerts)?
 - and, more generally, do delegations have further questions to address to the UK about their current state of technical and legal preparation for the accession to the SIS II?
2. Delegations meeting within the Friends of the Presidency Group are invited to take note of the summary of the discussions held as specified below:
- Several Member States (AT, BE, CZ, ES, FR) stated that for reasons of legal certainty, it is not possible for UK to accede to SIS before UK makes a formal re-opt in notification (which will have to include the network decision). FR indicated that it is also necessary for a formal decision to be taken by the Council approving the re-opt in list of measures before the test and data loading phases of the SIS II accession process can be initiated.
 - With regard to the implications of a potential gap due to the fact that, as of 1 December 2014, there will be no legal basis for transmission or treatment of SIS data by UK and of UK data by C.SIS and by other MS, COM underlined the necessity to create a specific technical solution to address the issue at central level (C.SIS II) as well as at national level. Several Member States (ES, FR, BE, AT) stated that there was no ideal technical solution to avoid inconveniences caused by such a gap and that it was important to wait for the consolidation of the legal situation of UK regarding the opt-out and opt-back in by the Friends of the Presidency Group, which is expected to give political guidance as to the timing of the adoption by the Council of a formal decision allowing the UK to load data (on provisional basis). UK stated that, given the planned schedule, no gap in legal or operational terms was envisaged.
 - MS and COM also stressed that it was necessary to guarantee the consistent application of the Schengen acquis. Member States' assessment is that there is still room for progress concerning the use of the European arrest warrant (EAW), especially as regards the proportionality checks and pre-validation procedure that the UK intends to apply, as they are in contradiction with the Framework Decision on the EAW. UK stated that national law requires a pre-validation procedure.

- Other issues raised by MS were:
 - the overall issue of opt-in should be dealt with within the FoP (CZ, UK), which ought to authorise the loading of data by the UK (ES) and should establish the best solution to guarantee a smooth transition process (UK);
 - the possibility of postponing UK's accession to SIS II until 1 December (AT), in line with the scheduled calendar for re-opt in with regard to the remaining Schengen measures;
 - the necessity to establish a timeline for the resolution of outstanding key issues (CZ) in order to allow the continuation of the tests in compliance with the calendar established by eu-LISA¹.
3. In conclusion, the Presidency has noted the following main points from the discussions in the Working Party for Schengen Matters (SIS/SIRENE) which are relevant for the future work of the FoP Group:
- from a technical IT point of view, the UK can be connected to the SIS II subject to successful results of the testing campaign;
 - the data loaded in the SIS II can be deleted in the event of a gap (i.e. the lack of a legal basis for transmission and treatment of SIS data); nevertheless, this will imply putting into place a specific technical solution to address the issue at central level (C.SIS II) as well as at national level. Possible data protection implications arising from this exercise will also have to be assessed;

¹ The testing campaign calendar is as follows: Connectivity tests 12.5-13.5.2014 (organised by SIS II Advisory Group and eu-LISA); Global SIRENE Forms Test on 26.05.14 (backup 27.5.2014) (organised by the SIS/SIRENE Functional Tests Team with eu-LISA); SIS/SIRENE functional tests 2.6-6.6.2014 (backup till 12.6.2014) (organised by the SIS/SIRENE Functional Tests Team with eu-LISA). It will be carried out on the understanding that the loading of real data can only take place once the Council adopts a provisional decision putting the SIS acquis into effect with regard to UK, i.e. a decision on loading of data.

- there are, however, several open issues to which the UK did not provide a satisfactory answer or solution. They are:
 - the need to guarantee legal certainty regarding the accession of UK to SIS, which could only be envisaged after the UK makes a formal re-opt in notification (which will have to include the network decision);
 - the necessity to guarantee the consistent and uniform application of the Schengen acquis as far as the use of the European Arrest Warrant (EAW) by the UK is concerned.
4. The Working Party for Schengen Matters (SIS/SIRENE) will return to this issue when the Friends of the Presidency Group, which is in the process of examining the issues linked to the end of the five-year transitional period set out in Article 10 of Protocol 36 to the Treaties, in full compatibility with the Treaties, completes its work on this particular issue.
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