



Brussels, 17 November 2015  
(OR. en)

13193/15

LIMITE

FRONT 222  
COMIX 508

## OUTCOME OF PROCEEDINGS

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

On: 13 October 2015

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Subject: Summary of discussions

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1. Overall framework for borders and further work
  - Information by the Presidency: outcome of the JHA Council of 8 October
  - Information by the Presidency: outcome of the extraordinary SCIFA of 5 October

**The Presidency** debriefed the Working Party on the results of the JHA Council that took place on 8 October 2015. The Presidency recalled that the “future of the management of the external borders of the European Union” was discussed in detail. It also recalled the strong emphasis of the Council on the need to maintain the Schengen acquis by applying immediate action, as well as longer-term measures in the field of border management. These measures include in particular the strengthening of the role of Frontex, with a view to enhancing the collective responsibility for external borders, as well as the use of new technologies and ways to improve the current monitoring and evaluation mechanism to verify the application of the Schengen acquis. The Presidency pointed out that these issues would be further tackled by the European Council of 15-16 October 2015.

As regards the extraordinary SCIFA of 5 October 2015, **the Presidency** informed delegations that it focused on the intensified mobilisation of human resources for the good functioning of the hotspots in Italy and Greece on the basis of roadmaps on relocation presented by IT and EL. Frontex and EASO had submitted calls for concrete numbers of experts on the ground (in the context of the aforementioned hotspots and for the land missions at the Western Balkans route). During the JHA Council of 8 October 2015, certain Member States informed about the number of experts they would be able to provide. The Presidency informed the Working Party that this pledging exercise would last until 16 October 2015.

2. Smart Borders (SB) package

A. State of play

– Information by the Commission

**The Commission** debriefed the Working Party on the results of the first experts meeting that took place on 24 September 2015, which dealt with: i) the identification of the third-country national concerned without the use of fingerprints (i.e. whether facial image would be an adequate biometric identifier for certain tasks, or it would need to be complemented by fingerprints); ii) the possible employment of the fast-lane-for -all procedure, iii) the use of SB for the visa holders on the basis of the interoperability principle and whether the travel document number could be used instead of the visa sticker and iv) the issues that should be addressed in the SB context for the travellers without electronic passports, where the border guards' manual control would remain necessary.

Moreover, the Commission advised about the agenda of the second such experts meeting, which was scheduled to take place on 26 October 2015. Its draft agenda would comprise the impact of the SB on national systems, the added value of statistics and reporting in the context of the SB, the information that should be available to travellers and carriers, the possible use of the 2-D sticker (on the basis of the **FR** proposal) and the ways to handle exceptions (errors, missing records, etc.) in the future SB mechanism.

The Commission informed the Working Party about its meeting, on 14 September 2015, with the LIBE Committee on the progress of the pilot project for the SB and the fast-lane-for -all option, as well as about its meeting, on 30 September 2015, with the Rapporteurs and the Shadows of the SB proposals on the projected costs and other issues of the RTP and its alternatives. The Commission indicated LIBE's intention, for the end of October 2015, to hold a debate on the SB, which could be accompanied by a Resolution.

The Commission recalled that the public consultation on the SB was scheduled to last until 29 October 2015, the results of which would be annexed in the impact assessment of the future proposals. The Commission lastly informed delegations about the calls at political level for acceleration of the process for the submission of these proposals and the possible timing that it would envisage with a view to combining speed and a quality in its work.

Smart Borders package: State of play of the pilot-project

- Field visit in Germany and Italy  
Follow-up
- Information by DE and IT

**DE** debriefed the Working Party about the results of the field visit at the Frankfurt Airport that took place on 15 September 2015, in order to provide information on the findings of the eu-LISA-run pilot project tests and the German national end-to-end testing that were performed at the said airport. Two main conclusions were pointed out: i) given that the enrolment of wrong data would be inevitable in the EES, practical solutions should be qualified to make the corrections less onerous for the travellers and the national administrations, ii) the accurate identification of the travellers would be indispensable in the SB and the role of fingerprints as a biometric element in this procedure appeared to be important. **DE** concluded that a definite report on its findings would become available by the end of November 2015.

**IT** informed the Working Party about the field visit that took place on 21 September 2015 at the port of Genoa. The pilot project tests there were intended to verify the impact on the border process of the introduction of biometric enrolment and control regarding transit passengers. **IT** recalled the particularities at the said port facilities, as well as the cultural parameters of the majority of the travellers and underlined the positive results, the quality of which was commended by the eu-LISA.

- Monthly update of the pilot project
  - Information by eu-Lisa
- Outcome of the expert group from 23 September 2015

The representative of the **eu-LISA** provided an update on the closing steps of the execution phase of the pilot project, as well as the outcome of the experts meeting, that took place on 23 September 2015, regarding certain desk-research activities.

The five subject-matters covered in that meeting were linked with: i) the fall-back procedures, ii) the VIS search with the help of the travel document number (TDN), iii) the web services that could be delivered to carriers and travelers, iv) the conditions that could influence the possibility of reading the facial image from the e-MRTD (e.g. when the chip is damaged), v) whether the iris enrolment would be more or less prone to spoofing and which measures should be taken to address the problem. The first conclusions reached on the above issues were presented by eu-LISA.

Furthermore, certain lessons learnt on the basis of the pilot interim findings, in relation to fingerprints and the facial verification, were touched upon during the experts meeting. As regards the fingerprints, the discussion was focused on whether it would be feasible to enroll and use fingerprints as a biometric identifier in the future EES at all types of borders and with various set-ups. In relation to the facial verification, the question which was elaborated was about the feasibility of extracting the picture from the e-MRTD and verifying against live image at all types of borders and with various set-ups.

The representative of eu-LISA informed the Working Party about the subsequent steps for the production of the Agency's final report on the SB, which is expected by the end of November 2015.

**FR** provided information about the interim findings of the tests it carried out at all types of borders (air, land and maritime). These tests focused on the procedure to collect and the added value of the iris and fingerprints data. **FR** confirmed that detailed report on these findings would duly follow.

- B. Follow-up of the COREPER guidelines from December 2014
  - The consequences of the abolition of stamping: residence permit, entry, refusals and controls within the territory
  - Continuation of discussion
    - 12527/15 JAI 701 FRONT 202 COMIX 451 + ADD 1-3

**The Commission Legal Service (Cion LS)** submitted its considerations about the suggestions to extend the scope of the future EES (with the inclusion of residence permit holders, etc.) in the light of the recent case-law and in particular, the Schrems case (C-362/14) regarding the protection of personal data. **CionLS** pointed out that, under the current legal basis of EES (Art. 77 TFEU), it would be questionable to extend its scope to the above residence permit handling for which the Member States retain competence.

In addition, **Cion LS** recalled that, including the residence permits in the future EES would be intended to control their absences from the Member States concerned, in order to stem the social benefits fraud. However, **Cion LS** stressed that given the main objective of the EES - i.e. the external borders control, trying to verify the above absences through this future system (although these persons could travel inside Schengen without being tracked down) would not be a sufficient means to reach the sought example and thus, disproportionate from a data protection perspective.

**FR** acknowledged the problems that the abolition of stamping would entail and underscored the need for further reflection on the ways to identify the non-compliance with the law on residence permits and the relevant social benefits.

**SK** queried whether adding Art. 79 TFEU on immigration policy as a second legal basis for the EES could facilitate the inclusion of the residence permit holders. **Cion LS** expressed concerns about the legal possibility of such an addition and pointed out that there is a variable geometry between the two provisions regarding the Member States and associate countries which are affected.

**CLS** shared the concerns of the Cion LS related to the very recent Schrems judgment in which the Court of Justice reaffirmed the very strict criteria, which were held regarding the Data Retention Directive, for a purposed-based approach on the collection of personal data. In this sense, it should be checked whether the creation of a central data base for residence permit holders would meet the proportionality principle in terms of interference with fundamental rights.

**The Presidency** requested further contributions on the issue by 30 October 2015 on the basis of the above discussion, as well as with regard to the previous questionnaire that it had circulated on the abolition of stamping.

- Organizational aspects of the RTP application process
  - Presentation by the Commission
  - Outcome of the expert group from 24 September 2015
- Fast line RTP
  - Non-paper from the FI delegation
- Information by the Presidency and discussion
  - 11631/15 FRONT 172 VISA 260 CODEC 1140 COMIX 373

**The Commission** outlined the outcome of the aforementioned experts meeting that took place on 24 September 2015 focusing, among other issues, on what it considered as the added value of the fast-lane-for-all approach.

**FI** presented its views for the potential added value of the fast-lane-for-all vis-à-vis the RTP (in particular, the "lighter" TOM N option), concluding that the former could not replace RTP if the balance between border checks security and facilitation of border crossings would be the goal to achieve. **FI** stressed that a flexible approach should be adopted with regard to the implementation of the RTP infrastructure and the granting of the RTP status. **FI** acknowledged however, that the fast-lane-for-all could be used in the busiest border-crossing points (such as big airports and ports).

**SK, PL, FR, RO, ES, HU, PT, SI, EE, LT, BG** expressed support (in various degrees) for the views submitted by FI, mainly on the basis of security and infrastructure considerations. Certain of these delegations asked for a clearer analysis of the costs that are likely to be incurred from the implementation of either of the suggested approaches. Most among the above delegations underlined the need for a flexible system on the basis of the needs of the Member State concerned, whereas some of them advised to wait for the conclusion of the SB pilot project, before taking a decision. **NO**, although expressed certain doubts about the RTP' added value if be implemented across the land borders, could also be positively inclined towards the TOM N option, as long as the RTP would remain an option for the Member States. In the same line, **SE** underlined that RTP, if taken on board, should remain optional and that Member State should be entitled to choose the border crossing points at which RTP would be applied. **The Commission** expressed support to the Presidency paper, as set out in doc. 11631/15 and recalled its intention to evaluate the three options (i.e. the TOM M, TOM N and the fast-track approach) in its impact assessment for the upcoming SB proposals. As regards the suggestions from FI, the Commission underlined that they should, at any rate, include systematic verification of the biometric data and concluded (in agreement with **FI**) that the issue of facilitation at the borders for the broadest possible group, with the appropriate degree of flexibility, should be further reflected.

**The Presidency** concluded that a lot of delegations could support the suggestions submitted by **FI** and that, in this vein, an EU-wide RTP system, under the TOM N option and with clear flexibility should be carefully considered. **The Presidency** asked for further contributions on the issue by 30 October 2015.

- Fall back procedures in case of unavailability of the systems
  - Information by the Presidency and discussion
  - 12529/15 FRONT 203 COMIX 452

**The Presidency** presented its Note as set out in document 12529/15 and asked for contributions on the basis of the questionnaire contained in it by 30 October 2015.

- Access for Law enforcement purposes to the EES
  - Continuation of discussion
    - 11635/1/15 REV 1 FRONT 173 VISA 261 ENFOPOL 229 CODEC 1141 COMIX 374
    - 12531/15 FRONT 205 VISA 320 ENFOPOL 267 CODEC 1272 COMIX 454

**The Presidency** asked for further contributions on the issue by 30 October 2015.

C. The Scope of Smart Borders

- Smart borders for all
  - Presentation by the FR delegation and discussion
    - 12272/15 FRONT 192 VISA 312 CODEC 1222 COMIX 430

**FR** presented its views (as set out in doc. 12272/15) in relation with the critical challenges the Schengen area is currently faced with and with a possible broadening of the SB scope, including EU nationals, as a way to better address them. Furthermore, **FR** recalled the outcome of the February and June 2015 European Council meetings regarding enhanced border checks, as a counter-balance element for the free movement within the Schengen area and presented the elements of added value, which it considered that its proposal contained. **The Commission** underlined that in the context of its upcoming Communication on the future of border management, elements contained in the Note submitted by **FR** are likely to be reflected upon. At any rate, the Commission expressed certain concerns on the suggestions submitted by **FR** and indicated that it would not intend for such an expansion of the scope in its future SB proposals. **CLS** underlined that more details would be needed in order to start the debate on this suggestion, firstly about the objective for the sake of which the personal data should be retained, secondly about the authorities which would be entitled to have access to the data base and thirdly about the situation and conditions allowing such access. This approach would help the identification of the legal basis that would be required, as well as the assessment of the proportionality of such solution.



- D. Touring visa and bilateral agreements in the context of EES
  - Information by the Commission

**The Commission** informed the Working Party about the concerns for the well-functioning of the EES that could be caused by the bilateral visa-waiver agreements, covered by Art. 20(2) of the Schengen Convention, that certain Member States have concluded with third countries and which entail the prolongation of short stays for possibly indefinite periods. Given that the border guards in one Member State may not be aware of the bilateral agreements made by other Member States, there will not be a clear picture about the legality of stay of the persons concerned in the EES. The Commission referred to the Touring Visa proposal, which is currently under discussion by the competent Working Party, the potential solutions that it envisages in order to address the issue and invited delegations to check it thoroughly. **FR, NO, AT** pointed to the repercussions of the change of regime regarding the above bilateral agreements, at least with certain third countries, and the Commission provided further explanations on how it understands that these concerns could be redeemed.

- 3. Hotspots: state of play
  - Information by the Commission

**The Commission** provided information to the Working Party for the progress that had been accomplished in close cooperation with Frontex and EASO on the relocation objectives in Italy and Greece.

- 4. Schengen Masterlist: state of play
  - Information by the Commission

**The Commission** informed the Working Party about the three recent meetings (two in the context of the Article 6 Committee and one of the ad hoc Working Party set up by Frontex) that had taken place with a view to preparing the Schengen Masterlist. The Commission pointed to the very positive reactions of the participating delegations and recalled that, during the above meetings, **DE** and **ES** made presentations of their own Masterlists and explain how their working methods to obtain and compile the relevant certificates. The Commission further informed delegations that the results of the ongoing proof of concept on the Schengen Masterlist should be available at CIRCA by late November / early December 2015. **DE** underlined that no obligation should be imposed from the future EU-wide Schengen Masterlist on the Member States.

5. Frontex reports
  - Update on the latest phenomena and the situation in the Western Balkans
  - Information by Frontex

**The Frontex representative** gave a thorough presentation on the latest trends at external borders, in the context of the current migratory crisis, including the situation in the Western Balkans region.

6. Implementation of the Internal Security Strategy
  - Information by the Presidency
    - 12869/15 FRONT 210 JAI 734 SIRIS 70 COSI 119 COTER 130 ENFOPOL 287 COMIX 478

**The Presidency** informed delegations about the questionnaire contained in doc. 12869/15 on the application of common risk indicators and the use of the updated Schengen Handbook for border guards, which comprise recommendations for reinforcing border checks. The Presidency invited delegations to submit their contributions by 23 October 2015, with a view to having them discussed at the new Working Party meeting in November and submitting them to the December JHA Council meeting.

7. AOB
  - Follow-up of NO's AOB item from the Working Party on 10 September 2015
  - Improved information sharing on temporary reintroduction of border controls at internal borders
    - Information by the Presidency and the SE delegation
      - 5685/15 FRONT 30 COMIX 50

**As regards the follow-up to the question raised by NO** during the September Working Party meeting, **the Commission** referred to information provided by it in April 2008 on certain problems related to stays with a D visa, including the issue of short stay following long stays. It concluded that visa-exempt third country nationals would not be required to leave the Schengen Area following a long stay in order to have a subsequent short stay. **NO** and **FR** maintained certain concerns, pointing out that if the Commission's approach were to be followed it would not be possible to check if the person concerned fulfilled the conditions of entry for the short stay in another Member State.

**With regard to the item on the improved information sharing on the temporary reintroduction of border controls at internal borders, SE and the Presidency** reminded delegations of the procedure agreed at Coreper in early 2015 and pointed out that it has not always been followed in recent cases as it should.

**FR** informed of its intention to reintroduce temporarily border controls from 13 November 2015 until 13 December 2015. **DE** and **AT** also informed the Working Party about their plans to prolong their temporary border controls for 20 days respectively until early November 2015.

**The Commission** informed the Working Party on the ongoing development of cooperation between the border guards and the customs authorities on the basis of 2013 Guidelines. It indicated that a first evaluation of the progress would be carried out at on-spot visits by joint teams of experts.

**PL** raised the issue of stamping travel documents, when the passenger heading to a non-Schengen destination is on transit flight and makes a stopover at a Schengen airport when he/she could use the single-entry visa he may be equipped with.

**The Commission** presented its views on the handling and indicated that it would further reflect on it.

- ILO's reporting
  - Information by the NL delegation with regard to the preparation of its ILO report

**NL** gave some information to the Working Party with regard **to the preparation of its ILO report** on Kenya, its focus, timetable for the next steps, as well as its cooperation with the Kenyan authorities.

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