

Brussels, 18 December 2014
(OR. en)

16880/14

LIMITE

FRONT 272
COTER 94
ENFOPOL 439
COMIX 671

OUTCOME OF PROCEEDINGS

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

On: 11 December 2014

Subject: Foreign Fighters: Application of the Schengen Border Code – Follow-up

On the basis of the deliberations that took place during the previous meetings of the Working Party (WP) on the above issue, as well as the relevant written contributions submitted by delegations, **the Commission** presented an amended version of its informal recommendations as regards checks on travel document and its interpretation of non-systematic checks on persons enjoying the right of free movement under Union Law (see annex to this outcome of proceedings).

In the light of the ensuing discussion and without prejudice to certain concerns raised by delegations (in particular those voiced by **RO** regarding, among other points, the question of whether this Working Party could deal with issues linked to technical adaptations to the NSIS and the right of the border guards to retain travel documents issued by other MS), **the Commission** acknowledged a broad consensus of delegations on the wording of the informal recommendations. In this vein, **the Commission** invited delegations to apply these recommendation to the best of their abilities and pointed out that the experience of Member States drawn from their application in the coming months will be taken into account in due time. **The Commission** also suggested reflecting again at a later point on whether these recommendations should be included in the Schengen Handbook or not.

1. Informal recommendations as regards checks on travel documents

Article 7(2) of the Schengen Borders Code stipulates that *‘all persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border and of the presence of signs of falsification or counterfeiting’*.

In this context, the Commission recommends to the Member States to:

- Move towards an intensified consultation of the relevant databases (notably the documents section of SIS and Interpol’s Lost and Stolen Document database), based, where considered necessary, on a risk assessment.
- Instruct their border guards, in case such consultation reveals a SIS alert on the need to seize a document, to do so immediately and to contact the SIRENE Bureau for further information without any delay.
- Implement, where necessary and feasible, technical adaptations of the national SIS modalities to allow for separate consultations on travel documents and on persons at the external borders.
- Implement technical improvements with a view to decreasing the response times of consultation with the relevant databases.
- Carry out a second line check to verify the identity of the person in case where the traveler presents a travel document without a machine readable zone and there is a doubt about his/her identity.
- Improve the technical infrastructure of border crossings, including the increased use of passport readers, e-gates, and, where relevant, mobile terminals.

- Encourage the use of advanced passenger data in accordance with the Council Directive 2004/82/EC to enable more targeted checks on incoming flights crossing the external borders.
- Phase out non-machine readable national identification documents (ID cards, resident permits) and replace them by documents in a machine readable format in line with ICAO recommendation.

2. Commission's interpretation of non-systematic checks on persons enjoying the right of free movement under Union law

The minimum check as described above shall be the rule for persons enjoying the right of free movement under Union law. However, on a non-systematic basis when carrying out minimum checks on these persons, border guards may consult national and European databases in order to ensure that persons enjoying the right of free movement under Union law do not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to the public health.

In this context, the Commission is of the opinion that non-systematic checks should be interpreted as follows:

Non-systematic checks on persons enjoying the right of free movement under Union law can be carried out on the basis of risk assessment or on a random basis. Based on an analysis of the risks for internal security and analysis of the threats that may affect the security of external borders, checks may be carried out systematically on those persons which fall under this risk assessment whereas those not falling under the risk assessment would generally not be checked against the databases.

As an example, with a view of detecting persons returning back to the EU from the conflict zones where they were combatting or supporting terrorist organisations, the border guards may systematically check against the databases on particular travel patterns (e.g. flights coming from the geographical areas in the vicinity of conflict zones) a certain category of persons falling under the risk assessment.

In any case, these checks shall remain proportional to the objective pursued. These checks are hence to be adapted to evolving threats identified by the Member States in a given period of time.
