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NOTE

From:	Presidency
To:	Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
No. Cion doc.:	15397/15 FRONT 294 CODEC 1754 COMIX 705
Subject:	Draft Regulation of the European Parliament and of the Council amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders

The Working Party on Frontiers/Mixed Committee at its meeting on 8 January 2016 started its examination of the above proposal. Based on comments made, the Presidency submits the issues set out below and the revised text in the Annex for discussion at the meeting of the Working Party on 19 January 2016.

Checks on a targeted basis

Based on comments made by delegations, the Presidency proposes to add the underlined wording under Article 7(2)(b) in the Annex regarding checks on a targeted basis based on a risk assessment. The aim is to further specify the requirements to that risk assessment and to underline that such checks should be limited in scope and duration to what is necessary.

Delegations are invited to agree to the underlined text under Article 7(2)(b).

Checks regarding travel documents regarding third country nationals

Based on comments made by certain delegations, the Presidency proposes the underlined text set out under the revised Article 7(3)(i) and (ii) in the Annex, so that the check provided for regarding persons enjoying the right of free movement in Article 7(2)(a) also applies to third country nationals.

Delegations are invited to agree on this suggestion.

Use of information in the storage medium (chip) in the passports

Regarding persons enjoying the right of free movement under Union law, the text provides under Article 7(2)(b), second subparagraph, that in case of doubts on the authenticity of the travel document or on the identity of its holder, the checks shall include the verification of the biometric identifiers integrated in the passports and travel documents issued in accordance with Council Regulation (EC) No 2252/2004. Certain delegations suggested that it in addition could be provided that the authenticity of the electronic storage medium (chip) of the passport could or should be checked where possible against relevant certificates. For this purpose it could be envisaged that Member States should exchange and validate all Country Signing Certification Authority (CSCA) certificates for EU travel documents in accordance with the relevant Commission implementing Decisions.¹ A similar approach may be implemented regarding third country nationals.

Delegations are invited to consider:

- *if provisions on verification of the validity of the electronic storage medium of the passport should be envisaged;*
- *in the affirmative, if such checks should be used only in case of doubts or should be obligatory, and*
- *if a similar approach should be applied regarding third country nationals.*

¹ Commission implementing Decision of 30.9.2013 amending Commission Decision C(2006) 2909 final laying down the technical specifications on the standards for security features and biometrics in passports and travel documents issued by Member States and Commission Decision C(2008) 8657 laying down a certificate policy as required in the technical specifications on the standards for security features and biometrics in passports and travel documents issued by Member States and updating the normative reference documents.

Use of advanced passenger data for border control purposes

A delegation, supported by certain other delegations, proposed to include provisions on the use of advance passenger data, available pursuant to Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data, for the purpose of border control. The approach suggested would allow that certain checks could be carried out on the basis of such information received by the border control authorities in advance of the arrival to the border of the persons concerned, with the understanding that the result of the consultations would be verified at the border control.

Delegations are invited to consider this suggestion further regarding:

- *the possible benefits in terms of faster and more efficient control procedures at the border crossing point,*
- *the possible impact of such an approach on the overall quality of the border control, and*
- *how the approach may be used in practice procedurally and technically.*

Article 1

Regulation (EC) No 562/2006 is amended as follows:

(1) Article 7 is amended as follows:

(a) paragraph 2 is replaced by the following:

"(2) On entry and on exit, persons enjoying the right of free movement under Union law shall be subject to the following checks:

(a) verification of the identity and the nationality of the person and the validity and authenticity of the travel document, by consulting the relevant databases, in particular:

(1) the Schengen Information System;

(2) the Interpol database on stolen and lost travel documents;

(3) national databases containing information on stolen, misappropriated, lost and invalidated travel documents

(b) verification that a person enjoying the right of free movement under Union law is not considered to be a threat to the internal security, public policy, international relations of any of the Member States or to public health, including by consulting the relevant Union and national databases, in particular the Schengen Information System.

Where there is doubt on the authenticity of the travel document or on the identity of its holder, the checks shall include the verification of the biometric identifiers integrated in the passports and travel documents issued in accordance with Council Regulation (EC) No 2252/2004*.

Where, at external land and sea borders, the checks referred to in points a) and b) of the first subparagraph would have a disproportionate impact on the flow of traffic, Member States may decide to carry out those checks on a targeted basis at specified crossing-points based on an assessment of the risks related to internal security, public policy, international relations of any of the Member States or a threat to public health.

The scope and duration of the temporary introduction of targeted checks shall not exceed what is necessary according to the risk assessment, which shall be updated regularly depending on the duration of the measure.

The risk assessment established by the Member State concerned shall explain the reasons for the temporary introduction of targeted checks and shall take into account, inter alia, the disproportionate impact on the flow of traffic and assess the possible risks and shall provide for statistics on passengers and incidents related to cross border crime.

Each Member State shall transmit its risk assessment to the Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004 and report every three months to the Commission and to that Agency on the application of the checks carried out on a targeted basis."

* Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p.1)."

(aa) In Article 7(3) the points (i) and (ii) are replaced by the following points:

i) Verification of the identity and the nationality of the third country national and the validity and authenticity of the travel document, by consulting the relevant databases, in particular:

(1) the Schengen Information System;

(2) the Interpol database on stolen and lost travel documents;

(3) national databases containing information on stolen, misappropriated, lost and invalidated travel documents

This verification includes a thorough scrutiny of the travel document for signs of falsification and counterfeiting.

ii) verification that the travel document is accompanied, where applicable, by the requisite visa or residence permit.

(b) In paragraph 3(b), point (iii) is replaced by the following:

"(iii) verification that the third-country national concerned is not considered to be a threat to public policy, internal security or international relations of any of the Member States, including by consulting the relevant Union and national databases, in particular the Schengen Information System;"

(c) In paragraph (3)(c), point (iii) is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
