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(EU-Iceland/Liechtenstein/Norway/Switzerland)

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No. Cion prop.: doc. 6928/13 FRONT 13 VISA 51 CODEC 450 COMIX 130

Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing an Entry/Exit System (EES) to register entry and exit data of third
country nationals crossing the external borders of the Member States of the
European Union

At its meeting on 28-29 May 2013, the Working Party on Frontiers/Mixed Committee continued the first reading of the above proposal (Articles 6 to 15). The text of Articles 6 to 15 is reproduced in the Annex. Member States' comments are set out in footnotes.

2013/0057 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union

HAVE ADOPTED THIS REGULATION:

Article 6

Technical architecture of the EES

The EES shall be composed of¹:

a Central System comprising a Central Unit and a Back-up Central Unit, capable of ensuring all the functionalities of the Central Unit in the event of the failure of the system;

a National System comprising the required hardware, software and national communication infrastructure to connect the end user devices of the competent authorities as defined in Article 7(2) with the Network Entry Points in each Member State;

a Uniform Interface in each Member State based on common technical specifications and identical for all Member States;

the Network Entry Points, which are part of the Uniform Interface and are the national points of access connecting the National System of each Member State to the Central System; and

the Communication Infrastructure between the Central System and the Network Entry Points.

¹ Delegations which took the floor stressed that this Article should be more detailed. **NO**, **PL** and **SE** asked Cion to provide further information on the financing of the national system including staff costs. **CZ** and **PL** requested that this Article mention the locations for the Central Unit and Back-up Central Unit. A number of delegations sought further explanations from Cion regarding several aspects of the implementation at national level, such as whether or not it was possible to keep current national EES systems, the setting up of the uniform interface, the infrastructure to be used, and the common technical specifications or interoperability with SIS II and the VIS. **Cion** replied that the Agency would develop the common technical specifications and indicated that the national EESs did not have a place in the European System. Cion said that it might be possible for the pre-existing EES national systems to co-exist with the European EES but that this was a legal issue that should be solved in the future. As regards the infrastructure to be used at national level, Cion indicated that it should be EU TESTA and its successor.

Article 7¹²
Access for entering, amending, deleting and consulting data

1. In accordance with Article 4, access to the EES for entering, amending³, deleting and consulting⁴ the data referred to in Articles 11 and 12 in accordance with this Regulation shall be reserved exclusively to duly authorised staff⁵ of the authorities of each Member State which are competent for the purposes laid down in Articles 15 to 22, limited to the extent needed for the performance of the tasks in accordance with this purpose, and proportionate to the objectives pursued.
2. Each Member State shall designate the competent authorities, including border, visa and immigration authorities⁶, the duly authorised staff of which shall have access to enter, amend, delete or consult data in the EES. Each Member State shall without delay communicate to the Agency a list of these authorities. That list shall specify for which purpose each authority may have access to the data in the EES.

Within three months after the EES has become operational in accordance with Article 41, the Agency shall publish a consolidated list in *the Official Journal of the European Union*. Where there are amendments thereto, the Agency shall publish once a year an updated consolidated list.

Article 8
General principles

1. Each competent authority authorised to access the EES in accordance with this Regulation shall ensure that the use of the EES is necessary, appropriate and proportionate to the performance of tasks of the competent authorities.
2. Each competent authority shall ensure that in using the EES, it does not discriminate against third country nationals on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and that it fully respects the human dignity and the integrity of the person⁷.

¹ **AT, BE, DE and PL** entered a scrutiny reservation on this Article.

² **SI, IT, FR, ES, HU, MT, PT BG, PL, DK, AT and CY** requested that this Article cover law enforcement authorities for the purposes of consultation in the fight against serious crime.

³ **RO** asked to replace "amending" with "updating" in paragraphs 1 and 2.

⁴ **DE** said that a clear distinction should be made in the text as to what is covered by "entering", "amending", "deleting" and "consulting".

⁵ **NL** inquired if it would be up to each Member State to determine who is "duly authorised staff". **Cion** replied in the affirmative.

⁶ **EL** asked to include "sea coast guard authorities". **HU, NL, RO and SI** preferred a more general wording regarding competent authorities. **DE, FI and NO** stressed that access to the EES should be given to national authorities depending on the purpose.

⁷ **RO** asked to include at the end of this paragraph the following words: "and provide for the full respect of personal data in accordance with the legislation in force".

Article 9
Automated calculator

The EES shall incorporate an automated mechanism¹ that indicates the maximum authorised duration of stay in accordance with Article 5(1) of the Schengen Borders Code for each third-country national registered in the EES.

The automated calculator shall:

- (a) inform the competent authorities and the third-country national² of the authorised length of stay on border entry;
- (b) identify third country nationals upon exit who have overstayed³.

¹ **CZ** and **SE** asked Cion if the calculator would also cover longer-stay periods authorised on the basis of bilateral agreements concluded with third countries. **AT** also questioned how the calculator would take into account bilateral agreements for the holders of diplomatic and service passports. **Cion** made clear that it did not yet have a solution for those cases and that Member States' suggestions in that regard were welcomed. **IT** asked if the calculator would deal with situations in which a residence permit is granted following the expiry of a visa, without the person concerned leaving the territory of the Member State. **PL** asked whether information on the extension of short-stay visas would be directly included in the EES.

² **ES, HR, LV, NL** and **PT** inquired how and by whom this information would be passed to the third-country national. **RO** suggested amending this sentence as the system would not directly inform third-country nationals. **FR** expressed concerns on the elimination of stamping as it would mean that there would be no record of entry into the Schengen area in the third-country national's passport. **FR** suggested printing a receipt at the border to be given to the third-country national as proof of his/her entry. In the same vein as **FR**, **HU** asked Cion if this provision meant that stamping would not be necessary anymore. **BE** expressed concerns about the abolition of stamps in the travel document because of the existing obligations on carriers. **Cion** said that it might be a good idea to have a more detailed text. Cion also pointed out the new Article 7(8) in the proposal amending the Schengen Borders Code (6831/13) because it stipulates: *Upon request, the border guard shall inform the third country national of the maximum number of days of authorised stay, having regard to the results of the consultation of the EES and the length of the stay authorised by the visa, as applicable. The third country national may also request a written record containing the date and place of entry or exit.*

³ **PT** suggested deleting letter (b) because it had no added value.

Article 10
Information mechanism

1. The EES shall include a mechanism that shall automatically identify which entry/exit records do not have exit data immediately following the date of expiry of the authorised length of stay and identify records for which the maximum stay allowance has been exceeded¹.
2. A list², generated by the system, containing the data referred to in Article 11 of all identified overstayers shall be available to the designated competent national authorities³⁴.

¹ **NL** and **PL** asked if this mechanism would be interoperable with the VIS. **NL** also asked if it would be possible to send a message to SIS II.

² **SI** entered a scrutiny reservation on this paragraph. **DE**, **PT** and **SI** expressed doubts about the added value of this list and **NL** asked for the objective of such a list to be clarified. **CH** commented that it would be enough to get a hit from the system. **FR** asked if it would be possible to use this mechanism when carrying out checks inside the territory. **FR** also stressed that the mechanism should be able to make a hit and send it to the competent authorities. **CY** was in favour of covering in this mechanism all illegally staying third-country nationals in the Schengen area.

³ **PL** asked what was covered by "designated competent national authorities".

⁴ **LT**, **LV** and **SK** considered that this paragraph needed to contain a reference to third-country nationals exempted from a visa requirement. **LV** and **SI** said that it was necessary to clarify what would happen to the data of people who had not left the territory of the Member State. **Cion** commented that the list would be updated in real time.

Article 11¹
Personal data for visa holders

- 1². In the absence of a previous registration of a third country national in the EES where a decision to authorise the entry of a visa holder has been taken in accordance with the Schengen Borders Code, the border authority shall create the individual file of the person by entering the following data:
- (a) surname (family name), surname at birth (earlier family name(s)), first name(s) (given names); date of birth, place of birth, country of birth, nationality or nationalities and sex;
 - (b) type and number of the travel document or documents, the authority which issued it or them and the date of issue;
 - (c) three letter code of the issuing country, and the the date of expiry of the validity of the travel document(s);
 - (d) the visa sticker number, including the three letter code of the issuing Member State, and the date of expiry of the validity of the visa, if applicable;
 - (e) at the first entry on the basis of the visa, the number of entries and the authorised period of stay as indicated on the visa sticker;
 - (f) if applicable, information that the person has been granted access to the Registered Traveller Programme in accordance with Regulation COM(2013)97 final, the unique identifier number and status of participation.

¹ **DE, ES and LV** entered a scrutiny reservation on this Article.

² A large number of delegations stressed that paragraph 1 as proposed by Cion would result in long delays at the external borders. For that reason, **ES, NO, AT, PT, FI, NL, HU, RO, SE, SI, DK and PL** were in favour of introducing only data which can be registered automatically. Several delegations suggested referring to data in the Machine Readable Zone (MRZ). **DE** and **ES** also referred to data listed in Annex IX of ICAO. **BE, HU, NL, SI and LT** were interested in the possibility of making a link between the VIS and EES so that visa applicant information available in the VIS could be also registered in the EES. **PL** asked to include a derogation to this provision for cases where there are long queues at the border. **FR**, supported by **BE**, suggested including refusals of entry. **CZ** raised the issue of children travelling with their parents on a single travel document. **SE** and **SI** asked how to deal with third-country nationals with dual nationality. **Cion** was flexible on the idea of shortening the list in paragraph 1. As regards interoperability with the VIS, Cion said that border guards would have access to the VIS at the border but that the VIS and EES would not be linked because their searches are different and they are have a different legal basis. Concerning persons with dual nationality, Cion expressed the idea that border guards should check the biometrics in order to prevent a third-country national from circumventing the rules. Cion had doubts on the addition of the refusals of entry and it was not sure this fit into the system's purposes.

2. On each entry of that person the following data shall be entered in an entry/exit record¹, which shall be linked to the individual file of that person using the individual reference number created by the EES upon creation of that file:
 - (a) date and time of the entry;
 - (b) Member State of entry, the border crossing point and authority that authorised the entry;
 - (c) the calculation of the number of days of the authorised stay(s) and the date of the last day of authorised stay.
3. On exit the following data shall be entered in the entry/exit record linked to the individual file of that person²:
 - (a) date and time of the exit;
 - (b) the Member State and the border crossing point of the exit.

Article 12³

Personal data for third country nationals exempt from the visa obligation

1. In the absence of a previous registration of a third country national in the EES where a decision has been taken to authorise the entry in accordance with the Schengen Borders Code of a national of a third country exempt from the visa obligation, the border authority shall create an individual file and enter ten fingerprints⁴ in the individual file of that person, in addition to the data referred to in Article 11⁵, with the exception of the information referred to in Article 11 paragraph 1(d) and(e).

¹ **SE** indicated that it might be useful to include a definition of "entry/exit record".

² **DE** wondered if it would be necessary to also enter the number of re-entries allowed.

³ **ES** entered a scrutiny reservation.

⁴ **NL** and **RO** were in favour of entering 10 fingerprints and asked to enter the same number of fingerprints in the RTP (Article 8). **BE, EL, FI, IT** and **PT** expressed concerns about the time that would be necessary to take ten fingerprints at the border and therefore asked to reduce the number of fingerprints to be taken. **FR** and **HU** considered that a long transitional period before the introduction of biometrics was not justified. In particular, **FR** suggested introducing flexibility in paragraph 5 and allowing **MS** to introduce biometrics on the basis of their preparations.

⁵ As for Article 11, **HU** and **ES** underlined that only data which can be registered automatically should be put into the system by border guards.

2. Children under the age of 12 shall be exempt from the requirement to give fingerprints for legal reasons¹.

3. Persons for whom fingerprinting is physically impossible shall be exempt from the requirement to give fingerprints for factual reasons².

However, should the impossibility be of a temporary nature³, the person shall be required to give the fingerprints at the following entry. The border authorities shall be entitled to request further clarification on the grounds for the temporary impossibility to provide fingerprints.

Member States shall ensure that appropriate procedures guaranteeing the dignity of the person are in place in the event of encountered difficulties with capturing fingerprints.

4. Where the person concerned is exempt from the requirement to give fingerprints for legal or factual reasons pursuant to paragraphs 2 or 3, the specific data field shall be marked as 'not applicable'. The system shall permit a distinction to be made between the cases where fingerprints are not required to be provided for legal reasons and the cases where they cannot be provided for factual reasons.

5. For a period of three years⁴ after the EES has started operation only the alphanumeric data referred to in paragraph 1 shall be recorded.

¹ **FR** and **DE** asked to delete the words "for legal reasons". **PT** also indicated that "for legal reasons" should be deleted or, if it was retained, that those legal reasons should be listed. **PT** underlined that it was possible and worthwhile to take fingerprints of children under 12 in case of abduction. **Cion** explained that the preliminary results of the study on biometrics from children were not so conclusive and therefore **Cion** decided not to change this age limit as provided for in Regulation 444/2009.

² **EL** and **NL** asked for a picture to be taken as a back-up procedure when it is not possible to take fingerprints. **Cion** was not in favour of taking a picture when fingerprints cannot be taken because the number of people affected would be relatively small and requiring a picture would mean that all border crossing points should be equipped accordingly, which might be disproportionate. **FR** asked to delete "for factual reasons" or to keep those words but list the reasons.

³ **RO** suggested starting this subparagraph as follows: "When taking the fingerprints becomes possible..."

⁴ **AT**, **CH**, **DE** and **PL** entered a scrutiny reservation on this paragraph because of the three-year period. **SI** supported the **Cion** proposal while **FI**, **HU**, **NL** and **NO** were in favour of deleting this paragraph and introducing biometrics in the EES from the start. **DE** suggested having a similar solution to the **VIS** and taking a gradual approach. **AT** and **FR** were in favour of leaving this up to Member States on the basis of individual assessments. **PT** and **PL** found **DE**'s suggestion interesting. **Cion** said that it would be possible to take a progressive approach during the first three years but it needed more time to think how it could work.

Article 13

Procedures for entering data at border crossing points where a previous file has been registered

If a previous file has been registered, the border authority shall, if necessary, update the file data¹, enter an entry/exit record for each entry and exit in accordance with Articles 11 and 12 and link that record to the individual file of the person concerned.

Article 14

Data to be added where an authorisation to stay is revoked or extended

1. Where a decision has been taken to revoke an authorisation to stay or to extend the duration of the authorised stay², the competent authority that has taken the decision shall add the following data to the entry/exit record³:
 - (a) the status information indicating that the authorisation to stay has been revoked or that the duration of the authorised stay has been extended;
 - (b) the authority that revoked the authorisation to stay or extended the duration of the authorised stay;
 - (c) the place and date of the decision to revoke the authorisation to stay or to extend the duration of the authorised stay;
 - (d) the new expiry date of the authorisation to stay.

¹ **SE** and **SI** said that the update should be done automatically, **Cion** replied that it might be not be necessary to mention in this paragraph that the border guard should link that record to the individual file of the person concerned if the system would do it automatically. Cion suggested merging this paragraph with Articles 11 and 12.

² **Cion** made it clear that it did not intend to change the applicable legal framework concerning the extension or revocation of the authorisation to stay.

³ **HU**, **NL** and **PL** stressed that a link with the VIS was necessary to avoid duplication of work. **PL** asked in which language information on the revocation or extension should be introduced. **Cion** replied that it needed more time to reflect on possible links between the two systems. **FR** asked for revocations or extensions relating to refusals of entry to be included as well.

2. The entry/exit record shall indicate the ground(s)¹ for revocation of the authorisation to stay, which shall be:
 - (a) the grounds on which the person is being expelled;
 - (b) any other decision taken by the competent authorities of the Member State, in accordance with national legislation, resulting in the removal or departure of the third country national who does not fulfil or no longer fulfils the conditions for the entry to or stay in the territory of the Member States.
3. The entry/exit record shall indicate the grounds for extending the duration of an authorised stay.
4. When a person has departed or been removed from the territories of the Member States pursuant to a decision, as referred to in paragraph 2(b), the competent authority shall enter the data in accordance with Article 13 in the entry/exit record of that specific entry.

Article 15
Use of data for verification at the external borders

1. Border authorities shall have access to the EES for consulting the data to the extent the data is required for the performance of border control tasks².
2. For the purposes referred to in paragraph 1, the border authorities shall have access to search with the data referred to in Article 11(1)(a) in combination with some or all of the following data:
 - the data referred to in Article 11(1)(b);
 - the data referred to in Article 11(1)(c);
 - the visa sticker number referred to in Article 11(1)(d);
 - the data referred to in Article 11(2)(a);
 - the Member State and border crossing point of entry or exit;
 - the data referred to in Article 12.

¹ **DE, BE, PT, HU** and **MT** expressed doubts about the reasons justifying the indication of the grounds for the revocation or extension of the stay. **CH** questioned why paragraphs 2 and 3 could not be merged. **NO** and **SE** supported Cion's proposal for paragraphs 2 and 3. **NO** considered this information on the grounds useful because it could not be found on other systems. **SE** believed that information on the grounds could support operational activities but asked how the person would be informed about the grounds.

² **ES** asked to replace "border control tasks" by "border authorities".