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

on: 25 July 2013

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 25 July 2013, the Working Party on Frontiers/Mixed Committee continued the examination of the above-mentioned proposal examined Articles 16, 17, 18, 19, 23 and 24. The text of these Articles is reproduced in the Annex. Member States' comments are set out in footnotes.

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 REGULATION¹:

....

CHAPTER III

Entry of data and use of the EES by other authorities²

Article 16

Use of the EES for examining and deciding on visa applications

1. Visa authorities shall consult the EES for the purposes of the examination of visa applications and decisions relating to those applications, including decisions to annul, revoke or extend the period of validity of an issued visa in accordance with the relevant provisions of the Visa Code.

¹ **HU, BG** and **SI** asked Cion what should be understood by "external borders" in the context of EES and RTP. **Cion** replied that the EES would apply to all Schengen Member States, including those which do not apply in full the Schengen acquis, from the first day of operation. As for RTP, Cion replied that it would be applicable to those Member States which do not apply in full the Schengen acquis only from the date on which the controls at the internal borders would be lifted. Cion added that those Member States should be able to unilaterally recognise the RTP status granted.

² **PL** and **BG** stressed that access for law enforcement purposes should be regulated in Chapter III. **AT** shared the same view and asked that this Chapter not be discussed until a decision had been taken on that issue. **BG** suggested deleting the word "Entry" in the title of Chapter III which Cion accepted in principle. **PL** indicated that the type of data to be introduced and accessed, and by what kind of authority, was not sufficiently clear in the Articles in Chapters II and III.

2. For the purposes referred to in paragraph 1, the visa authority shall be given access to search with one or several of the following data³⁴:
 - (a) the data referred to in Article 11(1)(a), (b) and (c);
 - (b) the visa sticker number, including the three letter code of the issuing Member State referred to in Article 11(1)(d)⁵;
 - (c) the data referred to in Article 12⁶.
3. If the search with the data listed in paragraph 2 indicates that data on the third country national are recorded in the EES, visa authorities shall be given access to consult the data of the individual file of that person and the entry/exit records linked to it solely for the purposes referred to in paragraph 1.

Article 17

Use of the EES for examining applications for access to the RTP

1. The competent authorities referred to in Article 4 of Regulation COM(2013)97 final shall consult the EES for the purposes of the examination of RTP applications and decisions relating to those applications, including decisions to refuse, revoke or extend the period of validity of access to the RTP in accordance with the relevant provisions of that Regulation⁷.
2. For the purposes referred to in paragraph 1, the competent authority shall be given access to search with one or several of the data referred to in Article 11(1)(a), (b) and (c).
3. If the search with the data listed in paragraph 2 indicates that data on the third country national are recorded in the EES, the competent authority shall be given access to consult the data of the individual file of that person and the entry/exit records linked to it solely for the purposes referred to in paragraph 1.

³ **LV** asked for the text to be amended so as to allow the visa authorities to carry out automated searches with alphanumeric data.

⁴ **NL** expressed the view that it would be very useful for visa authorities to have access to the travel history; however, that would not be possible on the basis of the 181-day retention period. Therefore, **NL** asked whether the retention period could be extended. **Cion** replied that it did not consider that storing the travel history in the system for a period of more than 181 days was justified, bearing in mind that such data could be stored for a maximum of five years in cases of mala fide travellers.

⁵ **SE** asked for a reference to the ISO alpha three number.

⁶ **DE** said that the reference should be to biometric data and not to the whole of Article 12. **Cion** agreed with **DE**.

⁷ **ES** entered a reservation on this paragraph. **NL** made the same comment as for Article 16 (1) on the travel history. **SE** suggested clarifying the impact of this provision in the RTP draft Regulation itself.

Article 18
Access to data for verification within the territory of the Member States

1. For the purpose of verifying the identity of the third country national and/or whether the conditions for entry to or stay on the territory of the Member States are fulfilled, the competent authorities of the Member States, shall have access to search with the data referred to in Article 11(1)(a), (b) and (c), in combination with fingerprints referred to in Article 12⁸.
2. If the search with the data listed in paragraph 1 indicates that data on the third country national is recorded in the EES, the competent authority shall be given access to consult the data of the individual file of that person and the entry/exit record(s) linked to it solely for the purposes referred to in paragraph 1.

⁸ **SI** entered a scrutiny reservation on the reference to Article 12 in this paragraph. **HU** argued that this article should be the legal basis for authorising access for law enforcement purposes. **FR** reiterated that for the purpose of this provision, it would be very important to introduce biometrics in the EES from the beginning. **ES** indicated that there was a mistake in the title of this Article in the Spanish text. **ES** also asked Cion whether this provision could be the legal basis for checking the legality of the stay in the Schengen area. **NL** asked whether those checks should be carried out with mobile equipment. Several delegations asked Cion to clarify the distinction between Articles 18 and 19. **Cion** stated that checks under this provision should consist of a one-to-one verification, i.e. the authorities would check all the data and documents, including biometrics, while in Article 19 the authorities look to identify the person with the biometrics. Article 18 only applies to checks in the territory while Article 19 applies to checks both at the external borders (second line) and in the territory. As regards the introduction of biometrics in the EES, **Cion** repeated that the three-year period was envisaged to allow Member States to be equipped with the necessary infrastructure and to set up the appropriate procedures. In the meantime, Cion was open to discussing a progressive introduction of biometrics before the three-year period. In that regard, Cion suggested that, at some point in the discussion, the Presidency could prepare a questionnaire in order to check if Member States could adapt their border check process and necessary infrastructure quickly enough so as to reduce the transitional period foreseen in the text for biometrics. In reply to **ES**, Cion confirmed that Article 18 would be the legal basis for checking the legality of the stay of third-country nationals. As to the use of mobile equipment, Cion confirmed that Member States would be allowed to use mobile equipment similar to that currently used at the border checking points for the VIS.

Article 19
*Access to data for identification*⁹

1. Solely for the purpose of the identification of any¹⁰ person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States, the authorities competent for carrying out checks at external border crossing points in accordance with the Schengen Borders Code or within the territory of the Member States as to whether the conditions for entry to, stay or residence¹¹ on the territory of the Member States are fulfilled, shall have access to search with the fingerprints of that person.
2. If the search with the data listed in paragraph 1 indicates that data on the person are recorded in the EES, the competent authority shall be given access to consult the data of the individual file and the linked entry/exit records), solely for the purposes referred to in paragraph 1¹².

.....

⁹ **ES** entered a reservation on this provision.

¹⁰ **RO** suggested replacing "any" by "a".

¹¹ **FR** made the same comment regarding biometrics as for the previous article and asked Cion what the technical difference between stay and residence was. Cion replied that it might be better to delete the word "residence" and only leave "stay".

¹² **Cion** suggested amending this paragraph in order to make provision for what happens when a biometrics search fails. Cion would come up with a suggestion in that regard along the lines of Article 20 paragraph 1 of the VIS Regulation.

CHAPTER V

Development, Operation and Responsibilities

Article 23

Adoption of implementation measures by the Commission prior to development

The Commission shall adopt the following¹³ measures necessary for the development and technical implementation of the Central System, the Uniform Interfaces, and the Communication Infrastructure including specifications with regard to:

the specifications¹⁴ for the resolution and use of fingerprints for biometric verification in the EES;

the design¹⁵ of the physical architecture of the system including its communication infrastructure;

entering the data in accordance with Article 11 and 12;

accessing the data in accordance with Articles 15 to 19;

keeping, amending, deleting and advance deleting of data in accordance with Articles 21 and 22;

keeping and accessing the records in accordance with Article 30;

performance requirements.

Those implementing acts shall be adopted in accordance with the procedure referred to in Article 42.¹⁶

The technical specifications and their evolution as regards the Central Unit, the Back-up Central Unit, the Uniform Interfaces, and the Communication Infrastructure shall be defined by the Agency after receiving a favourable opinion of the Commission¹⁷.

¹³ **RO** suggested deleting the word "following". Cion replied that that word was supposed to limit its mandate.

¹⁴ **NO** suggested deleting the word "specifications" as it is already in the heading.

¹⁵ **NO** suggested deleting the word "design" or replacing it by "requirements".

¹⁶ **PL** entered a positive scrutiny reservation on this sentence and asked if a reference to specific provisions in Regulation 182/2011 should be made regarding situations where the act is not adopted.

¹⁷ **DE, NL** and **PL** stressed that Member States should be involved in the development of the technical specifications. Cion confirmed that Member State experts would indeed be involved in a similar way as for SIS II, both when Cion would prepare the functionalities and when LISA would proceed to prepare the technical specifications.

Article 24
Development and operational management

1. The Agency¹⁸ shall be responsible for the development of the Central Unit, the Back-Up Central Unit, the Uniform Interfaces including the Network Entry Points and the Communication Infrastructure¹⁹.

The Central Unit, the Back-up Central Unit, the Uniform Interfaces, and the Communication Infrastructure shall be developed and implemented by the Agency as soon as possible after entry into force of this Regulation and adoption by the Commission of the measures provided for in Article 23(1).

The development shall consist of the elaboration and implementation of the technical specifications, testing and overall project coordination²⁰.

2. The Agency shall be responsible for the operational management of the Central Unit, the Back-Up Central Unit, and the Uniform Interfaces. It shall ensure, in cooperation with the Member States at all times the best available technology, subject to a cost-benefit analysis²¹.

The Agency shall also be responsible for the operational management of the Communication Infrastructure between the Central system and the Network Entry Points.

Operational management of the EES shall consist of all the tasks necessary to keep the EES functioning 24 hours a day, 7 days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality, in particular as regards the time required for interrogation of the central database by border crossing points, which should be as short as possible.

3. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, the Agency shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its entire staff required to work with EES data. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.

¹⁸ **CH** asked to indicate in the text that the Agency should ensure that costs would be properly dealt with. Cion commented that the principle of cost-efficiency was an overarching general principle and that it was not necessary to refer to it in this provision.

¹⁹ **NL** as in previous article, asked Cion to confirm that EU LISA would work with Member States experts. Cion confirmed this.

²⁰ **CZ** requested to define "overall project coordination" and to indicate how Member States would take part. Cion replied that it would be better not to define this as it is an evolving concept and it would be done according to EU LISA own governance.

²¹ **RO** asked Cion who would carry out the cost-benefit analysis. Cion answered that EU LISA is expected to look for and to use the best available technology as a principle but "cost benefit analysis should not be read as meaning a methodology in this provision.