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LIMITE

FRONT 13
VISA 14
COMIX 15

NOTE

From:	Presidency
To:	Delegations
Subject:	Overstayers in the EU: methodology of gathering statistics; preventive measures; penalties

INTRODUCTION

FRONTEX risk analysis data shows that, in 2013 (data for 2014 will be available in February 2015), there were 344 888 detections of illegal stay in the EU, which represented a generally stable trend compared to the year before. Among these detections, some concern overstays beyond the authorised period of stay, while others concern detections within the EU of third-country nationals who have crossed illegally the border. In Q2 2014, there were 100 647 detections of illegal stay in the EU, which is an increase of 15% compared to last quarter and 22% more than one year ago.

The overstayers detected in the EU are third-country nationals who have exceeded the authorised period of stay, most of them being short-stay visa holders. It is very difficult predict such cases at the border, because in those cases migrants have genuine travel documents and presumably some proportion do not intend to overstay at the actual moment of entering the EU. A large volume of passengers impedes extended controls that would prevent overstaying. Yet, inland control and return procedures are likely to consume far more resources than preventive measures. Due to increase in detections of overstayers during exit controls, some airports are forced to devote more resources to exit controls.

OBJECTIVES

The upward trend of overstay detections inland or at exit points, especially in cases when migration provisions are not respected in one Member State and third-country nationals try to leave the EU area via other Member State, reveals the shortcomings in existing legal procedures and the practical processing of such cases at the level of the European Union.

A brief analysis of national regulations of different Member States and the existence of common standards regarding residence conditions within the Schengen area shows the need for possible further improvements in the legal field and in the development of common standards for the implementation of procedures and imposition of sanctions in overstay cases at EU level. This would also act as a deterrent as there would be no scope to avoid being penalised for violations of migration provisions.

One possible result of such a harmonisation policy could be the ability of Member States to follow and implement common standards. Moreover, sanctions would be imposed on third-country nationals corresponding to the level of seriousness commonly determined at EU level.

For example, at present, a *third-country national who has exceeded the duration of legal residence in one Member State may leave the European Union via another Member State without an appropriate sanction in an overstay case (in some Member States, the national legal system allows indictment solely based on proven facts within the respective Member State)*, due to the lack of common policy and standards. Such a situation must be avoided and common standards should be applicable in order to provide a response to the non respect of legal provisions in the European Union regardless of the territorial principle of individual Member States and to provide appropriate preventive measures.

At present, there is a certain level of harmonisation in the field of return (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals) and carrier's liability (Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985).

There is therefore a need to provide a certain level of harmonisation and implementation of common procedures and standards in overstay cases within the European Union, as well as to implement uniform sanctions. For the Presidency, these kind of policy measures would supplement the provisions of the future Entry Exit System leading to a more efficient management of the migration flows.

IMPLEMENTATION OF THIS INITIATIVE

Within the initiative it is planned to:

- *evaluate Member States' statistics on overstay cases;*
- *assess existing sanctions and preventive measures;*
- *identify basic elements for possible implementation of common standards and harmonisation (legislative (proposals) or practical (best practices));*
- *discuss with Member States the possibility of providing a certain level of harmonisation and implementation of common standards.*

The Presidency intends to assess the results and outcomes of previous operations carried out by the previous Presidencies ("*Mos Maiorum*", "*Perkunas*" and "*Mitras*"), FRONTEX Intra - Schengen data-gathering exercise, Study of the Fundamental Rights Agency "Criminalisation of migrants in an irregular situation and of persons engaging with them" and the Project "CLANDESTINO" with regard to overstaying.

With the support of the participating Member States, an analysis will be performed and possible input of Member States will be identified and discussed.

For the data gathering, the Presidency activity "AMBERLIGHT 2015" (doc. 5195/15) will be used.

CONCLUSION

In light of the above, the Presidency suggests to further examine the current legislation and practice in Member States regarding cases where third country nationals exceed the maximum duration of authorised stay in the territory of the member States, with a view to considering the possibility of a certain level of harmonisation of rules, sanctions and procedures for such cases.

For that purpose, the Presidency envisages to invite delegations to reply to a short questionnaire to have an overview from each Member State of the situation at national level. The Presidency would then analyse the replies to the questionnaire, together with the data available from the operations referred to above, and submit a document with its suggestions for further proceedings.

Can delegations agree to this approach?