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From: Presidency
To: Permanent Representatives Committee/Council / Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

Subject: Information Technology (IT) measures related to border management

- a) Systematic checks of external borders
- b) Entry/Exit System (EES)
- c) Evolution of the Schengen Information System (SIS)
- d) EU Travel Information and Authorisation System (ETIAS)
- e) High-Level Expert Group on Information Systems and Interoperability

= Progress report

I. INTRODUCTORY REMARKS

The recent terrorist attacks, such as those in Paris, Brussels and Nice, as well as the ongoing migration crisis at the European Union have caused a huge challenge for the Schengen area as a secure area without controls at internal borders. As it has been repeatedly stated by the European Council and the Council, a robust, integrated border management is an essential tool to encounter successfully these challenges at EU level, as well as to enhance the solidarity and in-depth cooperation among all the Schengen States.

A prerequisite for effective border management is the setting up and the development of an well-functioning information architecture, which caters in a balanced way for secure and swift border controls. Given the urgent need for a credible reaction to the aforementioned threats for the integrity of Schengen, the existing framework should be further developed as soon as possible, with the due participation of all the necessary stakeholders at EU and national level.

In the light of the above considerations, the Presidency is fully committed to pursue work on the current and upcoming files on information technology measures related to border management. In this vein, it presents to the Council the below progress report on these items with a view to allowing the Ministers to take stock of the work that is under way and of the ensuing challenges.

II. STATE OF PLAY OF THE IT MEASURES RELATED TO BORDER MANAGEMENT

A. Systematic checks on external borders

Following the terrorist attacks in Paris on 13 November 2015, the Council called in its Conclusions of 20 November 2015 for a revision of the Schengen Borders Code so as to provide for systematic checks against the relevant data bases of all travellers, including in particular EU nationals, at the Union's external borders. The relevant proposal for a targeted amendment to the Schengen Borders Code was submitted by the Commission on 15 December 2015, as a part of its Border Package.

The Council handled the file as a matter of absolute priority reaching a general approach at the JHA Council of 25 February 2016, which is set out in document 6673/16. The LIBE Committee adopted its Report on 21 June 2016. Since then, four technical meetings (the latest on 7 September 2016) and one trilogue, on 13 July 2016, have taken place.

At Council level, the negotiations with the European Parliament were addressed by the Working Party on Frontiers on 11 July 2016 and that the Presidency had also a series of bilateral meetings with most delegations in late July 2016 with a view to exploring its room for manoeuvre on the main outstanding issues with the Parliament.

These issues are: i) regarding air borders, the extent of the transitional period during which it will be possible to derogate from the systematic checks; ii) the question whether reference should be made in the text to consultation of national data bases to verify that there is no threat to the internal security, etc.; iii) the question whether the scope of cases to be exempted from systematic checks under certain conditions shall be limited to the disproportionate delays (and if allowed by the relevant risk analysis) or would be broadened; iv) The sunset clause which the Parliament wants to be included in the text in order to have the application of this Regulation terminated after a given time.

The Presidency wishes to underscore that during all the above negotiations it has repeatedly justified why diverting too much from the current Council position would deprive the future legal instrument from a substantial part of its added value regarding security and thus, would go counter to the explicit mandate received by the European Council and the Council. This mandate was most recently reiterated at the informal meeting of the Heads of State or Government at Bratislava on 16 September 2016.

The second political trilogue on this file is scheduled on 11 October 2016, for the preparation of which the Presidency intends to hold a JHA Counsellors meeting.

The Presidency would like to confirm its strong commitment for continuing vigorously the negotiations with the European Parliament with a view to reaching a timely compromise along with the mandate it has received.

B. Entry-Exit System (EES)

The new Smart Borders package containing proposals on the EES and on the ensuing amendments to the Schengen Borders Code, was submitted by the Commission in April 2016. Its main objective is to improve the effectiveness of border controls and it is expected also to contribute to the identification of overstayers and to the fight against terrorism and other serious crime.

The Presidency has intensified deliberations at competent preparatory Council bodies regarding the remaining outstanding questions.

The in-depth examination of the two proposals focuses on issues such as: i) the scope of the EES; ii) the optimal choice and use of biometric identifiers; iii) the calculation of the 90/180 day- timeframe regarding Member States which do not yet apply the Schengen acquis in full; iv) the conditions under which stamps will still be used on travel documents; v) the transfer of data to third countries and other third parties; vi) the interaction between the EES and the bilateral agreements under which a Member State extends the stay of the third country national concerned for a period longer than 90 days.

The Presidency intends to wrap up shortly the examination at technical level, aiming at providing workable and legally sound solutions for the outstanding issues and subsequently, confirm an agreement at political level, by adoption of the negotiating mandate. This mandate will then serve as a basis to enter interinstitutional negotiations with the LIBE Committee, which is also in the process of developing its own mandate.

C. Evolution of the Schengen Information System (SIS)

The European Union established the Schengen Information System (SIS) (now in its second generation – SIS II) in 2006. SIS II is a highly efficient large-scale information system which, as the Schengen Agreement's primary compensatory measure, represents a key building block in the cooperation of participating States.

1. Ongoing improvements within the present legal framework

a) Addition of an automated fingerprint search functionality (AFIS) to the SIS

Border checks against the SIS are currently carried out on the basis of alphanumeric searches (i.e. name and date of birth). Fingerprints can only be used to verify and confirm the identity of a person who has already been identified by name. This will be addressed by adding a fingerprint search functionality to the SIS through an Automated Fingerprint Identification System (AFIS), which does not require an amendment to the SIS legal basis as it is already foreseen in Art. 22(c) of the SIS II legal instruments¹. eu-LISA started working on the implementation of the AFIS in SIS with the Commission and the Member States in June 2016, and the user and technical requirements are about to be finalised. As a first phase, the plan is to implement the AFIS at central level with 6 pilot Member States. In the second phase, the AFIS will be rolled out to other Member States. The AFIS should be operational by mid-2017².

b) Exchange information management and information exchange

On a more operational perspective, Member States are involved in the follow-up of the implementation of the actions set out on the Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area (9368/1/16), which includes specific, practical short- and medium-term actions and long-term orientations to enhance information management and information exchange in this area. In this context, developments have been put in place concerning the procedure on alerts on Article 36 of the SIS II Decision in order to harmonize its use by the Member States.

¹ Regulation (EC) No 1987/2006 of the European Parliament and the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) and Council Decision 533/2007/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4 and OJ L 2015, 7.8.2007 p.63)

² In March 2016 the Commission presented a report to the European Parliament and the Council on the availability and readiness of technology to identify a person on the basis of fingerprints held in the second generation Schengen Information System (SIS II).

c) Restrictive measures

In addition, in compliance with Council Conclusions on the subject, work is ongoing to establish a mechanism of coordination at European Union level for the implementation and follow-up of the Council Decisions on restrictive measures as regards the alerts entered under Article 26 of the SIS II Regulation, which should improve the effectiveness of the system in this regard.

2. Expected legislation

As required by the SIS II legal instruments, the Commission carried out an overall evaluation of SIS three years after its entry into operation. The Commission aims to finalise internal consultations on the results and transmit the report to the European Parliament and the Council in 2016. Based on the outcome of the evaluation, the Commission intends to prepare a legislative proposal containing a series of measures aimed at maximising the effectiveness, efficiency and added value of SIS.

Against this background, and on the basis of the ongoing evaluation and a technical study, the Commission is currently examining possible additional functionalities for the SIS with a view to presenting proposals to revise its legal basis. Aspects under consideration include³:

- the creation of SIS alerts on irregular migrants who are the subject of return decisions;
- the use of facial images for biometric identification, in addition to fingerprints;
- the automatic transmission of information on a hit following a check;
- the storing of hit information on discreet and specific check alerts in the SIS Central System;
- the creation of a new alert category on 'Wanted Unknown Persons' for which forensic data may exist in national databases (e.g. a latent print left behind at a crime scene). This will be assessed with a view to seeking complementarity and avoiding overlap with the existing Prüm framework for searching fingerprints in the different national databases of EU Member States.

³ 7644/16 - Communication from the Commission to the European Parliament and to the Council Stronger and Smarter Information Systems for Borders and Security

The Commission plans to carry out an impact assessment focusing on measures regarding technical enhancements to the system and the extension of the scope of SIS for immigration purposes.

D. European Travel Information and Authorisation System (ETIAS)

The Commission announced its intention to submit a proposal to create a European Travel Information and Authorisation System (ETIAS) in order for the visa-exempt third country nationals to be authorised to travel to the Schengen Area for short-stay visits following a pre-screening prior to their trip. Such pre-screening should allow the competent authorities to assess whether such travel poses a security or migration risk.

However, it should be noted that this authorisation would not grant entry to the Schengen Area, which remains to be decided by the border guards. ETIAS would cover all external border types (air, land and sea).

The ETIAS is expected to focus on security and migration with benefits regarding security risk assessment, border control effectiveness and facilitation, migration risk assessment and convenience for travellers.

The Commission proposal is now expected by 25 October 2016.

The Presidency intends to deal with the future proposal as a matter of priority and will start its examination once it is submitted.

E. High-Level Expert Group on Information Systems and Interoperability

With a view to contributing to the improvement of the European Union's data management architecture for border control and security, the Commission has established a high-level expert group on information systems and interoperability (HLEG). The HLEG brings together high-level representatives of the Commission, Member States and associated members of the Schengen area, EU agencies (eu-LISA, Frontex, EU FRA, EASO and Europol), the Counter-Terrorism Coordinator, as well as and the Council Secretariat and the LIBE Committee as observers.

To a large extent, the work of the HLEG builds upon the Commission Communication on Stronger and Smarter Information Systems for Borders and Security of 6 April 2016⁴. The group is also guided by the Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area⁵, endorsed by the Council at its meeting on 9-10 June 2016.

The task of HLEG is to address the legal, technical and operational aspects of the different options to achieve interoperability of information systems, including the necessity, technical feasibility and proportionality of available options and their data protection implications. In particular, the following main challenges will be addressed by the HLEG and its sub-groups:

- how to improve the implementation and use by Member States of existing systems and how to make existing systems more effective, process-oriented and user-friendly;
- to consider the development of new systems to address identified gaps in the present information system landscape; and
- to develop an interoperability vision for the next decade that reconciles process requirements with data protection safeguards.

The HLEG has so far met twice (on 20 June and 20 September 2016), and three more meetings are planned. Following the last meeting of the HLEG in May 2017 the Commission will prepare a report to the European Parliament and the Council in June 2017. The report will present the main findings of the HLEG and propose concrete actions for follow-up.

III. CONCLUSIONS

The Presidency invites the Council to take note of the above progress report and, as appropriate, have an exchange of views on the overall approach regarding the use and further development of the Information Technology measures related to border management .

⁴ 7644/16

⁵ 9368/1/16 REV 1