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**SCHENGEN 10**  
**SIRIS 53**  
**COMIX 236**

## **OUTCOME OF PROCEEDINGS**

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From: Working Party for Schengen Matters (Acquis) - Mixed Committee (EU-Iceland, Norway and Switzerland, Liechtenstein)

On: 6 and 7 March 2017

Subject: Summary of discussions

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### **1. Adoption of the agenda**

The agenda as set out in CM 1621/1/17 REV 1 was adopted with the inclusion of one item under AOB (see item 5 below).

### **2. Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU**

The Working Party (WP) examined Articles 20 to 40 of the proposal, as set out in 15814/16.

For the discussion of Articles 32 and 33, delegations had been invited (see CM 1621/1/17 REV 1) to be composed of experts in judicial cooperation in civil law matters (family law issues - Brussels IIa).

The discussion revealed that the most problematic issues were related to the creation of alerts on unknown persons for searching using biometric data (Article 40), preventive alerts on missing persons (Article 32(4)), the obligation for Member States to create alerts on terrorism-related activities (Article 21(2)), and the new alert for inquiry checks (Article 36).

The outcome of the discussions will be reflected in a Presidency draft compromise text in document 8110/17 (to be issued). The Presidency asked the delegations to submit their comments in writing, by 20 March 2017, to [schengenacquis@consilium.europa.eu](mailto:schengenacquis@consilium.europa.eu) and [schengenacquis.mhas@gov.mt](mailto:schengenacquis.mhas@gov.mt). The comments would be taken into consideration when drafting the compromise text. That document would indicate the reservations entered by the delegations on specific provisions.

General scrutiny reservations on this instrument are pending from AT, BG, CZ, DE, FI, HU, IT, LT, NL, PL, PT, SE, SI and UK. Parliamentary reservations are pending from DE, PL and UK.

### **3. Proposal for a Regulation of the European Parliament and of the Council on use of the Schengen Information System for the return of illegally staying third-country nationals**

A Commission representative (COM) briefly presented the proposal. It aims to harmonise Member States' procedures on the enforcement of return decisions. COM said that, from February 2018, the identification of returnees would be done on the basis of fingerprints, and that the SIS was the most appropriate IT-system for identification and visualisation of return decisions. The SIS is also the most used system, with more than 2 million end-users. The insertion of return decisions in the SIS would make it possible to monitor compliance with the obligation to leave the territory. COM pointed out that more than 60% of the persons subject to a return decision remain in the EU.

Several delegations (AT, EL, ES, FI, FR, HU, PL and SI) welcomed the proposal, whilst admitting that further work was needed. BE and NL wondered about its added value. Some expressed concerns regarding the administrative burden it would imply.

The Council Legal Service (CLS) said it was still analysing the proposal and wondered about the need for a separate instrument on return.

Following a question from the UK, COM clarified that if the UK opted in to this proposal, the UK also had to opt in to Directive 2008/115/EC<sup>1</sup>, to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code<sup>2</sup>.

The WP examined Articles 1 to 4 of the proposal, as set out in (15812/16). For this discussion, delegations had been invited to be composed also of experts in Return/Expulsion and Borders.

The most debated issues regarded (i) the inclusion and use of biometric data, for instance, the fact that the insertion of dactyloscopic data is not a precondition for issuing an alert; (ii) the insertion of alerts in the event of voluntary return; (iii) the timing and relationship between the different steps: the creation of the alert, the postponement and enforcement of the action to be taken, how to consider when an expulsion decision is final (where no more appeals are possible), and the time of removal of the alert.

Delegations were requested to send in their comments in writing, by 20 March 2017, to [schengenacquis@consilium.europa.eu](mailto:schengenacquis@consilium.europa.eu) and [schengenacquis.mhas@gov.mt](mailto:schengenacquis.mhas@gov.mt).

Taking into account the discussions during the meeting and the written comments from the delegations, the Presidency, in cooperation with the Commission, would submit a redrafted compromise version of the relevant provisions (see 8108/17, to be issued). That document would also indicate the reservations on specific provisions.

General scrutiny reservations on this instrument are pending from AT, BG, CZ, DE, EL, FI, HU, IT, LT, NL, PL, PT, SE, SI, SK and UK. Parliamentary reservations are pending from DE, PL, SE and UK.

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<sup>1</sup> Directive on common standards and procedures in the Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

<sup>2</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), (OJ L 77, 23.3.2016, p. 1).

**4. Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006**

The WP continued the first round of the discussions on this proposal and examined Articles 20 to 29 of the proposal as set out in 15813/16.

The discussion revealed that the most problematic issues were related to the obligation for Member States to create alerts on terrorism-related activities (Article 21(2)) – like in the proposal for law enforcement (see above item 2), the minimum data required to enter an alert (Article 23), the timing and the relationship between the different steps regarding return decisions (Article 24(3)) – like in the return proposal (see above item 3) –, the procedures in case of coexistence of a residence permit issued by a Member State and a non-admission alert issued by another Member State (Article 26), and searching with biometric data (Article 28).

The outcome of the discussions will be reflected in a Presidency draft compromise text, in 8109/17 (to be issued). The written comments sent by the delegations following the meeting, would also be taken into consideration when drafting that document.

The Presidency asked the delegations to submit their comments in writing, by 20 March 2017, to [schengenacquis@consilium.europa.eu](mailto:schengenacquis@consilium.europa.eu) and [schengenacquis.mhas@gov.mt](mailto:schengenacquis.mhas@gov.mt).

General scrutiny reservations on this instrument are pending from AT, BG, CZ, DE, FI, HU, IT, LT, NL, PL, PT, SI and UK. Parliamentary reservations are pending from DE, PL and UK.

**5. AOB**

LI, supported by LU, reiterated its opposition to the obligation to have a national copy, as provided for in Article 4(1)(b) of both proposals as set out in 15813/16 and 15814/16.

**6. Confirmation by the Working Party for Schengen Matters (Acquis) of the decisions prepared in the Mixed Committee**

The WP confirmed the outcome of the discussions in the Mixed Committee.