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NOTE

From:	Presidency
To:	Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject:	Overstayers in the EU - Summary of replies to questionnaire

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I. INTRODUCTION

Following discussions in the Working Party on Frontiers on doc. 5193/15 and subsequent written comments received from delegations to the questionnaire doc. 6920/15, the Presidency has received very valuable input from **DELETED**. The compilation of those replies is set out in ADD 1 to this Note. On that basis, the Presidency sees scope for fruitful discussions in this Working Party.

The main aim of the questionnaire was to collect information on practices followed by Member States in overstay cases. The Presidency attaches great importance to this initiative as it could contribute to optimising the provisions on overstayers included in the draft Regulation establishing the Entry Exit System.

Delegations can find below a summary of the information and practices followed in different Member States and recommendations for discussion.

II. SUMMARY OF THE REPLIES

Question 1

Do you collect information on third-country nationals/overstayers at national level? What information is collected and in which categories? Do you collect data on all detected cases of overstaying or only in a few categories (for example, committed intentionally or through negligence, or in duly justified cases such as staying at hospitals, medical centres or other)? Is this data stored (where or in which databases)?

The majority of Member States (**DELETED**) collect information on persons who overstayed in the territory of the Member State. Such an obligation is laid down in national legislation or in the internal rules of the competent authorities. In addition, in overstay cases, national legislation in some Member States provides for cooperation with other authorities, whose responsibilities includes immigration issues. **DELETED** are carrying out checks on return decisions at border crossing points. **DELETED** closely monitors the regular presence on national territory, and its statistics are compiled on the number of residence permits issued by the Police Headquarters. **DELETED** is also statistically monitoring the phenomenon of illegal immigration, with particular reference to foreign nationals towards which removal administrative measures are adopted.

The amount of information collected by Member States differs, but, in general, personal and travel document data, the place of overstay (border crossing point or inland) and time are collected. Information on the reason for overstay (work, studies, staying at hospital etc.) is usually not collected. Member States collecting information use separate registers or overviews of statistical information, which include information on overstay cases. The above-mentioned information is available for authorities at border crossing points and inland.

General outcomes:

- The majority of Member States collect statistical data with regard to overstay. The information varies in terms of the amount and the subject dealt with.
- Only a number of Member States collect data on first country of entry and purpose of overstay.

Question 2

Do you submit statistical information on overstaying to FRONTEX regularly? Is the information currently gathered on overstaying cases by FRONTEX adequate and does it provide a reasonable and sufficient basis for further analysis?

Information on overstaying is submitted to FRONTEX FRAN (Frontex Risk Analysis Network) monthly (section - illegal stay on exit). However, only some Member States (**DELETED**) consider the quantity of information provided to be enough for general analysis.

DELETED does currently not provide statistical data on overstayers to the FRONTEX Agency. In this regard, as part of the upcoming implementation of a new system for the collection and examination of data for statistical and risk analysis (**DELETED**) it will be possible, once fully operational, to acquire and process information and statistical data also on the "overstayers" category.

General outcomes:

- The information gathered varies between Member States according to the subject dealt with, but the agreed type thereof is forwarded to the FRONTEX.
- There is no common opinion on sufficiency of information provided to the FRONTEX for risk analysis purposes.

Question 3

Is a standard action, inter alia procedures, for the official (institution) concerned defined for cases where an overstayer is detected? What actions are carried out by the official (institution) at first and second line border checks, during profiling of passengers at the airport transit zone, or within the country in overstaying cases? Is a time limit established for the procedure performed by officials (institutions) when overstaying cases are detected?

In general, the internal proceedings in the case of overstay are determined in all Member States which have replied. Member States practice with regard to applicable proceedings varies. Member States, after detection of overstay at a border crossing point, establish that a person has overstayed. In some cases fines are imposed and the Member State concerned evaluates the need to include the person in an entry ban list and takes the decision to issue a return decision. A return decision is issued to an overstayer detected inland, and care is taken to ensure that the person exits the territory of Member State voluntarily. In cases where a person does not voluntarily exit the territory of Member State concerned, a decision on forced return could be taken. Member States indicate that the time limit for proceedings is not laid down, but the decision should be taken within a reasonable time in accordance with general national provisions.

General outcome:

- While there are proper internal procedures in place for processing overstay cases, there is considerable diversity between Member States in terms of procedures.

Question 4

What are the typical overstayer detection methods at the external borders and within the country (for example, by checking in national databases or in the National Entry/Exit System, by comparing stamps (notes) in travel documents, by detecting counterfeit travel or other documents, etc.)? Please specify priorities, if possible.

All Member States which replied mentioned that the most effective way to detect overstay is by analysing entry/exit stamps. The majority of Member States (**DELETED**) use the national entry-exit system to monitor length of stay. On the other hand **DELETED** reported that they also use Schengen calculator, recommended by the Commission to control length of stay. **DELETED** also noted the importance of immigration control within the country.

General outcome:

- The most effective tools for ascertaining overstay cases are entry/exit stamps and national entry/exit system (or similar), as well as the Schengen calculator;

Question 5

Is information on the first country of entry and the initial purpose of entry checked in overstaying cases?

DELETED indicated that the information on the first country of entry and the initial purpose of entry is collected in all cases. Some Member States (**DELETED**) indicated that such information collection is included in internal proceedings. The main method of detection of the first country of entry is an entry stamp in travel document.

General outcome:

- There is no common methodology with regard to obtaining the information on the first country of entry and the initial purpose of entry.

Question 6

What reasons are usually indicated by travellers in overstaying cases?

From an analysis of the information provided by the Member State which replied, it is concluded that the main reasons for overstay are as follows:

- 1) TCNs with short-stay visas (individually limited duration of residence) do not understand when they have to exit because the validity of the visa does not correspond to the authorised residence period;
- 2) TCNVH and TCNVE could not calculate the authorised 90 days within the 180-day period correctly (if not otherwise agreed bilaterally);
- 3) health problems (the person concerned could not exit in time due to stay in hospital or illness);
- 4) family reasons (willing to stay longer with family members);
- 5) employment (mostly illegal);
- 6) loss of travel document (issue of new travel documents needs to be arranged);
- 7) force majeure (e.g. flight delay).

General outcome:

- Some overstay cases relate to errors in the manual calculation of duration of residence, (this might be admitted in case of really short overstay, and other well-founded reasons). However, there is a solid number of unjustified cases. Neither is analysed in detail at EU level.

Question 7

Do you receive information on overstayers from state institutions or private companies (e.g. hotels, carriers, etc.)?

Information on overstay in **DELETED** is received from state institutions (immigration control, employment checks by the authorities, police, educational institutions, prisons, hospitals and others) as well as from the private companies (carriers, hotels, rent of car services etc.). Analysis of the information provided by Member States and the exchange of information among the competent authorities ensures a framework of efficient cooperation. **DELETED** indicated that the obligation of the private individuals and legal persons to provide information on foreigners is also laid down by law. **DELETED** receives information in exceptional cases related to specific conditions of investigative/judicial nature.

General outcome:

- Information exchange between national authorities and companies provides firm ground for further action.

Question 8

Is information on overstay committed in other Member State(s) taken into account during the procedure on exit and how does it affect further action?

Most Member States (**DELETED**) that detect overstays also take into account the duration of overstay in other Member States. In this regard the procedure applied is similar to overstay committed in certain Member States. **DELETED** indicated that in such cases fines are not imposed.

General outcome:

- Taking into account Member States' replies, it seems that there is a common understanding and procedure in overstay cases. However, Member States implement sanctions differently, which could facilitate that a third-country national adapts his/her modus operandi to exit through a Member State not imposing an appropriate sanction.

Question 9

Do you issue a return decision in case of detection of an overstayer also when the overstay is detected at the airport when the person is about to leave the Schengen area?

DELETED do not issue return decisions in cases of detected overstay, if the overstay is detected at the airport on exit. **DELETED** indicated that issuing of a return decision at a border crossing point is an administrative burden and could delay the person's exit to the country of origin. **DELETED** issue a return decision to overstayers. In **DELETED** in exceptional cases, a return decision is not issued because it is inadequate (it is an administrative burden). On the other hand, **DELETED** mentioned that the procedure applies only to persons who overstayed more than 30 days.

DELETED Immigration and Asylum Service issues a return decision within 6 weeks of a person's exit. **DELETED** mentioned that an overstayer is warned of a possible expulsion with an entry ban for 2 years in accordance with national law. The overstayer is given 3 weeks to comment on the warning whereupon the **DELETED** Immigration Service makes a decision on the matter. In **DELETED**, transposing the Directive (EC) 115/2008 concerning the return of irregular third-country nationals, it was determined that, if the illegally residing foreigner was identified while leaving the country, during the police checks at external borders, it should be facilitated the voluntary return without having the foreigner to be subjected to any kind of measure. In such circumstances, where it has already been adopted an expulsion order, the order will be executed and Border Police officers will be required to make updates in the national database. In this way, the foreigner, in possession of a valid travel document and which transits exiting the country through an authorized border crossing point, is granted to leave voluntarily **DELETED**.

General outcome:

- A slight difference in the issuing of return decisions was identified, despite the active work of Contact Group - Return Directive (2008/115/EC) on the Draft Return Handbook organised by COM. Despite the fact that the Handbook does not impose any legally binding obligations upon Member States nor establish new rights and duties, a joint method of implementation could be envisaged.

Question 10

Is an entry ban imposed in the cases of overstay committed in other Member States or mentioned under question 9?

With regard to entry bans, **DELETED** take into consideration only overstay committed in their country. **DELETED** evaluate all conditions of overstay in order to take a decision on issuing an entry ban. **DELETED** partially (cases by case) take into consideration overstay committed in other Member States.

General outcome:

- There are national conditions in place corresponding to national jurisdiction. Member States primarily check if the person has overstayed in its own territory before imposing an entry ban. Only few Member States might use as evidence for imposing an entry ban an overstay in other Member State.

Question 11

What other sanctions are imposed on overstayers? What justified causes would exempt overstayers from sanctions? What are the exceptions when sanctions are not imposed on overstayers?

DELETED impose fines for overstay and this is laid down in national legislation. The amount of the fine is different in every Member State. Several Member States (**DELETED**) take into consideration the age of the overstayer (minors) and other conditions of overstay before imposing a fine, **DELETED** do not impose any sanctions. **DELETED** issues only a return decision.

DELETED includes overstayers in the national “**DELETED**”, in exceptional cases, although persons could be excluded from this list on account of family reunion or for health reasons.

DELETED might impose custodial sanctions in exceptional cases.

General outcome:

- There is a wide range of sanctions that could be imposed on overstayers. There are no common practices in this field.

Question 12

Is the decision in an overstaying case made on the spot? Which authority is authorised to make a decision in an overstaying case?

If an overstay case is detected at the border crossing point:

- a) The decision is taken by a second-line officer (shift leader) if there is no need for a detailed investigation and the person exits to a third country (**DELETED**);
- b) Institution/police board/bureau, responsible for immigration takes a decision as soon as possible (**DELETED**).

If an overstay case is detected inland, the authority responsible applies standard administrative procedures (the overstayer is allowed to take part in the administrative procedure from a distance).

General outcome:

- Based on the replies provided, the general procedures and decision-taking powers would seem rather similar in most Member States.

Question 13

Are alerts on refusal of entry entered into the SIS in the case of overstayers?

A case of overstay is a reason for refusal of entry, so all refusals of entry are entered in the SIS (**DELETED**). **DELETED** do not enter alerts on refusal of entry in the SIS. It is possible to enter alerts in the SIS (**DELETED**). **DELETED** enter alerts on refusal of entry in the SIS only in cases of administrative decisions. In **DELETED** alerts on refusal of entry in cases of overstay are entered in the national database only. **DELETED** alerts on refusal of entry in cases of overstay are entered in the national database only until joining the Schengen area and fully applying the Schengen acquis. In **DELETED** alerts on refusal of entry are inserted in the proper national database and also in the SIS when the overstayer is subject to deportation.

General outcome:

- There are slight differences in the use of the SIS tool and a more common approach could be agreed in these cases.

Question 14

Do you consult other Member States during the decision-making process on overstaying cases (for example, other Member States where the person exceeded the duration of stay)?

In a case of overstay during the decision-making process Member States usually do not consult one another (**DELETED**) if:

- a) the fact of overstay is based on available documentation;
- b) the decision-making process is within the sphere of competence of the Member State whose territory the overstayer exits.

During the decision-making process Member States consults with one another if:

- a) the person insists that he or she stayed in a Member State legally, but cannot prove that fact, in which case the state authority could consult with other Member States in order to confirm the facts;
- b) the person insists that travel documents were not stamped on entry into Schengen territory;
- c) there are suspicions of criminal activities on the territory of another Member State;
- d) there is a need to involve other Member States in obtaining evidence, appropriate information is requested (**DELETED**);
- e) if the foreigner has been subjected to a readmission procedure pursuant to any bi/multilateral agreements with neighboring countries (**DELETED**).

General outcome:

- There is no systematic information exchange between Member States related to overstay cases.

Question 15

What kind of measures are done at national level in order to inform third country nationals on obligation to respect authorised duration of residence and to prevent overstay (for example, brief note issued, information campaign, note in visa application etc.)?

In order to provide the necessary information to third country nationals and to prevent possible overstay at state level the following measures are implemented:

- a) An information brochure or publication and information is provided to third country nationals during the visa issuing process at consulates and representations (including information on a possible entry ban if there have been violation) (**DELETED**). Information is available in the application form for a short-stay visa (**DELETED**);
- b) Information materials regarding overstay risks are available at airports in various languages (**DELETED**);
- c) Visa holders and visa-exempt third-country nationals at consulates and representations as well as at border crossing points are informed of the authorised duration of stay (**DELETED**);
- d) Information on entry and residence conditions is available electronically on the competent authorities' web pages (Police/Border Guard, Ministry of Interior, Ministry of Foreign Affairs and others) (**DELETED**). The web pages of the Police and the Ministry of Interior have a hyperlink to the Schengen calculator;
- e) Information materials issued to professional road transport drivers, taxi drivers and lift-arranging agencies (**DELETED**);
- f) Information campaigns and information “days” using public media and in cooperation with state institutions and companies (**DELETED**);

- g) **DELETED** reported that within the Ministry of the Interior and its departments work is being carried out on two information documents for foreigners, namely a Vademecum for travellers and a Vademecum for persons who stay in **DELETED** without a residence permit or who have not registered as a family members of EU/EEA/CH citizens. These documents contain, among other things, information on the consequences of exceeding the authorized period of stay, are about to be finalized with a view to making them publicly available soon.

General outcome:

- All Member States that replied indicated that there was a range of measures in place, showing a clear intention to provide persons with valid and useful information and also to avoid possible violations.

III. RECOMMENDATIONS

The revised recommendations submitted by the Presidency to delegations following discussions in the Working Party on 22 May 2015 are set out in 9779/15.
