

23 February 2012

Technical Protocol for implementation of the IBM¹ Agreed Conclusions of the Dialogue of 2 December 2011

A. General Provisions

1. In line with the IBM Agreed conclusions, with the Lisbon Treaty, and relevant EU legislation² and given that both Parties are part of the EU's Western Balkan agenda, they will be required gradually to harmonise their legislation with the EU acquis and in particular will be required to apply the concept of IBM as defined in the Council Conclusions of 4-5 December 2006;
2. Acting in good faith, The Parties will gradually establish and start operating the common IBM crossing points (hereinafter referred to as 'CP') Jarinje/Rudnica-Jainjë/Rudnice, Tabavije/Bërnjak- Tabalije/Brnjak, Bela Zemlja/Končulj-Dheu i Bardhë/Konqul, Merdare/Merdarë-Merdare/Merdare, Mutivode/Mutivode-Mutivodë/Mutivode and Depce/Muçibabë-Depce/Muçibaba;
3. The 'CPs' will be located in a common IBM zone of 'CP', (hereinafter referred to as 'ZCP') where a balanced presence of all competent authorities, in line with requirements, such as Customs, Police, Phytosanitary and Veterinary, auxiliary and other services of each Party will carry out controls separately of each other within their part of the ZCP in accordance with their respective applicable legal responsibilities and liabilities under its respective jurisdictions, with full respect for human rights guaranteed by European and international standards;
4. The establishment of 'CPs' within 'ZCP' will simplify and facilitate the implementation of activities related to the control of persons, goods and vehicles at the 'CP', and in the interest of facilitating the crossing of persons, vehicles and goods, as well as preventing, detecting and investigating any criminal activities;
5. The Parties will commence by establishing and operating the 'CPs/ZCP' Jarinje/Rudnica-Jainjë/Rudnice, Dheu i Bardhë/Konqul-Bela Zemlja/Končulj, Tabalije/Brnjak/Tabavije/Bërnjak and Merdare/Merdarë-Merdare/Merdare. The establishment and operating of the 'CPs/ZCP' Depce/Muçibabë-Depce/Muçibaba and Mutivode/Mutivode-Mutivodë/Mutivode will be commenced at a later stage;
6. In line with, and for the duration of its mandate³ at the 'CPs/ZCP' Jarinje/Rudnica-Jainjë/Rudnice and Tabalije/Brnjak-Tabavije/Bërnjak, this presence will include EULEX officials. EULEX will also be present at the 'CPs' Bela Zemlja/Končulj-Dheu i Bardhë/Konqul, Merdare/Merdarë-Merdare/Merdare, Mutivode/Mutivode-Mutivodë/Mutivode and Depce/Muçibabë-Depce/Muçibaba;
7. The European Commission (Directorate-General for Enlargement/DG ELARG) will, after consultation with The Parties and EULEX, explore possibilities for the funding of the development of the 'CP/ZCP'. Furthermore, possibilities for co-financing of the 'CP/ZCP' between the Parties will be explored;

¹ One party recognises the line as a border; the other party recognises the line as an administrative boundary.

² As defined especially in the Schengen Border Code, Frontex Regulation, Local Border Traffic Regulation, VIS Regulation and Community Code on Visas.

³ As defined by Council Joint Action 2008/124 CEFSP, Article 3, Section a.

8. Pending the financial procedures as mentioned in paragraph 8, The Parties will explore the possibility for the rapid establishment of interim facilities for the presence of services as specified under paragraph 3. The EU will make its best efforts to engage with The Parties on the implementation of this as soon as practically possible after the Technical Protocol comes into effect;
9. Freedom of Movement will proceed as agreed in the Dialogue conclusions;

B. Implementation Group

10. A new tri-partite implementation group (hereinafter referred to as IG), as foreseen to be established by the Dialogue conclusions and chaired by the EU, will be established after the conclusion of this Technical Protocol and will be responsible for the implementation of this Technical Protocol, will be able to propose measures or solutions regarding questions associated with the implementation of this Technical Protocol, and propose measures for the resolution of disputes and/or conflicts. The IG will agree its own ToRs;
11. The IG will meet on a bi-annual basis on a senior level. In addition, the IG can be convened at this level upon request by any of The Parties.
12. Other formats/levels of the IG are specified in Section E of this Technical Protocol;

C. 'CP/ZCP'

13. Through this Technical Protocol, The Parties will, within a jointly delineated 'ZCP', establish appropriate 'CP' facilities and infrastructure for a balanced presence, in line with operational requirements, of all competent authorities of each Party for the carrying out of controls in accordance with their respective applicable legal responsibilities and liabilities;
14. The joint, integrated, single and secure posts will be located within a 'common area of IBM crossing points', jointly delineated, where officials of each party carry out relevant controls. Facilitated by the EU, the IG will work out and agree details for the establishment of the 'CP/ZCPs', taking into account the terrain and technical considerations on the ground. Each party will make necessary arrangements for the provision of the location of the 'CP/ZCPs' in its respective territory;
15. The 'ZCPs' will include sections of road, facilities, ancillary facilities, such as rest rooms, fencing and lightning, and any other space or facility necessary for implementing relevant controls/procedures by the relevant competent authorities;
16. The design of each 'CP/ZCP' should follow the template 'CP/ZCP' discussed between the parties, which will be adapted to the requirements/needs/traffic/terrain for/of each 'CP/ZCP';
17. Each Party will cover costs for operating/maintaining its part of the 'CP/ZCP';
18. The 'CP/ZCP' will be operated 24/7. The Parties will inform each other on their respective procedures for processing persons, vehicles and goods and on any changes to them;

19. The Police will operate at all 'CP/ZCP' a usual shift pattern of twelve (12) hours, which will be harmonised between the Parties in order to ensure an uninterrupted flow of persons, vehicles and goods across the 'CP/ZCP'. Further details will be worked out and agreed by the IG. Customs will operate a similar shift pattern at all 'CP/ZCP' with the exception of Mutivode/Mutivode-Mutivodë/Mutivode, where Police will be the only authority present. Veterinary and Phytosanitary Services will operate only within Inland Clearance Terminals with a usual shift pattern of twelve (12) hours, which will be harmonised between The Parties in order to ensure an uninterrupted flow of persons, vehicles and goods across the 'CP/ZCP'. Processing/movement of livestock and plants will be undertaken at the 'CP/ZCP's Merdare/Merdarë-Merdare/Merdare and Jarinje/Rudnica-Jainjë/Rudnice.
20. While carrying out official duties in the 'ZCP' officials from both Parties will enjoy applicable and relevant privileges and immunities and will only answer to their competent authorities of origin;
21. Officials from each Party, entering or exiting and while carrying out their official duties in their area of the 'ZCP' have to wear their official uniforms and badges.
22. Officials from each Party will carry an official identity card and an official authorisation, which gives the official the right to enter and work in their part of the 'ZCP'. The respective identity card must be issued by each party's competent authority . Each Party informs the other on which identity cards are valid for entering/exiting the 'ZCP'.
23. In its part of the 'ZCP', the use of force and other law enforcement measures by each Party is regulated by its respective legislation;
24. Exceptionally, and limited to the 'ZCP', The Parties will not display symbols of their respective jurisdictions⁴;
25. Functional information in the 'ZCP' will be displayed in the official languages. In addition, texts will be displayed in English;

D. Functioning of the 'CP/ZCP'

26. Within the 'ZCP' the processing of persons, vehicles and goods by officials from the territory of exit will proceed to be processed by officials from the territory of entry. After departure from the territory of exit, persons, vehicles and goods can no longer be processed by officials from the territory of exit unless denied entry by officials from the territory of entry;
27. Persons and goods that were denied entry into the territory of entry must return to the territory of exit;
28. Each Party's legislation concerning asylum and migration applies;
29. Eased traffic controls may be established in case of extraordinary and unforeseen circumstances, caused by unusual and increased levels of traffic flows. In such cases, the competent authorities of each Party will undertake relevant and applicable control measures to ease traffic congestions. Such eased control measures will only be established

⁴ This is further defined through letter of the Facilitator to each party of 6 December 2011.

on a temporary basis. The IG will work out and agree further details subject to circumstances as required;

30. The Parties will draft and put into effect contingency plans to cater for any unpredictable and/or unforeseeable events. In such cases, The Parties, upon request, will provide each other with mutual assistance. Details will be worked out and agreed by the IG;

E. Exchange, processing and use of information

31. Without prejudice to any obligation that The Parties have entered into with the EU and/or other international organisations, The Parties will establish mechanisms for the purpose of exchanging information and other data from the areas which are or may be of relevance to the prevention, detection and investigation of criminal activities as well as for protection of lives and health of people, animals and plants, environment and food safety in their respective areas of responsibilities, including exchange of statistics of movement of persons and goods as well as illegalities detected;
32. Neither Party will use any information and other data provided by the other party for matters other than those set out in Paragraph 31, nor will make such information available to another Party except for other relevant EU bodies. All processing of information will be undertaken in full compliance with EU data protection and processing standards;
33. The IG, formatted to meet relevant requirements as specified in this section E, will be responsible for ensuring that information is exchanged, processed and used;
34. Regular meetings will be held at regular intervals at all relevant levels (local, regional, central). The frequency of these meetings will be regulated and agreed by the IG;
35. The IG will draft/adopt detailed provisions for the exchange, processing and use of information and other data as specified in paragraph 32, in full compliance with EU standards;
36. The EU will make best efforts to facilitate that The Parties to the IG will exchange information through EU established regional initiatives/projects/systems (i.e. Systematic Electronic Exchange of Data (S.E.E.D.)etc.);

F. Responsibilities/Liabilities

37. For any misconduct or criminal offences as well as for any liabilities and damages in connection with the carrying out of official duties in the 'ZCP', The Party that has assigned the official that has committed any such action will be responsible and the legislation of the relevant Party applies/the relevant law enforcement authorities are responsible;
38. The Party immediately informs the other party in case of misconduct or a criminal offence by one of their officials;
39. Facilitated by the EU, The Parties will aim to establish mutual legal assistance;

G. Final provisions

40. Facilitated by the EU, the implementation of this Technical Protocol will start once the Technical Protocol is signed. For that purpose, the IG will be convened after signature of the Technical Protocol;
41. Change to this Technical Protocol will be worked out and agreed by the IG;
42. After consultations with the EU, each Party is free to notify its denouncement of this Technical Protocol, which will be effected through notification to all Parties to this Technical Protocol. The denouncement will come into effect twelve months after notification;
43. After the denouncement of this Technical Protocol, assets provided by each Party will remain the property of that Party. Assets provided through EU funding will be handled in line with provisions in the relevant Terms of References and/or contracts; ;