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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 **(first reading)**
- Adoption of the legislative act
= statements

Statement by the Council and the Commission

The Council and the Commission stress the importance, for the purpose of combatting identity fraud, accurately identifying applicants for international protection and verifying the declarations of the applicants, of enabling the direct access of the asylum authorities concerning the data of third country nationals stored in the EES when examining applications for international protection and determining the Member State responsible for the examination of such applications.

For this reason, both institutions agree that a legal provision should be introduced in order to ensure direct access by the asylum authorities to the EES in the relevant instruments of the asylum package and possible other relevant legislation, in particular the proposal on Asylum Procedure Regulation and Dublin Regulation currently discussed in the Council bodies, or in a future legislative initiative regarding interoperability. In this context, the specific situation of the Schengen and Dublin associated states should be taken into consideration.

Statement by the Commission

The Regulation establishing the Entry Exit System is consistent with the Kaliningrad Transit Scheme provided for in Regulation 693/2003¹ as presently designed.

The Commission will ensure the legislative consistency between these legal acts in the event the Kaliningrad Transit Scheme would be amended in the future.

Statement by Austria

Austria appreciates the intense efforts made by the Estonian Presidency to achieve a broad consensus among Member States on this important issue.

However, the law enforcement authorities still do not have sufficient authorisation to access the system for identifying third country nationals or other groups who have committed an offence. It is hoped that a solution to this problem will be found by way of interoperability.

It would also have been desirable for access by the asylum authorities to the entry-exit system to have been based on effective cooperation between those authorities in the Member States. It is essential that tools like the EES - the development of which took a long time and involved many financial and human resources - can also be used effectively. Access by the asylum authorities to the EES to identify third country nationals accurately, as well as for facilitating the procedure and for enforced returns, would have constituted a major added value of the EES.

¹ Council Regulation (EC) 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual, OJ L99, 17.04.2003, p.8

Statement by Belgium

Belgium has always supported the overarching goal to continue to work on the development of the EU's integrated border management strategy, including a better use of the modern technologies to improve management of border controls. The establishment of the Entry-Exit System will contribute to improve the efficiency of border control, by facilitating the border crossings of the majority of travelers while at the same time, the border security will be enhanced.

We therefore welcome the agreement on the Proposal for a Regulation establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) N° 767/2008 and Regulation (EU) N° 1077/2011.

The Entry-Exit System will also provide for a single automated calculator that indicates the maximum authorized duration of stay in the Member States that operate the EES. This will change significantly the way in which the calculation of authorized stay has been conducted until now. Current provisions of the Schengen *acquis* that are relevant to the calculation of the authorized stay give other indications on the way the authorized stay should be calculated.

In order to have a coherent approach on the calculation of the authorized stay, Belgium would like to call on the European Commission to examine all related provisions of the Schengen *acquis* and to propose amendments where necessary. In that way, a coherent and clear legal framework can be ensured from the moment the Entry-Exit System will enter into operation.

Statement by Slovenia

The Republic of Slovenia fully supports the efforts to strengthen control at the EU external borders, including the establishment of an Entry/Exit system, which is consistent with the requirements of the European Council and several EU strategic documents.

The goal of the system, i.e. improving the control over who is in the territory of Member States, was endorsed as early as in 2008, during the Slovenian presidency, when Member States' ministers proposed to the Commission, for the first time, that a proposal for such a system be prepared.

For this reason we regret that the proposal of the Regulation does not pursue this goal entirely as it restricts the use of the system to the Schengen area, which again makes a distinction between EU external borders and internal borders, for which decisions to abolish controls have not been adopted yet. This distinction is not only legal but will also have practical implications as the system will have a disproportionate effect on the flow of traffic at the border crossing points at the land border where it will be carried out, therefore also at some borders between EU Member States.

We would like to point out that the BCP infrastructure at the external land Schengen border in the Republic of Slovenia was adapted to the obligations at the time of the entry into the Schengen area. With ever increasing traffic at this border, changed control regime due to systematic checks of all passengers and obligatory use of a number of new border control systems, soon the infrastructure will no longer allow for a reasonable flow of traffic.

Therefore, the Republic of Slovenia calls on the European Commission to provide additional funding to make suitable adjustments to the infrastructure, given the restrictions on financing investment in infrastructure at border crossing points at temporary internal borders of the EU, which are included in the Multiannual Financial Framework 2014-2020. Control at external borders is in the common interest of all EU Member States, and with the establishment of an Entry/Exit system the Republic of Slovenia cannot and will not be responsible for any prolongation of waiting times at the external borders of the Schengen area and will not consider it a bilateral issue to be solved as part of relations with the neighbouring countries.

Statement by Croatia

The Republic of Croatia supports the aim of this Regulation, since it should contribute to reinforcing and maintaining a favourable security situation in the entire territory of the European Union, the prerequisite for which is, inter alia, better and more operational control of external borders.

This aim should be considered as the highest interest of European Union citizens, and the Republic of Croatia finds it unacceptable that this Regulation, from the very beginning of its operational application, would not apply at the external borders of the European Union, thus unnecessarily, and without any grounds, diminishing its effect. It should be emphasised that by entry into force of the current Proposal for a Regulation, the existing provision of Article 6(1) of the Schengen Borders Code (SBC), and the existing provisions of the Accession Treaty of the Republic of Croatia as an integral part of the *acquis communautaire*, would be temporarily suspended. The Republic of Croatia would like to point out that, in the very title of the Proposal for a Regulation, the European Commission has foreseen the implementation of the Regulation precisely at the external borders of the Union and thereby the equal treatment of all Member States.

Failure to equally apply the Regulation to full Schengen members and those that are about to become full members, including the Republic of Croatia, would render the aim of this Regulation secondary and, apart from threatening the internal security of the European Union and the efficient fight against terrorism and serious crime, it would also send a negative message to the European general public.

From the operational aspect, failure to equally apply this Regulation would mean that, due to the lack of access to the VIS through the EES, it would be impossible to register the duration of stay of third country nationals on short-term stay in the EU, and thus impossible to verify the validity of a Schengen visa. Since the Republic of Croatia recognises this visa as equivalent to Croatian visas and due to its lack of access to the VIS through the EES, it could grant entry into its state territory to a holder of a non-valid visa travelling to a Schengen country. This additionally raises the question about the Member State responsible for bearing the costs of return of such persons.

Furthermore, the non-application of this Regulation in the Republic of Croatia would mean the inability to access other operational data on persons who frequently cross the external border of the European Union and the Schengen border, including potential terrorists and other suspicious persons in terms of security.

Such uneven application could redirect the movement of persons who pose threat to internal security of the European Union across those borders where this system would not be applied. As regards the Republic of Croatia, this would mean redirection to about 1350 km of the external border of the European Union, having also in mind third countries where a trend of increased intolerance, radicalism and violent extremism is present, also fostered by the phenomenon of foreign terrorist fighters returning from war zones to their home countries, which also increases the risk of terrorism for the Republic of Croatia.

Moreover, the unequal application of this Regulation would also have serious implications for the flow of cross-border traffic since, in addition to systematic checks that have been introduced, more time would be required for manual instead of automated processing of travel documents, thus undermining the appropriate security profiling of passengers by border guards.

Taking into consideration all the above said, being a Member State with a long external border, the Republic of Croatia is extremely interested in finding a way to apply this Regulation at all external borders of the European Union from its very adoption, thus optimising the very aim of the Regulation.
