



Council of the
European Union

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14620/17
ADD 1 REV 1

PV/CONS 67

DRAFT MINUTES

Subject: **3578th** meeting of the Council of the European Union (**General Affairs**),
held in Brussels on 20 November 2017

PUBLIC DELIBERATION ITEMS¹

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¹ Deliberations on Union legislative acts (Article 16(8) of the Treaty on European Union), other deliberations open to the public and public debates (Article 8 of the Council's Rules of Procedure).

"A" ITEMS

2. Approval of "A" items a) Non-legislative list

14313/17

The Council adopted the "A" items listed in 14313/17.

For the following items, the related documents should read as follows:

5. Commission Delegated Regulation (EU) .../... of 25.9.2017 amending Regulation (EU) No 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits
Delegated act - Intention not to raise objections
approved by Coreper, Part 2, on 15.11.2017
6. Commission Delegated Regulation (EU) .../... of 19.10.2017 on supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the materiality threshold for credit obligations past due
Delegated act - Intention not to raise objections
approved by Coreper, Part 2, on 15.11.2017
7. Commission Delegated Regulation (EU) .../... of 27.9.2017 amending Annexes II, III and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences
Delegated act - Intention not to raise objections
approved by Coreper, Part 2, on 15.11.2017
9. Commission Regulation (EU) .../... of XXX amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for mercury compounds in or on certain products
Decision not to oppose adoption
approved by Coreper, Part 1, on 16.11.2017
10. Commission Regulation (EU) .../... of XXX amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 2-phenylphenol, bensulfuron-methyl, dimethachlor and lufenuron in or on certain products
Decision not to oppose adoption
approved by Coreper, Part 1, on 16.11.2017

13816/17

12585/17

+ ADD 1

+ ADD 1 COR 1

(el)

13631/17

13528/17

+ COR 1 (nl)

14120/17

12660/17

+ COR 1 (mt)

C

13997/17

+ COR 1 REV 1

13403/17

+ ADD 1

+ ADD 2

C

14025/17

+ COR 1

13637/17

+ ADD 1

+ ADD 2

b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

14314/17

The Council adopted the "A" items listed in [14314/17](#).

Justice and Home Affairs

1. Entry/Exit System (EES):

a) Regulation to amending the Schengen Borders Code as regards the Entry/Exit System (EES)

Adoption of the legislative act

approved by Coreper, Part 2, on 15.11.2017



14091/1/17 REV 1

+ REV 1 ADD 1

+ REV 1 ADD 1

COR 1

PE-CONS 46/17

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. In accordance with the relevant Protocols annexed to the Treaties, the Danish, United Kingdom and Irish delegations did not participate in the vote. (Legal basis: Article 77(2)(b) TFEU).

Statement by the Commission

"The Regulation establishing the Entry Exit System is consistent with the Kaliningrad Transit Scheme provided for in Regulation [693/2003](#)² 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 data in order to identify third country nationals who have committed an offence, or indeed other groups of persons. It is hoped that a solution to this problem can be found by way of interoperability.

In the interest of effective cooperation between the asylum authorities in the Member States, it would also have been preferable for those authorities to have access to the entry-exit system. It is essential that tools like the EES - the development of which took a long time and involved considerable financial and human resources - can be used effectively. Access by the asylum authorities to the EES to identify third country nationals accurately, for the purpose of expediting proceedings and for enforced returns, would have been a major part of the added value of the EES."

² 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 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."

b) Regulation establishing an Entry/Exit System (EES)

Adoption of the legislative act

approved by Coreper, Part 2, on 15.11.2017



14092/1/17 REV 1

+ REV 1 ADD 1

+ REV 1 ADD 1

COR 1

PE-CONS 47/17

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. In accordance with the relevant Protocols annexed to the Treaties, the Danish, United Kingdom and Irish delegations did not participate in the vote. (Legal basis: Article 77(2)(b) TFEU).

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 693/2003³ 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."

³ 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 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 data in order to identify third country nationals who have committed an offence, or indeed other groups of persons. It is hoped that a solution to this problem can be found by way of interoperability.

In the interest of effective cooperation between the asylum authorities in the Member States, it would also have been preferable for those authorities to have access to the entry-exit system. It is essential that tools like the EES - the development of which took a long time and involved considerable financial and human resources - can be used effectively. Access by the asylum authorities to the EES to identify third country nationals accurately, for the purpose of expediting proceedings and for enforced returns, would have been a major part of the added value of the EES."

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.

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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."

Economic and Financial Affairs

2. Securitisation Package:

a) CRR Amendment

Adoption of the legislative act

approved by Coreper, Part 2, on 15.11.2017



14093/17
PE-CONS 38/17

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 TFEU).

b) STS Securitisation Regulation

Adoption of the legislative act

approved by Coreper, Part 2, on 15.11.2017



14094/17 + ADD 1
PE-CONS 39/17

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 TFEU).

Statement by the United Kingdom

"The UK supports adoption of the European framework for simple, transparent and standardised securitisation. The United Kingdom considers that the Securitisation Regulation contains obligations within Article 34(2) relating to cooperation and data sharing between law enforcement agencies, which fall within the scope of Title V of Part III of the Treaty on the Functioning of the European Union. Therefore, in relation to these provisions, the United Kingdom considers that Protocol (No. 21) to the Treaties applies."

Statement by Latvia

"The Republic of Latvia draws attention to the use of the legal term 'veic uzņēmējdarbību' used in the Latvian language version of the Regulation. The term is used to describe the place of establishment of the entity that carries out securitisations. At the same time the term 'veic uzņēmējdarbību' means 'carries out entrepreneurship/business activity'.

Consequently, such a translation of the term is substantially different from the legal meaning of the term 'to be established' used in the English and other language versions of the Regulation, and it is inaccurate in determination of the place of the registration for the entities within the scope of mentioned Regulation (in particular Recital 35, Article 4., Articles 5.1.a-d., Article 6.1., Article 6.4., Article 10.2., Articles 11.1. and 11.2., Article 18., Article 27.3, Article 29.4., Article 40.3.). It might seriously hamper correct application of the regulatory practises which are based on the assumption of the place of the establishment of particular entity.

The Republic of Latvia notes that the term 'to be established' in analogous context appears in Article 49 of the Treaty on the Functioning of the European Union, where it is being translated into Latvian as 'izveidot'. The respective term 'izveidot' or its closest synonym 'dibināt' also was used in the initial Latvian language version of the European Commission's proposal for the Regulation published on 1 October 2015 (12601/15). Inconsistent or incorrect use of the legal term of such substantive importance leads to legal ambiguity and inter alia creates the risk of disrupting legal parallelism amongst the language versions of the Regulation and the Directive [2009/65/EC](#).

The Republic of Latvia intends to initiate the corrigendum procedure regarding the Regulation in order to ensure consistent and correct use of terminology."

"B" ITEMS

Non-legislative activities

5. **Legislative programming - Commission's Work Programme for 2018**

Presentation by the Commission
Exchange of views

14063/17

13837/1/17 REV 1

13837/17 ADD 1-5



The Commission presented its work programme for 2018. The Council held an exchange of views in which delegations indicated their views on priorities for the coming year, including the beginning of 2019. The Presidency informed delegations on the next steps towards the joint declaration introduced under the Interinstitutional Agreement on Better Law-Making.



First reading



Item based on a Commission proposal



Public debate (Article 8(3) of the Council's Rules of Procedure)
