



Council of the  
European Union

000923/EU XXVI. GP  
Eingelangt am 15/11/17

Brussels, 15 November 2017  
(OR. en)

---

---

**Interinstitutional File:**  
**2016/0106 (COD)**

---

---

14092/1/17  
REV 1 ADD 1

CODEC 1762  
FRONT 460  
VISA 419  
COMIX 745

#### '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 693/2003<sup>[1]</sup> 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<sup>1</sup>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 very much the intense efforts undertaken by the Estonian Presidency to achieve broad consensus among Member States in this important issue.

However, there is still an insufficient access to the system for law enforcement authorities for the identification of offending third-country nationals or other persons. Concerning this problem hopefully a solution will be found within the interoperability.

Also the access of asylum authorities to the entry-exit system would have been favorable in light of effective cooperation between asylum authorities in the Member States. Effective use of systems like the EES – which has been negotiated for a long time with many financial and personnel resources - is indispensable. The access of asylum authorities to the EES for reasons of identification of third country nationals as well as for reasons of process facilitation and returns would have constituted the central additional benefit if 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 preserving of 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 not to apply this Regulation from the very beginning of its operational application 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 make the aim of this Regulation become secondary, and apart from threatening the internal security of the European Union and the efficient fight against terrorism and serious crime, a negative message would be sent to the European public.

From the operational aspect, failure to equally apply this Regulation would mean inability to register the duration of stay of third country nationals on short-term stay in the EU due to the lack of access to the VIS through the EES, and thus the inability to verify the validity of a Schengen visa. Since the Republic of Croatia recognises this visa as equal to Croatian visas, it could allow entry into its state territory to a holder of a non-valid visa travelling to a Schengen country, all due to the lack of access to the VIS through the EES, which opens an issue of a Member State responsible for covering the costs of return of those persons.

Furthermore, non-application of this Regulation in the Republic of Croatia would mean 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 persons suspicious 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 at which 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 incited 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 uneven application of this Regulation would also have serious implications on 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 threatening 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 the very beginning of its adoption, thus optimising the very aim of the Regulation.

---