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European Union

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'I' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624 - Information of the European Parliament on the splitting of the original proposal into two texts

1. On 16 November 2016, the Commission adopted the above-mentioned proposal for a Regulation and submitted it to the European Parliament and the Council. This proposal establishes a European Travel Information and Authorisation System (ETIAS) allowing to gather information on visa exempt third country nationals in advance of their arrival at the EU external borders (land, air, and sea). The travel authorisation would only constitute an authorisation to travel to the Member States, but not a right of entry, as the decision to let a traveller enter the EU territory would still be taken by a border guard at the border-crossing point. It aims at determining whether the presence of visa-exempt travellers would pose a security, illegal immigration, or public health risk.

2. The ETIAS proposal contains provisions developing the Schengen acquis as well as provisions amending Regulation (EU) 2016/794 ('the Europol Regulation'). As the Europol Regulation is not part of the Schengen acquis and may not be amended by an act developing the Schengen acquis, it was necessary to split the original proposal into two texts so as to insert the provisions amending the Europol Regulation into a separate instrument.
3. At its 3546th meeting held on 8-9 June 2017, the Council adopted a general approach on the texts included in the annex to Doc. 10017/17 (Schengen related) and Doc. 10017/17 ADD 1 (Europol related) with a view to negotiating with the European Parliament. It is appropriate to inform the European Parliament about this splitting.
4. COREPER is therefore invited to agree to sending the letter in annex to this note to the European Parliament with a view to informing it of the splitting of the original ETIAS proposal and the transfer of the amendments to the Europol Regulation from the ETIAS proposal into a separate draft Regulation for the reasons explained in point 2.
5. The date of the endorsement by COREPER of the abovementioned letter to the European Parliament marks in this legislative file the commencement of the three months' opt-in period set out in Article 3 of Protocol 21 to the Treaties. It also triggers the application of Protocol 22 of the Treaties with regard to that separate proposal.

Brussels, 6 July 2017

Mrs Kinga Gal

Rapporteur on ETIAS, European Parliament Committee on LIBE

Mr Claude Moraes

Chairman, European Parliament Committee on LIBE

BRUSSELS

Subject: Proposal for a Regulation of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624 (2016/0357 (COD)) - Information on the splitting of the original proposal into two texts

Dear Mrs Gal / Mr Moraes,

In relation to this file, I would like to inform you that when the Council adopted its General Approach on 9 June 2017, it decided, for legal reasons, to split the proposal into two texts.

This is because the proposal contains a formal amendment of the Europol Regulation (Regulation (EU) 2016/794) in order to give Europol new tasks. As you are well aware, Europol does not belong to the Schengen acquis while ETIAS will fully belong to the Schengen acquis on external borders. Given the differentiated geometry concerning, respectively, Europol (27 Member States, without Denmark) and ETIAS (26 Member States, including Denmark under the conditions set out in Protocol 22, but without the United Kingdom and Ireland), it is legally necessary to split the proposal into two texts to allow a differentiated participation and vote in the Council, in accordance with the relevant Protocols (19, 21 and 22).

For your ease, I attach the text regarding the amendments to the Europol Regulation as endorsed by the Council on 9 June 2017.

This splitting does not affect in any way the substance of ETIAS. It will simply result in a need for two COD numbers.

Yours sincerely,

Kaja Tael

Chair of the Permanent Representatives Committee
(Part 2)

copy to:

Marlene Bonnici, Ambassador, Maltese Permanent Representative

Matthias Ruete, European Commission

Draft

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EU) 2016/794 for the purpose of establishing a European Travel
Information and Authorisation System (ETIAS)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the Functioning of the European Union, and in particular, Article 88(2)(a) thereof,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The ETIAS Regulation allocates new tasks to Europol such as the development and hosting of the ETIAS watchlist, the provision of information related to terrorist offences or other serious criminal offences to this watchlist and the provision of opinions following consultation requests by the ETIAS National Units. To implement these tasks, it is therefore necessary to amend Regulation (EU) 2016/794 accordingly.
- (2) The ressources required by Europol for the purpose of implementing its tasks as set out in this Regulation should be taken into account, in line with the existing applicable procedures.
- (3) [In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

- (4) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]
- (5) [In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]
- (6) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]
- (7) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) 2016/794

Regulation (EU) 2016/794 is amended as follows:

1. In Article 4 paragraph 1, the following points (n), (o) and (p) are added:
 - "(n) develop and host the ETIAS watchlist referred to in Article 29 of [Regulation establishing a European Travel Information and Authorisation System (ETIAS)] on the basis of Article 18(2)(a). The Management Board shall adopt guidelines further specifying the procedures for any processing of information for the purpose of hosting the ETIAS watchlist as set out in the [ETIAS Regulation], after consulting the EDPS;
 - (o) provide information to the ETIAS watchlist related to terrorist offences or other serious criminal offences obtained by Europol through international cooperation, without prejudice to the conditions regulating Europol's international cooperation;
 - (p) provide an opinion following a consultation request referred to in Article 25 of [Regulation establishing a European Travel Information and Authorisation System (ETIAS)]."
2. Article 21 is amended as follows:
 - (a) the title is replaced by the following:

"Article 21

Access by Eurojust, OLAF and, only for purposes of ETIAS, by the European Border and Coast Guard Agency to information stored by Europol"

(b) the following paragraph 1a is inserted:

"1a. Europol shall take all appropriate measures to enable the European Border and Coast Guard Agency, within its mandate and for the purposes of Regulation [Regulation establishing a European Travel Information and Authorisation System (ETIAS)], to have indirect access on the basis of a hit/no hit system to information provided for the purposes of point (a) of Article 18(2) without prejudice to any restrictions indicated by the Member State, Union body, third country or international organisation providing the information in question, in accordance with Article 19(2).

In the case of a hit, Europol shall initiate the procedure by which the information that generated the hit may be shared, in accordance with the decision of the provider of the information to Europol, and only to the extent that the data generating the hit are necessary for the performance of the European Border and Coast Guard Agency tasks related to ETIAS.

Paragraphs 2 to 7 of this Article shall apply accordingly".

Article 2
Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President