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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 amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System (first reading) - Adoption of the legislative act = statements

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.

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 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.

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.
