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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 693/2003^[1] 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 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 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.
