



Brussels, 26 June 2017
(OR. en)

10545/17

Interinstitutional Files:
2016/0106 (COD)
2016/0105 (COD)

FRONT 288
VISA 244
CODEC 1106
COMIX 463

NOTE

From: Presidency
To: Permanent Representatives Committee/Mixed Committee
Subject: Proposal for a 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 of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011
Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 2016/399 as regards the use of the Entry/Exit System

1. On 6 April 2016 the Commission submitted the legislative package on Smart Borders, which consists of a proposal for a Regulation for the establishment of an Entry/Exit System (EES)¹ and a proposal for Regulation amending the Schengen Borders Code (SBC) to integrate the technical changes that will result from the above new proposal for a Regulation establishing the EES².

¹ 7675/16.

² 7676/16 + ADD1.

2. The importance and the priority nature of the file have been repeatedly underlined by the European Council. At its meeting of 15 December 2016, the European Council considered that the co-legislators should agree on the Entry/Exit System by June 2017.
3. The LIBE Committee of the European Parliament adopted a mandate to enter interinstitutional negotiations on the two Regulations on 27 February 2017. The outcome of the vote was approved by silence procedure at plenary level during the March II part-session (13-16 March).
4. The Maltese Presidency was granted a mandate to enter interinstitutional negotiations on 2 March 2017³.
5. The interinstitutional negotiations started on 23 March 2017. 15 technical meetings and 5 political trilogues have been held so far. The Presidency has kept Member States constantly updated on the evolution of the negotiations, with several meetings of the JHA Counsellors convened for this purpose. COREPER also granted the Presidency a revised mandate on 24 May 2017, giving it some flexibility on some key issues of the Regulation⁴, followed also by written consultation with JHA Counsellors on some issues.
6. Considerable progress has been achieved so far and the Presidency managed to defend the Council position on crucial issues such as the conditions for law enforcement access, the territorial scope of the Regulation and the data retention period for overstayers.
7. The last political trilogue under the Maltese Presidency is scheduled for 29 June. A number of outstanding issues remain to be solved on this occasion in order to reach a political agreement and meet the objective set by the European Council. The outstanding points are the following:
 - the calculation of the duration of stay (Art. 10(4) and related provisions);
 - the data to be recorded in case of refusal of entry (Art. 16);

³ 6960/17.

⁴ 9415/17.

- the access to the EES by asylum authorities (Art. 25a and 25b);
 - the transfer of EES data to third countries (Art. 38);
 - the bilateral agreements (Art. 54 and Art. 64(5));
 - the border checks on persons (Art. 8 SBC).
8. The Presidency has prepared the two 4-column tables set out in ADD 1 and ADD 2 to this note.
9. COREPER is invited to take note of the two 4-column tables, and particularly what has so far been provisionally agreed in the course of the negotiations, related to the Regulation for the establishment of an Entry/Exit System (EES) and the Regulation amending the Schengen Borders Code (SBC). As far as the abovementioned outstanding issues are concerned, COREPER is invited to grant the Presidency a sufficient degree of flexibility on the basis of the text proposed in the 4-column tables, to allow it to reach an agreement with the European Parliament on the above outstanding points during the next trilogue. The basic principle according to which nothing is agreed until anything is agreed remains valid.
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