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NOTE

From: Presidency

To: Permanent Representatives Committee/Mixed Committee

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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 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

- Mandate for negotiations with the European Parliament

On page 14, recital 31a of document 6572/17 INIT should read as follows:

In accordance with Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, information contained in the EES can be provided to Member States not operating the EES, and to Member States to which this Regulation does not apply, by the competent authorities of the Member States whose designated authorities have access to the EES pursuant to this Decision. Such provision of information should be subject to a duly motivated request, and limited to where it is necessary

for the prevention, detection or investigation of a terrorist offence or another serious criminal offence. A Member State that operates the EES may only provide such information if a reciprocal provision of any information on entry/exit records held by the requesting Member State to the Member States operating the EES is ensured. Framework Decision 2008/977/JHA applies to all the subsequent treatment of data obtained from the EES.

On page 14, recital 32 should read as follows:

Personal data obtained by Member States pursuant to this Regulation should not be transferred or made available to a third country, an international organisation or any private party established in or outside the Union except if necessary in individual cases in order to assist the identification of a third country national in relation to his/her return and subject to strict conditions or in an exceptional case of urgency, where there is an immediate and serious threat of a terrorist offence or other serious criminal offences and in accordance with Framework Decision 2008/977/JHA. With regard to the rules on transfer of data, the return of overstayers should be regarded as an important public interest. **Such data should only be transferred to a third country if a reciprocal provision of any information on entry/exit records held by the requesting third country to the Member States operating the EES is ensured.**

On page 76, in Article 38(4a) a new point (c) is added:

(c) the reciprocal provision of any information on entry/exit records held by the requesting third country to the Member States operating the EES is ensured.

On page 76, in Article 38a para 1 should read as follows:

1. Article 38(4) and (4a) shall apply *mutatis mutandis* to the communication of data to the designated authorities of a Member State which does not yet operate the EES and to the designated authorities of a Member State to which this Regulation does not apply, upon a duly motivated written or electronic request, provided that the reciprocal provision of any information on entry/exit records held by the requesting Member State to the Member States operating the EES is ensured.