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THE EUROPEAN UNION**

**Brussels, 17 December 2012**

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JAI 741  
COMIX 601**

**ADDENDUM to DRAFT MINUTES**

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Subject: **3195th** meeting of the Council of the European Union (**JUSTICE AND HOME AFFAIRS**), held in Luxembourg on 25 and 26 October 2012

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<sup>1</sup> Deliberations on Union legislative acts (Article 16(8) of the Treaty on European Union), other deliberations open to the public and public debates (Article 8 of the Council's Rules of Procedure).

## **LEGISLATIVE DELIBERATIONS**

*(public deliberation in accordance with Article 16(8) of the Treaty on European Union)*

### **"A" ITEMS**

1. **Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast) [First reading]**
  - Political agreement  
14112/1/12 REV 1 ASILE 116 CODEC 2201  
+ REV 1 COR 1 (fr)  
approved by Coreper, Part 2, on 03.10.2012

The Council confirmed a Political agreement on the recast proposal amending the Reception Conditions Directive.

2. **Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 [First reading] (LA+S)**
  - PE-CONS 45/12 FIN 516 CODEC 1862 OC 399  
approved by Coreper, Part 2, on 24.10.2012

The Council approved the European Parliament's position at first reading and adopted the proposed act, with the Netherlands delegation abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 322 TFEU, and Article 106a TEAEC).

### **Joint Statement on MFF-related issues**

"The European Parliament, the Council and the Commission agree that the Financial Regulation would be revised in order to include amendments made necessary by the outcome of the negotiations on the multiannual financial framework for the years 2014-2020, including on the following issues:

- the carry-over rules for the Emergency Aid Reserve and for projects financed under the Connecting Europe Facility;
- the carry-over of unused appropriations and of the budgetary balance, as well as the related proposal to enter these in a reserve for payments and commitments;
- the possible inclusion of the European Development Fund in the Union budget;
- the treatment of funds resulting from the agreements on the fight against the illegal traffic in tobacco products."

### **Joint Statement on expenditure related to buildings with reference to Article 203**

"The European Parliament, the Council and the Commission agree that:

1. the early warning procedure foreseen in Article 203(4) and the prior approval procedure foreseen in Article 203(5) do not apply to the acquisition of land free of charge or for a symbolic amount;
2. any reference to "buildings" in Article 203 shall only apply to non residential buildings. The European Parliament and the Council may request any information related to residential buildings;
3. in exceptional or urgent political circumstances the information concerning building projects relating to EU delegations or offices in third countries foreseen in Article 203(4) may be submitted jointly with the building project under Article 203(5); In such cases the European Parliament, the Council and the Commission commit themselves to deal with the building project at the earliest possible opportunity;
4. the prior approval procedure foreseen in Article 203(5) and (6) does not apply to preparatory contracts or studies necessary to evaluate the detailed cost and financing of the building project;
5. the thresholds of EUR 750 000 or EUR 3 000 000 referred to in points (ii) to (iv) of Article 203(7) include the fitting out of the building; for rent contracts, these thresholds apply to the rent without charges but include costs related to the fitting out of the building;
6. the expenditure mentioned under Article 203(3)(a) does not include charges;
7. one year after the date of entry into application of the Financial Regulation, the Commission shall report on the application of the procedures foreseen in Article 203."

### **Joint Statement by the European Parliament, the Council and the Commission on Article 203(3)**

"The European Parliament, the Council and the Commission agree that equivalent provisions will be included in the Framework Financial Regulation for bodies set up under the TFEU and the Euratom Treaty."

### **Council Statement on Articles 34 and 40 with reference to the Court of Justice Case C-77/1**

"The Council recalls that the agreed text of the Financial Regulation shall be without prejudice to the issues raised in case C-77/11 on the adoption and publication of budgets; such agreed text shall be revised, should it prove necessary, to align it to the judgment of the Court of Justice in that case."

### **Commission Statement on Article 59(5) and (6)**

"The Commission confirms that

- the submission of information to the Commission on a yearly basis as provided for in Article 59(5), gives a view, inter alia, of the accounts on the expenditure incurred during the relevant reference period as defined in the sector-specific rules;
- this submission of information is distinct from the procedure of examination and acceptance of the accounts as provided for in Article 59(6).

The Financial Regulation does not prejudge the modalities for the examination and acceptance of the accounts nor the modalities for the closure of expenditure which are to be defined in the sector specific rules."

### **Commission Statement on the deadline for the submission of the required information by the Member States under Article 59(5)**

"The submission of the annual information after 15 February implies the corresponding postponement of the deadline for the signature of the annual activity reports of the Directorates-General implementing Union funds under shared management and for their transmission to the Court of Auditors in the context of its annual report. Consequently, it jeopardizes the timely submission of the summary of annual reports to the European Parliament and the Council by 15 June as provided in Article 66(9) and of the observations by the Court of Auditors, according to Article 162(1)."

### **Commission Statement on Article 59(5), last sub-paragraph**

"The Commission recalls that as foreseen by Article 59(1) of the Financial Regulation, it shall respect the principle of non-discrimination in fulfilling its responsibilities concerning the implementation of the budget under shared management. Accordingly, the absence of a voluntary declaration by a Member State signed at the appropriate national or regional level shall not have any consequences on the Commission's examination and assessment of the documentation provided under Article 59(5)."

### **Commission Statement on the application of Article 77(3) to Structural Funds**

"Wherever a Member State detects and corrects on its own account the irregularities, it may reuse the contribution from the Funds cancelled within the operational programme concerned, except for any operation that was subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic error."

**Commission Statement on financial corrections by Commission extrapolation with reference to Article 77(4)**

"Wherever possible, the financial corrections shall be calculated on the basis of the amounts unduly spent.

The Commission confirms that it will resort to extrapolated or flat rate corrections solely where it is not possible with proportionate effort to precisely quantify the amounts unduly spent."

**Commission Statement on grant reduction or recovery in the case of systemic or recurrent error or irregularity by a grant beneficiary - extrapolation with reference to Article 135(6)**

"The Commission confirms that, in the case of proven systemic or recurrent errors or irregularities by a beneficiary, calculation of the amounts to be reduced or recovered by way of extrapolation shall be seen as a last resort solution.

Wherever possible, the amounts to be reduced or recovered shall be calculated on the basis of the revised financial statements submitted by the beneficiary.

Extrapolation of the reduction or recovery rate shall be used solely where it is not possible or where it could create significant administrative difficulty for the beneficiary to precisely quantify the amounts of ineligible costs.

In addition, the Commission confirms that, before any reduction or recovery is decided, any substantiated alternative method or rate proposed by the beneficiary shall be duly examined by the Commission."

**Commission Statement on eligibility of non recoverable VAT with reference to point (c) of Article 126(3)**

"The Commission confirms that, as indicated in Article 121(2)(e), provisions of Title VI - including Article 126(3)(c) on eligibility of non recoverable VAT - do not apply to expenditure implemented under shared management within the meaning of Articles 58(1)(b) and 59."

**Commission Statement on the comitology for Union trust funds with reference to Article 187(8)**

"The Commission confirms that:

- the creation of Union trust funds shall be duly justified in terms of added value of the Union intervention and additionality;
- the draft decisions to create, extend and liquidate Union trust funds will be submitted to the examination procedure in accordance with the provisions of the relevant basic acts."

### **Commission Statement on loans with reference to Article 203(8)**

"The Commission underlines that using loans for the acquisition of buildings is not contrary to the principle of equilibrium according to Article 17 of the Financial Regulation.

The borrowing of the funds constitutes an off-budget operation: The amount of the loan is not recorded in the budget as revenue and the full amount of the building price is not recorded as expenditure. Only the annual instalments to be paid to the bank are included as expenditure matched by the annual administrative budget (revenue). From an accounting point of view, the loan does not finance the budget expenditures, but the acquisition of an asset. The loan (debt) is compensated by the value of the building (asset). Therefore, loans for the acquisition of buildings do not create a deficit."

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### **AGENDA ITEMS**

#### **3. Proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism [First reading]**

- State of play / orientation debate

14445/12 PROCIV 151 COHAF 119 COCON 32 JAI 662 FIN 710

CODEC 2272 PESC 1180

The Council held an orientation debate on a proposal to establish a Union Civil Protection Mechanism on the basis of a Presidency paper (doc. 14445/12). The initial proposal was tabled by the Commission in December 2011 (doc. 18919/11).

The Council agreed that a gradual process should be launched to reinforce the prevention policy by developing a risk-based disaster management approach in all Member States, taking account of differences in their risk assessment and planning policies.

The Council also discussed the necessary level of commitment by Member States and the possible financial incentives from the EU budget for the proposed voluntary pool of Member States' response assets.

Finally, the Council agreed to consider a process by which the Commission, in cooperation with the Member States, should identify significant response capacity gaps in the voluntary pool and that, if gaps are identified, will consider all available options set out in the above mentioned Presidency paper to address these gaps in the most effective way.

#### **4. Common European Asylum System [First reading]**

- State of play  
14823/12 ASILE 126 CODEC 2356

The Council was informed by the Presidency on the state of play of the legislative proposals in the field of asylum and instructed its preparatory bodies to continue work on the outstanding asylum proposals.

#### **5. Any Other Business**

##### **- Information from the Presidency on current legislative proposals**

The Council took note of the information provided by the Presidency concerning:

- Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer;
- Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment;
- Draft Regulation of the European Parliament and of the Council laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management;
- Draft Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund;
- Draft Regulation of the European Parliament of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management;
- Draft Regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa.



**12. Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union [First reading]**

- State of play/ orientation debate  
14826/12 DROIPEN 139 COPEN 223 CODEC 2357

The Council took note of the state of play of negotiations on the draft Directive, as outlined in doc. 14826/12. Furthermore, an orientation debate relating to the appropriate criterion to define the scope of the provision on extended powers of confiscation took place.

The Council confirmed that the scope of application of Article 4 on extended powers of confiscation should be limited to serious offences in order to satisfy the requirements of the proportionality principle. The work in the Council preparatory bodies will continue in line with the guidance provided with a view to reaching a general approach on the draft Directive by the end of the year.

**13. Proposal for a Directive of the European Parliament and of the Council on the protection of the financial interests of the European Union by criminal law [First reading]**

- Presentation by the Commission  
12683/12 DROIPEN 107 JAI 535 GAF 15 FIN 547 CADREFIN 349  
CODEC 1924

A number of delegations took the floor and gave their opinion on various aspects of the proposal. The Presidency concluded that work should be taken forward in the Council preparatory bodies.

**14. Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) [First reading]**

- State of play

The Council took note of the state of play of negotiations. Several delegations took the floor and voiced some concerns in relation in particular to the choice of the legal form of the instrument.

**15. Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation (MAD) [First reading]**

- State of play/orientation debate  
14598/12 DROIPEN 135 EF 219 ECOFIN 824 CODEC 2301

The Presidency informed delegations on the state of play in the discussions at technical level on the draft Directive. Subsequently, an orientation debate was held regarding the issue of protection of the principle of *ne bis in idem* in the draft instrument. The Presidency concluded that it would refer the outcome of discussions to the Working Party on Substantive Criminal Law in view of continuation of the work on the draft instrument.

**16. Any Other Business**

- Information from the Presidency on current legislative proposals

The Council took note of the information provided by the Presidency concerning:

- the Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia, and the Kingdom of Sweden regarding the European Investigation Order;
- the Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest
- the Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Justice Programme;
- the Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Rights, Equality and Citizenship programme;
- the Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017;
- the Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) (Brussels I).

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