



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 March 2013

**17486/12
ADD 1 REV 1**

**PV/CONS 68
JAI 896
COMIX 723**

ADDENDUM to DRAFT MINUTES

Subject: **3207th** meeting of the Council of the European Union (**JUSTICE AND HOME AFFAIRS**), held in Brussels, on 6 and 7 December 2012

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LEGISLATIVE DELIBERATIONS

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

"A" ITEMS

1. Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) [First reading] (LA)

PE-CONS 56/12 JUSTCIV 294 CODEC 2277 OC 536
+ REV 1 (es)

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. In accordance with the relevant Protocols annexed to the Treaties, the Danish delegation did not participate in the vote. (Legal basis: Article 67(4) and points (a), (c) and (e) of Article 81(2) of the TFEU).

2. Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community [First reading] (LA)

PE-CONS 60/12 ANTIDUMPING 85 COMER 217 WTO 337
CODEC 2420 OC 571

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 207(2) of the TFEU).

3. Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast) [First reading]

- Political agreement
16332/12 ASILE 138 CODEC 2704
+ COR 1 (lt)
+ ADD 1
+ ADD 2
approved by Coreper, Part 2, on 27.11.2012

The Council reached political agreement on the regulation proposal.

Statement by Greece

1. The completion of the Common European Asylum System (CEAS) will allow for further development of initiatives, focusing on sincere and genuine solidarity towards Member States, especially those at the EU external borders. The Treaty for the Functioning of the European Union (TFEU) institutionally establishes, for the first time, the notion of “solidarity” as well as the fair sharing of responsibilities between Member States (art. 80)¹ in the areas of Migration and Asylum.
2. Asylum issues are of particular importance and priority to Greece, as one of the Member States facing strong pressures at its external borders due to mixed flows of illegal migrants. In this context Greece is implementing a comprehensive reform of its Asylum and Migration Management systems, thus supporting in an effective and constant manner the CEAS development.
3. Greece believes that the “Dublin Regulation” recast has proved to be less ambitious than it should have been since, among others, it does not offer substantial answers to the concerns and pressing issues that Member States at EU’s external borders face. This is due to three major reasons:
 - The first entry criterion provision was never examined at the discussions of the “Dublin Regulation” recast.
 - A provision for the suspension of transfers was not included in the final text.
 - The new art. 31 limits itself to the Asylum System and does not contain any reference to pressures which are due to mixed migratory flows.
4. For the above reasons, Greece cannot offer its support to the political agreement, as presented in the “A” items.

Statement by Slovenia

"Slovenia agrees with the view of the Dublin Regulation as being one of the core elements of the Common European Asylum System, thus contributing to the efficient functioning of the EU asylum policy.

Past experience has shown the need to improve the functioning of the Dublin System, but it has also taught us that this should be done with prudence and with due attention to the horizontal nature of the Regulation. It is Slovenia's opinion that this was not duly taken into account in the process of negotiations, which is why Slovenia wishes to express serious concerns over the recast of the Dublin Regulation.

¹ *Art. 80: “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.*

Several amended provisions could present significant administrative and financial burden and prolong the procedure. This could endanger the proper functioning of the system as a whole and as a consequence seriously exacerbate the situation of persons subjected to it.

Slovenia regrets the new arrangements regarding additional personal interview in the Dublin procedure. In our opinion the institute of this interview is sufficiently regulated in Asylum Procedures Directive which also provides for the use in this Regulation. Such duplication could present a significant administrative burden to relevant authorities of Member States.

Slovenia also regrets the shortening of the deadlines for detention in Article 28 and the provision that a person must not be restricted only because they are being subject to Dublin procedure. It is the opinion of Slovenia that this could seriously affect the ability of the Member States to efficiently carry out Dublin transfers and could have negative effect throughout the EU as a result of absconding of the applicants, which cannot be effectively prevented.

Slovenia expresses concerns over the adopted arrangements for Unaccompanied Minors and dependent persons in the procedure. Despite being fully aware of special needs and vulnerable situation of these persons, we fear that the obligation to establish and consequently bring together the persons concerned with family members and relations to such an extended scope will prove to be very difficult in practice, and will present a significant administrative burden especially to relevant authorities of smaller Member States as well as prolong the situation of uncertainty for the asylum seekers concerned.

Finally, Slovenia would like to emphasize once again its hesitation towards the placement of the Early Warning System in the framework of this Regulation since it is not primarily connected to the Dublin procedure."

Joint and Commission statements

- "1. The European Parliament and the Council invite the Commission to consider, without prejudice to its right of initiative, a revision of Article 8(4) of the Recast of the Dublin Regulation once the Court of Justice rules on case C-648/11 MA and Others vs. Secretary of State for the Home Department and at the latest by the time limits set in Article 41 of the Dublin Regulation. The European Parliament and the Council will then both exercise their legislative competences, taking into account the best interests of the child.
The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, accepts to consider this invitation, which it understands as being limited to these specific circumstances and not creating a precedent."
- "2. In the application of the present Regulation, the Commission reiterates that, when proposing uniform conditions for implementing the provisions on transfers as foreseen under the present Regulation, it will ensure that current standards on transfers, as laid down in Articles 7-10 of Commission Regulation 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003, will be upheld."

"3. The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5 § 4, subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5 § 4 recourse to subparagraph 2, point b) cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified."

4. Draft amending budget No 6 to the general budget for 2012

- Council position
17145/1/12 REV 1 FIN 989 PE-L 118
approved by Coreper, Part 2, on 05.12.2012

The Council adopted its position on draft amending budget No 6 to the general budget for 2012 by qualified majority, with the Danish, Netherlands, Swedish and the United Kingdom delegations voting against.

Unilateral statement by the Commission on amending budget no 6/2012 and the GNI own resources

"The Commission confirms that Member States' contributions corresponding to the GNI-based own resources required to finance amending budget No 6/2012 will be booked by Eurostat to the 2012 national budgets and accounts, even if the actual disbursement was to take place in January 2013, in accordance with the relevant accounting rules as applied by Eurostat."

5. New draft budget of the European Union for the financial year 2013

- Council position
17146/2/12 REV 2 FIN 990
17146/12 FIN 990 ADD 1 to 7
approved by Coreper, Part 2, on 05.12.2012

The Council adopted its position on the new draft budget of the European Union for the financial year 2013 by qualified majority, with the Netherlands, Austrian, Swedish and the United Kingdom delegations voting against.

Joint statements

1. Payment appropriations for 2013

"Taking into account the ongoing fiscal consolidation efforts in Member States, the European Parliament and the Council, taking note of the level of payments proposed by the Commission for 2013, agree on a reduction of the level of payment appropriations for 2013 as compared to the Commission's draft budget. They ask the Commission to initiate any necessary action according to the Treaty and, in particular, to request additional payment appropriations in an amending budget if the appropriations entered in the 2013 budget prove insufficient to cover expenditure under sub-heading 1a (*Competitiveness for growth and employment*), sub-heading 1b (*Cohesion for growth and employment*), heading 2 (*Preservation and management of natural resources*), heading 3 (*Citizenship, freedom, security and justice*) and heading 4 (*The EU as a global player*).

Moreover, the European Parliament and the Council urge the Commission to present by mid-October 2013 at the latest updated figures concerning the state of play and estimates regarding payment appropriations under sub-heading 1b and rural development under heading 2, and, if necessary, to present a draft amending budget. The European Parliament and the Council are aware that a draft amending budget may possibly be required as early as mid-2013. With a view to facilitate the decision on the level of payment appropriations in the context of the annual budgetary procedure, the three institutions agree to explore how to better match payment appropriations estimates under shared management with the corresponding needs.

The European Parliament and the Council will take position on any draft amending budget as quickly as possible in order to avoid any shortfall in payment appropriations. In addition, the European Parliament and the Council undertake to process swiftly any possible transfer of payment appropriations, including across financial framework headings, in order to make the best possible use of payment appropriations entered in the budget and align them to actual execution and needs.

In accordance with Point 18 of the Interinstitutional Agreement on budgetary discipline and sound financial management, the European Parliament and the Council recall the need to ensure, in the light of implementation, an orderly progression of the total appropriations for payments in relation to the appropriations for commitments, so as to avoid any abnormal evolution of outstanding commitments ("RAL").

The European Parliament, the Council and the Commission will actively monitor the state of implementation of the 2013 budget, throughout the year, focussing on payment implementation, reimbursement claims received and revised forecasts, on the basis of detailed information provided by the Commission.

In any event, the European Parliament, the Council and the Commission recall their shared responsibility, as laid down in Article 323 TFEU, that "the European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligation in respect of third parties".

2. Payment needs for 2012

"The European Parliament and the Council note that the level of payments, proposed by the Commission in its 2013 draft budget, was based on the assumption that payment needs in 2012 would have been addressed with appropriations available in the 2012 budget. However, the additional payment appropriations authorised in amending budget No 6/2012 were lowered by EUR 2.9 billion with respect to the amount proposed by the Commission, and are not at the level of all payment claims received.

Therefore, the Commission undertakes to present at an early stage in the year 2013 a draft amending budget devoted to the sole purpose of covering the 2012 suspended claims, as soon as the suspensions are lifted, and the other pending legal obligations without prejudice to the proper implementation of the 2013 budget.

To ensure sound and accurate EU budgeting, the European Parliament and the Council will take position on this draft amending budget as quickly as possible in order to cover any outstanding gap."

3. Heading 5 and the salary and pension adjustment

"The European Parliament and the Council agree not to include at this stage the budgetary impact of the 2011 salary adjustment in the 2013 budget. Without prejudice to Council's position in cases c-66/12, c-63/12, c-196/12 and c-453/12, they jointly request the Commission, should the Court rule in favour of the Commission and as soon as it does, to submit a draft amending budget devoted to finance, as needed, the impact of the 2011 adjustment for the institutions, including its retroactive effect on previous years and possible late interest.

The European Parliament and the Council thus commit to approve such draft amending budget as soon as possible and to provide the necessary additional appropriations without jeopardising political priorities."

Unilateral statement by the Netherlands, Swedish and United Kingdom delegations

"The Netherlands, Sweden and the United Kingdom note that given the lack of a formal adoption procedure in Union law for political documents, such as conclusions and statements, the Council decides on such political documents by consensus. This reflects the long-standing practice of the Council that they are not passed if any Council member opposed them. As such, if the statements proceed without agreement by the Council by consensus, the Netherlands, Sweden and the United Kingdom do not consider such statements to have been adopted and do not consider themselves, or the Council, to be bound by the content of those statements."

Unilateral statement by the Danish delegation

"Denmark votes in favour of the 2013 budget. At the same time Denmark does not support the declaration concerning suspension of payments in 2012, which Denmark regards as related to amending budget No 6/2012 to which Denmark votes no."

AGENDA ITEMS

3. Common European Asylum System [First reading]

- State of play
16853/12 ASILE 139 CODEC 2819

The Council had an exchange of views on the basis of a presentation by the Presidency of the state of play on the legislative proposals establishing the Common European Asylum System.

9. 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]

- General approach
17117/12 DROIPEN 178 COPEN 264 CODEC 2887

The Council reached a general approach on the proposal for a Directive, as set out in doc.17117/12. The general approach will constitute the basis for the upcoming negotiations with the European Parliament in the context of the ordinary legislative procedure of Article 294, TFEU.

10. Proposal for a Directive of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) [First reading]

- General approach
16820/12 DROIPEN 174 EF 282 ECOFIN 990 CODEC 2813

The Council examined the text of the draft Directive on the basis of document 16820/12. The Presidency concluded that there was sufficient support for the proposed general approach and that negotiations with the European Parliament could be started on the basis of that text.

11. Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters [First reading]

- General approach
 - 17165/12 JUSTCIV 348 COPEN 265 CODEC 2900
 - + COR 1 (de)
 - + COR 2
 - 17441/12 JUSTCIV 353 COPEN 269 CODEC 2960
 - + 17461/1/12 JUSTCIV 354 COPEN 270 CODEC 2965 REV 1

The Council:

- a) took note of the statements made by the Hungarian delegation and by the Finnish delegation, as set out hereafter (ref. docs. 17441/12 and 17461/1/12 REV 1),
- b) approved the compromise package on the draft general approach set out in doc. 17165/12, and
- c) called for the work on the remaining recitals to be finalised at technical level on that basis as soon as possible after the Council.

Statement by Hungary
on Article 5b(2) and Article 8(3)

"Article 5b(2) and Article 8(3) of the *Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters*, in the form submitted to the JHA Council of 6-7 December 2012 for the adoption of a general approach, contain provisions on the notification of the person causing the risk and require Member States to effect the notification "by registered letter with acknowledgement of receipt" even if that person resides in a third State."

However, under the applicable international conventions on the service of documents in civil matters, a number of third States do not allow this method of service of foreign documents (service by postal services) in their territory. Hungary is convinced that it is not the intention of the Regulation to unilaterally oblige those third States to accept this method of service of protection measures issued in the Member States. Consequently, Hungary stresses its view that the provisions in question must not affect the application of international conventions concluded by Hungary with third States, which contain provisions on the cross-border service of judicial and extrajudicial documents in civil matters."

Statement by Finland

"Finland strongly shares the objective of strengthening the rights of victims in the European Union. Finland welcomes the draft Regulation which is an important element of the comprehensive European mechanism ensuring mutual recognition of protection measures.

Protection orders are preventive by nature. In order to ensure the preventing effect and the effectiveness of protection orders, it is essential that the person causing the risk is informed about the recognition in another Member State. However, according to the draft Regulation, in situations, where there is no need for adjustment of the protection measure in the Member State addressed, the person causing the risk is not informed of the invoking of a certificate. In those situations the person causing the risk is, thus, not informed that the protection measure is recognised in another Member State. This can lead to a situation where he or she unintentionally violates the protection measure. In addition, the person causing the risk does not know which Member State is the Member State addressed, so he or she is in reality prevented of exercising the remedies under Articles 12 and 12 a. In this respect the draft Regulation, unfortunately, does not fully guarantee the effectiveness of Regulation in practice."

12. Data protection package [First reading]

- **Report on progress achieved under the Cyprus Presidency**

= Progress report / orientation debate

16525/1/12 REV 1 DATAPROTECT 132 JAI 819 DAPIX 145 MI 753

FREMP 141 DRS 131 CODEC 2744

+ REV 1 + COR 1 (sv)

The Council held an orientation debate on the basis of the Presidency's progress report, following which it agreed to the way forward proposed by the Presidency for the three horizontal issues set out in the progress report. On the need to reduce administrative burdens and compliance costs for companies, the UK minister presented figures (DS 1854/12) showing that, unaltered, the Commission proposal for a Regulation would actually increase the overall costs to the UK public and private sectors, rather than reducing the costs as the Commission had argued in its impact assessment. On the need for more flexibility for the public sector, the Commission stated that it would oppose taking the public sector out of the scope of the Regulation. It was concluded that the question of the legal nature of the instrument could not yet be decided at this stage.

13. Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law [First reading]

- State of play

The Council took note of the state of play.

14. Proposal for a Regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross border debt recovery in civil and commercial matters [First reading]

- Orientation debate
16350/12 JUSTCIV 335 CODEC 2706

The Council:

- a) approved the general guidelines for the future work set out in doc. 16350/12 and
- b) called for the work to be continued at technical level on that basis.

15. Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

- = Orientation debate

Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships

- = Orientation debate
16878/12 JUSTCIV 344

The Council:

- a) took note that there is a very large agreement of the Member States on the guidelines for the future work set out in doc 16878/12.
- b) called for work to be continued at technical level on the basis of those guidelines and taking into account the comments expressed by delegations.

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