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**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 13 November 2013
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**14607/13
ADD 1 REV 1**

**PV/CONS 45
JAI 881
COMIX 538**

DRAFT MINUTES

Subject: **3260th** meeting of the Council of the European Union (**JUSTICE AND
HOME AFFAIRS**) held in Luxembourg on 7 and 8 October 2013

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LEGISLATIVE DELIBERATIONS

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

"A" ITEMS

- 1. Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [First Reading] (LA)**

PE-CONS 40/13 DROIPEN 77 COPEN 94 CODEC 1401

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, with the Belgian delegation abstaining, 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, the Irish and the United Kingdom delegations did not participate in the vote. (Legal basis: Article 82(2)(b) of the TFEU).

- 2. Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances [First reading] (LA+S)**

PE-CONS 30/13 SCHENGEN 16 SCH-EVAL 82 FRONT 61
COMIX 334 CODEC 1216

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, the Irish and the United Kingdom delegations did not participate in the vote. (Legal basis: Articles 77(1) and (2) of the TFEU).

Statement from the European Parliament, the Council and the Commission

"The European Parliament, the Council and the Commission welcome the adoption of the Regulation amending the Schengen Borders Code in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

They believe that these new mechanisms address adequately the call of the European Council in its Conclusions of 24 June 2011 for an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area and for an effective and reliable monitoring and evaluation system in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU acquis, while recalling that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

They state that this amendment to the Schengen Borders Code will reinforce the coordination and cooperation at the level of the Union by providing on the one hand for criteria for any reintroduction of border controls by Member States and on the other hand for an EU-based mechanism to respond to truly critical situations where the overall functioning of the area without internal border controls is put at risk.

They underline that this new evaluation system is an EU-based mechanism and that it will cover all aspects of the Schengen acquis and involve experts from the Member States, the Commission and relevant EU agencies.

They understand that any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text."

Statement by the Commission **on article 33a - committee procedure**

"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."

Statement by the Republic of Croatia

"Croatia supports the adoption of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances.

Recognizing the importance of the adoption and entry into force of the Regulation as envisaged, as well as the quality of the EU legislation, Croatia is of the opinion that the Croatian version of the text does not comply with the standard terminology used in Republic of Croatia, and therefore Croatia would like to enter a linguistic reservation.

In order to avoid the risk of inadequate application of the Union legislation, Croatia expects from the General Secretariat of the Council to implement, as soon as possible, the procedure to rectify the Croatian version of the Regulation."

Statement by Greece

"Greece has supported from the outset the call of the European Council in its Conclusions of 24.6.2011 for an enhancement of the cooperation and mutual trust between the Member states in the Schengen area. It has also supported the establishment of an effective and reliable monitoring and evaluation mechanism so as to strengthen the Schengen governance, taking into consideration that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

However, Greece wishes to reiterate its position, regarding the deletion of the reference to *"the closing of a specific border crossing-point"* on recital (8), former recital (5a), of the *proposal for a Regulation amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances*.

Greece has consistently underlined that the recommendation for the closing of a specific border crossing-point is an excessive and not proportionate measure of no particular added value. Furthermore, it should be noted that in many cases border crossing-points are set up following bilateral agreements with third countries. This could have negative implications to the relations of Member States with third countries.

Moreover, Greece wishes to point out again that the opening and the closure of border crossing-points is a matter of Member States competence, in accordance with Article 77.4 of the TFEU."

3. Decision of the European Parliament and of the Council on serious cross-border threats to health and repealing Decision No 2119/98/EC [First reading] (LA+S)

PE-CONS 29/13 SAN 179 PHARM 23 PROCIV 67 CODEC 1210

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 168(5) of the TFEU).

Statement by the Commission

"Where a risk assessment concerning a serious cross-border threat to health falls outside the mandates of the agencies of the Union, the Commission undertakes obtaining such a risk assessment by means of expert groups.

The Commission will, as a priority, have recourse to the Scientific Committees established by Commission Decision 2008/721/EC of 5 August 2008 setting up an advisory structure of Scientific Committees and experts in the field of consumer safety, public health and the environment and repealing Decision 2004/210/EC.

Where the specific expertise needed is not immediately available in the advisory structures of Scientific Committees and where the urgency so requires, the Commission will inform without delay the Member States and relevant scientific bodies about the particular expertise needed to help identify the experts it is looking for. The Commission will then appoint experts to contribute to the risk assessment needed.

The Commission will ensure the independence of the experts providing this assessment, in accordance with its established internal rules."

Statement by Luxembourg

"Luxembourg regrets that references to the Commission's Scientific Committees in the context of risk assessments concerning serious cross-border threats to health have been removed from the version submitted to the Council for approval.

It is insufficient to include a statement setting out the Commission's commitment to using the services of these committees as an annex to the decision when it would have been preferable to sanction their indisputable role and expertise in the body of the decision itself, as is the case for the competent European Union agencies concerned."

4. Regulation of the European Parliament and of the Council amending Council regulation (EC) No 1217/2009 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Community [First reading] (LA)

PE-CONS 32/13 AGRI 337 AGRIFIN 87 CODEC 1218

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 43(2) of the TFEU).

5. Draft amending budget No 7 to the general budget for 2013 - General statement of revenue - Statement of expenditure by section - Section III - Commission

14052/13 FIN 566 PE-L 80

The Council adopted its position on draft amending budget No 7 to the general budget for 2013 by qualified majority, with the Netherlands delegation voting against and the Swedish and the United Kingdom delegations abstaining.

Unilateral declaration by Austria

"Austria takes its decision on amending budget No 7/2013 without prejudice to the financing of any deployments of the European Union Solidarity Fund (EUSF) in the future.

In this context Austria underlines that the decision for its position on amending budget No 5/2013 was taken based on the information from the European Commission in document COM(2013) 258, assuming that the payment appropriations for the deployment of the EUSF are financed from the existing margin under the payments ceiling of the multiannual financial framework."

"B" ITEMS

3. 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]

- Orientation debate

14260/13 DATAPROTECT 138 JAI 848 MI 819 DRS 179 DAPIX 121
FREMP 140 COMIX 526 CODEC 2165

Following a detailed exchange of views, the Chair concluded the following:

- (1) The Council expressed its support for the principle that in important transnational cases the draft Regulation should establish a one-stop shop mechanism in order to arrive at a single supervisory decision, which would be fast, ensure consistent application, provide legal certainty and reduce administrative burden. This is an important factor to enhance the cost -efficiency of the data protection rules for international business, thus contributing to the growth of the digital economy.
- (2) Further expert work on this will continue along a model in which a single supervisory decision is taken by the 'main establishment' supervisory authority but the exclusive jurisdiction of that authority would be limited to the exercise of certain powers.
- (3) The competent Working Party will explore which are the exact powers to be exercised by the 'main establishment' supervisory authority and the methods for enhancing the 'proximity' between individuals and the decision-making supervisory authority by involving the 'local' supervisory authorities in the decision-making process. This proximity is an important aspect of the protection of individual rights.
- (4) As another important element of this model for increasing the consistency of the application of EU data protection rules, the Working Party will be further explore which role and powers could be entrusted to the European Data Protection Board (EDPB) as an appeal mechanism.

The Chair further clarified that the future work of the Council along these lines could include some elements of the so-called co-decision model.

4. Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA [First reading]

- General approach

14085/1/13 REV 1 DROIPEN 114 JAI 831 ECOFIN 831 UEM 320 GAF 44
CODEC 2131

The Council reached a general approach, following a very brief exchange of views on the text of the proposal as set out in the Annex to document 14085/1/13 REV 1. This general approach will constitute the basis for future negotiations with the European Parliament in the context of the ordinary legislative procedure (Article 294, TFEU).

5. – **Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (EPPO) [First reading]**
12558/13 EPPO 3 EUROJUST 58 CATS 35 FIN 467 COPEN 108
+ COR 1 (hr)
- **Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) [First reading]**
12566/13 EUROJUST 59 EPPO 4 CATS 36 COPEN 109 CODEC 2163
+ COR 1
- = Presentation by the Commission and orientation debate

The Council

- welcomed both proposals;
- noted that a number of issues in both files need to be developed further and/or clarified, and that the work will be continued at technical level in this sense;
- noted that the interest to ensure the participation of as many Member States as possible in the European Public Prosecutor's Office should guide the upcoming work.

6. Any other business

- Information from the Presidency on current legislative proposals

The Council took note of the state of play of negotiations of the two MFF Justice programmes and noted that agreement is within reach. The Presidency will do everything within its power to ensure clear separation of MFF Home and MFF Justice programmes in the negotiations and will proceed on that basis.

The Council took note of the state of play of negotiation on the European Investigation Order.

The Council noted that negotiations were continuing on the Directive on the freezing and confiscation of proceeds of crime with a view to reaching first reading agreement by the end of the year

9. Any other business

- Information from the Presidency on current legislative proposals

The Council agreed to postpone the examination of this issue.

NON LEGISLATIVE ACTIVITIES - ADOPTIONS

(in accordance with Article 9(1) of the Council's Rules of Procedure)

5. **Council Regulation establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen**

10597/13 JAI 467 SCHENGEN 21 SCH-EVAL 87 FRONT 70 COMIX 356

The Council adopted the above Regulation (Legal basis: Article 70 of the Treaty of the functioning of the European Union).

Statement by the European Parliament, the Council and the Commission

"The European Parliament, the Council and the Commission welcome the adoption of the Regulation amending the Schengen Borders Code in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. They believe that these new mechanisms address adequately the call of the European Council in its Conclusions of 24 June 2011 for an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area and for an effective and reliable monitoring and evaluation system in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU *acquis*, while recalling that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

They state that this amendment to the Schengen Borders Code will reinforce the coordination and cooperation at the level of the Union by providing on the one hand for criteria for any reintroduction of border controls by Member States and on the other hand for an EU-based mechanism to respond to truly critical situations where the overall functioning of the area without internal border controls is put at risk.

They underline that this new evaluation system is an EU-based mechanism and that it will cover all aspects of the Schengen *acquis* and involve experts from the Member States, the Commission and relevant EU agencies.

They understand that any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text."

Statement by the Commission
on article 21 - committee procedure

"The Commission underlines that it is contrary to the letter and to the spirit of Regulation (EU) No 182/2011 (OJ L 55, 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."

Statement by Germany

"Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) is based in particular on Article 62(1) and (2)(a) of the Treaty establishing the European Community, which has now been replaced by Article 77 of the Treaty on the Functioning of the European Union. According to those provisions, the Union is to develop a policy with a view to, inter alia, ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders.

Article 72 of the TFEU makes it clear that Title V of the TFEU, to which Article 77 belongs, does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. Thus while the legislative powers of the European Union do extend to regulating the crossing of the internal borders, they do not stretch to the exercise of police powers to maintain law and order and safeguard internal security.

The Federal Republic of Germany therefore expects that the evaluation mechanism will also deal only with whether there really is an absence of any controls when crossing internal borders and not with the exercise of police powers within the territory. The exercise of police powers within the territory falls exclusively within the scope of national sovereignty and is not covered by the evaluation mechanism."

Statement by the UK

"The UK has consistently supported this measure but at this time cannot support its adoption given it remains under scrutiny in our national Parliament, where it will be debated in November."
