



**COUNCIL OF
THE EUROPEAN UNION**

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JAI 501
COMIX 314**

DRAFT MINUTES

Subject: **3319th** meeting of the Council of the European Union (**JUSTICE AND HOME AFFAIRS**), held in Luxembourg on 5 and 6 June 2014

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¹ 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)

2. Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA [First reading]

- General approach¹

10033/14 ENFOPOL 142 CODEC 1323 CSC 109

The Council reached a general approach on the draft Europol Regulation, which will constitute the basis for negotiations with the European Parliament in the context of the ordinary legislative procedure of Article 294 TFEU. The Council also noted that in order to have a coordinated approach to the data protection provisions in the legislative acts relating to various JHA agencies, in particular Eurojust and EPPO, where relevant and taking into account the special features of these agencies, coherence should be sought between Chapter VII of this Regulation, the draft Regulations on Eurojust and EPPO as well as the data protection package. Further technical discussions will take place aiming to ensure such coherence.

3. Any other business

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

The Council took note of the information provided by the Presidency on the state of play of the examination by the Council preparatory bodies of the Students and Researchers Directive and noted the progress achieved so far on this proposal.

17. Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings [First reading]

- General approach

10065/14 DROIPEN 76 COPEN 155 CODEC 1331

The Council reached a general approach on the proposal for a Directive concerning procedural safeguards for children on the basis of doc. 10065/14, which will constitute the basis for negotiations with the European Parliament in the context of the ordinary legislative procedure of Article 294 TFEU (co-decision).

18. Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (EPPO)

- Orientation debate/State of play
9834/1/14 REV 1 EPPO 24 EUROJUST 97 CATS 69 FIN 361 COPEN 150
GAF 28

The Council welcomed the revised text of 19 Articles of the Regulation and confirmed it as the basis for future discussions in the working party, on the understanding that the text will need further consideration.

A large majority of Ministers confirmed:

- the approach in the text conforms with the principles of independence and efficiency of the EPPO;
- the model for supervision of operational work presented in the text as a basis for further discussions;
- the principle that the EPPO has a priority competence to investigate and prosecute offences affecting the Union's financial interests as presented in the text.

19. Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) [First reading]

- Orientation debate
9486/2/14 REV 2 EUROJUST 90 EPPO 23 CATS 65 COPEN 137 CODEC 1209

The Council welcomed the revised text of the Presidency as the basis for further discussions.

20. 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]

- Partial general approach¹/Orientation debate
10349/14 DATAPROTECT 85 JAI 375 MI 467 DRS 74 DAPIX 73 FREMP 106
COMIX 292 CODEC 1384
10139/14 DATAPROTECT 79 JAI 357 MI 450 DRS 71 DAPIX 68 FREMP 101
COMIX 276 CODEC 1346

The Council reached a partial general approach on Article 3(2) (territorial scope), on the respective definitions of BCR and “international organisation” (Articles 4(17) and (21)) and on Chapter V on the following understanding:

- nothing is agreed until everything is agreed and it is not excluded that future changes could be made to the text of Chapter V to ensure the overall coherence of the Regulation;

- this is without prejudice to horizontal questions, such as the legal nature of the instrument or provisions on delegated acts ;
- this does not mandate this or any future Presidency to engage in informal trilogues with the European Parliament on the text.

Germany, France, Poland, Austria and Slovenia made a declaration (as set out below).

On the one-stop-shop mechanism an orientation debate took place, in which many Member States intervened. The CLS intervened to draw the Council's attention to the ECJ judgment in the case of Google (C-131/12) . It emphasised that the Google judgment implied that, under the present system in case of multiple establishments, a data subject could seek redress, including by corrective measures, from the data protection authority of a Member State where the controller has an establishment and not only from that Member State where the controller has its main establishment, something which would no longer be possible under the proposed future one-stop-shop system. The CLS reiterated its concerns regarding the one-stop-shop mechanism as proposed by the Commission, indicating that where there are several establishments, this would amount to a decrease in the level of protection of data subjects.

Several Member States emphasised the need to take proximity into account in any one-stop-shop mechanism. Some Member States also referred to the need to develop the role of the European Data Protection Board in this respect. The Presidency concluded that there had been support for its approach and work will continue under the incoming Presidency.

Statements on Chapter V of the proposal for General Data Protection Regulation as in the version of Council doc. 10349/14:

Statement by Germany

"Germany supports the partial general agreement under the conditions stated in point 10 i-iii. In this regard Germany underlines the importance of improvements in particular for Safe Harbor and a new Art.42a as proposed by the German delegation which have not been finally discussed in the Council to date."

Statement by France

"France supports and welcomes the partial general approach on Chapter V. It thanks the Presidency for this outcome. Further discussions will have to be held on the transmission of data at the request of- third-country judicial or administrative authorities, in cases that are not authorised by Union law. To this end, the proposals put forward by the European Parliament (Article 43a) and Germany (Article 42a) concerning this type of transfer will need to be examined further.

France supports the Commission's pragmatic approach aimed at improving as soon as possible the conditions of application of the Safe Harbour arrangement. It believes that, once the Union's final legal framework on data protection has been adopted, consideration should be given to renegotiating the Safe Harbour: it is indeed essential to ensure equivalent conditions of competition between European and American companies and to guarantee that European residents' right to privacy and data protection is fully respected."

Statement by Poland

- "1. Poland welcomes the partial general approach on Chapter V. We strongly believe that new rules on transfer of personal data to third countries or international organisations will help all EU Member States better protect data protection rights of European citizens in the digital age. We applaud the agreement on Chapter V as a long awaited step forward in our work on the General Data Protection Regulation and we hope it will facilitate reaching a swift agreement on the remaining chapters of the Regulation.
2. However, in Poland's opinion the issue of Article 44 paragraph 1 subparagraph h has not been adequately resolved. The current wording of this provision may constitute a potential loophole through which uncontrolled transfers of data may occur. It undermines the high standards and guarantees for data transfers established in the remaining provisions of Chapter V. Poland would like to draw the Council's attention to the fact, that no such provision exists in Directive 95/46/EC and that there is a general agreement that we must not lower the standard of protection provided for in the current legislation. We should also bear in mind that transfers under Article 44 must be considered strictly as an exception to the general principles on data transfers. That is why, Poland will strive to resolve this issue and to ensure adequate level of data protection at the later stage of the negotiations with the European Parliament and the European Commission.
3. In Poland's opinion only safeguards of legally binding and enforceable nature may form a self-standing basis for transfers of our citizens' personal data under Article 42.
4. Finally, Poland supports the position iterated by several delegations, as well as the European Parliament in its report on the General Data Protection Regulation, that the issue of "Disclosures not authorised by Union law" should be dealt with appropriately in the Regulation. In this respect neither the proposal put forth by German Delegation in document 12884/13, nor Article 43a introduced by the European Parliament have been given enough consideration by the Council."

Statement by Austria and Slovenia

- "1. Austria and Slovenia are prepared to support the partial general approach under the conditions stated in paragraph 10 points i-iii of the doc. 10349/14. The support is granted for the basic concept of Chapter V under the understanding that important issues were not sufficiently resolved and thus Member States are not precluded from discussing and making further proposals for improvement of Chapter V and articles linked with the rules stipulated therein.
2. In this regard Austria underlines the importance of improvements and clarifications in particular regarding Art 42 with a view to undoubtedly ensure that only legally binding and enforceable instruments may be considered as appropriate safeguards under this Article.
3. Furthermore, Austria and Slovenia recall their conviction that the current wording of Art 44 para 1 subpara h poses a high risk of circumvention of the overall concept of legal barriers and guarantees as set out in Chapter V and which would therefore undermine the objective of the latter.
4. Finally, Austria and Slovenia underline the importance of the proposal for Art 42a 'Disclosures not authorised by Union law' by the German Delegation (doc. 12884/13) and the corresponding amendments voted by the European Parliament to Art 43a which should be discussed in detail at the technical level."

21. Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences of the execution of criminal penalties, and the free movement of such data [First reading]

– State of play

9873/1/14 REV 1 DATAPROTECT 72 JAI 314 DAPIX 65 FREMP 91
COMIX 265 CODEC 1296

The Presidency has presented a short state of play. No debate took place.

22. Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings [First reading]

– General approach ¹

10284/14 JUSTCIV 134 EJUSTICE 54 CODEC 1366

+ ADD 1

The Council noted that a large majority of Member States accepted the compromise package on the general approach as set out in doc. 10284/14 + ADD 1 + COR 1. Work on the remaining recitals and the Annexes shall be finalised at technical level on that basis as soon as possible. The agreed compromise text will be the basis for the future negotiation with the European Parliament.

23. Any other business

– **Information from the Presidency on current legislative proposals**

= **Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (First reading)]**

The Council took note of the state of play on the proposal on a Common European Sales Law.

¹ When adopting a General approach after the European Parliament has adopted its position at first reading, the Council is not acting within the meaning of Article 294(4) and (5) TFEU.