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Subject: **3309th** meeting of the Council of the European Union (**FOREIGN AFFAIRS**)  
held in Luxembourg on 14 and 15 April 2014

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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)*

**1. Regulation of the European Parliament and of the Council on the reduction or elimination of customs duties on goods originating in Ukraine [First reading] (LA)**

PE-CONS 73/14 WTO 99 COEST 80 NIS 9 UD 85 CODEC 778

+ ADD 1 to ADD 13

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

**2. Decision of the European Parliament and of the Council on the European Year of Development (2015) [First reading] (LA)**

PE-CONS 43/14 DEVGEN 37 ACP 27 RELEX 145 CODEC 474

+ REV 1 (lt)

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 209 and Article 210(2) of the TFEU).

**3. Decision of the European Parliament and of the Council granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union [First reading] (LA)**

PE-CONS 3/14 ECOFIN 11 RELEX 11 CODEC 30

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: Articles 209 and 212 of the TFEU).

**4. 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 and repealing Decision No 574/2007/EC [First reading] (LA)**

PE-CONS 141/13 JAI 1163 FRONT 221 VISA 289 CADREFIN 382  
COMIX 712 CODEC 3023

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

**5. Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC [First reading] (LA + S)**

PE-CONS 142/13 JAI 1164 ASIM 118 MIGR 147 ASILE 54 CADREFIN 383  
CODEC 3031

+ COR 1

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 78(2) and Article 79(2) and (4) of the TFEU).

**Statement by the Council**  
**on Article 80 TFEU**

"The Council underlines the importance of the principle of solidarity and fair sharing of responsibility which, in accordance with Article 80 TFEU, is to be given effect in Union acts adopted pursuant to the Chapter of the TFEU on policies on border checks, asylum and immigration. The Regulation establishing the Asylum and Migration Fund contains appropriate measures to give effect to the above principle. However, the Council reiterates its view that Article 80 TFEU does not constitute a legal basis within the meaning of EU law. Within the said Chapter, only Article 77(2) and (3), Article 78(2) and (3) and Article 79(2), (3) and (4) TFEU contain legal bases enabling the relevant EU institutions to adopt EU legal acts."

### **Statements by the Commission:**

#### **on Article 80 TFEU**

"The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, supports the final text; however it notes that this is without prejudice to its right of initiative with regard to the choice of legal bases, in particular in reference to the future use of Article 80 TFEU."

#### **on European Migration Network (EMN)**

"The Commission, in a spirit of compromise, supports the final text on Article 23 which ensures continued funding support to the activities of the European Migration Network while maintaining its current structure, objectives and governance, as set out in Council Decision 2008/381/EC of 14 May 2008. However the Commission notes that this is without prejudice to its right of initiative with regard to a future more comprehensive revision of the set up and functioning of this network, as envisaged in the Commission's initial proposal for Article 23."

### **Statement by Bulgaria**

"Acknowledging the sense of urgency and the importance of the timely adoption of the new financial instruments in the field of Home Affairs, Bulgaria welcomes and supports the text of the Regulation of the European Parliament and of the Council establishing the Asylum, Migration and Integration Fund.

However, we would like to underline the fact that Bulgaria is amongst the Member States that are the most affected from the recently increased refugee and migratory pressure and at the same time will receive one of the smallest national allocations under this fund. Along with the need to respond to the immediate challenges arising as regards granting adequate reception and accommodation to asylum seekers and persons requiring international protection, Bulgaria has to ensure a long-term comprehensive approach focusing also on the integration of the asylum seekers and the expected pressure on the social system: housing, social assistance, education, and health services.

Bulgaria repeatedly raised the issue of providing adequate financing, complementary to the national funds, under the Multiannual Financial Framework 2014-2020 and the Asylum, Migration and Integration Fund in particular considering the disproportionate pressure on the migration, asylum and integration systems.

Therefore, we strongly regret that our request for the increase of the national allocation has not been taken into account by the Council. We believe that, in the spirit of solidarity in the management of migration flows, a fair and objective solution will be found in the near future in order to support Bulgaria in coping with the difficult situation for the long term."

**6. Regulation of the European Parliament and of the Council laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management [First reading] (LA + S)**

PE-CONS 139/13 JAI 1158 CADREFIN 381 ENFOPOL 423 ASIM 117  
PROCIV 156 CODEC 3021

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 78(2), Article 79(2) and (4), Article 82(1), Article 84, and Article 87(2) of the TFEU).

**Statements by the Commission:**

**on the adoption of national programmes**

"The Commission will use its best efforts to inform the European Parliament in advance of the adoption of the national programmes."

**on Article 5(4), subparagraph 2, point b of Regulation 182/2011**

"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."

**7. Regulation of the European Parliament and 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 and repealing Council Decision 2007/125/JHA [First reading] (LA + S)**

PE-CONS 135/13 JAI 1155 ENFOPOL 420 PROCIV 154 CADREFIN 379  
CODEC 3008

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 Hungarian and Finnish delegations 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 and the United Kingdom delegations did not participate in the vote. (Legal basis: Articles 82(1), 84 and 87(2) of the TFEU).

**Joint statement by Bulgaria, Croatia, Estonia, Finland, Greece, Hungary, Poland and Slovak Republic**

"We welcome the establishment of the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and we consider that this instrument constitutes a solid base for implementation of the Multiannual Financial Framework targeting police (law enforcement related) tasks and duties.

However we would like to express our disappointment regarding the allocation key for the resources for eligible actions in the Member States with regard to the factor related to the number of passengers and the tons of cargo processed through their international air and sea ports [Article 10.1. (c)].

We stress that tasks and duties of the Member States linked to ensuring high-level of internal security stem not only from the fight against terrorist threats but also from the fact that criminality of various nature enters to the European Union not only through sea and airports and, but to large and measurable extent, via land borders, notably land border crossing points. In our opinion, the Regulation does not justify the emphasis laid on seaports and airports.. Therefore, we strongly argued for having land border crossing points included into the allocation criteria alongside sea and airports.

We hold the view that the omission of land border crossing points from the text results in a discriminatory legislation. We also hold the view that Recital (14) in connection with Annex III does not remedy the negative discrimination.

We are positive that in order to contribute to the EU's Internal Security the MFF ISF Police should have taken into account the genuine features of police (law enforcement) fieldwork in and place all border crossing points to equal footing."

**8. Regulation of the European Parliament and of the Council on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC [First reading] (LA + S)**

PE-CONS 78/13 EF 155 ECOFIN 726 DROIPEN 95 CODEC 1841

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 114 of the TFEU).

### **Statement by Sweden, Austria and Germany**

"The agreement means that administrative authorities will be able to access data traffic records held by providers of public electronic communications networks. This amounts to a serious interference with the right to respect of private and family life and the right to protection of personal data. Issues of privacy and surveillance are highly sensitive topics that need to be dealt with in a consistent manner across all EU policy areas. We welcome that the recitals clarify that Member States should have adequate and effective safeguards, i.e. prior judicial authorization, for the exercise of those powers. We would have preferred that the requirement of adequate and effective judicial safeguards was reflected in the Article as well. In this context the opinion of the EDPS should be duly considered. Further, we assume, and strongly suggested that it was explicitly mentioned, that the access does not cover data retained for the purposes of Directive 2006/24/EC (the Data Retention Directive), as this would circumvent the requirement in the Data Retention Directive of retention only for the purposes of investigating, detecting and prosecuting serious crimes. Any expansion in the access to traffic data outside judicial procedures would set a dangerous precedent for other EU dossiers."

### **Statement by Portugal and Spain**

"Portugal and Spain welcome the agreement on the Market Abuse Regulation, in particular the ambitious sanctions regime foreseen therein.

Portugal and Spain note that the sanctions regime is highly sensitive. Member States operate under very different legal and institutional frameworks and these national frameworks need to remain coherent as harmonisation of the sanctions regime is pursued at European level. The difficulties of these discussions are well known and most Member States specificities have been addressed, in particular when they are grounded on constitutional concerns.

Portugal and Spain will strive to implement the permanent ban on the exercise of management functions in investment firms in conformity with national law."

## **9. Directive of the European Parliament and of the Council on Criminal Sanctions for market abuse (market abuse regulation) [First reading] (LA + S)**

PE-CONS 8/14 DROIPEN 1 EF 6 ECOFIN 21 CODEC 47

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 and the United Kingdom delegations did not participate in the vote. (Legal basis: Article 83(2) of the TFEU).



### **Statement by Austria, Bulgaria, Hungary and Poland**

"The delegations of Austria, Bulgaria, Hungary and Poland welcome the efforts taken to combat insider dealing and market manipulation. We believe that appropriate measures, including criminalization of market abuse acts would contribute to enhancement of market integrity and public confidence in financial instruments which are imperative conditions for economic growth. Therefore, we endorse the adoption of a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation.

However, the harmonization of penalties introduced in this directive raises serious doubts as it ought to be preceded with analysis of its necessity for the effective implementation of a Union policy. Such analysis has not been conducted since the harmonization of penalties was proposed only at the stage of informal negotiations with the European Parliament. Moreover, the impact assessment initially carried out by the European Commission has not confirmed that such harmonization is deemed essential to ensure an effective implementation of Union's policy in this area.

The levels of penalties adopted in the directive may also raises concerns, since they diverge from the thresholds well established in practice, originating from the *Council conclusions of 2002 on the approach to apply regarding approximation of penalties* and confirmed by the *Council conclusions of 2009 on model provisions, guiding the Council's criminal law deliberations*. It is questionable, whether differences in legal systems and traditions of the Member States, which are protected by virtue of Article 67 of the Treaty on the Functioning of European Union, were sufficiently taken into account.

Furthermore, we are concerned that a threshold of 4 years of imprisonment, even for serious cases of insider dealing and market manipulation, is rather high compared to other serious offences harmonized at European level. For instance certain offences of sexual abuse of children are punishable by up to 3 or 5 years of imprisonment. Moreover, those Member States which do not foresee this threshold in their legal system will be obliged to increase the penalty to the closest threshold applied therein (to 5 years or more). It will have an adverse effect on harmonization and consequently unintended harshness in the treatment of offences concerned.

We express our belief that the levels of penalties previously agreed by the Council and the Parliament in other directives will be respected in future legal instruments. This directive should not constitute a precedence in that regard."

### **Statement by Luxembourg**

"Luxembourg notes that the Directive will not be binding upon all Member States of the Union in accordance with Protocols 21 and 22. This situation might conflict with the requirement to "ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures" established by the legal basis of Article 83(2) TFEU. Luxembourg therefore recalls the provisions set out in Declaration No 26 on the Lisbon Treaty."