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## OUTCOME OF PROCEEDINGS

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From: Working Party on Codification of Legislation  
On: 11 March 2015  
To: Delegations  
Subject: Outcome of proceedings of the Working Party on Codification of Legislation

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The Working Party on Codification of Legislation discussed the two proposals listed on the agenda for the meeting of 11 March 2015 (CM 1712/15). The basis for the discussion was a room document summarizing the comments made by delegations before the meeting and the Commission's replies.

This outcome of proceedings records only horizontal changes affecting all language versions. Comments relating to only one language version will be dealt with by the lawyer-linguists when the two texts are finalized. Subsequently, the texts will be submitted for approval and adoption to Coreper and Council as I/A-items.

- 1. Amended proposal for a Regulation of the European Parliament and of the Council laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation (codification)**

Master copy: EN - doc. 6187/15 + ADD1 CODIF 19 CODEC 183 ECO 16 INST 38 MI 80 - COM(2015) 49 final 2014/0174 (COD)

It was reminded that the amended proposal *COM(2015) 49 final* was adopted to incorporate an amendment of Regulation (EC) No 3286/94 in the codification exercise which was published in the Official Journal after *COM(2014) 341 final* was adopted. At the meeting of the Working Party of Codification of Legislation on 4 December 2014, it was decided that the codification of Regulation (EC) No 3286/94 would be discussed by the WP on the basis of the amended proposal to be submitted by the Commission. The Commission submitted the amended proposal in January 2015.

The opinion of the Consultative Working Party (doc. ST 8242/15) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance.

**At the meeting of the WP on 11 March 2015, the text of the amended proposal was accepted by delegations as proposed by the Commission.**

Language-related comments were sent ahead of the meeting for the following languages: SK, CS.

## **2. Proposal for a Regulation of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification)**

Master copy: EN - doc. 5470/15 + ADD1 CODIF 4 CODEC 77 SCHENGEN 2 FRONT 21 COMIX 45 VISA 24 - COM(2015) 8 final 2015/0006 (COD)

**2.1.** The opinion of the Consultative Working Party (doc. ST 9004/15) confirms that the proposal is a straightforward codification of existing texts, without any change in their substance.

The opinion contains the following specific points:

1. A recital corresponding, in an adapted form, to current recital 19 of Regulation (EC) No 562/2006 should be introduced into the preamble to the draft codified text. The wording of that recital should read as follows: *'Since the objective of Regulation (EC) No 562/2006 and its successive amendments, namely the establishment of rules applicable to the movement of persons across borders, could not be sufficiently achieved by the Member States but could rather be better achieved at Union level, the Union was able to adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, that Regulation and its successive amendments did not go beyond what was necessary in order to achieve that objective.'*
2. In recital 2, the reference made to *'Article 77(2)(b) and (e)'* should be adapted so as to read as a reference to *'Article 77(2)(e)'*.
3. In Article 8(3)(c), introductory wording, the words *'from points (a) and (b)'* should be removed.
4. In the title of Article 27, the indication *'23(1)'* should be removed.
5. In Annex VI, point 2.1.2, the text consisting of the two final sentences starting with the words *'Checks on passengers [...]'* should be aligned with point (b)(iii), so as for that text to constitute a second subparagraph of point 2.1.2(b)(iii).
6. In Annex VI, point 3.2.3, the final sentence starting with the words *'Nevertheless, checks shall be carried out [...]'* should be aligned with point (e), so as for that sentence to constitute a second subparagraph of point 3.2.3(e).

2.2. BE sent the following comments ahead of the meeting:

1. The title should be modified to point to the fact that the Code has already been established and is now contained in the Regulation. **However, delegations agreed with the explanation provided by the Commission that the title of the proposal takes into account the fact that the Code has already been established and hence, no change is required.**

2. In recital 43, the order in which Member States are cited should be the chronological order of their accession. **However, delegations agreed with the explanation provided by the Commission that there is no reason to change the protocol order in which Member States are cited in the recital.**

3. In Art. 2(7), the reference to Art. 96 of the Schengen Convention should be replaced by a reference to Art. 24, 25 and 26 of Regulation (EC) No 1987/2006 of the European Parliament and of the Council. **Delegations agreed with the analysis of the three Legal Services according to which the reference to Art. 24 and 26 in Art. 2(7) of the Commission codification proposal is correct and there is no need to add a reference to Art. 25 as well.**

4. The abbreviation of the Schengen Convention in point (d) of Art. 23 should become part of the definitions in Art. 2. **Delegations agreed with the explanation of the Commission that abbreviations are not to be regarded as terms which need to be defined and therefore, no change in this respect is required.**

5. Rewording suggested for points F and I in the form in Part B of Annex V. **BE accepted the argument of the Commission that the suggested rewording would constitute a change in substance and would thus go beyond a straightforward codification.**

**2.3.** CH sent the following comments ahead of the meeting:

1. "The inclusion of the word „should“ in both instances in recital 33 of the proposal is not appropriate for legal and political reasons. The proposed amendment manifestly exceeds the scope of a technical codification. Therefore, the word should be deleted and the recital should be kept in its version as it stands in recital 12 of Regulation 1051/2013." **Delegations and the Commission accepted that, given the political sensitivity and the background of recital 33 and of the corresponding Article 43, the text of recital 33 should be left unchanged.**

2. Some footnotes in the Annexes to the Proposal for a Schengen Borders Code will have to be adapted: annex III (footnotes 1, 2, 3 and 4), annex V Part B (footnote 1), as well as annex VIII (footnote 1). The footnotes should all read “No logo is required for Norway, Iceland, Switzerland and Liechtenstein”. **However, the Commission explained that such rewordings of the footnotes would constitute a change in substance and would thus go beyond a straightforward codification.**

**2.4.** CS sent the following comments ahead of the meeting:

1. Page 10, recital 33, second sentence:

instead of:

„...the Commission coordinates the evaluations...“

read as follows:

„...Commission should coordinate the evaluations...“

2. Page 46, Article 43, second paragraph:

instead of:

„... the Member States and the Commission are, jointly, to conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation and the Commission is to coordinate the evaluations...“

read as follows:

„... the Member States and the Commission jointly conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation and the Commission coordinates the evaluations...“

**CS delegation agreed that the text of recital 33 and of Art. 43 should be kept as in Regulation (EC) 562/2006, for the reasons explained under point 1 of the CH comments above.**

3. Page 34, Annex X, correlation table:

In the correlation table there a reference to Article 19a is inserted twice. The Commission explains that the correlation table in Annex X refers twice to Art. 19a since two different articles both numbered 19a were introduced into the Schengen Borders Code by two different amending acts, i.e. by the Treaty of accession of Croatia and by Regulation (EU) No 1051/2013. **For reasons of clarity, it would be appropriate to specify in the correlation table the chapters to which each of the two Article 19a belongs. That specification is to be made by the lawyer linguists in the course of the legal-linguistic revision.**

4. It is proposed to include in the list of successive amendments in Annex X a reference to point 9 of Annex V to the Decision of the Council of the European Union of 5 December 2011 on the admission of the Republic of Croatia to the European Union (OJ L 112, 24.4.2012, p. 6). **Delegations agreed with the proposal of the Commission to insert in the list of Annex X a reference which reads ' Point 9 of Annex V to the 2012 Act of Accession'.**

**2.5.** DE sent the following comments ahead of the meeting:

The renumbering of articles as a result of the codification could cause confusion because other legal instruments refer to the articles of the Schengen Borders Code as they are numbered in Regulation (EC) No 562/2006.

The Commission explained that, in accordance with the rules on legislative drafting technique, when a new legal act is adopted, which is the case of a codification, continued numbering of the articles should be used. Each codified act contains a standard provision reading that the references to the repealed Regulation shall be construed as references to the new Regulation and shall be read in accordance with the respective correlation table.

**Following that explanation, delegations agreed on keeping the new numbering of the provisions in the codification proposal.**

2.6. FR sent the following comments ahead of the meeting:

The deletion of the recital on subsidiarity and proportionality in the proposal (recital 19 of Regulation (EC) No 562/2006) is not justified. **This point is under discussion between the three Legal Services and will be addressed in the opinion of the Consultative Working Party of Legal Services.**

In addition, the Commission acknowledged that in the FR version of the codification proposal, in Annex VI, there is a technical error concerning the numbering of points. **In particular, point 3.2.9 following after point 3.2.7 should be renumbered as point 3.2.8.**

2.7. For the rest, the text was agreed as proposed by the Commission.

2.8. Language-related comments were sent ahead and after the meeting for the following languages: CS, PL, SK, FI, DK, RO.

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