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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters (Schengen acquis) – Outcome of the European Parliament's first reading (Strasbourg, 23 to 26 November 2015)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Mr Claude MORAES (S&D-UK) presented one compromise amendment (amendment 1) to the proposal for a Regulation, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 24 November 2015, the plenary adopted the compromise amendment (amendment 1) to the proposal for a Regulation.

The Commission's proposal as thus amended and the legislative resolution constitute the Parliament's first-reading position², it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Repealing certain acts from the Schengen acquis in the field of police cooperation and judicial cooperation in criminal matters *I**

European Parliament legislative resolution of 24 November 2015 on the proposal for a decision of the European Parliament and of the Council repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters (COM(2014)0714 – C8-0279/2014 – 2014/0338(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0714),
 - having regard to Article 294(2) and Article 82(1)(d) and Article 87(2)(a) and (c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0279/2014),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the undertaking given by the Council representative by letter of 21 October 2015 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 59 and 50(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0251/2015),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P8_TC1-COD(2014)0338

Position of the European Parliament adopted at first reading on 24 November 2015 with a view to the adoption of *Regulation (EU) 2015/...* of the European Parliament and of the Council repealing certain acts *from the Schengen acquis* in the field of police cooperation and judicial cooperation in criminal matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(d) and Article 87(2)(a) and (c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure³,

³ Position of the European Parliament of 24 November 2015.

Whereas:

- (1) Improving the transparency of Union law is an essential element of the better law-making strategy that the institutions of the Union are implementing. In that context, it is appropriate to repeal those acts which no longer serve any purpose.
- (2) A number of acts adopted in the field of police cooperation and judicial cooperation in criminal matters *and belonging to the Schengen acquis* are no longer relevant due to their temporary nature or because their content has been taken up by successive acts.
- (3) Decision of the Executive Committee SCH/Com-ex (93)14⁴ aimed to improve practical judicial cooperation for combating drug trafficking only for cases of refusal of cooperation by a Member State. That Decision became obsolete after the entry into force of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by Council Act 2000/C 197/01⁵, which provides for deeper cooperation among Member States in the field of mutual assistance on all offences and therefore also on drug trafficking.

⁴ Decision of the Executive Committee of 14 December 1993 on improving practical judicial cooperation for combating drug trafficking (SCH/Com-ex (93) 14) (OJ L 239, 22.9.2000, p. 427).

⁵ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 1).

- (4) Declaration of the Executive Committee SCH/Com-ex (97) decl. 13 rev2⁶ addressed the abduction of minors and the unlawful removal of a minor by one of the parents from the person to whom the right of custody has been granted. That Declaration became obsolete after the entry into force of Regulation (EC) No 562/2006 of the European Parliament and of the Council⁷ and Commission Implementing Decision 2013/115/EU⁸, which provide for new rules on the check of minors crossing an external border and in relation to the corresponding activities of the SIRENE bureaus.
- (5) Decision of the Executive Committee SCH/Com-ex (98)52⁹ adopted the Schengen handbook on cross-border police cooperation assisting Member States in carrying out cross-border operations. That Decision became obsolete after the handbook's content was included in the updated catalogue of recommendations for the correct application of the Schengen *acquis* and best practices in police cooperation, Handbook on cross-border operations and Compendium on law enforcement liaison officers.

⁶ Declaration of the Executive Committee of 9 February 1998 on the abduction of minors (SCH/Com-ex (97) decl. 13 rev 2) (OJ L 239, 22.9.2000, p. 436).

⁷ 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) (OJ L 105, 13.4.2006, p. 1).

⁸ Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 71, 14.3.2013, p. 1).

⁹ Decision of the Executive Committee of 16 December 1998 on the Handbook on cross-border police cooperation (SCH/Com-ex (98) 52) (OJ L 239, 22.9.2000, p. 408).

- (6) *Decision of the Executive Committee SCH/Com-ex (99)11 Rev. 2¹⁰ adopted an Agreement on Cooperation in Proceedings for Road Traffic Offences. That Agreement was concluded between certain Member States and also with two third states (Iceland and Norway). It is therefore not part of the Schengen acquis. In addition, it has never entered into force and none of the Member States has made a declaration under Article 20(3) of that Agreement regarding the application of the Agreement between those Member States having ratified it. Therefore, that Decision has no relevance and should be repealed.*
- (7) Council Decision 2008/173/JHA¹¹ set out the detailed scope, organisation, coordination and validation procedures for certain tests aiming to assess whether the Schengen Information System II (SIS II) complies with the technical and functional requirements as defined in the SIS II legal instruments. That Decision lost its legal effect once the SIS II became operational on 9 April 2013.
- (8) For reasons of legal certainty and clarity, those obsolete Decisions and Declaration should be repealed.
- (9) Since the objective of this **Regulation**, namely the repeal of a number of obsolete Union acts in the field of police cooperation and judicial cooperation in criminal matters **and belonging to the Schengen acquis**, cannot be **sufficiently** achieved by **the** Member States but **can rather be better achieved** at Union level, **the Union may adopt measures, in accordance** with the **■** principle of subsidiarity as set out in Article 5 of the Treaty **on European Union** (TEU). In accordance with the principle of proportionality, as set out in that Article, this **Regulation** does not go beyond what is necessary in order to achieve that objective.

¹⁰ **Decision of the Executive Committee of 28 April 1999 on the Agreement on cooperation in proceedings for road traffic offences (SCH/Com-ex (99)11 Rev. 2) (OJ L 239, 22.9.2000, p. 428).**

¹¹ Council Decision 2008/173/JHA of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) (OJ L 57, 1.3.2008, p. 14).

- (10) In accordance with Articles 1 and 2 of the Protocol No 22 on the *position* of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), Denmark is not taking part in the adoption of this **Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.**
- (11) This **Regulation** constitutes a development of *the* provisions of the Schengen *acquis* in which Ireland is taking part in accordance with Article 5(1) of **Protocol No 19 on the Schengen acquis integrated** into the framework of the European Union, annexed to the TEU and to the TFEU, and Article 6(2) of Council Decision 2002/192/EC¹².
- (12) **Following the notification made by the United Kingdom on 24 July 2013 in accordance with the first sentence of the first subparagraph of Article 10(4) of Protocol No 36** on transitional provisions, *the obsolete Decisions and Declaration referred to above have ceased* to apply to the United Kingdom as from 1 December 2014, pursuant to the *second sentence of the first subparagraph of Article 10(4) of that Protocol*. The United Kingdom is therefore not taking part in the adoption of this **Regulation and is not bound by it or subject to its application.**

¹² Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20.)

- (13) As regards Iceland and Norway, this **Regulation** constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*¹³ which fall within the area referred to in Article 1 of Council Decision 1999/437/EC¹⁴.
- (14) As regards Switzerland, this **Regulation** constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*¹⁵, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/149/JHA¹⁶.

¹³ OJ L 176, 10.7.1999, p. 36.

¹⁴ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

¹⁵ OJ L 53, 27.2.2008, p. 52.

¹⁶ Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50)

- (15) As regards Liechtenstein, this **Regulation** constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹⁷, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU¹⁸,

HAVE ADOPTED THIS **REGULATION**:

¹⁷ OJ L 160, 18.6.2011, p. 3.

¹⁸ Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

Article 1

Repeal of obsolete acts

The *following acts are repealed*:

- *Decision SCH/Com-ex (93)14 (combating drug trafficking);*
- Declaration ■ SCH/Com-ex (97) decl. 13 rev 2 (*abduction of minors*);
- *Decision Sch/Com-ex (98) 52 (police handbook);*
- *Decision SCH/Com-ex (99)11 Rev. 2 (road traffic offences); and*
- ■ Decision 2008/173/JHA (*SIS II tests*).

Article 2

Entry into force

This **Regulation** shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament

For the Council

The President

The President
