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## DRAFT MINUTES

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Subject: **3445<sup>th</sup>** meeting of the Council of the European Union  
(**ECONOMIC AND FINANCIAL AFFAIRS**) held in  
Brussels on 12 February 2016

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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)*

### **"A" ITEMS**

**1. 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]**

= Political agreement

5455/16 DATAPROTECT 3 JAI 44 MI 27 DIGIT 2 DAPIX 13

FREMP 5 COMIX 39 CODEC 55

+ ADD 1 REV 1

approved by Coreper, Part 2, on 03.02.2016

The Council reached a political agreement on the text of this Regulation proposal as set out in doc. 5455/16 and took note of the following statements.

#### **Statement by Austria**

"Austria has always tried to contribute to a Regulation that respects the fundamental rights but also takes into account business interests so that the result also is workable in practice.

For many problems a suitable solution was found. Unfortunately in our point of view some important issues remain unresolved.

Among others, the final compromise text fails to provide a consistent approach regarding the interplay between the principle of purpose limitation as set out in Article 5 para 1 subparagraph b in conjunction with the requirement of a legal basis according to Article 6 para 1, on the one hand, and the "compatibility test" according to Article 6 para 3a on the other hand. Thus, the practical operability of Article 5 and 6 in its entirety is doubtful.

Apart from this, Austria still holds the view that imposing the burden of proof on the data subject as foreseen in Article 6 para 1 subparagraph f is contradictory both to the protection purpose of the Regulation and to that of Art 8 CFR.

In its Note to the 3396th Council (DS 1384/15) Austria mentioned other main issues which needed to be resolved. In order to avoid repetition Austria refers to points 2 to 7 and 10 of this note which still remain valid.

So all in all Austria regrets not being in the position to endorse the final compromise text as proposed."

## **Statement by the Commission**

"The Commission regrets the change to its initial proposal through deletion of recitals 136, 137 and 138 related to the Schengen acquis. The Commission considers that in particular as visas, border control and return are concerned, the General Data Protection Regulation constitutes a development of the Schengen acquis for the four States associated with the implementation, application and development of said acquis."

### **2. 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 or the execution of criminal penalties, and the free movement of such data [First reading]**

= Political agreement

5463/16 DATAPROTECT 4 JAI 46 DAPIX 14 FREMP 6

COMIX 40 CODEC 56

approved by Coreper, Part 2, on 03.02.2016

The Council reached a political agreement on the text of this Regulation proposal as set out in doc. 5463/16.

### **3. Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings [First reading] (LA + S)**

PE-CONS 63/15 DROIPEN 136 COPEN 299 CODEC 1435

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, 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 this vote (Legal basis: Article 82(2) of the TFEU).

## **Statement by the Commission** **relating to Article 6 on the burden of proof**

"The Commission regrets the deletion of Article 5, paragraph 2, of its proposal for a Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings. The Commission considers that the compromise in relation to Article 6 may lead to problems in the implementation of this Directive, in terms of legal certainty, monitoring and operability, which may increase the risk of unnecessary litigation, in particular at national level. However, the Commission does not stand in the way of the adoption of this Directive."

### **Statement by the Commission**

#### **relating to Article 7, paragraph 6, on the right to remain silent and the right not to incriminate oneself**

"The Commission considers that Article 7, paragraph 6, of the Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings must be interpreted as merely confirming the possibility for Member States to decide that, with regard to minor offences, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities.

In contrast, this provision does not allow derogating from the rights enshrined in Article 7, and it may notably not be interpreted as obliging a suspect to make any statements in relation to the facts at issue or allowing a Member State to draw negative consequences from the exercise of the suspects' right to remain silent."

#### **4. Regulation of the European Parliament and of the Council on cableway installations and repealing Directive 2000/9/EC [First reading] (LA + S)**

PE-CONS 57/15 ENT 208 TRANS 320 MI 620 ECO 120 IND 149 CODEC 1316

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

### **Statement by the Commission**

"With regard to recital 65 and the possibility of the European Parliament to be invited to meetings of expert groups, the Commission will implement this recital in accordance with its practice in the implementation of point 15 of the Framework agreement on relations between the European Parliament and the European Commission. Meetings of the Comitology Committee are explicitly excluded under this arrangement. Concerning the reference to infringements in the same recital, the Commission considers this misleading as infringements proceeding are discussed with Member States in the context of the procedures set out under Article 258 TFEU.

The Commission regrets the adoption of Article 44(5) and recital 64 that creates confusion and legal uncertainty, and may compromise institutional balance. The role of the Comitology Committees which ensure control by Member States on the Commission's exercise of implementing powers is defined only by Regulation No (EU) 182/2011, adopted on the basis of Article 291, third paragraph, TFEU. Therefore, no other secondary legislative act can alter or would need to specify further this role. In particular, the Comitology Committees should not perform the functions which are those of the Commission's Groups of Experts. In addition, the rules of procedures of committees are adopted by the committees on the basis of Regulation No (EU) 182/2011. As such they are to be applied when the Committee exercises its role defined by Regulation No (EU) 182/2011. Any reference to rules of procedures outside this context is superfluous and inappropriate. It also risks complicating the functioning of the committee."

**5. Regulation of the European Parliament and of the Council on personal protective equipment and repealing Council Directive 89/686/EEC [First reading] (LA + S)**

PE-CONS 58/15 ENT 209 CONSOM 163 SOC 575 MI 621 ECO 121 IND 150  
CODEC 1317

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the United Kingdom delegation voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

**Statement by the Commission**

"With regard to recital 52 and the possibility of the European Parliament to be invited to meetings of expert groups, the Commission will implement this recital in accordance with its practice in the implementation of point 15 of the Framework agreement on relations between the European Parliament and the European Commission. Meetings of the Comitology Committee are explicitly excluded under this arrangement. Concerning the reference to infringements in the same recital, the Commission considers this misleading as infringements proceeding are discussed with Member States in the context of the procedures set out under Article 258 TFEU.

The Commission regrets the adoption of recital 51 and Article 44 (5) that creates confusion and legal uncertainty, and may compromise institutional balance. The role of the Comitology Committees which ensure control by Member States on the Commission's exercise of implementing powers is defined only by Regulation No (EU) 182/2011, adopted on the basis of Article 291, third paragraph, TFEU. Therefore, no other secondary legislative act can alter or would need to specify further this role. In particular, the Comitology Committees should not perform the functions which are those of the Commission's Groups of Experts. In addition, the rules of procedures of committees are adopted by the committees on the basis of Regulation No (EU) 182/2011. As such they are to be applied when the Committee exercises its role defined by Regulation No (EU) 182/2011. Any reference to rules of procedures outside this context is superfluous and inappropriate. It also risks complicating the functioning of the committee."

**Statement by the United Kingdom**

"The UK welcomes those aspects of the legislation which simplify existing single market measures through the alignment of the New Legislative Framework principles, as well as those which remove burdensome requirements in some of the detail. We particularly welcome the improvements made during negotiations to ensure household washing up gloves are out of scope. However, the UK does not support the requirements of the Regulation being extended to oven gloves used in the home. We see this as an unjustified and disproportionate intervention which is not consistent with the Commission's better regulation agenda and its vision to make the Single Market fit for business and consumers - a vision which the UK shares."

**6. Regulation of the European Parliament and of the Council on appliances burning gaseous fuels and repealing Directive 2009/142/EC [First reading] (LA + S)**

PE-CONS 59/15 ENT 210 MI 622 ECO 122 IND 151 CONSOM 164  
CODEC 1319

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

**Statement by the Commission**

"With regard to recital 74 and the possibility of the European Parliament to be invited to meetings of expert groups, the Commission will implement this recital in accordance with its practice in the implementation of point 15 of the Framework agreement on relations between the European Parliament and the European Commission. Meetings of the Comitology Committee are explicitly excluded under this arrangement. Concerning the reference to infringements in the same recital, the Commission considers this misleading as infringements proceeding are discussed with Member States in the context of the procedures set out under Article 258 TFEU.

The Commission regrets the adoption of Article 42(5) and recital 73 that creates confusion and legal uncertainty, and may compromise institutional balance. The role of the Comitology Committees which ensure control by Member States on the Commission's exercise of implementing powers is defined only by Regulation No (EU) 182/2011, adopted on the basis of Article 291, third paragraph, TFEU. Therefore, no other secondary legislative act can alter or would need to specify further this role. In particular, the Comitology Committees should not perform the functions which are those of the Commission's Groups of Experts. In addition, the rules of procedures of committees are adopted by the committees on the basis of Regulation No (EU) 182/2011. As such they are to be applied when the Committee exercises its role defined by Regulation No (EU) 182/2011. Any reference to rules of procedures outside this context is superfluous and inappropriate. It also risks complicating the functioning of the committee."

## "B" ITEMS

### 3. **Anti-Tax Avoidance Package (Commission Communication)**

- **Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market**
- **Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation**
  - = Presentation by the Commission
  - = Exchange of views
    - 5827/16 FISC 14 ECOFIN 71
    - 5639/16 FISC 10
    - 5638/16 FISC 9
      - + ADD 1
    - 5636/16 FISC 7
      - + ADD 1
    - 5637/16 FISC 8
      - + ADD 1
    - 5640/16 FISC 11

The Council heard a presentation by the Commission on the Anti-Tax Avoidance Package and had a first exchange of views on its content.

### 4. **Any other business**

- **Current legislative proposals**
  - = Information from the Presidency
    - 5781/16 ECOFIN 67

The Council took note of the state of play in relation to legislative financial services files.