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European Union

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DRAFT MINUTES

Subject: **3336th** meeting of the Council of the European Union (**JUSTICE AND HOME AFFAIRS**), held in Luxembourg on 9 and 10 October 2014

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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 amending Council Regulation (EC) No 1346/2000 on insolvency proceedings [First reading]

- = General Approach on Recitals and Annexes
13276/14 JUSTCIV 224 EJUSTICE 80 CODEC 1835
+ COR 1

The Council reached a general approach on the recitals and annexes of the proposal for a regulation amending Council Regulation No 1346/2000 on insolvency proceedings".

"B" ITEMS

HOME AFFAIRS

2. Any other business

- **Information from the Presidency on current legislative proposals**
 - = **Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (Recast) [First reading]**

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.

JUSTICE

11. Proposal for a Council Regulation on the establishment of the European Prosecutor's Office

- Orientation debate
13509/1/14 REV 1 EPPO 49 CATS 128 EUROJUST 161 FIN 671
COPEN 228 GAF 51

The Council noted:

- that a majority of delegations have spoken out for the principle that the EPPO will operate as one single office;
- that a new model for cross-border cooperation within the EPPO will be needed, with a view to ensuring that the Office will add real value, and that further work will be needed to elaborate the details of such a new model.

12. 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]

- Orientation debate

13619/14 DATAPROTECT 127 JAI 711 MI 704 DRS 118 DAPIX 132
FREMP 162 COMIX 490 CODEC 1883

Delegations engaged in a debate on the right to be forgotten following the Google Spain judgment of the Court. Member States acknowledged the importance of the right to erasure and the right to oppose data processing, in particular in a digital environment. At the same time, Member States set great store by the freedom of expression. It was pointed out that balancing the fundamental right to data protection with the freedom of expression will have to be done on a case-by-case basis.

- Partial general approach on certain issues¹

13772/14 DATAPROTECT 129 JAI 730 MI 726 DRS 120 DAPIX 137
FREMP 164 COMIX 503 CODEC 1926

The Council reached a partial general approach on this Chapter, subject to the caveats set out in doc. 13772/14. Germany and Austria made the statements as set out below.

Statements on Chapter IV in the version of Council doc. No 13772/14 by:

- **Germany**

"Germany supports the partial general approach under the conditions listed in paragraph 4 (i) to (iii) of the document. Germany reserves the right to return to the requirement for the mandatory appointment of a data protection officer for specific processing situations, due to its central importance in concluding discussions on the text."

- **Austria**

"1. Austria is prepared to support the partial general approach under the conditions stated in paragraph 4 points i-iii of the document 13772/14. The support is granted for the basic concept of Chapter IV 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 IV and articles linked with the rules stipulated therein.

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.

2. In this regard Austria particularly underlines the importance of improvements and clarifications in particular regarding Art 34 and the trigger for the prior consultation. We are of the opinion that there are several data processing operations which will in any case have to lead to a prior consultation. The wording of Art. 34 and Art. 33 is still unclear and leads to legal uncertainty. The responsibility and decision whether a prior consultation is required or not lies now alone within the controller.

3. In order to have a legal certainty and to minimize the administrative burden Austria is still of the opinion that the best solution is to have an additional (indicative) list with types of data processing operations which in any case lead to a prior consultation under Art. 34."

13. Proposal for a 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 trial in criminal proceedings [First reading]

– Orientation debate

13538/14 DROIPEN 112 COPEN 230 CODEC 1868

The Council had an orientation debate on the issue of Article 5 relating to the "burden of proof" on the basis of doc. 13538/14. The Council replied affirmatively to the two questions set out in point 13 of the document. The President invited the Working Party to continue its work on the draft Directive in light of the guidance given by the Council with a view to reaching a general approach on the text at the Council meeting of December this year.

14. Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012 [First reading]

– Orientation debate

13566/14 JUSTCIV 230 FREMP 161 CODEC 1873

The Council asked that work is continued in light of the views expressed during the orientation debate which took place on the basis of doc. 13566/14.

15. Any other business

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

No issues were raised under this item.