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COMIX 659**

DRAFT MINUTES

Subject: **3354th** meeting of the Council of the European Union (**JUSTICE AND HOME AFFAIRS**), held in Brussels on 4 and 5 December 2014

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¹ 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).

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LEGISLATIVE DELIBERATIONS

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

2. 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]

- Partial general approach²
- Orientation debate

16140/14 DATAPROTECT 181 JAI 961 MI 950 DRS 163 DAPIX 183

FREMP 220 COMIX 645 CODEC 2375

+ COR 1

15656/1/14 REV 1 DATAPROTECT 170 JAI 891 MI 898 DRS 154 DAPIX 172

FREMP 210 COMIX 616 CODEC 2276

The Council agreed on a partial general approach on Articles 1, 6(2)(3), 21 and Chapter IX of the draft General Data Protection Regulation on the following understanding:

- i) such partial general approach is to be reached on the understanding that nothing is agreed until everything is agreed and does not exclude future changes to be made to the text of the provisionally agreed Articles to ensure the overall coherence of the Regulation;
- ii) such partial general approach is without prejudice to any horizontal question;
- iii) such partial general approach does not mandate the Presidency to engage in informal trilogues with the European Parliament on the text.

On the one-stop-shop mechanism the Council engaged in an orientation debate, during which a majority of Member States lent their support to the general architecture of the one-stop-shop as outlined in the Presidency note. A minority of Member States voiced serious concerns on the Presidency note and thought that the architecture outlined therein did not guarantee that the goals for the one-stop-shop which the Council had at previous occasions set would be attained.

The President concluded that there was a majority in the Council which could endorse the general architecture of the one-stop-shop mechanism outlined in the Presidency note, including the idea of a co-decision mechanism between the data protection authorities concerned and the legally binding nature of the decisions of the European Data Protection Board.

² 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.

Further technical work would need to be done on a number of outstanding issues.

Germany made a statement, as set out in the Annex.

Austria, Hungary and Slovenia made a statement, as set out hereafter.

Statement by Germany

on Chapter IX of the proposal for a General Data Protection Regulation as set out in 16140/14

"Germany supports the partial general approach under the conditions listed in point 4 of the document, but underlines the importance of a provision that allows the Member States to provide for stricter rules in the field of protection of employees' data. Germany therefore reserves the right to return to this point in subsequent negotiations. The protection of employees' data is a fundamental and indispensable component of labour law. Labour regulations are seen as a special and protective right for the benefit of the employee as the weaker contractual partner and are consequently interpreted by the case law of labour tribunals. European labour law therefore generally lays down only minimum standards for the Member States to use as a framework. This means that a minimum level of protection by Member States established by European law may not be undercut, but at the same time the Member States are not prevented from prescribing a higher degree of protection for employees. In order to preserve this system of European labour law within the General Data Protection Regulation for the protection of employees' data as a component of labour law, Germany is in favour of opening up the possibility in Article 82 for the Member States to maintain or to create a level of protection of employees' data exceeding the level set out in the Regulation (paragraph 1: "Member States may by law provide for more specific **or stricter** rules for the protection of the employee ..."). In this way it can be guaranteed that the standards of the Regulation also apply in the context of employment and that the Member States can grant employees increased protection - as is otherwise customary in European labour law."

Statement by Austria, Slovenia and Hungary

to the proposal for General Data Protection Regulation in the version of Council doc. 16140/14 + COR 1

"Austria, Slovenia and Hungary are not in a position to endorse the current stage of negotiations as partial general approach on the provisions on the public sector (Art. 1, Art. 6 para 2 and 3, Art. 21) and Chapter IX, since in our opinion the following issues remain unresolved:

On Article 1 paragraph 2a

Austria, Slovenia and Hungary recall that there is an obligation of the EU and the Member States resulting from Art. 8 CFR in conjunction with the established case law on Art. 8 ECHR to enact laws governing and as the case may be restricting personal data processing operations carried out by private bodies for private purposes as far as necessary for balancing the individual's right to data protection with the need of controllers of the private sector to process data. However, neither the current wording of Art. 1 para 2a nor that of Art. 6 take sufficient account of these obligations. Austria, Slovenia and Hungary therefore keep the position that it is necessary to explicitly authorize Member States in the Regulation to adopt the aforementioned laws according to the Austrian proposal of Art. 82b (see doc. 15768/14).

Moreover, Slovenia and Hungary would like to emphasize that the minimum harmonization clause for the public sector would be an optimal solution.

On Article 21 paragraph 1

Austria again points to the issue of including Art. 5 when referring to restrictions of particular obligations and rights provided by this Regulation permitted under Art. 21 para. 1. Given the requirement of a proportionality test in the chapeaux of Art. 21 para 1 this would lead to the effect that the "proportionality principle" required under Art. 5 would no longer be applicable with regard to any restrictions adopted on the basis of Art. 21.

On Article 80 paragraph 2

Austria, Slovenia and Hungary regret that the scope of paragraph 2 on freedom of expression is not more ambitious.

On recital 121 that relates to Article 80

Austria, Slovenia and Hungary would like to emphasize that the penultimate sentence of recital 121 could lead to an unacceptable interpretation of a legal situation in cases where exemptions or derogations from provisions of the Regulation provided by the national law of the Member State would differ from each other. In just stating that in such cases the national law of the Member State to which the controller is subject should apply is a rather unclear and too far reaching approach that could particularly interfere with national media laws. Moreover, the proposed approach could also lead to a forum shopping, more precisely the meaning that the lowest level of protection accorded by a single national legislation could become the generally applicable law throughout the Union. This has to be avoided. In our opinion recital 121 requires further scrutiny since it was inserted at the last stage of negotiations and was not thoroughly discussed.

On Article 82 paragraph 1

Austria, Slovenia and Hungary are of the opinion that Member States should be authorized in the employment context to adopt not only more specific rules but also "stricter" rules than those provided by the Regulation.

On Article 85 paragraph 1

Austria, recalling the discussion in DAPIX, proposes to establish a close link between the rules relating to the protection of individuals being applied at the time of entry into force of this Regulation and related constitutional requirements of a Member State justifying the said application. Therefore the wording “due to particular existing constitutional requirements” after the word “state” in the first line should be inserted."

3. 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 on the free movement of such data [First reading]

- State of play
15730/14 DATAPROTECT 173 JAI 903 DAPIX 177 FREMP 213
COMIX 622 CODEC 2289
+ COR 1

The Council took note that the Mixed Committee at Ministerial level would be informed about the state of play of the Data Protection Directive.

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

- Orientation debate
15862/1/14 REV 1 EPPO 70 EUROJUST 205 CATS 194 FIN 878 COPEN 298
GAF 64

The Council noted :

- a) that a majority of the delegations that had taken the floor agreed that the rules on the appointment and dismissal of the European Chief Prosecutor and of the European Prosecutors should be strengthened, in particular through the introduction of a more transparent and objective procedure of nomination and appointment of the members of the College;
- b) that the relevant legal drafts should be updated accordingly.

5. **Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (EUROJUST) [First reading]**
– Partial general approach
16139/14 EUROJUST 212 EPPO 73 CATS 196 COPEN 306 CODEC 2374
+ COR 1
+ COR 2

The Council reached a partial general approach on this proposal set out in doc. 16139/1/14. The Czech Republic lifted its reservations on the text and the Netherlands lifted its parliamentary scrutiny reservation. Sweden and Finland made a statement, as set out in the Annex to these minutes.

6. **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]**
– General approach
15837/14 DROIPEN 142 COPEN 297 CODEC 2316

The Council reached a general approach on the text as set out in doc. 16531/14.

7. **Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings [First reading]**
– State of play
15490/14 DROIPEN 129 COPEN 278 CODEC 2241

The Council took stock of the state of play of the proposed Directive. Work on this file will be carried forward under the incoming Presidency.

8. **Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law [First reading]**
– State of play
15221/14 DROIPEN 127 JAI 847 GAF 62 FIN 830 CADREFIN 122
CODEC 2191

The Presidency gave a short summary of the State of play and invited Ministers to reflect further on how a compromise with the Parliament on the issue of VAT fraud could be envisaged.

9. Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings [First reading]

– Political agreement

15414/14 JUSTCIV 285 EJUSTICE 109 CODEC 2225

+ ADD 1

+ ADD 1 COR 1

The Council:

- a) adopted a political agreement on the compromise package set out in Addendum 1 to doc. 15414/14;
- b) instructed the Council's legal-linguistic experts to proceed with the revision of the compromise package.

10. 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 guidelines

15843/14 JUSTCIV 303 FREMP 217 CODEC 2319

The Council:

- a) endorsed the guidelines set out in doc. 15843/14, and
- b) requested the Working Party on Civil Law Matters to continue work on the proposed Regulation in light of such guidelines.

11. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure [First reading]

– General approach

15841/14 JUSTCIV 302 EJUSTICE 119 CODEC 2317

+ ADD 1

The Council:

- a) approved a general approach on the compromise package set out in doc. 15841/14, and
- b) took note that this text will constitute the basis for the negotiations with the European Parliament for a first reading agreement.

12. a) **Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes**
– State of play
- b) **Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships**
– State of play
16171/14 JUSTCIV 313

The Council:

- a) took note that the Presidency has submitted a possible compromise text on the two proposals for a Regulation;
- b) took note that a period of reflection was needed for several Member States in order to allow them to assess the results of the work completed so far;
- c) agreed to re-examine the possible compromise texts on the two proposals for a Regulation as soon as possible and not later than by the end of 2015, in order to assess whether the required unanimity can be achieved.

16. Fight against terrorism

- Proposal for a Directive of the Council and the European Parliament on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime **[First reading]**
= State of play

The Council was briefly informed about the outcome of the lunch discussion on EU-PNR and PNR agreements with third countries.

17. Any other business

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

The Presidency informed delegations of the state of play of the examination by the competent Council preparatory bodies of the proposals concerning the Directive on Students and Researchers as well as the Regulation modifying Article 8(4) of the Dublin Regulation on unaccompanied minors.