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REV 1

LIMITE

PV/CONS 70
JAI 979
COMIX 667

DRAFT MINUTES¹

Subject: **3433rd** meeting of the Council of the European Union (**JUSTICE AND HOME AFFAIRS**), held in Brussels on 3 and 4 December 2015

¹ Information on Council legislative deliberations, on other cases of Council deliberations open to the public and on public debates may be found in Addendum 1 to these minutes.

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1. **Adoption of the agenda**

14545/15 OJ/CONS 70 JAI 917 COMIX 627

The Council adopted the above agenda.

JUSTICE

LEGISLATIVE DELIBERATIONS

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

2. **Approval of the list of "A" items**

14546/15 PTS A 94

The Council adopted the list of "A" items as listed in doc. 14546/15.

Details on the adoption of these items are set out in the Addendum.

3. **Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the conditions for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012**

[First reading]

= Political agreement

14189/15 JUSTCIV 267 FREMP 262 CODEC 1530

+ ADD 1

The Council noted that

- a political agreement on the consolidated text of the draft Regulation has been reached, as set out in doc. 14189/15 ADD 1;
- the text will be revised by the legal linguists;
- once the text has been finalised by the legal linguists, the draft Regulation, accompanied by the explanatory memorandum, will be submitted to the Council as an "A" at a forthcoming session.

4. **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

14281/15 DROIPEN 149 JAI 877 GAF 51 FIN 784 CADREFIN 76 CODEC 1546

+ COR 1

The Council took note of the latest state of play of the file, as presented by the Presidency.

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

= Partial general approach
14718/15 EPPO 47 EUROJUST 199 CATS 129 FIN 858 COPEN 334 GAF 53

The Council expressed a very large support for Articles 17-20, 22, 22a, 23 and 28a of the EPPO Regulation, as set out in the Annexes to the Presidency document. The text was retained, together with the remarks made by some delegations which were not in a position to agree with all aspects of the text. The said Articles will be re-visited once the full text will have been examined in order to ensure coherence. The Council finally also took note of progress made on Article 36 of the draft text concerning judicial review.

6. Matrimonial property regimes and registered partnerships

(a) Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

= Political agreement
14655/15 JUSTCIV 278
14651/15 JUSTCIV 276
+ COR 1 REV 1
14842/15 JUSTCIV 285

(b) Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships

= Political agreement
14655/15 JUSTCIV 278
14652/15 JUSTCIV 277
14842/15 JUSTCIV 285

The Council noted that :

- there was no political agreement on the compromise texts of the proposals for a Regulation on matrimonial property regimes and for a Regulation on registered partnerships, as set out in documents 14651/15 and 14652/15;
- the negotiations have reached a point where it can be established that there is a lack of unanimity to go ahead with the two proposals and that insurmountable difficulties make it impossible to attain such a unanimity at present and within a reasonable time;
- that a significant number of Member States had indicated their readiness to follow the enhanced cooperation procedure provided for in the treaties in the areas that are the subject of the two proposals.

The United Kingdom made a statement which is set out in the Addendum (page 7).

7. **Any other business**

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

The Presidency informed delegations of the state of play of the different on-going legislative files, explaining in more detail the progress achieved on the data protection package.

NON-LEGISLATIVE ACTIVITIES

8. **Approval of the list of 'A' items**

14547/15 PTS A 95

The Council adopted the "A" items as listed in doc. 14547/15.

The documents on items 1 and 12 should read as follows:

Item 1: 14599/15 JAI 918 ENFOPOL 369 COTER 154 COWEB 137
11625/3/15 REV 3 JAI 623 ENFOPOL 228 COTER 118 COWEB 81
+ REV 3 COR 1

Item 12: 14763/15 CORLX 225 CFSP/PESC 823 RELEX 985 COARM 257 MOG 112
FIN 861
+ COR 1
+ REV 1 (cs)

Statements to these items are set out in the Annex.

9. **Migration crisis: aspects of judicial cooperation and the fight against xenophobia**

= Follow-up of measures

14716/15 JAI 925 CATS 127 ASIM 159 COPEN 333 FREMP 279 JAIEX 79

The Council noted the state of play of the actions identified in its October meeting as well as the report provided by Eurojust and by the European Judicial training Network in the field of judicial cooperation in the context of the migration crisis. Austria made a statement on the need for a common European Union Asylum Law, which is set out in the Annex (page 15), accordingly with the original statement in German.

10. Combating on-line hate speech

= General debate

The Council discussed the different aspects and ways of cooperation in combating on-line hate speech, welcoming the work done by the Commission since October, in particular by preparing the Internet Forum that would be launched that same day. It was stressed that, without neglecting the work done at national level, cooperation at EU level was essential, notably to liaise with Internet providers and obtain their involvement and engagement for training civil society in tackling hate speech, but also for taking down content within appropriate time limits. The possibility of drawing up a code of conduct would be explored, so as to help the different stakeholders in taking up their responsibility in combating on-line hate speech, while respecting fundamental rights and the freedom of speech in particular. The Forum would be an appropriate framework for this.

11. Ensuring effective criminal justice in the digital age: what are the needs?

= State of play

14369/15 JAI 895 COPEN 319 DROIPEN 150 CYBER 110

The Council confirmed the need to work in a comprehensive manner on the different aspects related to the needs of criminal justice systems in the digital age, as set out in the Presidency document. It was underlined that EU action might bring real added value in this area.

Ministers highlighted the problems of loss of location and the need to review the existing jurisdiction rules in this respect. The need for optimal use of the existing EU acquis of judicial cooperation in criminal matters and in particular of the European Investigation Order was also pointed out. Ministers referred to a number of other aspects, such as cooperation with foreign service providers and with the US authorities, cloud computing, admissibility of e-evidence or the need to speed up the MLA process, as equally important. It was a common understanding that the compliance with fundamental rights standards should be a guiding principle in any future initiative.

12. Retention of electronic communication data

= General debate

14677/15 GENVAL 64 COPEN 330 DROIPEN 159 JAI 924

The Council took note of the statement of the Commission that it would not submit a new proposal following the Judgement of the Court of 8 April 2014 rendering Directive 2006/24/CE invalid. A majority of Member States supported the need for a common approach at Union's level, including some specific requests for a proposal for a new legal instrument. However, some delegations were in favour of waiting for the outcome of cases pending in front of the Court.

13. Any other business

(a) Relations with the United States

– **European Union-United States JHA ministerial meeting on 13 November 2015**

= Information from the Presidency

14735/15 JAI 928 JAIEX 80 RELEX 981 ASIM 161 CATS 132 CYBER 117
EUROJUST 200 JUSTCIV 283 USA 35 DAPIX 226

The Council took note of the Presidency's report on this meeting.

– **Renewed framework for transatlantic data transfers**

= Information from the Commission

The Council took note of the Commission's information regarding on-going work to replace the Safe Harbour Decision by the end of January 2016, in particular the latest discussion with US stakeholders.

(b) European Union-Western Balkans ministerial forum on 7 and 8 December 2015

= Information from the Presidency

The Council took note of the Presidency's information on the subjects to be discussed at this upcoming meeting.

(c) Work programme of the incoming Presidency

= Information from the Netherlands delegation

The Council took note of the oral presentation of the programme of the incoming Netherlands Presidency.

LEGISLATIVE DELIBERATIONS

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

14. Proposal for a Directive of the European Parliament and of the Council 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

14670/15 GENVAL 63 AVIATION 145 DATAPROTECT 218 ENFOPOL 372
CODEC 1608

The Presidency recalled to delegations the compromise proposal achieved with EP on 2 December. Following an exchange of views, the Council agreed to the compromise text set out in 14670/1/15 REV 1 + COR 1. The Ministers also agreed the text of a declaration on the inclusion of internal flights and the extension to other non air carrier economic operators, set out in doc. 15271/15.

15. Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA [First reading]

= Political agreement

14713/15 ENFOPOL 375 CODEC 1619 CSC 299

The Council approved the text of the Europol Regulation agreed with the European Parliament, as set out in doc. 14713/15.

16. 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]

= Political agreement

14423/15 MIGR 64 RECH 283 EDUC 304 CODEC 1558 SOC 685
+ COR 1

The Council reached a political agreement on the above mentioned proposal, which is still to be revised by the lawyer linguists in view of its formal adoption by the European Parliament and by the Council. The European Parliament and the Commission made a joint statement, which is set out in the Addendum (page 9).

17. **Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person [First reading]**²

= State of play
14513/15 ASIM 157 CODEC 1578

The Presidency presented the state of play of the examination of the proposal to establish an EU list of safe countries of origin. The Presidency stressed the need to go forward swiftly with the discussions on this proposal.

18. **Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU [First reading]**

= State of play

The Council held a short discussion on the above proposal.

Following that discussion the Chair invited

- the Council's preparatory bodies to continue the examination of the proposal
- the Commission to speed up work on the amended Dublin Regulation
- Member States to fully engage in the implementation of the temporary relocation schemes.

19. **Any other business**

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

The Presidency informed the Council on the state of play of several legislative proposals.

² Exceptionally, in the presence of the Associated States

NON-LEGISLATIVE ACTIVITIES

20. Counter-terrorism³

- = Presentation by the Presidency and the Counter-Terrorism Coordinator
14734/15 JAI 927 CFSP/PESC 819 COSI 159 COPS 364 ENFOPOL 376
COTER 155 SIRIS 91 FRONT 265 CATS 131 EDUC 315
14886/15 JAI 960 COSI 179 COTER 157 COPS 384 ENFOPOL 397
ENFOCUSTOM 138 ASIM 165 CATS 133
- = State of play and general discussion of ongoing operations

Following the adoption of the Council conclusions on Counter-terrorism at the [extraordinary] JHA Council on 20 November⁴, Ministers were informed by the Counter-Terrorism Coordinator on progress made in the implementation of the Statement of the Members of the European Council of 12 February 2015, including the short-term priority measures agreed upon on 8 October 2015. Three topics were stressed: the need to optimise the existing tools to improve the exchange of information, the focus on soft measures/prevention such as the RAN Centre of Excellence and the Internet Forum, and the importance of cooperation with international partners, among other things stepping up the use of Justice and Home Affairs (JHA) tools in the EU's Counter-Terrorism cooperation with the Middle East and North Africa (MENA) region.

The Commission reported progress in the implementation of the European Agenda on Security. Almost all Ministers that took the floor referred to firearms as one the most urgent issues, together with the need for better information exchange (interoperability of databases) and strengthening the controls at external borders. The incoming Presidency stated that it would continue focussing on the implementation of the measures agreed.

21. Renewed EU Internal Security Strategy (2015-2020)

- = General debate on implementation
14636/15 COSI 158 CATS 123 JAI 922 ENFOPOL 371 ENFOCUSTOM 122
DAPIX 225 SIRIS 89 GENVAL 62 CORDROGUE 92
DROIPEN 158 COPEN 328 FREMP 278

The Council took note of the state of play of the implementation of the renewed EU ISS (2015-2020) as set out in doc. 14636/15 and welcomed that the incoming Presidency would follow the same methodology for reporting.

³ Exceptionally, in the presence of the Associated States

⁴ Doc. 14406/15 + COR 1

22. Migration

(a) Current situation

(b) Monitoring of the implementation of the measures taken and future action

14733/15 JAI 926 ASIM 160 FRONT 264 RELEX 980 COMIX 636

(c) Integrity of the Schengen area

14300/15 JAI 889 SCH-EVAL 50 SCHENGEN 37 FRONT 255 COMIX 600

The Council took note of the outcome of the debate at the meeting of the Mixed Committee at Ministerial level (doc. 15138/15 JAI 985 COMIX 678).

23. Any other business

(a) European Union-United States JHA ministerial meeting on 13 November 2015

14735/15 JAI 928 JAIEX 80 RELEX 981 ASIM 161 CATS 132 CYBER 117
EUROJUST 200 JUSTCIV 283 USA 35 DAPIX 226

(b) European Union-Western Balkans ministerial forum on 7 and 8 December 2015

(c) Valletta Summit, 11 and 12 November 2015¹

= Information from the Presidency

Information was provided by the Presidency and the Commission on the above mentioned items.

(d) Information on the Danish referendum on 3 December 2015

= Requested by the Danish delegation

14635/15 JAI 921 COPEN 327 DROIPEN 157 CYBER 112 JUSTCIV 275
ENFOPOL 370

The Minister of Denmark presented the result of the referendum held the day before, when the Danish people rejected the proposal to "change" the JHA opt-out into an opt-in possibility, similar to the one benefitting to the United Kingdom and Ireland. The Minister assured that Denmark would continue to closely cooperate in the JHA area.

(e) Work programme of the incoming Presidency

= Information from the Netherlands delegation

The Council took note of the oral presentation of the programme of the incoming Netherlands Presidency.

STATEMENTS FOR THE COUNCIL MINUTES

Ad "A" item 4: **Draft Decision authorising the Republic of Austria to sign and ratify, and Malta to accede to, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, in the interest of the European Union**
= **Request for the consent of the European Parliament**

STATEMENT BY THE UNITED KINGDOM

"The United Kingdom fully supports the accession of, and ratification by, Austria and Malta to the 1965 Hague Convention on the Service of Judicial and Extra-Judicial Documents (the Convention).

The United Kingdom continues to dispute the existence of EU exclusive external competence in relation to this proposed Council Decision. The uniform and consistent application of the parallel EU internal rules has not been shown to be capable of being undermined by the operation of the Convention between an EU Member State and a third state party to the Convention.

In the opinion of the United Kingdom, the Council Decision is unnecessary, and Austria and Malta are entitled to accede to and ratify the Convention without the need for authorisation by the European Union.

The question of exclusive external competence impacts across the whole range of EU work, and has profound implications for how the EU and its Member States engage internationally. The United Kingdom welcomes the fact that detailed discussions took place in the Working Group on this aspect of the proposal, and places great importance on such discussions, not only on individual dossiers but more horizontally, to ensure a consistent and effective analysis of the text and its application.

Notwithstanding the points set out above, the United Kingdom notes that, in accordance with the provisions of Protocol 21 to the Treaties, the United Kingdom has notified the President of the Council that it wished to take part in the adoption of this Decision, and considers the inclusion of the word "therefore" in the text of Recital 6 to be inaccurate. The fact that the United Kingdom is taking part in Regulation 1393/2007 or indeed in Regulation 1215/2012 does not, in its view, render inoperative the provisions of Protocol 21."

STATEMENT BY GERMANY

"The Federal Republic of Germany supports the efforts of the Republic of Austria to ratify and of Malta to accede to the 1965 Hague Service Convention, and thus to become Contracting States to that Convention. However, the Federal Republic of Germany continues to doubt whether the Decision which the Council has today submitted for adoption falls within the exclusive external competence of the European Union. It is not clear why the future application of the Hague Service Convention to Austria and Malta could affect common rules on judicial cooperation between Member States in civil matters or alter their scope (Article 3(2) TFEU).

The Hague Service Convention applies in relation to third countries. Between European Union Member States, Regulation (EC) No 1393/2007 (the 'Service of Documents Regulation') clearly takes precedence over that Convention. This Decision should therefore not be used as a model for and should be without prejudice to any other measures in which the exclusive external competence of the European Union may play a role which may be taken by the European Union to resolve other similar cases."

Ad "A" item 9: Council Regulation (EU, Euratom) No .../... of XXX extending and phasing out the temporary derogation measures from Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community introduced by Regulation (EC) No 920/2005

STATEMENT BY THE COMMISSION

"The Commission is committed to undertaking all measures within its competence to allow for the gradual reduction of the derogation and the passage to a full language regime for the Irish language as from 1 January 2022.

Recital 5 of the Council Regulation states that the reduction of the scope of the derogation should be closely monitored and reviewed in light of the available translation capacity in order to prevent delays in the Union's legislative process. Article 2 of the Council Regulation provides that any revision of the target dates in the Annex would have to be agreed by the Council, acting unanimously in accordance with Article 342 of the Treaty on the Functioning of the European Union. If such unanimity cannot be achieved, the reduction of the scope of the derogation will continue as currently provided for in the Annex, potentially resulting in delays in the legislative process. If the report provided for in the second paragraph of Article 2 of the Council Regulation shows that the Union institutions do not have sufficient available capacity to reduce the scope of the derogation as set out in the Annex to that Regulation, the Commission will invite the Council to modify the target dates in the Annex.

In addition, Article 3 of the Council Regulation provides that no later than June 2021, the Commission shall report to the Council on whether the Union institutions have sufficient capacity for the derogation to end. If the report shows that the Union institutions do not have sufficient available capacity for the derogation to end, the Commission will invite the Council to decide on a further extension of the derogation."

Ad "A" item 16: **Support of the European Union and its Member States for the démarche by New Zealand on the government of Japan concerning the resumption of whaling in the Southern Ocean ('NEWREP-A programme')**
= Approval

STATEMENT BY THE COMMISSION

"The Commission would like to recall that the joint demarche on Japanese scientific whaling reflects established Union positions, and therefore no approval by Council is necessary for the demarche to be conducted on behalf of the Union.

As already stated on previous occasions the Commission recalls that the European Union has exclusive competence in the field of the conservation of the marine biological resources pursuant to the provisions of Article 3(1)(d) in conjunction with Article 38 and Annex I of the Treaty and thus of all living aquatic resources under the Common Fisheries Policy pursuant to Council Regulation (EU) No 1380/2013. The fact that this demarche is carried out jointly by the EU and EU Member States is without prejudice for any future negotiations about the conservation and management of marine biological resources under the common fisheries policy."

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Ad "B" item 9: **Migration crisis: aspects of judicial cooperation and the fight against xenophobia**
= Follow-up measures

STATEMENT BY AUSTRIA

"I would like to thank the Presidency for this document, which provides in particular for even greater cooperation at European level. This is only right and fitting.

At our last meeting, you said that to resolve the refugee crisis, we would actually need more Europe, and you were quite right. We are suffering from the inadequacies of our European regulatory framework, which must be urgently remedied by a common EU asylum law.

It goes without saying that the fight against terrorism is also a challenge for us as Ministers for Justice, and no one can seriously deny the potential dangers of abuse by individual terrorists of refugee and migrant flows that are uncontrolled or in practice uncontrollable for humanitarian reasons and due to the need for proportionality of coercive state measures.

Whatever needs to be done now, we must be guided by order and humanitarian principles. It is just as important for us to be rigorous in applying the law as it is for us to be humane in the face of reality. There must not be any chaotic and uncontrolled refugee flows at internal European borders, and those who are stranded here must be treated humanely and decently, irrespective of whether they have the right to asylum.

At the same time, we must do all we can to help them in their home countries and eliminate the reasons for their flight.

However, if Europe wants to remain a single area of freedom, security and justice, then it must now safeguard its internal freedom with effective protection of its external borders. The dismantling of internal borders under the Schengen Agreement was a great step forward which we could not do without, and it must be underpinned by an effective control of Europe's external borders.

Critics of the EU often accuse it of repeatedly taking the second step before the first. Perhaps this is what happened here, or perhaps we just got stuck halfway. If that is so, then we must rectify our omissions as a matter of urgency.

Freedom, security and justice are mutually dependent. As long as there is no effective control of our external borders, the freedoms gained with the Schengen Agreement are at risk because they are achieved at the expense of security. And that is something that we cannot and must not allow to happen; we as Ministers for Justice must make it our concern. The freedoms gained with the Schengen Agreement must be defended!

The Dublin Regulation was originally conceived as a possible basis for a pan-European asylum law and not as a playground for national interests. It does not work in practice, but this does not alter its binding force. It will have to be reconsidered for the purpose of a pan-European asylum law.

This pan-European asylum law must contain uniform rules on the submission of applications to EU authorities, uniform admission procedures, uniform screening criteria and, as far as possible, uniform standards relating to the care and treatment of asylum seekers. It must provide for an adequate and pragmatic distribution of the financial burden between all Member States and for the enforceability of decisions and allocations of refugees at EU level.

But until we achieve this, we must prevent uncontrolled refugee flows in the interest of security and eliminate the excessive demands placed on individual States in order to protect internal EU freedoms.

We must restore order to the system and, in future, we should only accept asylum applications submitted to EU diplomatic representations abroad, or in the hotspots established for this purpose by the EU or the international community. This would be the most sensible transition towards a new and fully functioning EU-wide asylum law.

This is not a denial of the right to asylum, but rather a reliable guarantee of the individual's entitlement to a due process of law, rightly called for by the UNHRC, and which, in the event of a positive outcome, can result in applicants receiving an entry visa. This is the only way to prevent asylum seekers from having to rely on criminal smugglers and take mortal risks. It is in their interests as well as ours to tighten and clearly define the legal framework and conditions in order to take a further step towards a pan-European uniform asylum law.

We must ensure that the law prevails. This is the clear message that we must send out to all those who want to come to Europe. Those who are already stranded in Europe are naturally entitled to expect a due process of law and, first and foremost, to expect to be treated humanely. Because that is also what Europe stands for – for freedom, security, justice and humanitarianism, and the one depends on the other.

Europe should not put itself in a position where it is negotiating the de facto distribution of refugees with individual overburdened or unwilling States whose governments are all under pressure from populist movements and have to introduce restrictions for all citizens. Instead, we should negotiate a responsible distribution and implementation of asylum proceedings before risking chaotic flows of refugees in unlimited numbers, whose hopes and expectations are often ultimately dashed, and who, in their understandable despair, all too often put themselves at the mercy of criminal gangs of smugglers which must be fought with all possible means!

Each individual State is free to grant more freedom by issuing visas on a case-by-case basis. However, Europe as a whole must know and be able to control who enters its territory when and under which conditions. We must ensure that that is the case.

There is a considerable difference between talking to refugees personally and understanding their concerns at an emotional level, as I myself often do, and seriously considering what is legally necessary in the interests of the EU.

This difference is responsibility.

To resolve this problem, which is jeopardising the splendid vision of European unity, we now need both: order and humanitarianism – and thus more Europe."
