



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 November 2013  
(OR. en)**

**14607/13**

**LIMITE**

**PV/CONS 45  
JAI 881  
COMIX 538**

**DRAFT MINUTES<sup>1</sup>**

---

Subject: **3260th meeting of the Council of the European Union (JUSTICE AND HOME AFFAIRS) held in Luxembourg on 7 and 8 October 2013**

---

---

<sup>1</sup> 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.

## CONTENTS

**Page**

1. Adoption of the provisional agenda ..... 4

### JUSTICE

#### **LEGISLATIVE DELIBERATIONS**

2. Approval of the list of "A" items ..... 4
3. 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] ..... 4
4. Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA [First reading] ..... 5
5. - Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (EPPO) [First reading] ..... 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]

6. Any other business ..... 6

#### **NON-LEGISLATIVE ACTIVITIES**

7. Approval of the list of "A" items ..... 6
8. Any other business ..... 6

### HOME AFFAIRS

#### **LEGISLATIVE DELIBERATIONS**

9. Any other business ..... 7

#### **NON-LEGISLATIVE ACTIVITIES**

10. Provisional arrangements to host CEPOL ..... 7
11. Issues related to the free movement of persons ..... 7

12. Syria: Protection of refugees, latest developments..... 7

13. Recent events in Lampedusa: Problem of migration flows and loss of life at sea in the Mediterranean..... 8

14. First Annual Relocation Forum, 25 September 2013 ..... 9

15. Any other business ..... 9

ANNEX - Statements for the Council minutes..... 10

\*

\* \*

1. **Adoption of the provisional agenda**

14105/13 OJ/CONS 45 JAI 833

The Council, upon a request from Italy, added the following item to the provisional agenda:

"Recent events in Lampedusa: Problem of migration flows and loss of life at sea in the Mediterranean". The Council adopted the amended 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**

14106/13 PTS A 61

The Council approved the "A" items as listed in doc. 14106/13.

The documents on item 2 should read as follows:

Item 2: 14057/1/13 REV 1 CODEC 2124 SCHENGEN 33 SCH-EVAL 114  
FRONT 132 COMIX 517  
14057/13 ADD 1  
14057/13 ADD 2 REV 1  
PE-CONS 30/13 SCHENGEN 16 SCH-EVAL 82 FRONT 61  
COMIX 334 CODEC 1216

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 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

14260/13 DATAPROTECT 138 JAI 848 MI 819 DRS 179 DAPIX 121  
FREMP 140 COMIX 526 CODEC 2165

Following a detailed exchange of views, the Chair concluded the following:

- (1) The Council expressed its support for the principle that in important transnational cases the draft Regulation should establish a one-stop shop mechanism in order to arrive at a single supervisory decision, which would be fast, ensure consistent application, provide legal certainty and reduce administrative burden. This is an important factor to enhance the cost -efficiency of the data protection rules for international business, thus contributing to the growth of the digital economy.
- (2) Further expert work on this will continue along a model in which a single supervisory decision is taken by the 'main establishment' supervisory authority but the exclusive jurisdiction of that authority would be limited to the exercise of certain powers.

- (3) The competent Working Party will explore which are the exact powers to be exercised by the 'main establishment' supervisory authority and the methods for enhancing the 'proximity' between individuals and the decision-making supervisory authority by involving the 'local' supervisory authorities in the decision-making process. This proximity is an important aspect of the protection of individual rights.
- (4) As another important element of this model for increasing the consistency of the application of EU data protection rules, the Working Party will be further explore which role and powers could be entrusted to the European Data Protection Board (EDPB) as an appeal mechanism.

The Chair further clarified that the future work of the Council along these lines could include some elements of the so-called co-decision model.

4. **Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA [First reading]**

- General approach  
14085/1/13 REV 1 DROIPEN 114 JAI 831 ECOFIN 831 UEM 320 GAF 44  
CODEC 2131

The Council reached a general approach, following a very brief exchange of views on the text of the proposal as set out in the Annex to document 14085/1/13 REV 1. This general approach will constitute the basis for future negotiations with the European Parliament in the context of the ordinary legislative procedure (Article 294, TFEU).

5. - **Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (EPPO) [First reading]**

12558/13 EPPO 3 EUROJUST 58 CATS 35 FIN 467 COPEN 108  
+ COR 1 (hr)

- **Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust)**

[First reading]

12566/13 EUROJUST 59 EPPO 4 CATS 36 COPEN 109 CODEC 2163  
+ COR 1

= Presentation by the Commission and orientation debate

The Council

- welcomed both proposals;

- noted that a number of issues in both files need to be developed further and/or clarified, and that the work will be continued at technical level in this sense;
- noted that the interest to ensure the participation of as many Member States as possible in the European Public Prosecutor's Office should guide the upcoming work.

## 6. **Any other business**

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

The Council took note of the state of play of negotiations of the two MFF Justice programmes and noted that agreement is within reach. The Presidency will do everything within its power to ensure clear separation of MFF Home and MFF Justice programmes in the negotiations and will proceed on that basis.

The Council took note of the state of play of negotiation on the European Investigation Order.

The Council noted that negotiations were continuing on the Directive on the freezing and confiscation of proceeds of crime with a view to reaching first reading agreement by the end of the year.

## **NON-LEGISLATIVE ACTIVITIES**

### 7. **Approval of the list of "A" items**

14107/13 PTS A 62

+ REV 1 (pt)

The Council approved the "A" items as listed in doc. 14107/13 + REV 1 (pt).

Statements to these items are set out in the Annex.

### 8. **Any other business**

The Commission representative drew the attention of delegations to a conference "Assises de la Justice" that the Commission was organising on 21-22 November 2013 in Brussels on the future of the justice policy

**LEGISLATIVE DELIBERATIONS**

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

**9. Any other business**

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

The Council agreed to postpone the examination of this issue.

**NON-LEGISLATIVE ACTIVITIES**

**10. Provisional arrangements to host CEPOL**

The Council noted that, during lunch, Ministers agreed by common accord that as soon as CEPOL moves out from Bramshill, it should be hosted in Budapest (HU). The legislative act will need to be adopted as soon as possible, on the basis of Article 87(2)(b) TFEU under the ordinary legislative procedure.

The Luxembourg delegation made a declaration as set out in the Annex to these minutes (p.12). France supported in principle the preoccupation expressed by the Luxembourg delegation.

**11. Issues related to the free movement of persons**

– Interim report from the Commission

The Council took note of the interim report by the Commission, presented orally, on issues related to the free movement of persons. The Commission concluded provisionally that it had not found evidence on widespread abuse of free movement rights. It nevertheless proposed a number of measures within the current legal framework to improve implementation.

The Council invited the Commission to continue collection and analysis of data with a view to submitting the final report to the JHA Council in December 2013.

**12. Syria: Protection of refugees, latest developments**

The Council recalled the strong EU commitment to step up the assistance to the concerned populations in Syria and its neighbouring countries and invited Member States to improve their efforts in this area, in particular if the situation in Syria continues to deteriorate.

The Council welcomed the progress being made towards the establishment of a Regional Protection Programme and invited the Commission to pursue its important work on this programme concerning both the situation of the refugees as well as the development aspects in that region of the Middle East.

The Council took note of the results of the fact-finding mission, organised by the Commission in cooperation with EASO and FRONTEX, which visited Bulgaria, Cyprus and Greece, with the objective of monitoring the situation in these Member States in terms of current and potential migratory pressures coming, in particular, from Syria.

Finally, the Council agreed to continue the examination of the situation in Syria and, in particular, the protection of Syrian refugees at one of its next meetings.

13. **Recent events in Lampedusa: Problem of migration flows and loss of life at sea in the Mediterranean**

– As requested by Italy

During his intervention, the Italian Minister recalled the tragic events that occurred off the coast of Lampedusa and the high number of casualties and made several suggestions in order to avoid the recurrence of such tragic accidents in the Mediterranean. In particular, he called for a joint task-force Italy-Commission to be convened with the objective of identifying concrete actions to address the current situation. Several Member States and the Commission supported the proposal.

During the debate that followed, Ministers expressed solidarity to Italy for the tragic events of Lampedusa. The need to reinforce cooperation with the countries of origin and transit in the area of illegal migration was generally underlined, to address the root causes of this phenomenon. The need to reinforce the fight against smuggling and human trafficking was also widely underlined, as well as the importance of strengthening the role and the capacities of FRONTEX. The Council agreed to keep this issue under close examination.

14. **First Annual Relocation Forum, 25 September 2013**

- Information from the Commission

The Council took note of the information provided by the Commission on the results of the First Annual Relocation Forum (Brussels, 25 September 2013). Malta underlined the importance of concrete solidarity between Member States on the implementation of relocation in the Union.

15. **Any other business**

- **Capabilities for civilian CSDP missions** (as requested by the EEAS)

HR Ashton gave a brief overview of the current CSDP missions and explained that more resources will have to be devoted on ensuring the security of the staff involved. She thanked the Home Affairs and Justice Ministers for their contribution to the missions and asked them to continue to do more in this field as setting up and maintaining such missions remains a challenge. Finally, she stressed the importance of having exit strategies in place

- **Outcome of the Informal meeting of Home Affairs Ministers of Schengen States with External Land Borders**

= Information by Finland

The Council took note of the information provided by the Finnish and Polish delegations on the outcome of the informal meeting of Home Affairs Ministers of Schengen States with external land borders.

- **Greece's Revised Action Plan on Asylum and Migration Management**

= Information by Greece  
14347/13 ASIM 79 COMIX 529

The Council noted the efforts of Greece to improve its asylum and migration systems.

The Commission stated its intentions to carry out on-site visits to assess the implementation of the Greek Action Plan.

\*\*\*\*\*

**STATEMENTS FOR THE COUNCIL MINUTES**

**Ad "A" item 5:**            **Proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis**

**STATEMENT BY THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**

"The European Parliament, the Council and the Commission welcome the adoption of the Regulation amending the Schengen Borders Code in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis. They believe that these new mechanisms address adequately the call of the European Council in its Conclusions of 24 June 2011 for an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area and for an effective and reliable monitoring and evaluation system in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU acquis, while recalling that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

They state that this amendment to the Schengen Borders Code will reinforce the coordination and cooperation at the level of the Union by providing on the one hand for criteria for any reintroduction of border controls by Member States and on the other hand for an EU-based mechanism to respond to truly critical situations where the overall functioning of the area without internal border controls is put at risk.

They underline that this new evaluation system is an EU-based mechanism and that it will cover all aspects of the Schengen acquis and involve experts from the Member States, the Commission and relevant EU agencies.

They understand that any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text."

**STATEMENT BY THE COMMISSION  
on article 21 - committee procedure**

"The Commission underlines that it is contrary to the letter and to the spirit of Regulation (EU) No 182/2011 (OJ L 55, 28.2.2011, p. 13) to invoke Article 5(4), subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5(4) recourse to subparagraph 2, point b) cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified."

## STATEMENT BY GERMANY

"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) is based in particular on Article 62(1) and (2)(a) of the Treaty establishing the European Community, which has now been replaced by Article 77 of the Treaty on the Functioning of the European Union. According to those provisions, the Union is to develop a policy with a view to, inter alia, ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders.

Article 72 of the TFEU makes it clear that Title V of the TFEU, to which Article 77 belongs, does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. Thus while the legislative powers of the European Union do extend to regulating the crossing of the internal borders, they do not stretch to the exercise of police powers to maintain law and order and safeguard internal security.

The Federal Republic of Germany therefore expects that the evaluation mechanism will also deal only with whether there really is an absence of any controls when crossing internal borders and not with the exercise of police powers within the territory. The exercise of police powers within the territory falls exclusively within the scope of national sovereignty and is not covered by the evaluation mechanism."

## STATEMENT BY THE UK

"The UK has consistently supported this measure but at this time cannot support its adoption given it remains under scrutiny in our national Parliament, where it will be debated in November."

**Ad "A" item 12: Council Decision authorising the Commission to open negotiations on an agreement between the European Union and Iceland, Norway and Liechtenstein on the future financial contributions of the EEA EFTA States to economic and social cohesion in the European Economic Area**

## STATEMENT BY THE COMMISSION

"The Commission considers that a Council Decision authorising the opening of negotiations should not indicate a substantive legal basis. It is premature to determine at such early stage the correct substantive legal basis for signature and conclusion of a future agreement. The choice of the substantive legal basis will need to be done, according to settled case-law of the Court of Justice, on the basis of objective factors such as the aim and content of the agreement".

**Ad "A" item 13: Council Decision to authorise the Commission to open negotiations on behalf of the European Union for a new Protocol to the Fisheries Partnership Agreement with the Democratic Republic of São Tomé and Príncipe - Adoption**

**STATEMENT BY THE COMMISSION**

"The Commission does not consider it necessary that a Council Decision authorising the opening of negotiations indicates a substantive legal basis."

**STATEMENT BY THE NETHERLANDS AND THE UNITED KINGDOM**

"The Netherlands and the United Kingdom are of the view that the ex post evaluation of the current protocol to the Fisheries Partnership Agreement with the Democratic Republic of São Tomé and Príncipe raises concerns for the negotiation of a new protocol, which is why they cannot support this. These delegations wish, in particular, to express their concern about the level of shark fishing in the waters of the Democratic Republic of São Tomé and Príncipe. It would appear that there is no clear management system in force to provide for the necessary protection of these species. Also, the ex post evaluation raises doubts that the protocol provides sufficient benefits to the local fishing industry. Furthermore, the economic return for the European Union does not appear to represent good value for money."

\*\*\*\*\*

**Ad agenda item 10: Provisional arrangements to host CEPOL**

**STATEMENT BY LUXEMBOURG**

"It is understood that the procedure suggested is to be applied without prejudice to paragraph 6 of the Common Approach annexed to the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19 July 2012, which recalls that political decisions on the seats of decentralised agencies are to be taken by representatives of the Member States meeting at Head of State or government level, or by the Council. Luxembourg recalls that the Joint Statement on decentralised agencies stipulates that the institutions will take the Common Approach into account in the context of their decisions concerning EU decentralised agencies, following a case by case analysis. Luxembourg can agree to the suggested procedure for reaching a political agreement on the provisional seat of CEPOL only insofar as the purpose of that procedure is to determine the provisional seat of an agency in accordance with a legal instrument in force."