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COMIX 377**

ADDENDUM to DRAFT MINUTES

Subject: **3172nd meeting of the Council of the European Union (JUSTICE AND HOME AFFAIRS), held in Luxembourg on 7 and 8 June 2012**

PUBLIC DELIBERATION ITEMS¹

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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).

LEGISLATIVE DELIBERATIONS

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

"A" ITEMS

1. Directive of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) - (recast) [Second reading] (LA+S)

PE-CONS 2/12 ENV 38 MI 42 CODEC 179 OC 21

+ COR 1 (fi)

+ REV 1 (hu)

The Council approved the European Parliament's amendment to the Council's position.

The Directive is deemed to have been adopted in the form of the Council's position at first reading thus amended, with the Austrian delegation abstaining, pursuant to Article 294(8)(a) of the Treaty on the Functioning of the European Union. (Legal basis: Article 192(1) of the TFEU).

Statement by the Commission on Product Design **(WEEE Article 4)**

"Eco-design measures can help to facilitate meeting the targets of the Directive on waste electrical and electronic equipment in line with the Roadmap on Resource Efficiency (COM(2011)571). The Commission will, if and when introducing new or reviewing the implementing measures adopted pursuant to Directive 2009/125/EC on products also covered by the WEEE Directive, take into account the parameters for re-use and recycling as set out in Annex 1 part 1 of the Directive 2009/125/EC, and assess the feasibility of introducing requirements on re-usability, easy dismantling and recyclability of such products."

Statement by the Commission on specific derogations from the collection targets **(WEEE Article 7)**

"The new WEEE Directive in Article 7(4) creates the possibility for transitional arrangements in order to address difficulties faced by a Member State in meeting the collection targets of that Article, as a result of specific circumstances. The Commission underlines that high collection targets of WEEE are important for a resource-efficient Europe and that the transitional arrangements can only be applied in exceptional circumstances. The difficulties faced and the specific circumstances on which they are based must be objective, well documented, and verifiable."

Statement by the Commission on nanomaterials
(WEEE Article 8 and Annex VII)

"The European Parliament and the Council have agreed to invite the Commission to evaluate whether specific treatment may be necessary to address nanomaterials contained in EEE. In this context the Commission understands nanomaterials to be those falling under the definition set out in the Commission Recommendation 696/2011. Potential risks posed by such nanomaterials would be identified with tools available under the appropriate legislation for this purpose. Where specific nanomaterials have been shown to pose risks to human health or the environment, the Commission will assess whether specific treatment may be necessary and amend Annex VII as appropriate."

Statement by the Commission concerning the use of implementing acts
(WEEE Articles 7(5) and 23(4))

"The Commission considers that the powers conferred on the Commission in Articles 7(5) and 23(4) should be delegated powers, in order to properly reflect the nature of the powers conferred, in accordance with Article 290 of the Treaty on the Functioning of the EU. However, in a spirit of compromise, the Commission will not stand against a qualified majority vote in favour of the Presidency text. Nevertheless, on this specific issue, the Commission reserves its right to avail itself of the legal remedies provided by the Treaty with a view to seeking clarification by the Court on the issue of delimitation between Articles 290 and 291."

Statement by the Commission
on the procedure of adoption of implementing acts

"The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 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 Austria

"Austria would like to reiterate its reservation against the possibility as set out in Art 17 (1) to allow a foreign producer to appoint a person as an authorised representative. This would endanger proper financing of the collection and recycling of WEEE.

For this reason Austria will, when implementing the WEEE Directive, stipulate the same requirements for such an authorised representative, regarding financial warranties and criminal liability, as for the producer. In consequence, if need be, the national producer, as defined in Art 3(1) (f) (ii) and (iii), would need to assume responsibility for the fulfilment of the producer's obligations.

Furthermore, Austria draws attention to a situation where two different persons will be responsible for electrical appliances containing batteries: On the one hand, according to the Batteries Directive, the importer of the battery, and on the other hand, according to the WEEE Directive, a potential legal representative of a producer from another Member State.

Austria is concerned as to the expected increase of the administrative burden for instance related to the 6th category of WEEE as foreseen in Annex III and IV."

Statement by Malta

"Malta believes that the text laid down in Article 17(1) is not consistent with the notion of authorised representative since it requires Member States to allow the appointment of an authorised representative even in the case when a producer is already established in the same Member State where such representative is being appointed. Malta, therefore, does not agree with the appointment of an authorised representative in the case of producers as defined in Article 3(1)(f)(i) to (iii), since these are already established in the Member State they are selling to, and therefore, do not need an authorised representative to be responsible for fulfilling their obligations under this Directive."

2. Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession [First reading] (LA+S)

PE-CONS 14/12 JUSTCIV 94 EJUSTICE 25 CODEC 712 OC 142

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, with the Maltese delegation voting against, 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 the vote. (Legal basis: Article 81(2) of the TFEU).

Statement by Malta

"Malta regrets that the draft Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, does not take into account Malta's concerns.

Throughout the negotiations, Malta made it very clear that this Regulation will have far-reaching effects on the fundamental elements of Malta's legal regime regulating succession, in particular as regards the rules concerning the applicable law and the adoption of a single rule to regulate the whole estate of the deceased without any distinction between movable and immovable property. The common law approach that lies at the core of Malta's succession law has always served to indicate with clarity and certainty the legal regime that is to be applied in inheritance matters.

The law applicable to the formal validity of dispositions *causa mortis* will irremediably complicate matters for Malta's practitioners and citizens alike as it is going to introduce new types of wills such as holograph wills which do not guarantee legal certainty and formality. Likewise, the new rules regarding the administration of the estate that will be adopted under the Regulation as well as the provisions on agreements as to succession, will create uncertainty under Maltese law.

In view of the above, Malta is voting against the adoption of the draft Regulation."

3. Regulation of the European Parliament and of the Council on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers (Recast) [First reading] (LA)

PE-CONS 18/12 MAR 36 ENV 246 CODEC 843 OC 163

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 100(2) of the TFEU).

AGENDA ITEMS

3. Schengen governance

- **Schengen Borders Code:
Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) N° 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances. [First reading]**
 - = General approach
10319/1/12 REV 1 SCHENGEN 39 SCH-EVAL 71 FRONT 81 COMIX 326
CODEC 1415
6161/4/12 REV 4 SCHENGEN 9 FRONT 15 SCH-EVAL 17 COMIX 83
CODEC 292

- **Schengen Evaluation Mechanism:
Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis [First reading]**
 - = General approach
10319/1/12 REV 1 SCHENGEN 39 SCH-EVAL 71 FRONT 81 COMIX 326
CODEC 1415
5754/6/12 REV 6 SCHENGEN 7 SCH-EVAL 15 FRONT 8 COMIX 50
CODEC 202

The outcome of proceedings, including certain statements by the Commission, Germany and Romania regarding the Schengen Borders Code and the Schengen Evaluation Mechanism proposals, is set out in doc. 11588/12. The statements are to be included in these draft minutes as hereafter.

Statement by the Commission

"The Commission continues to take the view that the appropriate legal basis for the adoption of the Schengen evaluation mechanism is Article 77 TFEU, and that implementing powers for the adoption of reports and recommendations under the mechanism should - in line with the terms of Article 291 TFEU - be delegated to the Commission rather than to the Council. Accordingly, the Commission maintains its position on these two issues, and expressly reserves its rights and powers under the Treaties to challenge these aspects of the Regulation before the Court of Justice."

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 Romania

"Having in mind political guidelines for the strengthening of the Schengen governance, adopted at EU level in 2011, Romania remains of the opinion that Article 77(2)(e) of the TFEU is a suitable legal basis to found a robust, EU-centered Schengen evaluation system on.

However, having also taken note of the opinion expressed by the Council Legal Service, and in a spirit of compromise aimed at achieving swift accord on the Regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis at the level of the Council, Romania would not oppose the change of the said legal basis into Article 70 of the TFEU.

By the same token, Romania remains persuaded that the same spirit of loyal and constructive cooperation will prevail among all Member States in other matters pertaining to the Schengen acquis on which the Council Legal Service would have given a clear opinion."

4. Common European Asylum System (First reading)

- State of play / orientation debate
 - 10431/12 ASILE 88 CODEC 1499
 - 10638/12 EURODAC 3 ENFOPOL 157 CODEC 1503

The Council had an exchange of views on the Common European Asylum System and took note of the report from the Presidency on the state of play regarding the relevant legislative proposals. The Commission presented the Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of EURODAC.

5. Any Other Business

- Information from the Presidency on current legislative proposals

The Presidency reported on developments in relation to the proposal for Directives of the European Parliament and Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer and on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment.

13. Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceeding and on the right to communicate upon arrest (First reading)

General approach

10467/12 DROIPEN 67 COPEN 129 CODEC 1459

The Council reached a general approach on the text of the draft Directive as set out in the annex to doc. 10908/12.

There was consensus among Member States that a declaration of the European Parliament and the Council calling on the Commission to present a legislative proposal on legal aid should be made part of the negotiations with the European Parliament, (doc. 10908/12 pages 1 and 2).

Declarations for the minutes of the Council were presented by the Commission, by the Commission, Spain and Italy, and by Portugal. These are set out hereafter.

Declaration by the Commission

in reply to the draft declaration of the European Parliament and the Council calling on the Commission to present a legislative proposal on legal aid at the earliest:

"On the basis of a detailed analysis of the different national systems and the financial consequences, the Commission has the intention to present in the course of 2013 a proposal for a legal instrument regarding legal aid, in accordance with the Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings."

Declaration by the Commission, Spain and Italy

"The Commission, Spain and Italy note that in the course of the negotiations in the Council, good progress has been made towards strengthening procedural rights, notably on the access to a lawyer in criminal proceedings in the European Union.

The draft Directive as it currently stands still does not satisfy all our concerns as far as protection of fundamental rights and procedural guarantees is concerned. We notably continue to have some important concerns about the derogations included in the current compromise text, including to the principle of confidentiality of the communication between the lawyer and the suspect or accused person, which is a key pillar of the fundamental rights of the person concerned. Our objective is to achieve a high level of protection of fundamental rights on the basis of the standards set out in the Charter of Fundamental Rights. As a matter of principle the application of derogations should be subject to law and judicial control.

Further, as regards minor offences, we believe that exclusions from the scope should be limited to those which are duly and objectively justified.

However, we believe that time is now ripe for starting negotiations with the European Parliament on the draft Directive and we will therefore support the Presidency in carrying on negotiations with the European Parliament on these issues, taking full account of our remaining concerns."

Declaration by Portugal

"Portugal considers that the text of the Directive should be more ambitious as regards the right of access to a lawyer, that it should have a broader scope of application in which minor offences are also included, and that the terms for making derogations to the rights set out in the Directive should be more restricted.

Portugal consequently reserves the right to continue to discuss these issues in the context of the trilogues with the European Parliament and the European Commission."

14. Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) (Brussels I) [First reading]

- General approach
10609/12 JUSTCIV 209 CODEC 1495
+ ADD 1

The Council:

- (a) adopted the draft general approach as a compromise package;

- (b) requested that the wording of Article 5(2), the recitals and the Annexes be finalised at technical level as soon as possible;
- (c) took note of a parliamentary scrutiny reservation tabled by the United Kingdom delegation.

15. Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017

- Requesting the consent of the European Parliament
10615/12 FREMP 83 JAI 375 COSCE 18 COHOM 123

The Council endorsed the text of the proposal as set out in doc. 10615/12 and agreed that, subject to legal linguistic revision, the text would be sent to the European Parliament for its consent.

The Council also agreed on the text of two declarations of the Council that will be made at the time of formal adoption. The Commission informed the Council that it would also make a declaration at the stage of formal adoption, regretting the exclusion of police cooperation and judicial cooperation in criminal matters.

The Council noted three parliamentary reservations that would have to be lifted before final adoption but the nature of which does not prevent the Council from transmitting the text to the European Parliament for its consent.

16. Multiannual Financial Framework 2014-2020 (Justice Affairs)

a) Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Justice programme (First reading)

- Partial general approach
10645/12 JAI 380 CADREFIN 277 DROIPEN 70 COPEN 131 CATS 41
JUSTCIV 213 EJUSTICE 48 JURINFO 24 CORDROGUE 41
JAIEX 40 CODEC 1507

The Council reached partial general approach on the proposal. The partial general approach covers the whole text and all recitals with the exception of the question of inclusion of drugs policy aspects and the budget figures.

b) Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Rights and Citizenship programme (First reading)

- Partial general approach
10642/12 JAI 379 CADREFIN 275 FREMP 84 DATAPROTECT 68
JAIEX 39 CULT 87 SOC 465 CODEC 1505

The Council reached partial general approach on the proposal. The partial general approach covers the whole text and all recitals with the exception of the budget figures.

The UK delegation entered a parliamentary scrutiny reservation on the provision on the protection of EU financial interests.

17. Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (First reading)

- Orientation debate / certain issues
10611/12 JUSTCIV 210 CONSOM 85 CODEC 1496

The Council held an orientation debate on how to handle the further negotiations on the proposal for a regulation on a Common European Sales Law (doc. 15429/11). The Council agreed that:

- there was overall agreement that work should start on the examination of the substance of the Annex of the proposal;
- during the actual examination of the Annex, sufficient time must be allowed for the proposal to be examined thoroughly, so as to take into consideration the views and concerns of all the Member States;
- attention should be given to the examination of whether the individual parts of the proposal would in fact work towards removing the practical obstacles to the internal market;
- a final position on the legal basis of the proposed instrument should only be taken once the final structure and scope of the proposal are clear.

18. Any Other Business

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

The Presidency informed the Council on progress made on the initiative for a Directive on a European Investigation Order in criminal matters, on the proposal for a Directive on attacks against information systems, and on the proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime.

- **Confiscation of the proceeds of crime (requested by the Irish Delegation)**
10759/12 DROIPEN 71 COPEN 133 CODEC 1528

The Irish Minister informed his colleagues on the Irish experience in accordance with the reference document.

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