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2014/0338 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
repealing certain acts in the field of police cooperation and judicial cooperation in
criminal matters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Ensuring that the EU legislative *acquis* remains up to date and fit for purpose is a priority for the Commission. Already in the Inter-institutional agreement of 16.12.2003 on better law-making¹, the European Parliament, the Council and the Commission agreed that the volume of the law of the European Union should be reduced by repealing acts that are no longer applied. Such acts should be removed from the law *acquis* of the European Union to improve transparency and give a higher degree of certainty for all citizens and all Member States.

This is in line with the Commission's policy on Regulatory Fitness. In its Communication of June 2014 on "Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook"², the Commission stated that it was screening the *acquis* in respect of police cooperation and judicial cooperation in criminal matters in order to identify acts which could be repealed in the context of the expiry of the transitional period set out in the Treaties.

The Commission has now completed its assessment on the legal acts related to the area of freedom, security and justice, including the former third pillar *acquis*. A number of acts adopted in recent decades have exhausted all their effects. They are no longer relevant because of their temporary nature or because their content has been taken up by successive acts. For reasons of legal certainty, the Commission proposes that the measures referred to in this proposal are repealed by the European Parliament and the Council.

I. *Decision of the Executive Committee SCH/Com-ex (93)14 on improving practical judicial cooperation for combating drug trafficking*³ has only addressed the situation when a Member State refused practical judicial cooperation in combating drug trafficking. That Decision became obsolete since entry into force of the Convention on Mutual assistance in Criminal matters between the Member States of the European Union⁴ that provides for a broader co-operation among Member States also in the drug policy area.

II. *Declaration of the Executive Committee SCH/Com-ex (97) decl. 13 rev 2*⁵ addressed the situations of the abductions of minors or the unlawful removal of a minor by one of the parents from the person to whom the right of custody has been attributed. That Declaration became obsolete after the entry into force of Regulation 562/2006⁶ and Commission Implementing Decision 2013/115/EU⁷ providing for new rules on the check of minors crossing an external border and in relation to the corresponding activities of the SIRENE bureau.

¹ OJ C 321, 31.12.2003, p. 1.

² COM(2014) 368 final, 18.6.2014.

³ Decision of the Executive Committee of 14 December 1993 on improving practical judicial cooperation for combating drug trafficking (SCH/Com-ex (93) 14) (OJ L 239, 22.9.2000, p. 427).

⁴ Convention of 29 May 2000, established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual assistance in Criminal matters between the Member States of the European Union and Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union (OJ C 326 of 21.11.2001).

⁵ Declaration of the Executive Committee of 9 February 1998 on the abduction of minors (SCH/Com-ex (97) decl. 13 rev 2) (OJ L 239, 22.9.2000, p. 436).

⁶ 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) (OJ L 105, 13.4.2006, p. 1–32).

⁷ Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 71, 14.3.2013, p. 1).

III. *Decision of the Executive Committee SCH/Com-ex (98) 52*⁸ adopted the Schengen handbook on cross-border police cooperation assisting Member States in carrying out cross-border operations. That Decision became obsolete after the handbook's content has been included in the more recent Updated catalogue of recommendations for the correct application of the Schengen *acquis* and best practices: police cooperation⁹, Handbook on cross-border operations¹⁰ and Compendium on law enforcement liaison officers¹¹.

IV. *Council Decision 2008/173/EC*¹² set out the detailed scope, organization, coordination and validation procedures for certain Schengen Information System II (SIS II) tests with the aim to assess whether during the development phase the SIS II could work in accordance with the technical and functional requirements as defined in the SIS II legal instruments. That Decision exhausted its legal effect once the SIS II went live on 9 April 2013.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Dialogue on identifying legal measures of the former third pillar *acquis* that became obsolete took place during 2014 among the Commission and the representatives of the Member States and of the Council Secretariat within the Friends of the Presidency Group that has been activated with a view to examining all the issues linked to the end of the 5 year transitional period set out in Article 10 of Protocol 36 to the Treaties.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

The proposal repeals a number of legal measures in the field of police cooperation and judicial cooperation in criminal matters that have been identified as obsolete.

Legal basis

The legal basis for repealing Decision of the Executive Committee of 14 December 1993 on improving practical judicial cooperation for combating drug trafficking (SCH/Com-ex (93)14) is Article 82 (1) (d) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Declaration of the Executive Committee of 9 February 1998 on the abduction of minors (SCH/Com-ex (97) decl. 13 rev 2) is Article 87(2)(a) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Decision of the Executive Committee of 16 December 1998 on cross-border police cooperation in the area of crime prevention and detection (SCH/Com-ex (98) 52) is Article 87(2)(c) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Council Decision 2008/173/EC of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) is Article 87(2)(a) of the Treaty on the Functioning of the European Union.

⁸ Decision of the Executive Committee of 16 December 1998 on the Handbook on cross-border police cooperation (SCH/Com-ex (98) 52) (OJ L 239, 22.9.2000, p. 408).

⁹ 15785/2/10 REV 2, 25 January 2011.

¹⁰ 10505/2/09 REV 2, 3 September 2009.

¹¹ 10504/2/09 REV 2, 17 July 2009.

¹² Council Decision 2008/173/EC of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) (OJ L 57, 1.3.2008, p. 14).

Principles of subsidiarity and proportionality

The measures concerned by this proposal are obsolete, either because their content has been taken up by successive acts or because they are no longer relevant due to their temporary nature. Therefore, it is in line with the principles of subsidiarity and of proportionality to repeal those measures. It is for the Union legislator to adopt the necessary measures to that effect.

Choice of instrument

Proposed instrument: European Parliament and Council decision.

4. BUDGETARY IMPLICATION

The proposal has no budgetary impact.

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(d) and Article 87(2)(a) and (c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Improving the transparency of Union law is an essential element of the better law-making strategy that the institutions of the Union are implementing. In that context it is appropriate to remove from the legislation in force those acts which no longer serve any purpose.
- (2) A number of acts adopted in the field of police cooperation and judicial cooperation in criminal matters are no longer relevant due to their temporary nature or because their content has been taken up by successive acts, even though they have not been repealed.
- (3) Decision of the Executive Committee SCH/Com-ex (93)14¹³ aimed at improving practical judicial cooperation for combating drug trafficking only for cases of refusal of cooperation by a Member State. That decision became obsolete since entry into force of the Convention on Mutual assistance in Criminal matters between the Member States of the European Union¹⁴ that provides for a broader co-operation among Member States in the drug policy.
- (4) Declaration of the Executive Committee SCH/Com-ex (97) decl. 13 rev 2¹⁵ addressed the situations of the abductions of minors or the unlawful removal of a minor by one of the parents from the person to whom the right of custody has been attributed. That declaration became obsolete after the entry into force of Regulation (EC) No 562/2006

¹³ Decision of the Executive Committee of 14 December 1993 on improving practical judicial cooperation for combating drug trafficking (SCH/Com-ex (93) 14) (OJ L 239, 22.9.2000, p. 427)

¹⁴ Convention of 29 May 2000, established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual assistance in Criminal matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 3) and Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union (OJ C 326, 21.11.2001, p. 1).

¹⁵ Declaration of the Executive Committee of 9 February 1998 on the abduction of minors (SCH/Com-ex (97) decl. 13 rev 2) (OJ L 239, 22.9.2000, p. 436).

of the European Parliament and of the Council¹⁶ and Commission Implementing Decision 2013/115/EU¹⁷ providing for new rules on the check of minors crossing an external border and in relation to the corresponding activities of the SIRENE bureaux.

- (5) Decision of the Executive Committee SCH/Com-ex (98) 52¹⁸ adopted the Schengen handbook on cross-border police cooperation assisting Member States in carrying out cross-border operations. That decision became obsolete after the handbook's content has been included in the more recent Updated catalogue of recommendations for the correct application of the Schengen *acquis* and best practices: police cooperation, Handbook on cross-border operations and Compendium on law enforcement liaison officers.
- (6) Council Decision 2008/173/EC¹⁹ set out the detailed scope, organization, coordination and validation procedures for certain tests aiming at assessing whether the Schengen Information System II (SIS II) complies with the technical and functional requirements as defined in the SIS II legal instruments. That decision exhausted its legal effect once the SIS II started operation on 9 April 2013.
- (7) For reasons of legal certainty and clarity, those obsolete Decisions and Declarations should be repealed.
- (8) Since the objective of this Decision, namely the repeal of a number of obsolete Union acts in the field of police cooperation and judicial cooperation in criminal matters cannot be achieved by Member States but only at Union level, this Decision complies with the requirements of the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.
- (9) In accordance with Article 1 of the Protocol No 22 on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision.
- (10) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland is taking part in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 6(2) of Council Decision 2002/192/EC²⁰.
- (11) On 24 July 2013, the United Kingdom made the notification referred to in the first subparagraph of Article 10(4) of Protocol (No 36) on transitional provisions that it does not accept, with respect to the acts referred to in Article 10(1) of that Protocol, the powers of the institutions referred to in Article 10(1) of Protocol. As a consequence, all acts referred to in Article 10(1) of that Protocol shall cease to apply to the United Kingdom as from 1 December 2014. On 20 November 2014 the United

¹⁶ 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) (OJ L 105, 13.4.2006, p. 1).

¹⁷ Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 71, 14.3.2013, p. 1).

¹⁸ Decision of the Executive Committee of 16 December 1998 on the Handbook on cross-border police cooperation (SCH/Com-ex (98) 52) (OJ L 239, 22.9.2000, p. 408).

¹⁹ Council Decision 2008/173/EC of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) (OJ L 57, 1.3.2008, p. 14).

²⁰ OJ L 64, 7.3.2002, p. 20.

Kingdom made the notification referred to in Article 10(5) of that Protocol. The United Kingdom notified, with effect on 1 December 2014, its wish to participate in 35 acts which would otherwise cease to apply to it as from the same date pursuant to Article 10(4) of the same Protocol. This list of 35 notified acts does not include the ones referred to in this Decision. The United Kingdom is therefore not taking part in the adoption of this Decision.

- (12) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*²¹ which fall within the area referred to in Article 1 of Council Decision 1999/437/EC²².
- (13) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*²³, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/149/JHA²⁴.
- (14) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*²⁵, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU²⁶,

HAVE ADOPTED THIS DECISION:

Article 1

Repeal of obsolete acts

The Decisions of the Executive Committee SCH/Com-ex (93)14 and (98) 52, the Declaration of the Executive Committee SCH/Com-ex (97) decl. 13 rev 2 and the Council Decision 2008/173/EC are repealed.

²¹ OJ L 176, 10.7.1999, p. 36.

²² Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p.31).

²³ OJ L 53, 27.2.2008, p. 52.

²⁴ Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50)

²⁵ OJ L 160, 18.6.2011, p. 3.

²⁶ Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

Article 2

Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the European Parliament
The President

For the Council
The President