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2014/0339 (COD)

Proposal for a

REGULATION 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in respect of police cooperation and judicial cooperation in criminal matters in order to identify acts which could be repealed in the context of the expiry of the transitional period set out in the Treaties.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 revoked by the European Parliament and the Council.

I. *Council Joint Action 96/610/JHA*³ created a *Directory of specialised counterterrorist competences, skills and expertise* in order to make them more widely and readily available to agencies in all Member States, thus enhancing Member States' counter-terrorist capability. That Joint Action became obsolete since Council Decision 2009/371/JHA⁴ entrusted Europol to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating terrorism and the Council Decision 2008/615/JHA⁵ (so-called Prüm Decision) introduced a new framework for cross-border cooperation on combating terrorism.

II. *Council Joint Action 96/699/JHA*⁶ on the exchange of information on the chemical profiling of drugs to facilitate combating illicit drug trafficking. That Joint Action became obsolete after the entry into force of the Council Decision 2009/371/JHA⁷ establishing Europol that has incorporated the formerly existing Drug Unit and of the Convention on

¹ OJ C 321, 31.12.2003, p. 1.

² COM(2014) 368 final, 18.6.2014.

³ Joint Action 96/610/JHA of 15 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union (OJ L 273, 25.10.1996, p. 1).

⁴ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

⁵ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

⁶ Council Joint Action 96/699/JHA of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking (OJ L 322 of 12 December 1996, p. 5).

⁷ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121 of 15.5.2009, p. 37.

Mutual assistance in Criminal matters between the Member States of the European Union⁸ that provides for a broader co-operation among Member States in the drug policy area.

III. *Council Joint Action 96/747/JHA⁹ aimed at strengthening the cooperation between Member States' law enforcement agencies by providing assistance in cooperation in fighting crime across the EU.* That Joint Action became obsolete since Council Decision 2009/371/JHA¹⁰ entrusted Europol with developing specialist knowledge of the investigative procedures of the Member States' competent authorities and providing advice to the national authorities on investigations. Moreover, following the development by Europol of the Europol Platform for Experts (EPE), Member States' Heads of Europol National Unit (HENU) took the decision on 16 February 2012 to close the directory provided for by the Joint Action 96/747/JHA.

IV. *Council Joint Action 96/750/JHA¹¹ concerning the approximation of the laws and practices to combat drug addiction and to combat illegal drug trafficking.* That Joint Action became obsolete since entry into force of the Convention on Mutual assistance in Criminal matters between the Member States of the European Union¹² that provides for a broader co-operation among Member States also in the drug policy area and Council Framework Decision 2004/757/JHA¹³ on minimum provisions on criminal acts and penalties in the field of illicit drug trafficking that has laid down more stringent rules on definitions and sanction of certain criminal acts in the drug policy area.

V. *Council Joint Action 97/339/JHA¹⁴ allowed for cooperation and mandated information sharing between Member States regarding large scale events in order to maintain law and order and prevent criminal offences.* That Joint Action became obsolete since the Council Decision 2008/615/JHA¹⁵ (so-called Prüm Decision) introduced a new framework for

⁸ 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.

⁹ Council Joint Action 96/747/JHA of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the creation and maintenance of a directory of specialized competences, skills and expertise in the fight against international organized crime, in order to facilitate law enforcement cooperation between Member States of the European Union (OJ L 342, 31.12.1996, p.2).

¹⁰ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

¹¹ Council Joint Action 96/750/JHA of 17 December 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the approximation of the laws and practices of the Member States of the EU to combat drug addiction and to prevent and combat illegal drug trafficking (OJ L 342 of 31 December 1996, p. 6).

¹² 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).

¹³ Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking OJ L 335, 11.11.2004, p. 8.

¹⁴ Council Joint Action 97/339/JHA of 26 May 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union with regard to cooperation on law and order and security (OJ L 147, 5.06.1997, p.1).

¹⁵ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

cooperation for maintaining public order and security for major events and exchange of data. In addition, Council Decisions 2002/348/JHA¹⁶ and 2007/412/JHA¹⁷ set up National Football Information Points to coordinate and facilitate international police co-operation and information exchange in connection with football matches with an international dimension.

VI. *Council Joint Action 97/372/JHA*¹⁸ aimed at increasing information and intelligence sharing among customs authorities and other law enforcement authorities in particular on drugs. That Joint Action became obsolete after the entry into force of the Naples Convention¹⁹ which provides for more detailed rules on the mutual assistance and cooperation between Member States for preventing and detecting infringements of national customs provisions, and prosecuting and punishing infringements of Community and national customs provisions. Furthermore, Council Decision 2009/917/JHA²⁰ increased the effectiveness of the cooperation and control procedures of the customs authorities by setting up a customs information system (CIS) with the aim to prevent, investigate and prosecute breaches of Community customs or agricultural legislation. In addition Council Decision 2009/371/JHA entrusted Europol with tasks aimed at supporting customs cooperation.

VII. *Council Joint Action 98/427/JHA*²¹ on good practice in mutual legal assistance in Criminal Matters became obsolete since the entry into force of the Convention on Mutual assistance in Criminal matters between the Member States of the European Union²² that provides for a broader co-operation in criminal matters among Member States.

VIII. *Council Act of 3 December 1998 laying down the staff regulations applicable to Europol*²³ employees applied to staff engaged by Europol before the entry into force of Council Decision 2009/371/JHA. However, the employment contracts in force are to come soon to their end rendering these staff regulations obsolete. Transitional provisions foreseen by the present proposal ensure that these employment contracts remain to be governed by that act pending their termination.

¹⁶ Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension (OJ L 121, 8.5.2002, p. 1).

¹⁷ Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension (OJ L 155, 15.6.2007, p. 76).

¹⁸ Council Joint Action 97/372/JHA of 9 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, for the refining of targeting criteria, selection methods, etc., and collection of customs and police information (OJ L 159, 17.6.1997, p. 1).

¹⁹ Council Act 98/C 24/01 of 18 December 1997 drawing up, on the basis of Article K3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations (OJ C 24, 23.1.1998).

²⁰ Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20).

²¹ Council Joint Action 98/427/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal in criminal matters.

²² 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).

²³ OJ C 026, 30.01.1999, p. 23.

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 of the former third pillar *acquis* that have been identified as obsolete.

Legal basis

The legal basis for repealing Council Joint Action 96/610/JHA is Article 87(2)(c) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Council Joint Action 96/699/JHA is Article 87(2) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Council Joint Action 96/747/JHA is Article 88(2)(a) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Council Joint Action 96/750/JHA is Article 83 (1) and 87(2) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Council Joint Action 97/339/JHA is Article 87(2) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Joint Action 97/372/JHA is Article 87(2) of the Treaty on the Functioning of the European Union.

The legal basis for repealing Council Joint Action 98/427/JHA is Article 82 (1) of the Treaty on the Functioning of the European Union.

The legal basis for repealing the Council Act of 3 December 1998 laying down the staff regulations applicable to Europol is Article 88 (2) of the Treaty on the Functioning of the European Union.

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 regulation.

Article 88 (2) of the Treaty on the Functioning of the European Union provides that Europol's structure, operation, field of action and tasks are to be determined by the European Parliament and the Council by means of regulations.

A regulation is therefore the form of act expressly provided for in this provision of primary law.

4. BUDGETARY IMPLICATION

The proposal has no budgetary impact

Proposal for a

REGULATION 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) and 83 (1) and 87(2) and Article 88(2) thereof,

Having regard to the proposal from the European Commission²⁴,

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 lawmaking 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 have become obsolete due to their temporary nature or because their content has been taken up by successive acts, even though they have not been repealed.
- (3) Council Joint Action 96/610/JHA²⁵ created a Directory of specialised counterterrorist competences, skills and expertise in order to make them more widely and readily available to agencies in all Member States. That Joint Action became obsolete since Council Decision 2009/371/JHA²⁶ entrusted Europol to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating terrorism and the Council Decision 2008/615/JHA²⁷ introduced a new framework for cross-border cooperation on combating terrorism.
- (4) By Council Joint Action 96/699/JHA²⁸ Europol Drugs Unit was designated as the authority to which information from Member States concerning chemical profiling

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²⁵ Joint Action 96/610/JHA of 15 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise to facilitate counter- terrorist cooperation between the Member States of the European Union (OJ L 273, 25.10.1996, p. 1).

²⁶ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

²⁷ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

²⁸ Council Joint Action 96/699/JHA of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking (OJ L 322 of 12 December 1996, p. 5).

was to be transmitted. That joint action became obsolete after the entry into force of the Council Decision 2009/371/JHA²⁹ and of the Convention on Mutual assistance in Criminal matters between the Member States³⁰.

- (5) Council Joint Action 96/747/JHA³¹ aimed at strengthening the cooperation between Member States' law enforcement agencies by creating a directory of areas of specialized competencies, skills and expertise. That joint action became obsolete after the entry into force of Decision 2009/371/JHA which entrusted Europol with the task of developing specialist knowledge of the investigative procedures of the Member States' competent authorities and to provide advice on investigations.
- (6) Council Joint Action 96/750/JHA³² aimed at reinforcing the cooperation of the relevant authorities of the Member States in the fight against drug addiction and to call on Member States to approximate their laws to make them mutually compatible to the extent necessary to prevent and combat illegal drug trafficking in the Union. That joint action became obsolete since entry into force of the Convention on Mutual assistance in Criminal matters between the Member States of the European Union and of Council Framework Decision 2004/757/JHA³³.
- (7) Council Joint Action 97/339/JHA³⁴ allowed for cooperation and mandated information sharing between Member States regarding large scale events which are attended by large numbers of people from more than one Member State in order to maintain law and order, protect people and their property, and prevent criminal offences. That joint action became obsolete after the entry into force of Council Decisions 2008/615/JHA³⁵, 2002/348/JHA³⁶ and 2007/412/JHA³⁷ which provided for new rules on the exchange of non-personal and personal data and other forms of cooperation for maintaining public order and security for major events.

²⁹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), (OJ L 121 of 15.5.2009, p. 37).

³⁰ 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).

³¹ Joint Action 96/747/JHA of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the creation and maintenance of a directory of specialized competences, skills and expertise in the fight against international organized crime, in order to facilitate law enforcement cooperation between the Member States of the European Union (OJ L 342, 31.12.1996, p. 2).

³² Council Joint Action 96/750/JHA of 17 December 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the approximation of the laws and practices of the Member States of the EU to combat drug addiction and to prevent and combat illegal drug trafficking (OJ L 342 of 31 December 1996, p. 6).

³³ Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ L 335, 11.11.2004, p. 8).

³⁴ Joint Action 97/339/JHA of 26 May 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union with regard to cooperation on law and order and security (OJ L 147, 5.6.1997, p. 1).

³⁵ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

³⁶ Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension (OJ L 121, 8.5.2002, p. 1).

³⁷ Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension (OJ L 155, 15.6.2007, p. 76).

- (8) Council Joint Action 97/372/JHA³⁸ aimed at increasing information and intelligence sharing among customs authorities and other law enforcement authorities in particular on drugs. That joint action became obsolete after the entry into force of Council Act 98/C 24/01³⁹ drawing up the Naples Convention which introduced detailed rules on mutual assistance and cooperation between the Member States for preventing and detecting infringements of national customs provisions, of Council Decision 2009/917/JHA⁴⁰ that increased the effectiveness of the cooperation and control procedures of the customs authorities by setting up a customs information system (CIS) and of the Council Decision 2009/371/JHA that provided Europol with tasks aimed at supporting customs cooperation.
- (9) Council Joint Action 98/427/JHA⁴¹ on good practice in mutual legal assistance in Criminal Matters aimed at exchange of good practice among Member States for executing requests for legal assistance in criminal matters. That joint action has become obsolete. It has never been evaluated and has de facto lost its relevance with the entry into force of the Convention on Mutual assistance in Criminal matters between the Member States.
- (10) The Council Act 1999/C 26/07⁴² still applies to staff engaged by Europol before the entry into force of the Council Decision 2009/371/JHA. However the employment contracts in force are to come soon to their end and thus rendering these staff regulations obsolete.
- (11) For reasons of legal certainty and clarity, those obsolete joint actions and the Council Act should be repealed.
- (12) Since the objective of this Regulation, 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 Regulation 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 Regulation does not go beyond what is necessary in order to achieve that objective.
- (13) In accordance with Article 1 of 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 Regulation.
- (14) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European

³⁸ Council Joint Action 97/372/JHA of 9 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, for the refining of targeting criteria, selection methods and collection of customs and police information (OJ L 159, 17.6.1997, p. 1).

³⁹ Council Act 98/C 24/01 of 18 December 1997 drawing up, on the basis of Article K3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations (the Naples Convention) (OJ C 24, 23.1.1998).

⁴⁰ Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20).

⁴¹ Council Joint Action 98/427/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal in criminal matters (OJ L 191, 7.7.1998, p. 1).

⁴² The Council Act 1999/C 26/07 of 3 December 1998 laying down the staff regulations applicable to Europol employees (OJ C 26, 30.1.1999, p. 23).

Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1

Repeal of obsolete acts

The Joint Actions 96/610/JHA, 96/699/JHA, 96/747/JHA, 96/750/JHA, 97/339/JHA, 97/372/JHA 98/427/JHA and the Council Act 1999/C 26/07 are repealed.

Article 2

Transitional provisions

Contracts concluded under the Council Act 1999/C 26/07 shall remain to be governed by that act.

Article 3

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President