



Council of the
European Union

Brussels, 9 April 2015
(OR. en)

6060/1/15
REV 1

LIMITE

PROAPP 5
CATS 23
CODEC 167

**Interinstitutional File:
2014/0339 (COD)**

NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	16334/14 PROAPP 38 CATS 198 CODEC 2407 (COM(2014) 715 FINAL)
Subject:	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

Delegates will find an amended version of Doc 6060/15 revising the Commission's proposal for a Regulation repealing certain acts in the field of police and judicial cooperation in criminal matters attached in the Annex.

The changes made reflect the comments made at the PROAPP (FOP) meeting of 6 March and the written comments received from Member States.

Changes to the Commission's proposal are highlighted in underlined bold and ~~striktthrough~~.

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 Commission ¹,

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 have become obsolete ~~due to their temporary nature or~~ because their content has been taken up by successive **subsequent** acts, even though they have not been repealed.

¹ XXX

- (3) Council Joint Action 96/610/JHA ² 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/JHA ³ entrusted Europol to support and strengthen **mutual cooperation between action by the competent law enforcement authorities of the Member States and their mutual cooperation** in preventing and combating terrorism **and other forms of serious crime** and ~~the~~ Council Decision 2008/615/JHA ⁴ introduced a new framework for cross-border cooperation on combating terrorism.
- (4) By Council Joint Action 96/699/JHA ⁵ Europol Drugs Unit was designated as the authority to which information from Member States concerning chemical profiling was to be transmitted. That joint action became obsolete after the entry into force of the Council Decision 2009/371/JHA ⁶ ~~and of the Convention on Mutual assistance in Criminal matters between the Member States~~ ⁷.

² 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).

³ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

⁴ 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).

⁵ 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).

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

⁷ ~~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).~~

- (5) Council Joint Action 96/747/JHA⁸ aimed at strengthening the cooperation between Member States' law enforcement agencies by creating a directory of areas of specialised 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/JHA⁹ 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/JHA¹⁰.

⁸ 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).

⁹ 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).

¹⁰ 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).

- (7) Council Joint Action 97/339/JHA¹¹ 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/JHA¹², 2002/348/JHA¹³ and 2007/412/JHA¹⁴ 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.
- (8) Council Joint Action 97/372/JHA¹⁵ 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 24/01¹⁶ 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/JHA¹⁷ 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.

¹¹ 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).

¹² 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).

¹³ 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).

¹⁴ 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).

¹⁵ 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).

¹⁶ 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).

¹⁷ 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).

(8a) The Convention of 17 June 1998¹⁸ on Driving Disqualifications, as drawn up by Council Act 98/C 216/01¹⁹, has been ratified by only seven Member States and has never entered into force. In addition, among those Member States having ratified it, only two of them, Ireland and the United Kingdom, had made a declaration in accordance with Article 15(4) which allowed the Convention to apply between them before its entry into force for all Member States. However, following the notification made by the United Kingdom on 24 July 2013 in accordance with Article 10(4), first sentence, of Protocol No 36 on transitional provisions, the Council Act and the Convention have ceased to apply to the United Kingdom as from 1 December 2014, pursuant to Article 10(4), second sentence, of the said Protocol. Therefore, as these instruments are no longer applicable between any of the Member States, they have lost their relevance in the Union *acquis* and should be repealed.

(9) Council Joint Action 98/427/JHA²⁰ 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.

¹⁸ **Convention of 17 June 1998 drawn up on the basis of Article K.3 of the Treaty on European Union on Driving Disqualifications (OJ C 216, 10.7.1998, p. 2).**

¹⁹ **Council Act 98/C 216/01 of 17 June 1998 drawing up the Convention on Driving Disqualifications (OJ C 216, 10.7.1998, p. 1).**

²⁰ 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).

- (10) The Council Act 1999/C 26/07²¹ **on Europol staff regulations, as amended by Council Decision 1999/C 364/02²²**, still applies to staff ~~engaged~~**employed** by Europol before the entry into force of the Council Decision 2009/371/JHA²³. **Therefore, transitional provisions should provide that contracts concluded in accordance with such staff regulations remain governed by them.** However the employment contracts in force ~~are to~~ ~~come~~ **will** soon **come** to their **an** end, and thus rendering these staff regulations obsolete.
- (10a) Council Framework Decision 2008/978/JHA²⁴ on the European evidence warrant (EEW) was replaced by Directive 2014/41/EU²⁵ on the European Investigation Order (EIO), because, as explained in Recital 4 of the EIO Directive, the scope of the EEW was too limited. As the EIO will apply between 26 Member States the EEW would only remain applicable between the two Member States which do not participate in the EIO. The EEW has therefore lost its usefulness as an instrument of cooperation in criminal matters and should be repealed.**
- (11) For reasons of legal certainty and clarity, those obsolete joint actions, **the Convention**, and the Council Acts **and the Framework Decision** should be repealed.
- (11a) Although Article 83(1) of the Treaty on the Functioning of the European Union provides for the adoption of directives, the choice of a regulation as an instrument for repealing the above obsolete acts is the only appropriate choice in view of the fact that the EU legislature is here not establishing minimum rules concerning the definition of criminal offences and sanctions, but is only repealing obsolete acts, without replacing them with new ones.**

²¹ ~~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).

²² **Council Decision 1999/C 364/02 of 2 December 1999 amending the Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees, with regard to the establishment of remuneration, pensions and other financial entitlements in euro (OJ C 364, 17.12.1999, p. 3).**

²³ **Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).**

²⁴ **Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ L 350, 30.12.2008, p. 72).**

²⁵ **Directive 2014/41/EU of 3 April 2014 of the European Parliament and the Council regarding the European Investigation Order in criminal (OJ L 130, 1.5.2014, p. 12).**

- (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 **and is not bound by it or subject to its application.**
- (14) **In accordance with Article 3 and Article 4a(1) 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 Union, Ireland has notified its wish to take part in the adoption and application of this Regulation.**

(15) Following the notification made by the United Kingdom on 24 July 2013 in accordance with Article 10(4), first subparagraph, first sentence, of Protocol No 36 on transitional provisions, Joint Actions 96/610/JHA, 96/699/JHA, 96/747/JHA, 96/750/JHA, 97/339/JHA, 97/372/JHA 98/427/JHA, as well as Council Acts 1999/C 26/07 and 98/C 216/01 have ceased to apply to the United Kingdom as from 1 December 2014, pursuant to Article 10(4), first subparagraph, second sentence, of the said Protocol. The United Kingdom is therefore not taking part in the adoption of this Regulation with regard to those legal acts and is not bound by it or subject to its application.

However, in accordance with Article 10(4), first subparagraph, third sentence, of Protocol No 36, Council Framework Decision 2008/978/EU (European evidence warrant) remained applicable to the United Kingdom as replaced by Directive 2014/41/EU (European Investigation Order). Therefore, in accordance with Article 3 and Article 4a(1) 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 Union, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation.

HAVE ADOPTED THIS REGULATION:

Article 1
Repeal of obsolete acts

The **following acts are repealed:**

- Joint Actions 96/610/JHA (**directory of counter-terrorism competences**);
- **Joint Action** 96/699/JHA (**chemical profiling of drugs**);
- **Joint Action** 96/747/JHA (**directory of competences on fight against organised crime**);
- **Joint Action** 96/750/JHA (**combatting drug addiction and trafficking**);
- **Joint Action** 97/339/JHA (**cooperation on law and order and security**);
- **Joint Action** 97/372/JHA (**cooperation between customs authorities**);
- **Council Act 98/C 216/01 and the Convention of 17 June 1998 (driving disqualifications)**;
- **Joint Action** 98/427/JHA (**good practice in mutual legal assistance in criminal matters**);
- ~~and~~ Council Act 1999/C 26/07 (**Europol staff regulations**) ~~are repealed~~;
- **and Framework Decision 2008/978/JHA (European evidence warrant)**.

Article 2
Transitional provisions

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

2. Any European evidence warrant executed under Council Framework Decision 2008/978/EU shall continue to be governed by that instrument until the relevant criminal procedure is finalised.

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 **in accordance with the Treaties.**

Done at Brussels,

For the European Parliament
The President

For the Council
The President
