



Council of the  
European Union

Brussels, 18 December 2018  
(OR. en)

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**Interinstitutional File:  
2016/0002 (COD)**

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ADD 1**

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EJUSTICE 185  
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DAPIX 391  
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**'I' ITEM NOTE**

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From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	5438/16 + ADD 1 + ADD 2
No. prev. doc.:	15535/18
Subject:	Proposal for a Directive of the European Parliament and of the Council of amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA - Confirmation of the final compromise text with a view to agreement

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In relation to the "no-opinion clause" (see Article 1, point 10, relating to Article 12a, in particular paragraph 3 thereof), the Commission presents the following declaration for the minutes of the meeting of Coreper:

*"The Commission underlines that it is contrary to the letter and to the spirit of Regulation (EU) No 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke point b) of the second subparagraph of Article 5(4) 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 point b) of the second subparagraph of that Article cannot be simply seen as a discretionary power of the legislator, but must be interpreted in a restrictive manner and thus must be justified."*

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