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LIMITE

**PROAPP 7
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NOTE

from: General Secretariat of the Council
to: Delegations
Subject: Updated list of "lisbonised" ex-third pillar *acquis*

1. Delegations will find attached an updated version of the Annex to the introductory note of 10 March 2014 to the Friends of Presidency Group (doc. 7519/14) which contains the list of acts of the ex-third pillar *acquis* which have been "lisbonised" (see point 7 of that introductory note).
2. For clarity, it is recalled that Article 10(1) of Protocol 36 sets out a 5 year transitional period concerning ex-third pillar acts (i.e. acts in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty) which will end on 1 December 2014. During this transitional period, the powers of the Commission and of the Court with regard to those acts remain limited to those provided for in Article 35 of the ex-TEU (e.g. no infringement powers).
3. However, paragraph 2 of Article 10 provides that "*the amendment of [such] an act (...) shall entail the applicability of the powers of the institutions (...) as set out in the Treaties with respect to the amended act for those Member States to which that amended act shall apply*".

In addition, paragraph 4 of Article 10, which gives the UK the option of opting out *en bloc* from the ex-third pillar *acquis*, excludes from this possibility the ex-third pillar acts which, in the meantime, will have been amended post-Lisbon as provided in the above paragraph 2 of Article 10. This exclusion is provided for in the last sentence of paragraph 4 which reads "*this subparagraph [on the block opt-out] shall not apply with respect to the amended acts which are applicable to the United Kingdom as referred to in paragraph 2*".

4. This means that as soon as, during the 5 year transitional period, a post-Lisbon act is adopted which amends an ex-third pillar act, by whatever drafting technique (amendment, replacement or repeal or the ex-third pillar act in whole or in part), this ex-third pillar act is "lisbonised" for those Member States which are bound by the amended act (and by the amending act) with the two consequences provided for in the Protocol:

- (1) the first consequence is that the full powers of the Commission and of the Court apply to all the Member States bound by the amended ex-third pillar act, and by the amending act, as from the formal adoption of the amending act;
- (2) the second consequence is that, in cases where the UK has opted in the post-Lisbon amending act, the UK can no longer block opt-out from the amended ex-third pillar act, i.e. the amended ex-third pillar act is deleted from the block opt-out list of ex-third pillar *acquis* and, therefore, the relevant rules applicable between Member States and *vis-à-vis* Schengen associated countries will continue to apply without any block opt-out taking effect.

5. In any event, as from 1 December 2014, the full powers of the Commission and of the Court will apply with regard to all ex-third pillar *acquis* as concerns all Member States bound by that *acquis*.¹ Such powers will therefore not apply with regard to ex-third pillar acts which will have ceased to apply to the UK as from 1 December 2014 as a consequence of the block opt-out.

¹ Taking into account the specific situation of Denmark under Protocol 22.

LIST OF EX-THIRD PILLAR ACTS
WHICH HAVE ALREADY BEEN "LISBONISED"
OR ARE IN THE PROCESS OF BEING "LISBONISED"

NON-SCHENGEN EX-THIRD PILLAR ACQUIS

The following ex-third pillar acts have already been "lisbonised":

I. Acts already "lisbonised" for 27 Member States (DK not bound)

- 1) Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (N° 30)²
replaced by Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA;³
- 2) Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (N° 44)
replaced by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;⁴
- 3) Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (N° 53)
replaced by Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA;⁵
- 4) Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems (N° 59)
replaced by Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA;⁶

² The number appearing next to the title of the relevant ex-third pillar act corresponds to the number of that act in the revised preliminary list of ex-third pillar *acquis* (doc. 9883/14).

³ OJ L 315, 14.11.2012, p. 57.

⁴ OJ L 101, 15.4.2011, p. 1. The UK has opted in post-adoption (see Commission Decision 2011/169/EU of 14 October 2011, OJ L 271, 18.10.2012, p. 49).

⁵ OJ L 335, 17.12.2011, p. 1 (corrigendum in OJ L 18, 21.1.2012, p. 7).

⁶ OJ L 218, 14.8.2013, p. 8.

- 5) Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA (N° 63)
amended by Regulation of the European Parliament and of the Council amending Decision 2005/681/JHA establishing the European Police College (CEPOL)⁷
- 6) Council Decision 2007/551/CFSP/JHA of 23 July 2007 on the signing, on behalf of the European Union, of an Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security
superseded by Council Decision 2012/472/EU of 26 April 2012 on the conclusion of the Agreement between the European Union and the United States of America on the use and transfer of passenger name records to the United States Department of Homeland Security;⁸
- 7) Council Decision 2008/651/CFSP/JHA of 30 June 2008 on the signing, on behalf of the European Union, of an Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service
replaced by Council Decision of 13 December 2011 on the conclusion of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service;⁹
- 8) Council Decision 2009/935/JHA of 30 November 2009 determining the list of third countries with which Europol shall conclude agreements (N° 98)
amended by Council implementing Decision amending Decision 2009/935/JHA as regards the list of third States and organisations with which Europol shall conclude agreements¹⁰

II. Acts already "lisbonised" for 26 Member States (IE has not opted in the amending act and DK not bound)

- 9) Council Act of 29 May 2000 establishing the Convention on mutual assistance in criminal matters between the Member States of the European Union (N° 29)
- Council Act of 16 October 2001 establishing the Protocol to the Convention on mutual assistance in criminal matters between the Member states of the European Union (N° 34)
replaced, as regards corresponding provisions, by Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (EIO)¹¹

⁷ The Regulation was adopted by the Council on 6 May 2014 (doc. PE-CONS 59/14, see item 5 on A items list, Council agenda in doc. 9376/14). OJ L [...].

⁸ OJ L 215, 11.8.2012, p. 4. IE has opted in post-adoption (see doc. 10392/12).

⁹ OJ L 186, 14.7.2012, p. 3.

¹⁰ The Decision was adopted by the Council on 6 May 2014 (doc. 8516/14, see item 18 on A items list, Council agenda in doc. 9377/14). OJ L [...].

¹¹ OJ L 130, 1.5.2014, p. 1 (adopted on 14 March 2014).

- 10) Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (N° 48)
replaced, as regards freezing of evidence, by Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (EIO)¹²
- 11) 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 (N° 83)
replaced by Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (EIO)¹³

III. Acts already "lisbonised" for 26 Member States (the UK has not opted in the amending act and DK not bound)

- 12) Joint Action 98/699/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and proceeds from crime (N° 20)
replaced by Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union¹⁴
- 13) Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (N° 26)
- Council Framework Decision 2001/888/JHA of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (N° 36)
replaced by Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal laws, and replacing Council Framework Decision 2000/383/JHA¹⁵
- 14) Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (N° 33)
amended (replacement of Articles 1(a), 3 and 4) by Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union¹⁶

¹² See footnote 11 above.

¹³ See footnote 11 above.

¹⁴ OJ L 127, 29.4.2014, p. 39 (adopted on 14 March 2014).

¹⁵ The Directive was adopted by the Council on 6 May 2014 (doc. PE-CONS 45/14, see item 9 on A items list, Council agenda in doc. 9376/14). OJ L [...].

¹⁶ See footnote 14 above.

- 15) Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property (N° 57)
amended (replacement of Articles 1 and 3) by Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union¹⁷

The following ex-third pillar acts are in the process of being "lisbonised" (i.e. a proposal is being examined by the EU legislature, but no adoption foreseen before current EP term):

IV. Acts in the process of being "lisbonised" for 27 Member States (DK is not bound)

- 16) Council Decision 2006/697/EC of 27 June 2006 on the signing of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (N° 65)
will be superseded when the proposed Council Decision on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway will be adopted by the Council¹⁸

V. Acts in the process of being "lisbonised" for 26 Member States (the UK has not opted in the draft amending act and DK is not bound)

- 17) Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (N° 2)
- Council Act of 27 September 1996 drawing up a Protocol to the Convention on the protection of the European Communities' financial interests (N° 10)
 - Council Act of 29 November 1996 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests (N° 11)
 - Council Act of 19 June 1997 drawing up the Second Protocol of the Convention on the protection of the European Communities' financial interests (N° 15)

will be replaced when the proposed Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law will be adopted by the EU legislature

¹⁷ See footnote 14 above.

¹⁸ See doc. 5278/10. Both the UK and IE have opted in that proposed Decision (doc. 7676/10 and doc. 9262/10). Five Member States (DK is not bound) still need to convey to the Council Secretariat the necessary notifications and declarations under Article 36 of the Agreement (see doc. 6332/3/14 Rev 3, from which it emerges that DE, IT, NL, HU and HR still need to do so).

- 18) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (N° 87)¹⁹
- Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees (N° 22)
 - Council Decision 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
 - Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information (N° 97)
 - Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files (N° 99)
 - Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information (N° 101)

will be amended/replaced when the proposed Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA will be adopted by the EU legislature

VI. Acts in the process of being "lisbonised" for 25 Member States (IE and the UK have not opted in the draft amending act and DK is not bound)

- 19) Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (N° 37)
- Council Decision 2003/659/JHA amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (N° 50)
 - Council Decision 2008/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (N° 71)

will be replaced when the proposed Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) will be adopted by the EU legislature

¹⁹ It is recalled that Council Decision 2009/935/JHA of 30 November 2009 determining the list of third countries with which Europol shall conclude agreements (N° 98) is not listed here because it has been "lisbonised" (see above under point 8).

- 20) 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 drug trafficking (N° 54)

will be amended when the proposed package consisting of a Directive of the European Parliament and of the Council amending 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 drug trafficking and of a Regulation of the European Parliament and of the Council on new psychoactive substances will be adopted by the EU legislature

- 21) Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (N° 60)

- Council Decision 1999/615/JHA of 13 September 1999 defining 4-MTA as a new synthetic drug which is to be made subject to control measures and criminal penalties (N°23)
- Council Decision 2002/188/JHA of 28 February 2002 concerning control measures and criminal sanctions in respect of the new synthetic drug PMMA (N° 38)
- Council Decision 2003/847/JHA of 27 November 2003 concerning control measures and criminal sanctions in respect of the new synthetic drugs 2C-I, 2C-T-2, 2C-T-7 and TMA-2 (N° 51)
- Council Decision 2008/206/JHA of 3 March 2008 defining 1-benzylpiperazine (BZP) as a new psychoactive substance which is to be made subject to control measures and criminal provisions (N° 70)

will be amended/replaced when the proposed package consisting of a Directive of the European Parliament and of the Council amending 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 drug trafficking and of a Regulation of the European Parliament and of the Council on new psychoactive substances will be adopted by the EU legislature

SCHENGEN EX-THIRD PILLAR ACQUIS

The following ex-third pillar acts have already been "lisbonised":²⁰

I. Acts already "lisbonised" for all Member States

- 22) Decision of the Executive Committee of 16 September 1998 (SCH/Com-ex (98) 26 def) setting up a Standing Committee on the evaluation and implementation of Schengen (N° 106) replaced by Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen²¹
- 23) Council Decision 2008/149/EC 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* (N° 120) amended by Council Decision 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 cooperation²²

²⁰ The Commission Decision 2008/334/JHA of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (not listed in the ex-third pillar preliminary list in doc. 7519/14) was replaced by Commission Implementing Decision of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 123, 8.5.2008, p. 39).

²¹ OJ L 295, 6.11.2013, p. 27.

²² OJ L 160, 18.6.2011, p. 1.

II. Acts already "lisbonised" for 26 Member States (IE has not opted in the amending act and DK not bound)

- 24) Chapter 2 of Title III (Articles 48 to 53, on mutual assistance in criminal matters), as well as Article 73 of the 1990 Convention implementing the Schengen Agreement of 14 June 1985 (N° 102)

replaced, as regards corresponding provisions, by Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (EIO)²³

The following ex-third pillar acts are in the process of being "lisbonised" (i.e. a proposal is being examined by the EU legislature, but no adoption foreseen before current EP term):

Act in the process of being "lisbonised" for all Member States (outside Title V)

- 25) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (N° 122)

will be replaced when the proposed Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data will be adopted by the EU legislature

²³ See footnote 11 above.