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European Union

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PV CONS 50
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COMIX 552

DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
11 and 12 October 2018

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THURSDAY 11 OCTOBER 2018

1. **Adoption of the agenda** 12664/18

The Council adopted the agenda set out in 12664/18.

2. **Approval of "A" items**
a) **Non-legislative list** 12665/18

The Council adopted the "A" items listed in 12665/18 including COR and REV documents presented for adoption. Statements related to these items are set out in the Addendum.

For the following items the documents should read as follows:

Justice and Home Affairs

7. eu-LISA Regulation: Annex to the Council Decision on the signing of a complementary arrangement with Schengen Associated States 12366/18
Adoption 12367/18
adopted by Coreper, Part 2, on 10.10.2018 + **COR 1 (it)**
DAPIX


Agriculture

9. Council Decision on the conclusion of the Voluntary Partnership Agreement between the EU and Viet Nam on forest law enforcement, governance and trade 12242/18
Agreement in principle 10861/18
Request for the consent of the European Parliament + **COR 1 (de)**
adopted by Coreper, Part 1, on 10.10.2018 10877/18
FORETS

b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)


12666/18

Justice and Home Affairs

1. **Regulation on Data Protection by EU Institutions and bodies**  12221/18
Adoption of the legislative act
adopted by Coreper, Part 2, on 26.09.2018
+ ADD 1 REV 1
PE-CONS 31/18
DATAPROTECT

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 16(2) TFEU).

Statements related to this item are set out in the Annex.



2. **Money laundering Directive**  12230/1/18 REV 1
Adoption of the legislative act
adopted by Coreper, Part 2, on 26.09.2018
+ REV 1 ADD 1
PE-CONS 30/18
+ COR 1 (cs)
JAI

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the German delegation voting against and the Slovenin delegation abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. In accordance with the relevant Protocols annexed to the Treaties, the Danish, Irish and the United Kingdom delegations did not participate in the vote. (Legal basis: Article 83(1) TFEU).





Statements related to this item are set out in the Annex.

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

3. **Directive on Insolvency, restructuring and second chance**   12536/18
General approach

The Council approved the general approach on the proposed Directive as set out in the annex of document 12536/18 and took note of the written statement of Germany (doc. 13184/18), as set out in the Annex.

4. **e-evidence** 12856/18
a) **Regulation on European Production and Preservation Orders for e-evidence**  
b) **Directive on legal representatives for gathering evidence**  
Policy debate

Following a policy debate on the basis of document 12856/18, the President welcomed that there is a will to find a compromise. He concluded that further work was required in relation to the notification procedure, taking into account different categories of data and their sensitivities together with positions expressed by Member States.

The Council also agreed not to expand the scope of the current draft Regulation to include real-time interception. The Presidency again urged the Commission to present as soon as possible the negotiation mandates for a possible agreement with the US under the US CLOUD Act and for the second additional protocol to the Budapest Convention.

5. **Any other business**
– **Current legislative proposals**
Information from the Presidency

Ministers took note of the information provided by the Presidency on the state of play of different legislative files.

Non-legislative activities

The Council addressed the following non-legislative discussion items (6-10)

- | | | |
|-----|---|--------------------------------------|
| 6. | Fundamental Rights | |
| a) | Exchange of views with the Director of the Fundamental Rights Agency (FRA) | |
| b) | Conclusions on the application of the EU Charter of Fundamental Rights in 2017
<i>Adoption</i> | 12839/1/18 REV 1
12884/18 |
| 7. | EPPO Regulation: Implementation
<i>State of play</i> | 12171/18 |
| 8. | Mutual Recognition in Criminal Matters - Enhancing Mutual Trust - The way forward
<i>Exchange of views</i> | 12492/18 |
| 9. | Securing free and fair European elections, including protection from personal data misuse and cyber incidents
<i>Policy debate</i> | 12404/18 + COR 1
12405/18 + COR 1 |
| 10. | Any other business | |
| – | EU-Western Balkans Ministerial Forum on Justice and Home Affairs (Tirana, 4-5 October 2018)
<i>Information from the Presidency</i> | 12868/18 |

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

11. Commission proposals in the context of the Multiannual Financial Framework¹ 12777/18

a) **Regulation establishing the Asylum and Migration Fund (AMF)**




b) **Regulation establishing the Border Management and Visa Instrument as part of the Integrated Border Management Fund (BMVI)**



c) **Regulation establishing the Internal Security Fund (ISF)**

Policy debate

The Council held a policy debate on the challenges raised by the enhancement of the external dimension of migration in the Home affairs Funds (doc. 12777/18). Ministers broadly supported that the three Funds reserve a share of their financial envelopes to tackle the external aspects of migration. Ministers also discussed possible avenues to improve the governance structures in the field of migration in order to ensure better coordination, coherence and synergies on the implementation of the different EU funds and instruments.

12. Regulation amending the European Border and Coast Guard Regulation  12768/18 + COR 1

Policy debate

The Council confirmed the outcome of the discussions in the Mixed Committee at Ministerial level (doc. 13182/18 JAI 1009 COMIX 562).

13. Return Directive (recast)  12562/18 + COR 1

Policy debate

The Council confirmed the outcome of the discussions in the Mixed Committee at Ministerial level (doc. 13182/18 JAI 1009 COMIX 562).

¹ Exceptionally, in the presence of the Schengen Associated States.

14. **Reform of the Common European Asylum System and Resettlement**

12826/18

- a) **Dublin Regulation**
- b) **Reception Conditions Directive**
- c) **Qualification Regulation**
- d) **Asylum Procedure Regulation**
- e) **Eurodac Regulation**
- f) **EU Asylum Agency Regulation**
- g) **Resettlement Framework Regulation**



Progress report

The Presidency informed the Council on the progress of the reform of the Common European Asylum System and Resettlement as set out in doc. 12826/18.

15. **Any other business**

- **Current legislative proposals**
Information from the Presidency

Ministers took note of the information provided by the Presidency on the state of play of different legislative files.

Non-legislative activities

The Council addressed the following non-legislative discussion items (16-17)

16. Migration: State of play²
Exchange of views

17. Any other business

- Vienna Process: State of play, way forward
- Conference "Security and Migration - Promoting Partnership and Resilience" (Vienna, 13-14 September 2018) 12486/18
- EU-Western Balkans Ministerial Forum on Justice and Home Affairs (Tirana, 4-5 October 2018) 12868/18
- *Information from the Presidency*
- Legal Migration
Information from the Commission



First reading



Item based on a Commission proposal

² Exceptionally, in the presence of the Schengen Associated States.

Statements to the legislative "A" items set out in 12666/18

Ad "A" item 1: **Regulation on Data Protection by EU Institutions and bodies**
Adoption of the legislative act

STATEMENT BY THE COMMISSION

"The Commission regrets the exclusion of missions referred to in Articles 42(1), 43 and 44 TEU from the scope of the Regulation and notes that, as a result, there will be no data protection rules in place for such missions. The Commission notes that a Council decision, based on Article 39 TEU, could only lay down the data protection rules for processing of personal data by Member States when carrying out activities that fall within the scope of the Common Foreign and Security Policy. Such a Council decision could not include rules that apply to activities carried out by EU institutions, bodies, offices and agencies. In order to remedy the legal lacuna, a possible Council decision therefore would need to be accompanied by an additional, complementary instrument, based on Article 16 TFEU.

The Commission notes that paragraph 3 of Article 9 (former Article 70a of the Council's General Approach) does not create a new obligation on Union institutions and bodies as regards the balance to be struck between personal data protection and public access to documents."

STATEMENT BY THE REPUBLIC OF SLOVENIA

"The Republic of Slovenia supports the compromise "Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC", since it will update existing data protection rules, and data subjects' rights and will align the data protection for European Union institutions, bodies, offices and agencies with the European Union data protection reform of 2016

However, the Republic of Slovenia would like to highlight again its opinion that the very concept of introducing derogations to data protection by internal rules runs contrary to the core principles of data protection, in particularly the principles of lawfulness, legal security, proportionality, and democratic legitimacy (transparency)."

Ad "A" item 2: **Money laundering Directive**
Adoption of the legislative act

STATEMENT BY THE CZECH REPUBLIC, GERMANY, GREECE AND SLOVENIA

"The Czech Republic, the Federal Republic of Germany, the Hellenic Republic and the Republic of Slovenia support the aim of the Directive of the European Parliament and of the Council on combating money laundering by criminal law (the Directive) to strengthen the fight against money laundering by means of criminal law.

However, the Czech Republic, the Federal Republic of Germany, the Hellenic Republic and the Republic of Slovenia would like to highlight their concerns regarding Article 3(3)(c) and (4) of the Directive. Under this provision, Member States have to criminalize the laundering of property derived from conduct that took place in another jurisdiction, even if such conduct is not a criminal offence in that jurisdiction. This provision is applicable to conduct according to point (a) to (e) and (h) of point 1 of Article 2 which Member States are required to criminalize under EU law. Given, however, that third countries are not bound by EU law and may not have criminalized such conduct, the provision can result in the criminalization of transactions regarding property legally obtained in a third country which raises serious concerns.

It is the opinion of the Czech Republic, the Federal Republic of Germany, the Hellenic Republic and the Republic of Slovenia that dual criminality in these cases, i.e. the requirement that predicate conduct be criminalized in both, the jurisdiction where it took place and (had it occurred there) the jurisdiction where the money laundering is committed, is necessary for the proportionality of a criminal offence and penalty according to the fundamental principles that constitutes a common constitutional tradition of the Member States and Article 49 of the Charter of Fundamental Rights of the European Union."

Statements to the legislative "B" items set out in 12664/18

Ad "B" item 3: **Directive on Insolvency, restructuring and second chance** *General approach*

STATEMENT BY GERMANY

"Germany approves the general approach of the Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM(2016) 723) in the version of the compromise text of 1 October 2018 (Doc. No. 12536/18).

However – with reference to its earlier protocol declaration at the JHA Council Meeting of 4/5 June 2018 – Germany reiterates its view that within the context of the banking union, the proposal does not make a significant contribution to the measures necessary for the sustainable reduction and future avoidance of non-performing loans. Farther-reaching elements would be required here, such as ensuring that secured creditors have effective access to the value of the collateral security in liquidation procedures.

Furthermore, in Title II (Preventive Restructuring Frameworks), the Directive grants a large number of national voting rights, thereby leaving Member States room for implementations which do not provide adequate safeguards against abuse and against economically inefficient restructuring attempts. This can lead to the delaying of necessary insolvency procedures which in turn can lead to lower rates of return.

In addition, the collection of data on recovery rates envisaged in Article 29 (1b) of Title V (Monitoring) should be obligatory for all Member States in order to allow a comparison of the efficiency of insolvency procedures within the context of the banking union.

As a result, the proposed Directive does not offer the required minimum level of creditor protection and does not therefore represent an important step towards fulfilling the "*Action plan to tackle non-performing loans in Europe*" of 11 July 2017."