



Council of the
European Union

006901/EU XXVI. GP
Eingelangt am 22/12/17

Brussels, 22 December 2017
(OR. en)

15575/17
ADD 1

PV/CONS 72
JAI 1186
COMIX 826

DRAFT MINUTES

Subject: **3584th** meeting of the Council of the European Union
(Justice and Home Affairs), held in Brussels on 7 and 8 December 2017

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¹ Deliberations on Union legislative acts (Article 16(8) of the Treaty on European Union), other deliberations open to the public and public debates (Article 8 of the Council's Rules of Procedure).

"A" ITEMS

- 2. Approval of "A" items** 14948/17
a) Non-legislative list

The Council adopted the "A" items listed in 14948/17 + COR 1.

For the following items, the related documents should read as follows:

8. EU response to public spaces, CBRN and explosive precursors 14755/17
Conclusions 14074/3/17 REV 3
Adoption **+ REV 3 COR 1**
approved by Coreper, Part 2, on 29.11.2017 **(pt)**

Statements related to these items are set out in the Annex of 15575/17 INIT.

- b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)** 14949/17

Council Decision on MAF for FRA 2018-2022 C 14373/1/17 REV 1
Adoption + REV 1 COR 1
approved by Coreper, Part 2, on 22.11.2017 14423/16
+ COR 1 (de)

The Council adopted the Council decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2018-2022, as set out in 14423/16 and took note of the following statements:

Declaration of the Council concerning the review of the Multiannual Framework to be made at the time of adoption and entered into the Council minutes

"Under Article 30 (3) and (4) of Council Regulation (EC) N° 168/2007 ('the Regulation') an independent, external evaluation of the EU Agency for Fundamental Rights ('FRA') will be carried out in 2017. As stipulated in Article 31 (2) of the Regulation, the Commission, after having assessed the evaluation report and recommendations made on that basis by the FRA's Management Board, may consider submitting any proposals for amendments to the Regulation which it considers necessary.

In this context, the Council agrees that it will consider carefully any proposals for amendments to the Regulation that the Commission may decide to submit, including those pertaining to the remit of the Agency to cover the areas of police cooperation and judicial cooperation in criminal matters. The Council further agrees that it will consider carefully any proposals to improve procedures for the governance and functioning of the Agency."

Declaration of the Council concerning national minorities to be made at the time of adoption and entered into the Council minutes

"The Council Decision does not intend to define the notion of "national minority" and therefore the activities of the Fundamental Rights Agency under Article 2(b) affect neither the definition nor the existence of the term "national minority" as provided for by national law, nor the distribution of competences between the Union and the Member States in this respect."

Statement by the Commission

"The Commission regrets the lack of agreement on the inclusion of the proposed new thematic areas of police cooperation and judicial cooperation in criminal matters in the EU Agency for Fundamental Rights' Multiannual Framework for 2018-2022.

The Commission recalls that following the entry into force of the Treaty of Lisbon, police cooperation and judicial cooperation in criminal matters have become part of Union law and are therefore covered by the scope of the tasks of the Agency, as all areas falling within the competences of the Union, under Article 3(1) of Council Regulation (EC) n°168/2007.

If these thematic areas are not included in the Council Decision establishing a Multiannual Framework for the Agency for 2018-2022, the Agency will continue to carry out its tasks in these areas upon request from the European Parliament, the Council or the Commission, under Article 5(3) of Council Regulation (EC) n°168/2007.

Following the external evaluation of the Agency in 2017, the Commission shall transmit the evaluation reports and recommendations to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and make them public.

After having assessed the evaluation report and recommendations, the Commission may submit any proposals for amendments to Regulation (EC) n°168/2007 which it considers necessary, as provided in Article 31(2) thereof."

Statement by Austria, Belgium, Finland, Germany, Portugal, Slovenia, Sweden, Lithuania, Czech Republic, Italy, Luxembourg and Ireland.

"Austria, Belgium, Finland, Germany, Portugal, Slovenia, Sweden, Lithuania, Czech Republic, Italy, Luxembourg and Ireland regret that the areas of police cooperation and judicial cooperation in criminal matters could not be included in the Multiannual Framework of the Fundamental Rights Agency, despite the fact that these areas are particularly fundamental rights-sensitive and should, therefore, be part of the regular activities of the Agency. Furthermore, it should be recalled that the Agency is already active in these areas upon request in accordance with Article 5 (3) of Council Regulation (EC) No 168/2007.

Austria, Belgium, Finland, Germany, Portugal, Slovenia, Sweden, Lithuania, Czech Republic, Italy, Luxembourg and Ireland reiterate their support for the inclusion of police cooperation and judicial cooperation in criminal matters in the Agency's areas of activities and will revert to this issue in the context of proposals for amendment of Council Regulation (EC) No 168/2007. We invite the Commission to submit a proposal to this effect following the independent external evaluation to be carried out in 2017."

"B" ITEMS

Legislative deliberations

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

HOME AFFAIRS

8. Reform of the Common European Asylum System and Resettlement 🗳️ 📄 15057/1/17 REV 1

- 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 Council took note of the state of play of the examination of the seven legislative proposals on the reform of the Common European Asylum System on the basis of the above-mentioned Presidency progress report. An agreement was reached on the repartition among Member States of 500 asylum experts for the reserve pool foreseen in the Annex to the EU Asylum Agency Regulation.



9. eu-LISA Regulation 🗳️ 📄 15081/17
General approach

The Council confirmed the outcome of the discussions in the Mixed Committee at Ministerial level (15670717 JAI 1195 COMIX 836) and reached a General approach on the eu-LISA Regulation as set out in the annex to 15081/17. It will constitute the basis for negotiations with the European Parliament in the framework of the ordinary legislative procedure (Article 294 TFEU) as soon as the co-legislator has adopted its position.

10. 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.

JUSTICE

- 14. European Criminal Records Information System (ECRIS)**  
- a) **ECRIS-TCN Regulation** 15101/17 + COR 1
General approach 15102/17 + COR 1
- b) **ECRIS Directive**
General approach

The Council unanimously reached a general approach on both the draft Regulation and the draft Directive as set out in 15101/17 + COR 1 and 15102/17 + COR1.

- 15. Freezing and Confiscation Regulation**   15104/17 + COR 1
General approach 15107/17

The Council reached a general approach on the draft Regulation and the accompanying draft certificates as set out respectively in 15104/17 + COR 1 and 15107/17.

A statement by Germany to this item is set out below:

Statement by Germany

"In order to counter organised crime and prevent the financing of terrorism, it is of critical importance to confiscate the proceeds of their crimes from offenders. Because organised groups are often active across borders and – no doubt quite intentionally – increasingly investing their assets across and beyond national borders, effective instruments are necessary in order to trace, freeze, confiscate and, where appropriate, return those assets to the victims of the offences.

This is currently accomplished on the basis of the framework decisions on the application of the principle of mutual recognition to confiscation orders (2006/783/JHA) and on the execution of orders freezing property or evidence (2003/577/JHA). The aims of the new regulatory initiative include creating a uniform and more effective legal instrument to improve cross-border asset recovery.

Guaranteeing cross-border asset recovery as comprehensively as possible is consistent with the principle of mutual trust. However, cooperation reaches its limits when, in altogether exceptional cases, fundamental rights are no longer safeguarded. From the outset of the negotiations, Germany has therefore advocated drafting a Regulation text that is not only precise and easy to implement in practice, but also includes clear and transparent wording emphasising compliance with fundamental rights in the recognition and enforcement of decisions. Germany's various suggestions to the Member States and the Commission for compromise, some of which were quite far-reaching, were made not least to take account of the most recent case-law of the European Court of Justice.

Although the text is otherwise successful in creating a good and practicable legal basis for effective cross-border asset recovery, unfortunately a majority could not be found for anchoring fundamental rights in the text. We will not do justice to the great importance of fundamental rights if we do not clearly and unequivocally emphasise their importance, as we have done in the Directive on the European Investigation Order.

Although Germany, like the other Member States, sees the need to improve cross-border cooperation in the area of asset recovery, in light of the above Germany is not in a position to agree to the general approach contained in the current text of the Regulation. "

17. Brussels IIa Regulation: recast

 14810/17

Policy debate

Council had a policy debate on the on the abolition of *exequatur* proceedings for all the remaining parental responsibility cases under the Brussels IIa Regulation. Member States unanimously endorsed the decision to complete the abolition of *exequatur* for those decisions subject to appropriate safeguards. As regards the form of the abolition work will continue at technical level.

18. Insolvency, restructuring and second chance Directive

  15201/17

Policy debate

Council held a policy debate on the basis of document 15201/17 on principles relating to the viability of the debtor, the cross-class cram-down and the second chance for honest entrepreneurs.

Ministers endorsed the principle that Member States should have the option to introduce a viability test as a precondition for access to the preventive restructuring procedure or to a stay of individual enforcement actions. Most ministers endorsed the principle of introducing a cross-class cram-down mechanism, but further technical work is needed on the conditions for such cram-down, in particular whether class formation should be obligatory for Member States. Ministers endorsed the principle that there should be a harmonised maximum period for a discharge of debt, but further technical work is needed on the requirements and limitations for such discharge.

19. 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.
