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COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
6 and 7 June 2019

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JUSTICE

1. Adoption of the agenda

The Council adopted the agenda set out in 9699/19.

2. Approval of "A" items

a) Non-legislative list

9700/19

The Council adopted the "A" items listed in 9700/19 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

4. Civil Protection Presidency report
approved by Coreper, Part 2, on 29.05.2019

9407/19
+ COR 1 (et)
PROCIV

Environment


28. Commission Delegated Regulation (EU) .../... of 6.3.2019
supplementing Directive 2003/87/EC of the European
Parliament and of the Council as regards measures adopted by
the International Civil Aviation Organisation for the monitoring,
reporting and verification of aviation emissions for the purpose
of implementing a global market-based measure
Delegated act - Decision to raise objections
approved by Coreper, Part 1, on 29.05.2019

9527/4/19 REV 4
7252/19
+ COR 1
+ COR 2 (fi, cs)
CLIMA


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

9702/19


Justice and Home Affairs

1. **Regulation amending the Community Code on Visas (Visa Code)**  9172/19 + ADD 1
Adoption of the legislative act PE-CONS 29/19
approved by Coreper, Part 2, on 22.05.2019 VISA


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. 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 77(2)(a) TFEU). Statements related to this item are set out in the Annex.

2. **Regulation on strengthening the security of ID cards and of residence documents**  9167/1/19 REV 1
Adoption of the legislative act 9167/19 ADD 1
approved by Coreper, Part 2, on 22.05.2019 REV 1
PE-CONS 70/19
JAI

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the Czech Republic and the Slovak Republic voting against and the United Kingdom abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 21(2) TFEU). Statements related to this item are set out in the Annex.

3. **Directive on Insolvency, Restructuring & Second Chance**  9170/2/19 REV 2
Adoption of the legislative act + REV 2 ADD 1 REV 1
approved by Coreper, Part 2, on 22.05.2019 PE-CONS 93/18
JUSTCIV

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 53 and Article 114 TFEU). Statements related to this item are set out in the Annex.

4. **Regulation on European Production and Preservation Orders for e-evidence (Annexes)**  9365/19
General approach (supplement)
approved by Coreper, Part 2, on 22.05.2019
COPEN

The Council agreed to supplement the general approach on the proposed Regulation reached in December 2018 with the text of Annexes I, II and III as set up in the Annex to 9365/19.



Legislative deliberations

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

3. **Regulation on the assignments of claims**  9562/19
Progress report

The Council took note of the progress report set out in document 9562/19.

4. **Digitalisation of judicial cooperation** 9566/19

- a) **Regulation amending Regulation (EC) No 1393/2007**  **on the Service of Documents**
- b) **Regulation amending Council Regulation (EC) No 1206/2001 on the Taking of Evidence** 

Policy debate

The Council held a policy debate on the digitalisation of judicial cooperation in the context of the two Regulations. The Presidency concluded that delegations had expressed:

- support for the use of secure decentralised IT systems;
- support for the principle of a mandatory introduction and use of such IT systems, under certain conditions be discussed further;
- a preference for the use of the software solution of the e-CODEX for such IT systems.

5. **Any other business**

Current legislative proposals 9693/19
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

- | | | |
|-----|--|--------------------|
| 6. | The future of EU substantive criminal law <i>Policy debate</i> | 9726/19 |
| 7. | The way forward in the field of mutual recognition in criminal matters <i>Policy debate</i> | 9728/19 |
| 8. | Conclusions on the synergies between Eurojust and the networks established by the Council in the area of judicial cooperation in criminal matters <i>Adoption</i> | 9643/19 |
| 9. | EPPO Regulation: Implementation <i>Information from the Commission on the state of play</i> | 9548/19 |
| 10. | e-evidence | |
| a) | Council Decision on the opening of negotiations for EU-US agreement on cross-border access to e-evidence | 9666/19 9114/19 |
| b) | Council Decision authorising the participation in the negotiations on a second additional protocol to the Budapest Convention <i>Adoption</i> | 9664/19 9116/19 |
| 11. | Data Retention: Conclusions on Retention of Data for the purpose of Fighting Crime <i>Adoption</i> | 9663/19 |
| 12. | Any other business | |
| a) | Actions against judges and prosecutors <i>Information from Lithuania</i> | |
| b) | Work programme of the incoming Presidency <i>Presentation by Finland</i> | |

HOME AFFAIRS

Non-legislative activities

13. The future of EU Law Enforcement 9393/19
Policy debate
14. Any other business 8983/19
a) Implications of 5G in the area of internal security
Information from the EU Counter-Terrorism Coordinator
b) Actions against judges and prosecutors
Information from Lithuania
15. Counter-terrorism: Update on cooperation between 
competent authorities dealing with counter-terrorism¹
Exchange of views
16. Migration and Asylum: challenges ahead 9511/1/19 REV 1
Exchange of views

Legislative deliberations







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

17. **Return Directive (recast)**  9620/19
Partial general approach

The Council confirmed the outcome of the discussions in the Mixed Committee at Ministerial level (doc. 10407/19) and reached a partial general approach on the proposed Directive as set out in doc. 9620/19.

¹ Exceptionally, in the presence of the Schengen Associated States

18. **Commission proposals in the context of the Multiannual Financial Framework**

- a) **Regulation establishing the border management and visa instrument (BMVI) as part of the Integrated Border Management Fund**   9629/1/19 REV 1
- b) **Regulation establishing the Asylum and Migration Fund (AMF)**   9715/19
  9349/19
- c) **Regulation establishing the Internal Security Fund (ISF)**

Partial general approach

- a) The Council confirmed the outcome of the discussions in the Mixed Committee at Ministerial level (document 10407/19) and reached a partial general approach on the proposed Regulation (BMVI) as set out in doc. 9629/1/19 REV 1.
- b) and c) The Council reached a partial general approach:
- on the proposed Regulation (AMF) as set out in doc. 9715/19.
 - on the proposed Regulation (ISF) as set out in doc. 9349/19.

A statement by Italy to these items is set out in the Annex.

19. **Any other business**

Current legislative proposals

9693/19

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

14. Any other business

- c) Salzburg Ministerial Conference in Portorož (Slovenia, 28-29 May 2019)  9779/19
Information from Slovenia
- d) Ministerial Conference on "Migration challenges along the Eastern Mediterranean, Western Balkan Route", Vienna 3 May 2019  9696/19
Information from Austria
- e) Work programme of the incoming Presidency
Presentation by Finland



First reading



Restricted item



Item based on a Commission proposal

Statements to the legislative "B" items set out in 9699/18

- Ad "B" item 18:** **Commission proposals in the context of the Multiannual Financial Framework**
- a) Regulation establishing the border management and visa instrument (BMVI) as part of the Integrated Border Management Fund**
 - b) Regulation establishing the Asylum and Migration Fund (AMF)**
Partial general approach

STATEMENT BY ITALY

"In view of the future developments of the negotiating box on the Multiannual Financial Framework, being aware that the allocation of JHA European Funds is not the subject of today's meeting, the Italian delegation deems it necessary to point out that the repartition criteria of funds among Member States should reflect the different levels of pressure and challenges affecting each Member States when it comes to border management, combating irregular migration and trafficking of human beings.

The management of the European sea borders and the connected control activities is undoubtedly particularly complex. Therefore, their specificity should be recognised also in the context of the criteria for the allocation of funding, in order to guarantee the necessary financial support to those Member States which are called to protect them.

As the proposal stands now, Italy does not consider it satisfactory that in the context of the criteria for the allocation of Border Management and Visa Instrument, external sea borders are attributed a weighting of 35%, even lower than the 45% foreseen in the current MFF.

In addition, the Italian delegation considers that the financial instruments – and in particular the Asylum and Migration Fund – should be used in accordance with the goal of strengthening the European return system and in the prospect of a broader and effective cooperation of the third countries concerned.

Finally, the Italian delegation underscores that its support to the partial general approach regarding the Asylum and Migration Fund is without prejudice to the future reform of the Common European Asylum System."

Statements to the legislative "A" items set out in 9702/18

Ad "A" item 1: **Regulation amending the Community Code on Visas (Visa Code)**
Adoption of the legislative act

STATEMENT BY ITALY

"In a spirit of compromise, Italy accepts the text of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code), presented by the Presidency (6113/19). It nevertheless wishes to draw attention to a specific issue which the Italian delegation raised on a number of occasions during the negotiations: reducing the maximum period within which a visa application must be decided on from 60 to 45 days (Article 23(2)). Italy regrets that, despite the efforts made during the negotiations, the final compromise text differs from the Council mandate. There is a risk that the new provision will not be compatible with the structure and workload of the Italian consular network, particularly in exceptional cases where further scrutiny of the applications is needed."

Ad "A" item 2: **Regulation on strengthening the security of ID cards and of residence documents**
Adoption of the legislative act

STATEMENT BY LATVIA

"Latvia welcomes the work of Presidency on the Regulation aimed at strengthening the security of the European Union citizen's identity cards and the security of residence documents issued to the European Union citizens and their family members exercising their right to free movement.

Latvia believes that overall the compromise text agreed between the European Parliament, the Council of the European Union and the Commission will strengthen the security of identity cards and residence documents, thereby reducing crime, promoting European Union internal security, improving the identification of persons and promoting the fight against document fraud and identity theft.

Nevertheless, Latvia regrets that Article 3(4) and Article 6(h) of this Regulation prescribe the inclusion of the distinguishing sign that consists of the two-letter country code of the Member State issuing the document, printed in negative in a blue rectangle encircled by twelve yellow stars. Latvia believes that this distinguishing sign will not provide additional security feature. Therefore, clear reference in the text of the Regulation to the DOVID security element is needed to provide clear guidance for technical implementation and thus serving as an additional security feature for travel documents. Such a reference would allow printing the distinguishing sign in variable visibility on some fields of personalized information.

Additionally, Latvia is of the opinion that this distinguishing sign would occupy too much space, which otherwise could be used more efficiently, and it would not harmoniously fit in the overall design of the identity card."

STATEMENT BY THE CZECH REPUBLIC

"The Czech Republic appreciates the development that has been made in improving the level of security of identity cards issued to Union citizens and residence documents issued to their family members.

However, we cannot agree with the mandatory introduction of biometric data in identity cards and, therefore, cannot support the proposal for a regulation as it stands now. The Czech Republic could only take the opposite view if biometric data (and specifically fingerprints) were included in identity cards on a voluntary basis only.

From the data protection perspective, obligatory storage of biometric data in identity cards is a very sensitive issue for the Czech Republic as the majority of the population is obliged to hold an identity card.

Since only half of the Member States require their citizens to hold an identity card, the Czech Republic considers the proposal for a regulation to be disproportionate."

STATEMENT BY POLAND

"Poland supports the general aim of the proposal of improving security within the EU by ensuring security of selected identity documents. Within that context, Poland is also in favour of implementing some level of harmonization of national identity documents. In a spirit of compromise Poland accepts the text presented by the Presidency.

However, Poland wishes to draw attention to the question it has pointed out consequently during the negotiations, namely that the Regulation cannot encroach on areas of the exclusive competence of the Member States, e.g. set out methods of determining a person's gender.

This Regulation may only stipulate how to indicate the holder's gender in the national document, provided that their gender has been previously determined in accordance with the national law. Poland expresses regret that this distinction has not been clearly set out in the negotiated text."

Ad "A" item 3: Directive on Insolvency, Restructuring & Second Chance
Adoption of the legislative act

STATEMENT BY PORTUGAL

"Portugal acknowledges that there is sufficient flexibility within the text of the Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU to allow Member States to exclude specific categories of debt from discharge of debt, or restrict access to discharge of debt or lay down a longer discharge period where such exclusions, restrictions or longer periods are duly justified.

Portugal's understanding is that Member States may maintain or introduce provisions excluding or restricting access to discharge of tax debts, not only because such measures are to be considered duly justified due to the special nature of tax debts, but also because the adoption of EU legislation with an impact on the payment of turnover taxes, excise duties and other forms of taxation would require a different specific legal basis, subject to special legislative procedures, as prescribed by the Treaty on the Functioning of the European Union.

Bearing this in mind, Portugal would like to reserve this position regarding the regulation of access to discharge of tax debts when transposing the Directive."

STATEMENT BY GERMANY

"Germany approves the position of the European Parliament at first reading on the Commission's proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures (COM(2016) 723).

I. However – with reference to its earlier statements for the minutes of the JHA Council Meetings of 4/5 June and 11/12 October 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 a sustainable reduction and future avoidance of non-performing loans. Farther-reaching elements would be required to that end, 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 allows a large number of options to be exercised at national discretion, leaving Member States room for forms of implementation which do not provide adequate safeguards against abuse and against economically inefficient restructuring attempts. This may lead to the delaying of necessary insolvency proceedings, which in turn may lead to lower rates of return.

In addition, the collection of data on recovery rates envisaged in point (b) of Article 29(3) of Title V (Monitoring) should be obligatory for all Member States in order to allow a comparison of the efficiency of insolvency proceedings within the context of the banking union.

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

II. Lastly, it is Germany's understanding that the Directive, as stated in recital 95, is subordinate to the Cape Town Convention on international interests in mobile equipment of 16 November 2001 (OJ L 121, 15.5.2009, p. 8) and all its Protocols, and that this was not made clear in the enacting terms - in Article 31(3) - only because the additional Protocols which are not referred to therein have not yet entered into force. Germany therefore assumes that, in the event of a conflict with the additional Protocols to the Cape Town Convention on international interests in mobile equipment of 16 November 2001, once these have entered into force, the Directive will also not affect the application of these additional Protocols and that a conflict with the provisions of international law can consequently be ruled out."