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COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
8 and 9 December 2022

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d)	Workshop on digitalisation of justice (Brussels, 24 October 2022)	
e)	Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions	
f)	EU 2022 Annual Report on the application of the EU Charter of Fundamental Rights	
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HOME AFFAIRS

1. Adoption of the agenda

The Council adopted the agenda set out in 15556/22.

2. Approval of "A" items

a) Non-legislative list

15558/22

The Council adopted the "A" items listed in 15558/22 including COR and REV documents presented for adoption. Statements to these items are set out in the Addendum.

For the following items the documents should read as follows:

Justice and Home Affairs

1. Council Decision on the accession of Philippines to the 1980 Hague Convention on the Civil Aspects of International Child Abduction
Adoption
approved by Coreper, Part 2, on 30.11.2022

C 14957/1/22 REV 1
13845/22
+ **COR 1 (sv)**
JUSTCIV

2. Council Decision on the accession of Tunisia to the 1980 Hague Convention on the Civil Aspects of International Child Abduction
Adoption
approved by Coreper, Part 2, on 30.11.2022

C 14950/1/22 REV 1
13840/22
+ **COR 1 (sv)**
JUSTCIV

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

15560/22

Justice and Home Affairs

1. Directive on the resilience of critical entities

Adoption of the legislative act
approved by Coreper, Part 2, on 7.12.2022

1C 15415/1/22 REV 1
+ REV 1 ADD 1
PE-CONS 51/22
PROCIV

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 114 TFEU). A statement to this item is set out in the Annex.

2. **Decision on the non-acceptance of travel documents of the Russian Federation issued in Ukraine and Georgia**  15418/1/22 REV 1
Adoption of the legislative act PE-CONS 57/22
Decision to derogate from the eight-week period provided for in FRONT
Article 4 of Protocol 1 on the role of national parliaments in the
EU
approved by Coreper, Part 2, on 7.12.2022

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 77(2), points (a) and (b) TFEU).

The Council agreed to derogate from the eight- week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments.

Internal Market and Industry

3. **Regulation amending Regulation (EU) No 1025/2012 as regards the decisions of European standardisation organisations concerning European standards and European standardisation deliverables**  15145/22
Adoption of the legislative act PE-CONS 58/22
approved by Coreper, Part 1, on 7.12.2022 COMPET

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 114 TFEU).

Telecommunications

4. **Decision on the Path to the Digital Decade**  15157/22
Adoption of the legislative act PE-CONS 50/22
approved by Coreper, Part 1, on 7.12.2022 TELECOM

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 173(3) TFEU).

Transport

5. **Directive on training of drivers for the carriage of goods or passengers (codification)**  15417/22
Adoption of the legislative act PE-CONS 1/22
approved by Coreper, Part 2, on 7.12.2022 CODIF
TRANS

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 91 TFEU).

Fisheries

6. **Regulation amending Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013, as regards restrictions to the access to Union waters**  15156/1/22 REV 1
Adoption of the legislative act 15156/22 ADD 1
approved by Coreper, Part 1, on 7.12.2022 PE-CONS 56/22
PECHE

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, with Ireland voting against, (Legal basis: Article 43(2) TFEU). Statements to this item are set out in the Annex.

POLITICAL GOVERNANCE OF THE SCHENGEN AREA ('SCHENGEN COUNCIL')

Non-legislative activities

3. Full application of the Schengen acquis in Bulgaria, Croatia and Romania
- a) Council Decision on the full application of the provisions of the Schengen acquis in Bulgaria and Romania (*) 15218/22
(Legal basis: Article 4 (2) of the 2005 Act of Accession of Bulgaria and Romania)
(*poss.*) *Adoption*
- b) Council Decision on the full application of the provisions of the Schengen acquis in Croatia (*) 14239/22
(Legal basis: Article 4 (2) of the 2011 Act of Accession of Croatia)
(*poss.*) *Adoption*

4. Overall state of the Schengen area
 - a) Schengen barometer 15674/22
 - b) Schengen Council cycle 15271/1/22 REV 1
 - c) Internal security: counteracting migrant smuggling 15086/22
 - d) Interoperability*State of play*

OTHER HOME AFFAIRS ISSUES

Legislative deliberations

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

5. **Regulation on addressing situations of instrumentalisation in the field of migration and asylum**  15219/1/22 REV 1
Progress report

The Council took note of the progress report provided by the Presidency on this file.

6. **Regulation to prevent and combat child sexual abuse**  14862/22
Progress report

The Council took note of the progress report set out in document 14862/22.

7. **Any other business** 15288/22
Current legislative proposals
Information from the Presidency

The Council took note of the information provided by the Presidency on the state of play of different legislative proposals.

Non-legislative activities

8. Russia's aggression against Ukraine ^{1 2} 14684/1/22 REV 1
 - a) The situation of Ukrainian refugees in the EU
 - b) Internal security dialogue*Exchange of views*
9. External dimension of migration and the situation along the main migratory routes ^{1 2} 15270/22 + COR 1 + **COR 1 REV 1 (el)** 15749/22
Exchange of views
Follow-up to extraordinary JHA Council meeting on 25 November 2022

¹ Exceptionally in the presence of the Schengen Associated States.

² The EU agencies Europol, Frontex and EUAA are invited to this point.

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|-----|---|---|
| 10. | Asylum and migration ¹
<i>State of play</i> | 15265/22 + ADD 1 |
| 11. | Cooperation between competent authorities dealing with
counter-terrorism ^{1 3}
<i>State of play presented by the Presidency of the Counter
Terrorism Group (CTG)</i> |  |
| 12. | Council Recommendation on the resilience of critical
infrastructure
<i>Adoption</i> | 15454/22 |
| 13. | Any other business | |
| a) | Prague Process Ministerial Conference
(Prague 24 and 25 October 2022)
<i>Information from the Presidency</i> | 12629/22 + ADD 1 |
| b) | EU-Western Balkans Ministerial Forum on Justice and
Home Affairs (Tirana, 3-4 November 2022)
<i>Debrief by the Presidency</i> | 14331/22 |
| c) | EU-US Justice and Home Affairs Ministerial Meeting,
Washington (14-15 December 2022)
<i>Information from the Presidency</i> | 14779/22 |
| d) | Wildfire preparedness in the context of the Union Civil
Protection Mechanism
<i>Information from the Commission</i> | |
| e) | Union Civil Protection Mechanism response to the
challenges arising from the war in Ukraine
<i>Information from the Commission</i> | |
| f) | Designation of the Director General of the International
Organisation for Migration (IOM)
<i>Information from Portugal</i> | 15637/22 |
| g) | Work programme of the incoming Presidency
<i>Presentation by the Swedish delegation</i> | |

¹ Exceptionally, in the presence of the Schengen Associated States.
³ The EU Agency Europol is invited to this point.

Legislative deliberations

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

14. e-evidence 15267/22

a) **Regulation on European Production and Preservation Orders for e-evidence**

b) **Directive on appointment of legal representatives for gathering evidence**

Progress report

The Council took note of the progress report provided by the Presidency regarding the two legislative instruments forming a package on the collection of electronic evidence.

15. Directive on asset recovery and confiscation 15010/22

Policy debate

The Council held a policy debate on the proposal for a Directive on asset recovery and confiscation, focusing on the right to a fair trial and the right to an effective remedy and how affected persons are protected under the proposed Directive.

16. Important steps on legislative files

a) **Directive on protection of the environment through criminal law** 15006/22
General approach + ADD 2-4

b) **Regulation on the digitalisation of judicial cooperation and access to justice** 15205/22
General approach 15139/22

c) **Directive on the digitalisation of judicial cooperation** 15205/22
General approach 15138/22

The Council reached a general approach on the proposal for a Directive on protection of the environment through criminal law as well as on the proposal for a Regulation and the proposal for a Directive forming a package on digitalisation of judicial cooperation.

17. **Directive against strategic lawsuits against public participation ("anti-SLAPP Directive")**
Policy debate



15222/22

The Council held a policy debate on the proposal for a Directive against strategic lawsuits against public participation ("anti-SLAPP Directive"), focusing on whether the Directive should provide for adequate safeguards against the abuse of civil proceedings brought to prevent, restrict or penalise public participation and media freedom and pluralism, while ensuring that the right to effective access to justice is maintained.

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

15288/22

The Council took note of the information provided by the Presidency on the state of play of different legislative proposals.

Non-legislative activities

19. Fight against antisemitism ⁴
Exchange of views
20. Conclusions on the fight against impunity regarding crimes committed in connection with Russia's war of aggression against Ukraine
Approval
21. Conclusions on enhancing the capacities of the European Judicial Cybercrime Network (EJCN)
Approval
22. EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
Policy debate

15165/22

15237/22

15003/22

14858/22

13873/22

⁴ The Fundamental Rights Agency is invited to this point.

23. Any other business

- | | | |
|----|---|----------|
| a) | EU-Western Balkans Ministerial Forum on Justice and Home Affairs, Tirana, 3-4 November 2022
<i>Debrief by the Presidency</i> | 14331/22 |
| b) | EU-US Justice and Home Affairs Ministerial Meeting, Washington, 14-15 December 2022
<i>Information from the Presidency</i> | 14779/22 |
| c) | Conference on whistleblowing
(Prague, 26-27 October 2022)
<i>Information from the Presidency</i> | |
| d) | Workshop on digitalisation of justice
(Brussels, 24 October 2022)
<i>Information from the Presidency</i> | |
| e) | Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions
<i>Information from the Commission</i> | 15292/22 |
| f) | EU 2022 Annual Report on the application of the EU Charter of Fundamental Rights
<i>Information from the Commission</i> | 15737/22 |
| g) | Work programme of the incoming Presidency
<i>Presentation by the Swedish delegation</i> | |



First reading



Restricted item



Item based on a Commission proposal

(*)

Item on which a vote may be requested

Statements to the legislative "B" items set out in doc. 15556/22**Ad "B" item 5:****Regulation on addressing situations of instrumentalisation in the field of migration and asylum**
*Progress report***STATEMENT BY HUNGARY**

“Hungary is seriously concerned about the practices of certain third countries or non-state actors that seek to destabilise a Member State or the European Union as a whole by instrumentalising migration. This is why we consider it essential to address this issue comprehensively and with the most effective means possible. As a result, it must be recognised that there are situations in which the only solution, both for the protection of the Union and for the protection of migrants, is to close the external borders and to limit the possibility of lodging asylum applications to an external location, such as a consulate, and to declare the primacy of border protection. Consequently, in Hungary's view, the procedures, the limited scope and extent of the derogations set out in the draft Regulation addressing situations of instrumentalisation in the field of migration and asylum does not provide a meaningful solution to address the situations related to the instrumentalisation of migration. Furthermore, we remain firmly of the view that persons disembarked following search and rescue operations should not constitute a separate category from persons crossing sea borders illegally, as those arriving in this way are also considered illegal border crossers. Finally, Hungary attributes a decisive role to the European Council in determining situations of instrumentalisation of migration, which is not sufficiently taken into account in the present draft legislation.

For the above reasons, Hungary cannot support the adoption of the partial general approach.”

Important steps on legislative files

Ad "B" item 16:

a) Directive on protection of the environment through criminal law *General approach*

STATEMENT BY ESTONIA

“Estonia fully supports the objectives of the proposal for the Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC.

Estonia is able to accept the General Approach as a compromise, but we would like to voice our concerns on the evolution of the European Union criminal law. Every new proposal in the field of criminal law introduces additional elements that will inevitably become a standard for future European Union instruments. Although these requirements are formally limited to specific areas of crime, the Member States must also guarantee that their criminal law forms a coherent whole. This means that the transposition of such rules will often lead to changes that will affect the entire criminal justice system of a Member State.

Paragraph 1 of Article 83 of the Treaty on the Functioning of The European Union (TFEU) allows for establishing minimum rules concerning the definition of criminal offences and sanctions. Paragraph 3 of Article 83 and paragraph 1 of Article 67 highlight the importance of safeguarding the legal traditions and fundamental aspects of national criminal justice systems. It is becoming increasingly doubtful whether some of these specific novel rules that are being contemplated by new Directives, are indeed the minimum requirements as envisaged by paragraph 1 of Article 83 of TFEU, or go beyond the necessary minimum. Estonia finds it questionable, whether harmonising penalties for natural persons in Article 5 when the crime is committed with serious negligence, harmonising sanctions for legal persons in Art 7 and harmonising limitation periods in Art 11 remain within the scope of minimum harmonisation. We would therefore like to call on the Commission and Council to ensure that harmonisation of criminal law would indeed be minimum harmonisation.”

STATEMENT BY FINLAND AND BULGARIA

“Finland and Bulgaria fully support the objectives of the proposal for the Directive on the protection of the environment through criminal law. However, we consider that the proposed provisions of Article 7 on the fines to be imposed on legal persons constitute an overly far-reaching and detailed harmonisation of criminal law. In addition, these provisions would, in practice, also significantly affect all other offence categories besides environmental offences.

Finland and Bulgaria are of the view that when reforms of such great principal significance are being considered in the area of EU criminal law, it is especially important to ensure that they are based on appropriately considered and weighty grounds and prepared very thoroughly. When considering the need to approximate criminal sanctions in certain areas, it is also necessary to keep in mind that legal traditions differ between Member States. In the area of criminal law, it is essential to ensure that the special features and fundamental elements of the national systems are respected.

In order to allow Member States to preserve the coherence of their national penal systems, certain flexibility is needed when approximating criminal sanctions. When common sanction levels are determined, due consideration should also be given to the overall level of severity and coherence of the national systems.”

STATEMENT BY HUNGARY

“Hungary is fully committed to protecting the environment, including through the use of effective and efficient criminal measures. Therefore, as a compromise, we support the adoption of the general approach.

However, for the future negotiations with the Parliament, we consider that basic principles of criminal law, and concepts such as *mens rea* and the related sanctions, as well as the sanctions against legal persons need to be reconsidered and further debated. We are not convinced that the current proposal will address the existing and visible gaps. Rather, it is likely to lead to uncertainty for the implementation; it is also likely to result in diverging national legal solutions and to non-uniform application by the courts. We remain convinced that the fundamental principles governing national criminal law, and the national justice systems should be respected to a greater extent during the future negotiations. The attitude expecting responsibility for efficient governance and lawmaking would produce greater impact, and most importantly, it would lead to functional measures at national level. In this regard, we also join other delegations in stating that every new proposal in criminal law introduces additional elements that will become standard for future European Union instruments. Although these requirements are formally limited to specific areas of crime, the Member States must guarantee that their criminal law forms a coherent system. This means that the transposition of such rules will inevitably lead to changes affecting the entire criminal justice system of a Member State.

Similarly to other delegations, we doubt whether the proposed penalties for natural persons in Article 5 (when the crime is committed with serious negligence), harmonizing sanctions for legal persons in Article 7 remain within the scope of minimum harmonisation. We would therefore like to ensure that harmonisation of criminal law remains minimum harmonisation.”

Ad "A" item 1: **Directive on the resilience of critical entities**
Adoption of the legislative act

STATEMENT BY IRELAND

“Ireland notes that resilience is a whole of Government, cross-EU, whole of society issue. Therefore, we support and welcome the Directive on Critical Entities Resilience, which stems from a proposal of the European Commission. It is a key element in enhancing the resilience of operators of critical infrastructure in the face of threats such as pandemics, terrorism or natural disasters.

We wish to acknowledge the work of the European Commission and the attention of the European Presidency in assisting Ireland in working through our concerns relating to the impact of this proposal on existing International Treaties. Also of key concern for Ireland throughout the negotiations was the need to safeguard the important areas of public security, national security and defence. We are satisfied that our concerns were addressed throughout the negotiations.”

Ad "A" item 6: **Regulation amending Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013, as regards restrictions to the access to Union waters**
Adoption of the legislative act

JOINT STATEMENT BY THE COMMISSION AND THE EUROPEAN PARLIAMENT

“The Commission and the European Parliament take note of the situation of fisheries in the Channel and the concerns raised by local and regional fisheries stakeholders, including fishers, regarding the use of demersal seines by numerous vessels.

The Commission and the European Parliament encourage close cooperation between those stakeholders and initiatives from them and invite Member States to follow-up, where relevant, with the submission of joint recommendations. The Commission will follow-up with measures, where appropriate, including technical measures, based on consultations of stakeholders and an assessment by the relevant scientific bodies including an assessment of socio-economic impacts. In this regard, the Commission will ensure that funding is available for scientific research and advice.”

STATEMENT BY THE COMMISSION

“In the event that it considers a review of the CFP Regulation, the Commission will conduct an impact assessment, along the lines of the Better Regulation principles. The Commission will make available to the co-legislators the impact assessment at the moment it publishes such proposal.

Alternatively, it will consider reporting on the implementation of the Common Fisheries Policy at the latest by 2032.”