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European Union

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DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(Foreign Affairs)
24 April 2023

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1. Adoption of the agenda

The Council adopted the agenda set out in 8257/23.

2. Approval of "A" items

a) Non-legislative list

8258/23

The Council adopted all "A" items listed in document 8258/23, including all linguistic COR and REV documents presented for adoption.

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

8259/23

Justice and Home Affairs

1. Regulation amending Regulation (EU) No 216/2013 on the electronic publication of the Official Journal of the European Union

S**C**

7650/23

6551/23

EJUSTICE

Agreement in principle

Request for the consent of the European Parliament approved by Coreper, Part 2, on 05.04.2023

The Council agreed in principle on the proposed regulation, as set out in document 6551/23, subject to the consent of the European Parliament, and decided to forward the draft text of the regulation as set out in document 6551/23 to the European Parliament for consent in accordance with Article 352 TFEU.

2. Information Exchange Directive (IED)

O**C**

7947/23 + COR 1

+ ADD 1

PE-CONS 70/22

+ **REV 1 (sk)**

IXIM

Adoption of the legislative act

approved by Coreper, Part 2, on 19.04.2023

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 Austria and Germany abstaining. (Legal basis: Article 87(2), point (a), TFEU). In accordance with the relevant Protocols annexed to the Treaties, Denmark did not participate in the vote. A statement to this item is set out in the Annex.

3. **Regulation establishing a Joint Investigation Teams collaboration platform**  7950/23 + ADD 1
Adoption of the legislative act PE-CONS 73/22
approved by Coreper, Part 2, on 19.04.2023 JAI

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 82(1), second subparagraph, point (d), TFEU). In accordance with the relevant Protocols annexed to the Treaties, Denmark did not participate in the vote. A statement to this item is set out in the Annex.

Employment and Social Policy

4. **Decision on a European Year of Skills 2023**  7844/23 + ADD 1
Adoption of the legislative act PE-CONS 12/23
approved by Coreper, Part 1, on 19.04.2023 SOC

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 Hungary abstaining. (Legal basis: Article 149 TFEU). A statement to this item is set out in the Annex.

5. **Directive on binding pay transparency measures**  7845/23 + ADD 1
Adoption of the legislative act PE-CONS 81/22
approved by Coreper, Part 1, on 19.04.2023 SOC

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 Bulgaria, Hungary and Sweden voting against and Germany and Latvia abstaining. (Legal basis: Article 157(3) TFEU). Statements to this item are set out in the Annex.

Non-legislative activities

3. Current affairs
4. Russian aggression against Ukraine
Exchange of views
5. Implementation of the EU action plan on the geopolitical consequences of the Russian aggression against Ukraine: engagement with third countries
Exchange of views
6. Any other business

-
- First reading
 - Special legislative procedure
 - Item based on a Commission proposal
-

Statements to the legislative "A" items set out in doc. 8259/23

Ad "A" item 2:

Information Exchange Directive (IED)

Adoption of the legislative act

STATEMENT BY AUSTRIA

“Austria stresses its full support for enhanced police cooperation and improved information exchange between law enforcement authorities.

Regrettably, the current text contains provisions which Austria considers problematic. These are (1) the prescribed time-bound review period for data in the national case management systems, which unduly interferes with national legislative competence, and (2) the possibility of changing communication channels while an exchange of information is ongoing.

In Austria’s view, these points will make police work more difficult and should have been deleted. In light of this, Austria abstains.”

Ad "A" item 3:

Regulation establishing a Joint Investigation Teams collaboration platform

Adoption of the legislative act

STATEMENT BY CROATIA

“The Republic of Croatia expresses its full support for the adoption of the Regulation of the European Parliament and of the Council establishing a collaboration platform to support the functioning of Joint Investigation Teams and amending Regulation (EU) 2018/1726.

However, the Republic of Croatia reiterates its discontent with the current Croatian linguistic version of the proposal for the Regulation, i.e. with the Croatian equivalent of the English term “cyber” and its derivatives into the Croatian language¹, an issue which we have continuously raised on several levels within the Council during the last few years.

The current Croatian version of the proposal for the Regulation uses terminology that is non-existent in Croatian cyber legislation and professional use, thus creating confusion and undermining legal certainty, coherence and clarity.

The Republic of Croatia reiterates its position that the terminology used by the EU institutions should be aligned with already existing national legal terminology in order to ensure legal certainty.

The Republic of Croatia remains committed to improvement of judicial cooperation in criminal matters, as regards secure and fast electronic communication between members of joint investigation teams and the exchange of evidence, and continues to support the adoption of the Regulation.”

¹ The equivalent used in the Croatian legislation is “kibernetički” whereas the term used in the Regulation is “kiber-“.

Ad "A" item 4:

Decision on a European Year of Skills 2023

Adoption of the legislative act

STATEMENT BY HUNGARY

“Hungary is committed to fully support the aims of the European Year of Skills 2023 initiative with regard to the re- and upskilling of people and recognize that a skilled workforce is crucial to ensuring just green and digital transitions. We acknowledge that the final compromise text set out in document 7219/23+ADD 1 is the result of long-lasting negotiations, due to certain elements in the text which are not in line with our position on legal migration in general, Hungary abstains from voting. We regret to note that certain provisions of the decision on legal migration do not reflect sufficiently the need to respect national competences as set out in Article 79(5) TFEU, according to which the Member States’ right to determine volumes of admission of third-country nationals in order to seek work, shall not be affected. In this context, Hungary does not consider “Attracting people from third-countries”, i.e. encouragement of legal migration on the Union level as an appropriate and legally sound tool to resolve the Union’s skills and labour shortage.

Furthermore Hungary recognizes and promotes equality between men and women in accordance with the Fundamental Law of Hungary, and the primary law, principles and values of the European Union, as well as commitments and principles stemming from the international law. Furthermore, equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender convergence’ as ‘convergence between women and men’ in the Decision of the European Parliament and of the Council on a European Year of Skills 2023.”

Ad "A" item 5:

Directive on binding pay transparency measures

Adoption of the legislative act

STATEMENT BY AUSTRIA AND GERMANY

“Austria and Germany consider the use of the wording ‘*Frauen unterschiedlicher Rasse*’ in recital 25 of the German language version of the Pay Transparency Directive to be deeply problematic.

Austria and Germany assume that the clarification on the use of the term ‘*Rasse*’ (‘race’/‘racial origin’) in recital 6 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which is referred to in recital 25 of the Pay Transparency Directive, also applies to the Pay Transparency Directive: ‘*The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term "racial origin" in this Directive does not imply an acceptance of such theories.*’

STATEMENT BY BULGARIA

“The effective implementation of the principle of equal pay for men and women for equal work or work of equal value is an essential condition for eliminating inequalities, promoting equality between women and men, and achieving upward social convergence in the Union. In this respect, the Republic of Bulgaria supports the objectives of the Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

At the same time, however, during the negotiations on the proposal for a Directive, changes were made to the text that are unacceptable to the Republic of Bulgaria.

The scope of employers for whom new obligations are being created has been significantly extended, without taking into account the specific situation of small and medium-sized enterprises. It is important for the Republic of Bulgaria that obligations laid down in the European Commission’s original proposal to report on the pay gap between women and men and to carry out joint pay assessments are applicable only to relatively large companies, which will have the financial and human resources to implement them.

Furthermore, the inclusion of intersectional discrimination in the operative part of the Directive creates legal uncertainty in view of the legal basis for the adoption of the Directive (Article 157(3) TFEU), which covers only protection on the grounds of ‘sex’ (equality between men and women), but not protection on other grounds or on a combination of such grounds.

Last but not least, in 2018, the Bulgarian Constitutional Court adopted a decision stating that the Council of Europe’s Convention on preventing and combating violence against women and domestic violence (‘Istanbul Convention’) promotes legal concepts related to the notion of ‘gender’ that are incompatible with the basic principles of the Constitution of the Republic of Bulgaria. In 2021, the Constitutional Court further clarified that the term ‘sex’ used in the Constitution, should, in the context of the national legal order, be understood in its biological sense only (men and women).

In line with these decisions, the Republic of Bulgaria declares that it cannot accept concepts that aim to distinguish ‘sex’ as a biological category (men and women) from ‘gender’ as a social construct and that it will interpret the use of the term ‘gender’ in the Directive only in its biological sense. Recital 6 is therefore irrelevant to the Republic of Bulgaria in light of its national constitutional order.

For these reasons, the Republic of Bulgaria does not support the text of the Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.”

STATEMENT BY HUNGARY

“Hungary recognizes and promotes equality between men and women in accordance with the Fundamental Law of Hungary, and the primary law, principles and values of the European Union, as well as commitments and principles stemming from the international law. Furthermore, equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender equality’ as reference to ‘providing equal rights, chances and opportunities for women and men’ in the Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.”

STATEMENT BY LATVIA

“Latvia supports the aim of addressing the gender pay gap and the objectives of the Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. Nonetheless, Latvia has concerns about the envisaged enforcement mechanism and regrets that the final compromise agreement on the Directive to be adopted in the Council on 24 April 2023 might impose an excessive and disproportionate administrative burden on private and public sectors.”

STATEMENT BY POLAND

“Equality between women and men is enshrined in the treaties of the European Union as a fundamental right. Poland ensures equality between women and men within the framework of the Polish national legal system in accordance with international human rights treaties and within the framework of the fundamental values and principles of the European Union. For these reasons, the expression ‘gender equality’ will be interpreted by Poland as equality between women and men, in accordance with Articles 2 and 3 of the Treaty on European Union and Articles 8 and 157(3) of the Treaty on the Functioning of the European Union, while expressing ‘gender pay gap’ as the ‘pay gap between women and men’. In view of the above, Poland will interpret other expressions containing the term ‘gender’ as referring to ‘sex’, in accordance with Article 10, Article 19(1) and Article 157(2) and (4) of the Treaty on the Functioning of the European Union. At the same time, Poland does not recognise categories of sex other than ‘female’ and ‘male’; recitals 5 and 6 therefore do not apply to the situation in Poland.”

STATEMENT BY THE COMMISSION

“The Commission takes note of the compromise reached between the co-legislators on a transposition period of three years for the entry into application of the new rules on pay transparency. The Commission would like to point out that this deviation from the standard two-year transposition period should not be seen as a precedent. It only aims at ensuring that employers will have non-discriminatory pay structures in place so as to ensure full application of the new rules at the time of transposition.”