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European Union

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DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(General Affairs)
27 June 2023

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1. Adoption of the agenda

The Council adopted the agenda set out in document 10822/23.

2. Approval of "A" items

a) Non-legislative list

10938/23

The Council adopted all "A" items listed in the document above, including all linguistic COR and REV documents presented for adoption. Statements to these items are set out in the Addendum.

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

10939/23

Justice and Home Affairs

1. Directive on appointment of legal representatives for gathering evidence



10481/2/23 REV 2
+ REV 2 ADD 1
PE-CONS 3/23
CYBER

Adoption of the legislative act

approved by Coreper, Part 2, on 21.06.2023

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 Poland voting against and Bulgaria and Greece abstaining (legal basis: Article 53 and Article 62 TFEU). Statements to this item are set out in the Annex.

2. Regulation on European Production and Preservation Orders for e-evidence



10482/1/23 REV 1
10482/23
ADD 1 REV 2
PE-CONS 4/23
CYBER

Adoption of the legislative act

approved by Coreper, Part 2, on 21.06.2023

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 Hungary, Poland and Finland voting against and Bulgaria and Greece abstaining (legal basis: Article 82(1) TFEU). Statements to this item are set out in the Annex.

3. **Regulation on European Union Drugs Agency**
Adoption of the legislative act
approved by Coreper, Part 2, on 21.06.2023



10485/1/23 REV 1
10485/23
ADD 1 REV 1
PE-CONS 16/23
CORDROGUE

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 voting against (legal basis: Article 168(5) TFEU). Statements 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. **European electoral law**
State of play



10278/2/23 REV 2

The Council took note of the state of play and held an exchange of views.

4. **Any other business**

None.

Non-legislative activities

5. Preparation of the European Council on 29-30 June 2023:
Conclusions
Exchange of views

8748/23

6. European Semester 2023: integrated country-specific
recommendations
Approval
Transmission to the European Council

9900/23
9901/3/23 REV 3
9902/1/23 REV 1
9904/23

7. **Eighteen-month programme of the Council**
(1 July 2023 - 31 December 2024)
Endorsement



10597/23 + COR 1

The Council endorsed the eighteen-month programme.

8. Impact of the European Union carbon market on different EU policies
Information from Poland

10457/23

9. Any other business
Stockholm symposium on democracy and the rule of law
on 21-22 June 2023
Information from the Presidency



First reading



Special legislative procedure



Public debate (Article 8(3) of the Council's Rules of Procedure)



Item based on a Commission proposal

Statements to the legislative "A" items set out in doc. 10939/23Ad "A" item 1:**Directive on appointment of legal representatives for gathering evidence**
*Adoption of the legislative act***STATEMENT BY GERMANY**

“1. The German Federal Government approves the final version of the Regulation on European production and preservation orders for electronic evidence in criminal proceedings (hereinafter ‘the Regulation’), as it provides an urgently needed set of tools to more effectively combat crimes using digital media.

2. At the same time, the Federal Government finds it regrettable that the recitals lack the necessary clarity with regard to the handling of the grounds for refusal. The rule of law imposes two obligations upon the notified authority: it must, on the one hand, examine the production orders transmitted to it and, on the other hand, it must invoke the grounds for refusal relating to the protection of the rights of individuals as set out in Article 12, if the relevant conditions are met. In particular, if the conditions of the still very narrow ground for refusal on the basis of fundamental rights are met, there should be no scope for a discretionary decision. Clearer wording on this in recitals 62 et seq. would have been useful.

3. Furthermore, from a rule of law perspective, it is essential that legal protection exists not only against production orders and in the issuing state, but also against preservation orders and in the enforcing state. The Federal Government regrets that Article 18 explicitly provides for only the first two aspects of legal protection, but considers the possibility of comprehensive legal protection to be covered by the wording.

4. Lastly, we regard the wording used in recital 53 (interpretation of the residence criterion) on the intention to settle in a particular Member State as too vague. A mere undefined ‘manifestation’ of an intention to settle leaves too much room for interpretation, thereby unduly broadening the scope of the residency criterion. In practice, this could result in fewer notifications than would be appropriate in light of the rationale behind the Regulation.”

STATEMENT BY POLAND

“From the beginning of the negotiations, Poland has fully supported the objectives of the e-evidence package, which were fully incorporated into the general approach adopted by the Council. However, the amendments adopted at the initiative of the European Parliament completely undermine the effectiveness of the measures introduced. For this reason, Poland needs to express its objection to the adoption of the e-evidence Regulation and the e-evidence Directive.

The proposed ground for refusing orders, based on the political procedures referred to in Article 7(1) TEU, introduces a significant liberalisation of the grounds for refusal, which will have the effect of obstructing cooperation in criminal matters between Member States. Such a procedure dictates, that practitioners applying the law are involved in assessing circumstances, that are far beyond the scope and purpose of criminal proceedings. The development of a mechanism to enable Member State authorities to assess a potential serious breach of a fundamental right unjustifiably interferes with the competences of the Council of the European Union as set out in the Treaties.

In view of the final negotiated structure of the provisions of the Regulation on European Production and Preservation Orders for e-evidence and the close link with the Directive on the appointment of legal representatives for the purpose of gathering evidence, Poland objects to the adoption of both instruments of the e-evidence package.”

Ad "A" item 2: **Regulation on European Production and Preservation Orders
for e-evidence**
Adoption of the legislative act

STATEMENT BY CROATIA

“The Republic of Croatia expresses its full support for the adoption of the Regulation on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (“Regulation”).

The Republic of Croatia has been continuously expressing its discontent with the Croatian linguistic version of the legislative proposals using a particular equivalent of the English term “cyber” and its derivatives into the Croatian language versions of the legal acts . Following intensive consultations, in May 2023 an understanding on the issue was reached with the Secretariat General of the Council that would apply in all new Council legal acts that DQL receives for legal-linguistic revision, as from 1 June 2023, regarding legal acts to be adopted by the Council.

Croatia has expected that this understanding would have been reflected in the Croatian linguistic version of this Regulation taking into consideration the importance of this Regulation as a basic legal act in the field of e-evidence in criminal proceedings, and therefore as a step forward towards harmonising the respective terminology. Unfortunately, this seems not to be the case and that opportunity is missed.

The Republic of Croatia welcomes the adoption of this legislative instrument, in order to adapt the cooperation mechanisms regarding the collection of evidence to the digital age, especially when the relevant data is stored in third countries.”

STATEMENT BY FINLAND

“Finland recognizes the changing nature of criminality and the growing importance of cross-border cooperation to obtain electronic evidence in criminal proceedings swiftly and effectively.

During the negotiations, Finland has consistently underlined the necessity to find the right balance between effective law enforcement and criminal investigation and the protection of fundamental rights. From this perspective, the notification mechanism and its scope as well as the grounds for refusal are of particular importance. While the text has improved during the negotiations, we consider the mechanism still inadequate. We believe that in relation to production orders for the most sensitive data, judicial assessment should also be done by the competent authorities in the enforcing State.

Furthermore, Finland regrets that the grounds for refusal do not include a ground that would allow the enforcing authority to refuse a production order for traffic and content data in cases where the use of such measure is restricted under the law of the enforcing State to certain offences or to offences punishable by a certain minimum threshold.”

STATEMENT BY GERMANY

“1. The German Federal Government approves the final version of the Regulation on European production and preservation orders for electronic evidence in criminal proceedings (hereinafter ‘the Regulation’), as it provides an urgently needed set of tools to more effectively combat crimes using digital media.

2. At the same time, the Federal Government finds it regrettable that the recitals lack the necessary clarity with regard to the handling of the grounds for refusal. The rule of law imposes two obligations upon the notified authority: it must, on the one hand, examine the production orders transmitted to it and, on the other hand, it must invoke the grounds for refusal relating to the protection of the rights of individuals as set out in Article 12, if the relevant conditions are met. In particular, if the conditions of the still very narrow ground for refusal on the basis of fundamental rights are met, there should be no scope for a discretionary decision. Clearer wording on this in recitals 62 et seq. would have been useful.

3. Furthermore, from a rule of law perspective, it is essential that legal protection exists not only against production orders and in the issuing state, but also against preservation orders and in the enforcing state. The Federal Government regrets that Article 18 explicitly provides for only the first two aspects of legal protection, but considers the possibility of comprehensive legal protection to be covered by the wording.

4. Lastly, we regard the wording used in recital 53 (interpretation of the residence criterion) on the intention to settle in a particular Member State as too vague. A mere undefined ‘manifestation’ of an intention to settle leaves too much room for interpretation, thereby unduly broadening the scope of the residency criterion. In practice, this could result in fewer notifications than would be appropriate in light of the rationale behind the Regulation.”

STATEMENT BY HUNGARY

“Hungary is fully committed to the fight against crime and would welcome an effective instrument that promotes criminal justice and observes the protection of fundamental rights at the same time. However, we hold any reference in the Regulation to Article 7 TEU unacceptable, even in the recital. The reference to Article 7 TEU was not part of the general approach adopted by the Council, it has only been introduced on the request of the EP and we find its inclusion detrimental to the effectiveness of the new measure and also to the principles of mutual trust and mutual recognition, upon which it is based. Accordingly, Hungary is not in a position to support the adoption of the Regulation.”

STATEMENT BY POLAND

“From the beginning of the negotiations, Poland has fully supported the objectives of the e-evidence package, which were fully incorporated into the general approach adopted by the Council. However, the amendments adopted at the initiative of the European Parliament completely undermine the effectiveness of the measures introduced. For this reason, Poland needs to express its objection to the adoption of the e-evidence Regulation and the e-evidence Directive.

The proposed ground for refusing orders, based on the political procedures referred to in Article 7(1) TEU, introduces a significant liberalisation of the grounds for refusal, which will have the effect of obstructing cooperation in criminal matters between Member States. Such a procedure dictates, that practitioners applying the law are involved in assessing circumstances, that are far beyond the scope and purpose of criminal proceedings. The development of a mechanism to enable Member State authorities to assess a potential serious breach of a fundamental right unjustifiably interferes with the competences of the Council of the European Union as set out in the Treaties.

In view of the final negotiated structure of the provisions of the Regulation on European Production and Preservation Orders for e-evidence and the close link with the Directive on the appointment of legal representatives for the purpose of gathering evidence, Poland objects to the adoption of both instruments of the e-evidence package.”

Ad "A" item 3: **Regulation on European Union Drugs Agency**
Adoption of the legislative act

STATEMENT BY BULGARIA

“The Republic of Bulgaria supports the added value of the Regulation of the European Parliament and of the Council on the European Union Drugs Agency. The extension of the current scope of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) provides solid guarantees that the future agency will be able to respond more effectively to the new challenges in the field of drugs, to provide better support to Member States and to contribute to the improvement of the drug situation at international level.

The Republic of Bulgaria attaches great importance to the promotion and protection of fundamental rights, an important aspect of which is the equality between women and men. We are and will remain dedicated to the principles and values of the European Union as enshrined in the Treaties.

At the same time, in the course of the negotiations between the Council of the EU, the European Parliament and the European Commission on the proposal for the Regulation, changes have been made in the text of Articles 6(6) and 34(5) that are unacceptable for Bulgaria. These are the simultaneous reference to the terms ‘sex’ and ‘gender’.

In this context, Bulgaria points out that in 2018 the Constitutional Court of the Republic of Bulgaria adopted a decision stating that the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence (the ‘Istanbul Convention’) promotes legal concepts related to the notion of ‘gender’ that are incompatible with the fundamental principles of the Constitution of the Republic of Bulgaria.

In 2021, the Constitutional Court further clarified that the term ‘sex’, as used in the Constitution in the context of the national legal order, is to be understood only in the sense of biological determination (men and women). In accordance with the aforementioned decisions, the Republic of Bulgaria declares that it cannot accept concepts that intend to differentiate between ‘sex’ as a biological category (women and men) and ‘gender’ as a social construct and that it will interpret the use of the term ‘gender’ in the Regulation only in its biological sense.

In addition, in Bulgaria, data collection is only possible based on biological sex. As a result, Bulgaria interprets the process of data collection in this context, as referring to biological sex, in the Regulation of the European Parliament and of the Council on the European Union Drugs Agency.

Lastly, the Republic of Bulgaria will only accept the translation into Bulgarian of the term ‘gender’ by ‘sex’ (‘пол’ in Bulgarian) in the text of the Regulation.

For the aforementioned reasons, the Republic of Bulgaria cannot vote in support of the text of the Regulation of the European Parliament and of the Council on European Union Drugs Agency.”

STATEMENT BY HUNGARY

“Hungary recognises 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 international law. 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 gender equality as providing equal chances and opportunities for women and men. In Hungary, data collection is only possible based on biological sex. As a result, Hungary interprets the process of data collection in this context, referring to biological sex, in the Regulation of the European Parliament and of the Council on the European Union Drugs Agency.”