



Brussels, 28 October 2024
(OR. en)

14523/24
PV CONS 50
JAI 1503
COMIX 425

DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
10 and 11 October 2024

HOME AFFAIRS

1. Adoption of the agenda

The Council adopted the agenda set out in document 13938/24.

2. Approval of 'A' items

a) Non-legislative list

13939/24

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)

13940/24

Justice and Home Affairs

1. Directive on liability for defective products



Adoption of the legislative act

13760/24 + ADD 1
PE-CONS 7/24
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 114 TFEU). A statement to this item is set out in the Annex.


2. Directive amending Directive 2014/62/EU as regards certain reporting requirements



Adoption of the legislative act

13763/24
PE-CONS 82/24
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 83(1) TFEU). In accordance with the relevant Protocols annexed to the Treaties, Denmark did not participate in the vote.

3. **Regulation amending Council Regulation (EC) No 6/2002 on Community designs**  13286/24
Adoption of the legislative act PE-CONS 96/23
PI

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 118 TFEU).

4. **Directive on the legal protection of designs (recast)**  13313/24
Adoption of the legislative act PE-CONS 97/23
PI

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(1) TFEU), with Sweden voting against.

Telecommunications

5. **Regulation on horizontal cybersecurity requirements for products with digital elements (Cyber Resilience Act)**  13757/24 + ADD 1
Adoption of the legislative act PE-CONS 100/23
CYBER

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.

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

Non-legislative activities

3. Overall state of the Schengen area
- a) Schengen barometer 13507/1/24 REV 1
 - b) Implementation of the priorities of the annual Schengen Council cycle 13866/24
- Exchange of views*
- c) Implementation of interoperability
- State of play*

4. Enhancing the effectiveness of the EU's return policy
Exchange of views 13713/24
5. The full application of the Schengen *acquis* in Bulgaria and Romania
State of play

OTHER HOME AFFAIRS ISSUES

Legislative deliberations

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

6. **Regulation to prevent and combat child sexual abuse**  13726/1/24 REV 1
State of play

The Council took note of the state of play regarding the Regulation to prevent and combat child sexual abuse.

7. **Any other business**
Current legislative proposals 13515/24
Information from the Presidency

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

Non-legislative activities

8. The consequences of external conflicts and their implications for the EU¹
Exchange of views 13811/24
9. The fight against drug trafficking and organised crime
State of play 13703/24 + COR 1

¹ The European agencies EUAA, Europol and Frontex were invited to this item.

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| 10. | Any other business | |
| a) | Implementation of migration and asylum reforms
<i>Information from the Commission</i> | 14291/24 |
| b) | Implementation of Regulation (EU) 2022/2065 on a single market for digital services (DSA): reporting obligation for illegal content
<i>Information from Germany</i> | 13839/24 |
| c) | Recruitment of minors and young individuals into criminality via online platforms
<i>Information from Sweden</i> | 13840/24 |
| d) | Regional civil protection forum (Vilnius, 6 September 2024)
<i>Information from Lithuania</i> | 13849/24 |
| e) | EU-Western Balkans' Justice and Home Affairs ministerial forum (Montenegro, 28-29 October 2024)
<i>Information from the Presidency</i> | 13161/24 |

FRIDAY 11 OCTOBER 2024

JUSTICE

Legislative deliberations

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

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| 11. | Any other business | |
| | Current legislative proposals | 13515/24 |
| | <i>Information from the Presidency</i> | |

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

Non-legislative activities

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| 12. | The fight against drug trafficking and organised crime ²
<i>State of play</i> | 13703/24 + COR 1 |
| 13. | Russia's war of aggression against Ukraine: fight against impunity ²
<i>State of play</i> | 13216/24 |
| 14. | Fostering access to justice in the context of rule of law and competitiveness
<i>Exchange of views</i> | 13797/24 |

² The European agency Eurojust was invited to this item.

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| 15. | Fight against racism: implementation report on the antiracism action plan ³
<i>Exchange of views</i> | 13809/24
13819/24 |
| 16. Any other business | | |
| a) | Fight against antisemitism: developments in the area of combatting antisemitism ³
<i>Information from the Presidency and the Commission</i> | |
| b) | 2024 annual report on the application of the Charter of Fundamental Rights ³
<i>Information from the Commission</i> | 14119/24 |
| c) | EU accession to the European Convention on Human Rights.
<i>Information from the Presidency</i> | |
| d) | Rule of Law report 2024
<i>Information from Slovakia</i> | 13686/24 |
| e) | EU-US negotiations on an e-evidence agreement
<i>Information from the Commission</i> | |
| f) | EU-Western Balkans' Justice and Home Affairs ministerial forum (Montenegro, 28-29 October 2024)
<i>Information from the Presidency</i> | 13161/24 |



First reading



Item based on a Commission proposal

³ The Director of the Fundamental Rights Agency was invited to this point.

Statements to the legislative "B" items set out in doc. 13938/24**Ad “B” item 6: Regulation to prevent and combat child sexual abuse**
*State of play***STATEMENT BY ITALY**

“Italy shares the fundamental importance of combating child sexual abuse. It is a type of crime deeply damaging to the dignity of minors and, for this reason, particularly abject.

Italy has always been at the forefront of combating this heinous crime and is in favour of adopting the most advanced means of combating it, both legally and technically, in compliance with the principles of the rule of law.

For this reason, Italy supports the proposal for a Regulation of the European Parliament and of the Council of the European Union laying down uniform rules to prevent and combat child sexual abuse, as formulated in the last proposal by the Hungarian Presidency of the Council, while reaffirming the following principles:

1. Member States’, and in particular Italy’s, judicial authority keeps intact the prerogatives accorded by national law pertaining to the direction, conduct, control and supervision in the detection and suppression of criminal offenses, as the guarantor of the rights of suspects and offended persons according to national law;
2. Reporting obligations and other obligations imposed to provider and other subjects by the regulation does not affect in any manner, nor substitute, obligation to report to the judicial authority and other obligations established by national law, so that judicial authority remain the direct recipient and depository of all reports and news of offenses, including those potentially arising from investigative findings relating to C.S.A.M. materials acquired by law enforcement agencies of member countries as well as child pornography material independently detected by internet service providers and related to the reporting obligations under the regulation;

3. Any measure of a prohibitory or inhibitory nature with respect to the publication or dissemination of child pornography material is subject to the prior scrutiny of the judicial authority, if so is required by national law, including through forms of prior or posthumous authorization of the aforementioned acts;
4. The confidentiality of users' communications is unequivocally ensured through the end-to-end encryption system, according to national law, effectively avoiding indiscriminate profiling of service users. In this regard, it should be ensured that any exceptions to the encryption regime at data input can only occur as a result of the issuance of a detection order related to a known child abuse, within the limits and the scope of the regulation;
5. Jurisdiction for the purposes of the application of the Regulation shall not affect in any manner existing rules on jurisdiction for the prosecution and judgements of crimes. In particular, the jurisdiction of a member State to issue with regard to issue detection orders, according to the regulation, shall not affect jurisdiction of other member States, in particular Italy, to prosecute and judge criminal offence in accordance with national law.

At the same time, Italy points out that both the broad interpretation given to Article 114 TFEU in order to use it as the legal basis for the proposed regulation and the measures of exceptional importance which are the object of the proposal are justified only in light of the particular heinousness of the crimes which the regulation aims to punish and cannot be regarded as applicable to other matters, purposes or crimes.

It follows, in particular, that the material collected during the detection operations must not be made available to the authorities for purposes other than the repression of crimes of child abuse, even if said purposes aim to the repression of other crimes or to the preservation of public security. In these cases, only national law and any European law specifically dedicated to these matters should apply. The clauses in the proposed regulation should be interpreted in this way, particularly as regards the binding nature of the concepts of 'sole' or 'solely' mentioned in Articles 7(1) and 10, as well as the competences and powers of the EU Centre referred to in Chapter IV of the proposal, with particular regard to Articles 44 to 50.

This is essential if the balance between conflicting fundamental constitutional values – including the protection of personal data and the protection of minors - can be said to be reasonable, proportionate and respectful of the supreme constitutional principles of the Member States.

Similarly, Italy recalls that Article 114 TFEU should not be used as a legal basis where the ‘centre of gravity’ of the regulation relates to matters other than the establishment and functioning of the internal market. Nor can it be used, in a ‘functionalist’ perspective, to extend the competences of the European Union beyond those expressly attributed to the Union in accordance with the principles laid down in Article 5 TEU.

The broad interpretation given by the Commission to the scope of Article 114 TFEU as a basis for the CSA Regulation, establishing a mechanism which does not merely lay down rules for the functioning of the internal market, but also significantly affects criminal law, procedural law and fundamental rights, can be accepted by way of exception on the sole ground of the exceptional importance of the object of the regulation.”

Statements to the legislative "A" items set out in doc. 13940/24

Ad “A” item 1: **Directive on liability for defective products**
Adoption of the legislative act

STATEMENT BY ESTONIA

“Estonia supports the aim of the Directive and can agree with most of its solutions. However, the Directive regulates procedural law in a way that leads to fundamental concerns of the basic principles of a Member State law.

Namely, the Directive has a maximum harmonisation clause, thus regulating exhaustively also the disclosure of evidence in matters of liability for defective products. Maximum harmonization leads to a worrisome special regime in our law where different rules apply. More specifically, it would be more difficult for a plaintiff to request the court's assistance in gathering evidence in cases of liability for defective products than in other legal proceedings, both in those where inequality of the parties is assumed and in those where equality of the parties is assumed.

Estonia has throughout the negotiations explained that the content of procedural actions should not be unreasonably different based on the specific content of the dispute. This would lead to fragmentation of law, lack of legal clarity and, most importantly, different treatment of the parties to the proceedings. That could lead to a problem with our Constitution. We have drawn the attention to the fact that the procedural law of a Member State is a unified system where different parts of procedural law are connected and balanced with other parts of procedural law. Thus, in order to ensure legal clarity and equal treatment of parties to the proceedings, we should consider changing the general rules for disclosure of evidence in our domestic civil procedural law to what it is in the Directive. However, we do not consider it possible as such an interference with national law should not be the purpose of the EU law.

Additionally, the legal basis for regulating civil court proceedings in the European Union is Article 81 of the TFEU, which regulates cross-border judicial cooperation. In the case of this legal basis, it is always very carefully monitored that the created rules would not interfere with national procedural law of the Member States. The legal basis of the Directive at hand is Article 114 of the TFEU, which regulates the establishment and functioning of the internal market. We believe the same careful considerations should be given, when applying this legal basis and at the same time regulating procedural law of the Member States. For example, one existing Directive with an internal market legal basis, which deals with civil court proceedings and contains the clause of disclosure of evidence as well, has only a minimum harmonizing effect (Representative Actions Directive). That allows Member States to base their rules on national law and their legal traditions.

Lastly, Union law may not go beyond what is necessary to achieve the objective. However, the wording of the rules on disclosure of evidence (in the operative part and the recital) indicate that the aim is to intervene in the procedural law of the Member State, while creating a special regime for gathering evidence only in the specific area of matters of liability for defective products. It has remained incomprehensible how the maximum harmonization in this case would be justified (including how is it justified to regulate it differently than in other fields where inequality of parties is also assumed). Furthermore, the actual impact of such maximum harmonization to national procedural law and legal systems of the Member States have not been assessed. In our view, it is not proportionate to achieve the objective at hand with the above-explained solution.

To sum up, Estonia believes the chosen approach on the disclosure of evidence in this Directive is not appropriate and we will carefully follow other proposals that such an approach would not be repeated.”

Ad “A” item 5: **Regulation on horizontal cybersecurity requirements for products with digital elements (Cyber Resilience Act)**
Adoption of the legislative act

**JOINT POLITICAL STATEMENT BY THE EUROPEAN PARLIAMENT, THE COUNCIL
AND THE COMMISSION**

The European Parliament and the Council consider that this Regulation confers additional tasks on ENISA which result in additional workload and would require additional resources in terms of both expertise and number. In view of this, in order to enable ENISA to effectively carry out the tasks under this Regulation, the European Parliament, the Council and the Commission consider that an increase in its resources, in particular its human resources with the adequate expertise, may be necessary. Such increase could be provided for in the annual procedure related to the establishment plan of ENISA. Accordingly, the Commission, which is responsible for entering in the draft general budget of the Union the estimates it deems to be necessary for ENISA’s establishment plan, in the framework of the budgetary procedure set out in Article 314 TFEU and in accordance the procedure set out in the Cybersecurity Act, shall assess the estimates for the establishment plan of ENISA entered for the first year after entry into force of this Regulation in consideration of the necessary resources, in particular human resources, to enable ENISA to adequately carry out its tasks under this Regulation.
