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DRAFT MINUTES

COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)

9 and 10 June 2022

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THURSDAY 9 JUNE 2022

JUSTICE AFFAIRS

1. **Adoption of the agenda**

The Council adopted the agenda set out in 9710/22.

2. **Approval of 'A' items** 9711/22
(a) Non-legislative list

The Council adopted the "A" items listed in 9711/22 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 authorising the opening of negotiations on the judicial sales of ships in the framework of the United Nations Commission on International Trade Law (UNCITRAL) *Adoption* approved by Coreper, Part 2, on 25 May 2022	C	9026/22 **+ REV 1 (lt)** + ADD 1 8926/1/22 REV 1 8926/22 ADD 1 JUSTCIV
2.	Council Decision on the signing of the Protocol on Matters specific to Mining, Agricultural and Construction Equipment (MAC Protocol, UNIDROIT) *Adoption* approved by Coreper, Part 2, on 25 May 2022	C	9028/22 + ADD 1 REV 1 5230/22 + ADD 1 **+ ADD 1 REV 1 (lt)** JUSTCIV
7.	Council Regulation on the Schengen evaluation and monitoring mechanism *Adoption* approved by Coreper, Part 2, on 27 April 2022	C	9128/22 + COR 1 7609/22 **+ COR 1 (fr,lv)** SCH-EVAL

(b) **Legislative list** (public deliberation in accordance with Article 16(8) of the Treaty on European Union) 9712/22

Justice and Home Affairs

Regulation on the European Union Drugs Agency 1 C 9297/22
General approach CORDROGUE

The Council adopted a general approach on this Commission's proposal for a Regulation.

(Legal basis: Article 168(5) TFEU)

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

3. Electronic evidence 1 C 9296/22

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

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

Progress report

The Council took note of the progress report (document 9296/22) provided by the Presidency on the ongoing negotiations regarding the legislative instruments related to electronic evidence.

4. Directive on the protection of the environment through criminal law 1 C 9374/22

Partial general approach

The Council reached a partial general approach as set out in doc. 9374/22 covering Articles 2 (with the exception of the definitions of 'victim' and 'public concerned', which relate to provisions that have not yet been discussed), 3 and 4 of the Directive and the related recitals of the proposal for a Directive on the protection of the environment through criminal law. The Council also had a debate on issues related to provisions on sanctions.

5. Regulation on digital information exchange in terrorism cases 1 C 9259/22 + ADD 1
General approach

The Council reached a general approach on the proposed Regulation as set out in doc. 9259/22. A statement by Cyprus is set out in the Annex.

6. Regulation establishing a collaboration platform to support the functioning of Joint Investigation Teams 1 C 9166/22
General approach

The Council reached a general approach on the proposed Regulation as set out in doc. 9166/22. A statement by Germany is set out in the Annex.

7. Any other business 957722
Current legislative proposals
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

8. Protection of personal data in the context of international transfers 9258/1/22 REV 1 9188/22
Exchange of views

9. Judicial responses to the situation in Ukraine[1] 9784/22
Policy debate

10. Conclusions on the EU Strategy on the rights of the child 9468/22 + COR 1
Approval

11. EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 9211/22 + COR 1
State of play

[1] The European Union agency Eurojust is invited on this item.

12. Any other business
    a) Guidelines on extradition
    Information from the Commission
    b) EU-US Justice and Home Affairs Ministerial Meeting, Paris, 23 June 2022 — 9657/22
    Information from the Presidency
    c) Work programme of the incoming Presidency
    Presentation by the Czech delegation

FRIDAY 10 JUNE 2022

HOME AFFAIRS

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

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

13. Amendments to the Schengen Borders Code — 1 C — 9937/22
General approach

The Council reached a general approach on the text submitted by the Presidency as set out in doc. 9937/22. A statement by Germany is set out in the Annex.

14. Directive on information exchange — 1 C — 9502/22
General approach

The Council reached a general approach on the text submitted by the Presidency as set out in doc. 9502/22.

Non-legislative activities

15. Overall state of the Schengen area — 9802/22
    - State of Schengen Report
    Exchange of views

OTHER HOME AFFAIRS ISSUES

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

16. Prüm II Regulation 1 C 9544/22
General approach

The Council reached a general approach on the text submitted by the Presidency as set out in doc. 9544/22.

17. Any other business 9577/22

Current legislative proposals
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

18. Ukraine / Follow-up of the 10-point plan[2] [3] 9440/22
Exchange of views

19. Asylum/migration: review of progress achieved in the first step[3] 9360/22 + ADD 1
Progress report

20. Enhanced cooperation between competent authorities in the fight against terrorism [3] [4]
State of play presented by the Presidency of the Counter Terrorism Group (CTG)

21. Report on other non-legislative activities:
    a) Implementation of the EU Drugs Strategy and Action Plan 2021-2025 9064/22
    b) Combating radicalisation
    Information from the Presidency 9319/22

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2 The European Union agencies EUAA, Europol, eu-LISA and Frontex are invited on this item.
3 Exceptionally, in the presence of the Schengen Associated States.
4 The European Union agency Europol is invited on this item.

22. Any other business

a) EU-US Justice and Home Affairs Ministerial Meeting, Paris, 23 June 2022 — 9657/22
Information from the Presidency

b) Work programme of the incoming Presidency
Presentation by the Czech delegation

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❶ First reading

Ⓒ Item based on a Commission proposal

✋ Restricted item

ANNEX

Statements to the legislative "B" items set out in doc. 9710/22

Ad "B" item 5: **Regulation on digital information exchange in terrorism cases**
General approach

STATEMENT BY CYPRUS

"As regards the abovementioned proposal, and in particular to the provisions therein related to the exchange of information with third countries and the secondment of a liaison Prosecutor from a third country to Eurojust, Cyprus recalls its position as regards the horizontal obligation of third countries, including candidate countries, to fully and effectively cooperate with all EU Member States in a non-discriminatory manner, both for the exchange of information as well as at the level of liaison officers of third countries seconded to Eurojust."

Ad "B" item 6: **Regulation establishing a collaboration platform to support the functioning of Joint Investigation Teams**
General approach

STATEMENT BY GERMANY

"The Federal Government agrees with the proposal for a Regulation establishing a platform for the cooperation of joint investigative teams (JITs). Establishing a secure and functional collaboration platform, which is embedded in the existing collaboration systems and allows for more efficient collaboration between judicial and criminal prosecution authorities across the EU is an important step in combating of cross-border crime.

However, the Federal Government takes the view that access to this collaboration platform should also be granted to joint investigation teams within the meaning of Article 24 of the Naples II Convention, which are established by judicial and criminal prosecution authorities in the course of carrying out their duties in cases of breaches of customs or excise duty regulations, or of prohibitions and restrictions (e.g. smuggling drugs or weapons). Joint investigation teams within the meaning of the Naples II Convention are regularly used and are highly significant in practice in order to be able to effectively combat cross-border organised and serious crime. Moreover, they are an important instrument for safeguarding the EU's financial interests. For this reason, the Federal Government takes the view that they should also have access to the most modern collaboration tools, such as the proposed collaboration platform."

Ad "B" item 13: **Amendments to the Schengen Borders Code**
General approach

STATEMENT BY GERMANY

"Germany welcomes the common Council position on a draft regulation amending the Schengen Border Code adopted by the Council on 10 June 2022.

With a view to clarifying the interpretation of paragraph 5 of article 27a of the draft Code, Germany wishes to specify its position on the said provision's operational implementation.

In Germany's view para. 5 of article 27a needs to be read in conjunction with the rulings of the European Court of Justice of 26 April 2022 (C-368/20 and C-369/20), and indeed serves to implement the principles as spelled out by the Court in these decisions. As a consequence, Germany considers that internal border controls in the Schengen Area need to be restricted to what is strictly necessary. More specifically, para. 5 of article 27a cannot be construed so as to allow for the indefinite prolongation of internal border controls.

Therefore, it is Germany's position that para. 5 of article 27a provides for a prolongation of internal border controls beyond two years due to persistent threats only in major, exceptional cases. Given the principle of free movement of persons without border controls, as laid down in the Treaties, this exception needs to be construed in a strict and narrow way, taking into account that conceivable threats normally do not persist over a period of two years without the possibility of being effectively addressed by other, less intrusive measures.

By the same token, any extension of internal border controls under the said provision even beyond these additional six months can be applied only in very rare and most exceptional cases. It is Germany's express view that border controls shall expire on the date specified by the Member State concerned under para. 5 article 27a as the date that controls will be lifted at the latest. Therefore, any extension of border controls beyond this final prolongation regarding the same threat will need to be considered as not being covered by para. 5 of article 27a and will need to be lifted without undue delay. If, however, the European Commission under the said provision recommends that internal border controls need to be lifted earlier in the light of necessity and proportionality, the Commission's recommendation shall prevail.

Germany invites the European Commission to continue to effectively exert its functions as the guardian of the Treaties by ensuring that the principle of free movement of persons without border controls, one of the European Union's principal achievements, is maintained. The European Commission is invited to do so by closely scrutinizing the operational implementation of this provision."