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**DRAFT MINUTES**

COUNCIL OF THE EUROPEAN UNION  
(Justice and Home Affairs)

7 and 8 October 2021

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## Non-legislative activities

4. **Pre-trial detention** 12005/21  
*Policy debate* 12161/21

The Council held an exchange of views on the issue of pre-trial detention, and more generally on the issue of detention conditions.

5. **European Public Prosecutor's Office (EPPO)** 12022/21  
*State of play*

The Commission provided information on the state of play of the EPPO, which started its operational activities on 1 June 2021.

6. **Conclusions on the EU Strategy on the rights of the child** 12345/21  
*Approval*

There was no consensus for the approval of the Council conclusions on the EU Strategy on the Rights of the Child, as set out in document 12345/21. Bulgaria and Poland submitted statements for the minutes of the Council. The Presidency will reflect on the steps to take with regard to this file.

7. **Any other business**  
a) **Conference on Regulation of Artificial Intelligence –  
Ethical and Fundamental Rights Aspects, 20 July 2021**  
*Information from the Presidency*

The Presidency informed the Council on the main takeaways of the online conference on Artificial Intelligence and fundamental rights organised by the Slovenian Ministry of Justice on 20 July 2021.

- b) **Situation of the members of judiciary in Afghanistan** 12159/21  
*Information from Italy*

The Council took note of the letter of the Ministers of Justice of France, Italy, Luxembourg and Spain on the situation of the judiciary in Afghanistan.

c) **Results of the 6th evaluation of the Code of Conduct on Countering Illegal Hate Speech Online**  
*Information from the Commission*

The Commission reported to the Council on the results of its sixth evaluation of the Code of Conduct on countering illegal hate speech on line.

**FRIDAY 8 OCTOBER 2021**

**HOME AFFAIRS**

**Non-legislative activities**

**8. Situation in Afghanistan: follow up<sup>1</sup>**  
*Information from the Presidency, the Commission and the EU CTC*

The Presidency, the Commission, the EEAS and the EU CTC provided an update on the situation in Afghanistan, covering the humanitarian, migration and security angle.

**9. External dimension of migration**  
**a) Migration Action Plans: state of play**  
*Information from the Commission and the Presidency*  
**b) Migratory situation on various routes**  
*Exchange of views*

The Presidency provided a state of play of the action plans which had been presented and discussed at Working Party level.

Following a joint presentation by the executive directors of Frontex, EASO and Europol on the migratory situation on the various routes, delegations exchanged views on the migratory situation and the measures need to address it.

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<sup>1</sup> Exceptionally, in the presence of the Schengen Associated States.

11. **The digital dimension of investigating Child Sexual Abuse – challenges and way forward** 12060/21  
*Policy debate*

The Council held a policy debate on the digital dimension of investigating child sexual abuse, focusing on challenges and the way forward. The need for effective law enforcement access to data was stressed. Ministers took note, that the Commission is preparing a legislative proposal to address child sexual abuse. A more active role for providers in preventing and detecting child sexual abuse material online could be envisaged.

12. **Challenges of screening and detention at the border** 12043/21  
*Policy debate*

The Council took note of the information provided at the meeting of the Mixed Committee at Ministerial level (document 12767/21).

13. **Implementation of interoperability** 11863/21  
*Information from the Commission and eu-LISA*  
*Exchange of views*

Ministers had an exchange of views on the implementation of interoperability . The December Council meeting will come back to the issue on the basis of an assessment by eu-LISA.

14. **Any other business**  
**Salzburg Forum Ministerial Conference (23-24 June 2021),** 11721/21  
**Prague, Czech Republic**  
*Information from the Czech Republic*

The Council took note of the information provided by the Czech delegation.

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**Statements to the non-legislative "B" items set out in doc. 12374/21**

**Ad "B" item 6:**                    **Conclusions on the EU Strategy on the rights of the child**  
*Approval*

**STATEMENT BY BULGARIA**

“The Republic of Bulgaria attaches great importance to the promotion and protection of human rights, including the rights of the child. The country is and will remain dedicated to its human rights commitments.

In 2018, the Bulgarian Constitutional Court adopted a decision stating that the Council of Europe’s Convention on Preventing and Combatting Violence against Women and Domestic Violence (“Istanbul Convention”) promotes legal concepts related to the notion of gender that are incompatible with main principles of the Bulgarian Constitution.

In line with the above-mentioned Decision of the Constitutional Court and with the Bulgarian Constitution, the Republic of Bulgaria declares that expressions containing the term „gender” will be interpreted as referring to women and men.”

**STATEMENT BY POLAND**

“Poland has always been in favour of granting, implementing and strengthening children’s rights in all possible fields of their activity. It was on the initiative of Poland that *the 1989 UN Convention on the Rights of the Child*, to which all EU Member States are parties, was adopted.

Poland always has in mind the welfare of children and pursues the policy aimed at strengthening children’s rights and protecting them from violence. This area has been systematically developed and adapted to the changing circumstances.

Despite noble causes and many important areas that require attention and action, the Commission’s Strategy makes attempts to win, through the back door, the approval for actions that are not connected with the protection of children, and Poland cannot agree to this.

The Strategy, as prepared by the European Commission, makes references to legislative announcements regarding mutual recognition of parental rights of same-sex couples (the so-called rainbow families).

Poland would like to emphasize that family law is a particularly delicate matter and the regulations governing family ties are of paramount importance to the generally understood state community. There is no consensus in the EU about the shared vision of a specific family and marriage model. These are issues of key concern to each Member State and they are related to its national identity, as defined in the constitutional norms. That is why this sphere has been excluded from competences regulated by the EU law.

Poland does not agree to interference by EU institutions in such sensitive spheres of legislation as substantive family law. This area falls under the exclusive competence of each Member State as regards the shaping of family norms, definition of marriage and parenthood.

The conclusions discussed in this debate do not contain the provisions which would indicate the need for the EU institutions to respect the exclusive competences of the Member States in the area of family law, in particular, such guarantees are not provided in the principles of subsidiarity and proportionality, as indicated in the preamble to the conclusions, which apply to shared competences between the Member States and the EU.

The obligation of the EU institutions to respect family law results directly from the provisions of the Treaties – Article 4 (2) of the Treaty on European Union, as well as from the doctrine and jurisprudence of the Court of Justice of the European Union (i.e. the opinion of the Advocate General in case “Pancharevo” C-490/20, the judgment of the CJEU in case Coman C-673/16).

Poland is against such actions of the EU institutions that violate the exclusive competences of the Member States and would lead to the imposition of solutions that are inconsistent with Polish constitutional norms.”

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**Statements to the non-legislative "A" items set out in doc. 12375/21**

**Ad "A" item 9:**

**The 1965 Hague Convention on Service Abroad: Line to take  
concerning the accession of Georgia**  
*Approval*

**STATEMENT BY CZECHIA, FRANCE AND GERMANY**

“Czechia, France and Germany abstain from the vote on the Council recommendation to the accession by Georgia to the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereafter the “Hague Service Convention”).

Czechia, France and Germany have remaining doubts whether a recommendation for a line to be taken by the Council of the European Union with regard to the accession by Georgia to this convention as laid down in Documents 11969/21 and 12284/21 JUSTCIV is necessary and correct. It implicitly states that the European Union has exclusive external competence in this field of law, which is doubtful at least in the light of the discussions within the Council.

It is therefore important that a Council recommendation is limited to the matters that may affect common rules or alter their scope and where the EU has external competences already accepted by the Member States, which is not the case for the current text.

Czechia, France and Germany do not consider this recommendation as a precedent for any other accessions to the Hague Service Convention and other measures of the European Union that aim to regulate comparable subject matters, where exclusive external competence of the European Union could play a role but has not yet been agreed upon by the Member States.”