



Council of the  
European Union

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**DRAFT MINUTES**  
COUNCIL OF THE EUROPEAN UNION  
(Justice and Home Affairs)  
28 September 2023

## **HOME AFFAIRS**

### **OTHER HOME AFFAIRS ISSUES**

#### **Non-legislative activities**

5. **Cooperation with Latin America to fight organised crime and address drug trafficking** 12884/23  
12838/23  
*State of play*

The Council took note of the Joint Declaration agreed by EU Ministers for Home Affairs and the Ministers in charge of security matters of the Member States of the Latin American Committee on Internal Security (CLASI) on 28 September 2023.

6. **Asylum and migration: external dimension** <sup>1 2</sup> 12990/1/23 REV 1  
*Exchange of views*

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

7. **Consequences of Russia's aggression against Ukraine**  
a) **Council Implementing Decision extending temporary protection as introduced by Implementing Decision (EU) 2022/382** 13228/23  
**(Legal basis: Article 4(2) of Council Directive 2001/55/EC of 20 July 2001)**  
*Political agreement*

The Council reached a political agreement on the extension of the Temporary Protection and the text of the Council Implementing Decision.

- b) **Internal security** <sup>3</sup> 12901/23 R-UE  
*State of play*

The Council took note of the state of play on internal security.

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

<sup>2</sup> The EU agencies Frontex, Europol and EUAA were invited to this point.

<sup>3</sup> The EU agencies Frontex and Europol were invited to this point.

**8. Any other business**

13013/23

**2nd Euro-Arab border security conference (EABSC 2023)**

**(Porto, 15-16 November 2023)**

*Information from Portugal*

The Council took note of the information provided by Portugal.

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**R-UE** Document classified RESTREINT UE/EU RESTRICTED

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**Statements to the non-legislative "A" items set out in doc. 13259/1/23 REV 1****Ad "A" item 6:**

**Council Decision authorising the Commission to participate in negotiations on Council of Europe Convention on the protection of the environment through criminal law (ETS No. 172)**

*Adoption*

**STATEMENT BY THE COMMISSION**

“The Commission welcomes the swift progress by the Council on the preparation and adoption of its Decision authorising the European Commission to participate, on behalf of the European Union, in negotiations for a Council of Europe Convention on the protection of the environment through criminal law.

However, the Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

The Decision authorising the opening of negotiations is premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Its effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations. The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known.

The Commission also considers that the scope of the authorisation as set out in Article 1 of the Decision should extend to all matters falling within all Union’s competences, as defined by the Treaties. In this respect, the Commission considers it incorrect to limit the authorisation to solely matters in respect of which “the Union has adopted rules or their adoption is expected in the foreseeable future” and not to refer the fact that the envisaged Convention falls within an area largely covered by EU common rules. Since the envisaged Convention falls within an area largely covered by EU common rules and, therefore, within the Union’s exclusive competence, the Commission, as guardian of the Treaties, will monitor that there is no violation thereof.

The Commission also considers the possible revision or further development of negotiating directives as set out in Article 1(1) of the Council Decision must be subject to the Commission’s right of initiative on these matters.

The Commission reserves all its rights in these matters.”

## STATEMENT BY IRELAND

“The draft Council Decision proposes to authorise the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172).

On 7 July 2023, the Commission published the Recommendation for a Council Decision having regard to Articles 218(3) and (4) TFEU.

At its meeting on 19 July 2023, Coreper approved the addition of Article 83(2) TFEU to the legal basis of the draft Council Decision. The date of the approval by Coreper of this addition marked the commencement of the opt-in period set out in Article 3 of Protocol 21 to the Treaties.

Ireland notes that it is intended that the Council will make a decision less than 3 months after presentation of this proposed Decision to the Council in order to facilitate the start of negotiations in the Council of Europe.

Ireland notes with regret that this will result in Ireland not being afforded its right to have 3 months within which to exercise Ireland’s option to notify its wish to participate in the adoption and application of the proposed Council Decision, in accordance with the provisions of Article 3 of Protocol 21, TFEU.

However, mindful of the importance of the proposed Council Decision, and acknowledging the need to allow its speedy adoption, Ireland has agreed to waive its right to notify its wish to participate in the adoption and application of the proposed Council Decision, in accordance with the provisions of Article 3 of Protocol 21, TFEU.

This approach is without prejudice to Ireland’s underlying position on this matter.”

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