



Council of the
European Union

Brussels, 31 October 2023
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14487/23
ADD 1
LIMITE
PV CONS 49
JAI 1346
COMIX 476

DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
19 and 20 October 2023

THURSDAY 19 OCTOBER 2023

HOME AFFAIRS

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

Non-legislative activities

3. Overall state of the Schengen area

a) Schengen Barometer

13666/23

b) Fighting cross-border crime, especially migrant smuggling

13901/23

Exchange of views

The Council took note of the information provided at the meeting of the Mixed Committee at Ministerial level (document 14607/23).

4. Implementation of interoperability

13707/23

Exchange of views

The Council took note of the information provided at the meeting of the Mixed Committee at Ministerial level (document 14607/23).

OTHER HOME AFFAIRS ISSUES

Non-legislative activities

9. Asylum and migration: external dimension^{1 2}

13996/23

Exchange of views

The Council held an exchange of views on the external dimension of migration.

10. The implications of the situation in the Middle East for the EU's internal security^{1 3}

Exchange of views

The Council held an exchange of views on the implications of the situation in the Middle East for the EU's internal security.

¹ Exceptionally in the presence of the Schengen Associated States.

² The EU agencies Frontex, Europol and EUAA were invited to this point.

11. **Preventing online radicalisation of minors: state of play and next steps³** 13718/23
Exchange of views

The Council held an exchange of views on the prevention of the online radicalisation of minors.

12. **Any other business**
a) **EU-Western Balkans Ministerial Forum on Justice and Home Affairs (Skopje, 26-27 October 2023)** 11958/23
Information from the Presidency

The Council took note of the information provided by the Presidency.

- b) **Balticconnector disruption and data cable damage** 14281/23
Information from Estonia and Finland

The Council took note of further information provided by Finland and Estonia on ongoing investigations following the recent incidents affecting undersea critical infrastructure on 8 October.

- c) **International Donor's Conference on Humanitarian Demining in Ukraine (Zagreb, 11-12 October 2023)** 14225/23
Information from Croatia

The Council took note of the information provided by Croatia.

³ The EU agency Europol was invited to this point.

FRIDAY 20 OCTOBER 2023

JUSTICE

Non-legislative activities

- 15. Russia's war of aggression against Ukraine: fight against impunity⁴** 13632/23
State of play

The Council took note of the state of play and the information provided by the Presidency, the Commission and Eurojust on the fight against impunity in relation to Russia's war of aggression against Ukraine.

- 16. Judicial cooperation with Latin America to fight organised crime: ⁵** 13680/23
a) EU-CELAC summit (Brussels, 17-18 July 2023): follow-up
b) Europe and Latin America programme of assistance against transnational organised crime (future project "EL PAcCTO 2.0")
State of play

The Council took note of the state of play and the information provided by the Presidency and the Commission on the follow up to the EU-CELAC summit (Brussels, 17-18 July 2023) and on the Europe and Latin America programme of assistance against transnational organised crime (future project "EL PAcCTO 2.0").

- 17. Efforts to improve the efficiency and the quality of the justice systems** 13684/23
Exchange of views

The Council held an exchange of views on efforts to improve the efficiency and the quality of the justice systems.

⁴ The EU agency Eurojust was invited to this point.

⁵ The representative of "EL PAcCTO 2.0" was invited to this point.

18. Conclusions on digital empowerment and fundamental rights

13399/23 + COR 1
+ ADD 1

Approval

Exchange of views⁶

The Council approved conclusions on digital empowerment and fundamental rights and held an exchange of views on the matter with the participation of the Fundamental Rights Agency Director. Statements by Bulgaria, Hungary and Poland are set out in the Annex.

19. Any other business

a) Accession of the EU to the Istanbul Convention

13773/23

Information from the Presidency and the Commission

The Council took note of the information provided by the Presidency and the Commission on the accession of the EU to the Istanbul Convention.

b) EU-US negotiations on an e-evidence agreement

Information from the Commission

The Council took note of the information provided by the Commission on the EU-US negotiations on an e-evidence agreement.

c) EU-Western Balkans Ministerial Forum on Justice and Home Affairs (Skopje, 26-27 October 2023)

11958/23

Information from the Presidency

The Council took note of the information provided by the Presidency on the EU-Western Balkans Ministerial Forum on Justice and Home Affairs taking place in Skopje on 26-27 October 2023.

d) Communication on the EU Roadmap to fight drug trafficking and organised crime

14114/23

Information from the Commission

The Council took note of the information provided by the Commission on its communication on the EU Roadmap to fight drug trafficking and organised crime.

⁶ The Director of the Fundamental Rights Agency was invited to this point.

Statements to the non-legislative "B" items set out in doc. 13958/23**Conclusions on digital empowerment and fundamental rights****Ad "B" item 18:***Approval**Exchange of views***STATEMENT BY BULGARIA**

“Bulgaria attaches great importance to the topic of digital empowerment to protect and enforce fundamental rights in the digital age and therefore wishes to express its support for the proposed draft Council Conclusions on digital empowerment to protect and enforce fundamental rights in the digital age.

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. Therefore, in line with the above-mentioned Decision of the Constitutional Court, the Republic of Bulgaria declares that the country cannot accept either the concept of gender or the gender-based approach of the Council of Europe’s Convention or any other document that intends to differentiate between “sex” as a biological (women and men) category and “gender” as a social construct. Moreover, we strongly believe that when addressing fundamental rights in the context of the Charter of Fundamental Rights of the European Union, the Council should utilise the terminology of the Charter.”

STATEMENT BY HUNGARY

“Hungary recognizes 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 the international law. Furthermore, 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 the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender digital divide’ as reference to the ‘digital divide between women and men in points 5 and 8 of the Council conclusions on digital empowerment and fundamental rights.

Hungary’s agreement to the adoption of the Council Conclusions on digital empowerment and fundamental rights and to the references made therein to various strategies and action plans of the European Commission and the Council of Europe cannot be interpreted as a general endorsement of all actions announced, terminologies used as well as references made in those strategies and action plans, especially when these actions, terminologies and references are direct connotations of the LGBTIQ Equality Strategy 2020-2025 and/or the Gender Equality Strategy 2020-2025 of the Commission.”

STATEMENT BY POLAND

“Poland agrees to adopt the Conclusions on digital empowerment to protect and enforce fundamental rights in the digital age, appreciating the contribution of the Spanish Presidency to their preparation. Indeed, Poland shares the view that fundamental rights are the cornerstone of any democratic society and that their protection, both online and offline, is crucial to respect for human dignity.

However, approving the direction of the Conclusions, Poland questions some of the provisions that attempt to introduce a definition of the crime of 'hate speech' and use the vague concept of 'gender'.

It should be noted that Articles 2 and 3(3) of the Treaty on European Union, Article 10 of the Treaty on the Functioning of the European Union and Article 23 of the EU Charter of Fundamental Rights refer explicitly to equality between women and men and do not use the term 'gender', only 'sex'. The term 'gender' has no definition in EU fundamental law and therefore remains unclear and ambiguously understood in EU Member States. This observation raises the unequivocal conclusion that it is not possible to separate or distinguish with sufficient certainty a use of 'gender' that would ensure uniformity of interpretation. This means that it can be used to refer both to biological sex, but also to so-called socio-cultural sex. This doubt results in the impossibility of eliminating circumstances in which it would be possible to discriminate against certain social groups on the basis of their biological sex. The right of every person to equality before the law and protection against discrimination is a universal right recognised both internationally and in Polish law.

However, the concept of 'gender' should be interpreted in accordance with the Polish constitutional order and tradition, as, according to Article 33 of the Constitution, the Republic of Poland strives to ensure equal rights in family, political, social and economic life for women and men. The Polish Constitution does not contain any reference to the undefined phrase 'gender'. The principle of respect for the national identity of the Member States prevails in such a case towards an interpretation in line with overriding legal principles. Poland therefore reserves the right to interpret the term 'gender' used in the text of the draft as being identical to the unambiguous and well-established term 'sex' (in the sense of male and female) in European Union law.

It is also important to recognise that 'hate speech' is still not part of the catalogue of Eurocrimes under Article 83(1) TFEU. The meaning of 'hate speech' is unclear and understood differently in each Member State. The provisions proposed in the Conclusions, defining 'hate speech' as 'incitement to violence and hatred', which can lead 'to physical violence, stalking, intimidation, objectification, harassment, sexual harassment and discrimination, including hate crime', may therefore be an attempt to circumvent the treaty procedure and in fact seek to introduce a definition of 'hate speech' into the EU legal order in non-legislative documents.

In addition, it should also be emphasized that the definition of 'hate speech' contained in the conclusions cannot be legally binding on any Member State. Moreover, it cannot serve as a basis for interpretation or reasoning by any judicial authority. The ambiguous concept of 'hate speech' used in official EU documents may jeopardise freedom of expression and, consequently, may constitute a violation of the rights and freedoms to express one's opinion.”

Ad "A" item 5: **Council Implementing Decision extending temporary protection**
Adoption

STATEMENT BY THE CZECH REPUBLIC

“Similarly to other Member States and those along the frontline in particular, the Czech Republic has been providing, since the very start of the Russian invasion of Ukraine, an unprecedented assistance to persons fleeing the war. As of 15 October 2023, out of almost 600 000 (571 511) applicants registered, the Czech Republic is still hosting over 360 000 beneficiaries of temporary protection (share of 8.7 % of active registrations in the EU) that corresponds to 3 % of its population. With additional 8 000 applicants newly registered every month, the Czech Republic remains the most affected EU Member State per capita. The Czech Republic duly implements the temporary protection directive and has agreed to its extension until March 2025, also because it firmly believes that the situation requires a joint European response. Accordingly, and in line with the EUCO conclusions of 9 February and 30 June 2023, the Czech Republic expects the Commission to provide further adequate and flexible financial support in order to help relieve the associated financial burden at national level (According to OECD data, only in 2022, the Czech Republic spent the third highest amount of 1.96 billion euros to cover related living, education and health costs).”

STATEMENT BY POLAND

“From the very beginning of the Russian invasion in Ukraine EU Member States have been providing necessary assistance to refugees fleeing from the war.

According to data uploaded on the Temporary Protection Platform (TPP) and channeled via the Blueprint Network as of 10 October 2023, the estimated number of active registration in 27 Member States is still huge i.e. 4 088 249. One of the main countries receiving beneficiaries of temporary protection is Poland that hosts 957 175 beneficiaries (23% of active registrations in the EU). According to OECD estimates, Poland spent 8.36 billion euros on maintaining refugees from Ukraine in 2022 only (including on education, social benefits, medical care, accommodation and others). Is the highest figure among all the OECD member countries.

Poland has no doubt that Ukraine and its citizens deserve our solidarity and therefore does not oppose the extension of temporary protection, but as the country most burdened by the influx of refugees from Ukraine, we call on the European Commission to provide adequate and flexible financing in line with the EUCO conclusions of 9 February 2023. The existing support from the EU budget does not correspond to the scale of needs.”