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(Justice and Home Affairs)
9 and 10 December 2021

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Non-legislative activities

5. **Council Regulation on a Schengen Evaluation and Monitoring Mechanism** ☐ 14629/21 + ADD 1
Progress report

The Council took note of the Presidency report on progress made in the negotiations on the Council Regulation on a Schengen evaluation and monitoring mechanism.

6. **Conclusions on the fulfilment of the necessary conditions for the full application of the Schengen acquis in Croatia** 14764/21
Approval

The Council approved the conclusions on the fulfilment of the necessary conditions for the full application of the Schengen acquis in Croatia.

7. **Implementation of interoperability** 14132/21
Information from the Commission and eu-LISA 14134/21
Exchange of views

Ministers agreed on a revised timeframe for the implementation of certain elements of the interoperability of large scale JHA databases.

8. **Next Generation EU - preventing the infiltration by organised crime** 14255/21
Policy debate

Ministers held a debate on the Next Generation EU recovery funds and on how infiltration by organised crime into legal structures and processes can best be prevented.

9. Cooperation between competent authorities dealing with counter-terrorism



a) State of play by the EU Counter Terrorism Coordinator (EU CTC)

b) State of play by the Counter Terrorism Group (CTG)¹

a) The Council took note of the information provided by the EU CTC.

b) The Council took note of the information provided by the CTG.

10. Countering hybrid threats and migratory challenges

Policy debate

The Commission and the EEAS presented the actions undertaken to counter the hybrid threats posed by the Belarussian regime and provided a brief overview of the current migratory challenges.

11. Any other business

a) **EU-Western Balkans JHA Ministerial (Brdo, 2-3 December 2021)**

14718/21

Debrief by the Presidency

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

b) **EU-US Justice and Home Affairs Ministerial Meeting (Washington, 16 December 2021)**

Information from the Presidency

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

c) **Ministerial Conference on Child sexual abuse, 11-12 November 2021, Brdo pri Kranju, Slovenia**

Information from the Presidency

The Presidency informed Ministers about the above ministerial conference.

d) **Work programme of the incoming Presidency**

Presentation by France

The Council took note of the oral presentation of the programme of the incoming French Presidency.

¹ Exceptionally, in the presence of the Schengen Associated States.

14. EU accession to ECHR

State of play

The Council was updated by the Presidency and the Commission on the negotiations for the accession of the EU to the ECHR. This state-of-play covered the progress made in the negotiations in the Council of Europe and the relevant work within the competent Council bodies.

15. The Covid-19 pandemic - lessons learned for the functioning of courts and for the judicial review/scrutiny of emergency measures

14266/21

Exchange of views

The Council had an exchange of views on the lessons learned from the COVID-19 pandemic for the functioning of courts and the judicial scrutiny of emergency measures on the basis of a Presidency paper (document 14266/21). Ministers shared their best practices to maintain effective judicial scrutiny and stressed the importance of the digitalisation of the justice systems.

16. Combating hate speech and hate crime for a more inclusive and protective Europe

14334/21

Exchange of views

Ministers examined over lunch how to further strengthen efforts against the spread of hate speech and hate crime (also online) and to improve the reporting by victims and their protection.

17. EPPO - European Public Prosecutor's Office

14220/21

State of play

The Council took note of the information on the state of play provided by the Commission and the European Public Prosecutor's Office.

18. Any other business

**a) EU-Western Balkans JHA Ministerial
(Brdo, 2-3 December 2021)**

14718/21

Debrief by the Presidency

The Council took note of the information on the state of play provided by the Presidency on the ministerial meeting with the JHA Ministers of the Western Balkans held in Brdo on 2-3 December 2021.

**b) EU-US Justice and Home Affairs Ministerial Meeting
(Washington, 16 December 2021)**

Information from the Presidency

The Council took note of the information provided by the Presidency on the preparation of the EU-US ministerial meeting scheduled in Washington on 16 December 2021.

c) Future proposals in the area of justice

Information from the Commission

The Commission informed the Council on its plans regarding future proposals to be submitted in the coming months in the area of justice.

**d) 2021 Annual Report on the application of the EU
Charter of Fundamental Rights: protecting
fundamental rights in the digital age**

14592/21

Information from the Commission

The Commission presented to the Council its Annual Report on the application of the EU Charter of Fundamental Rights.

e) Work programme of the incoming Presidency

Presentation by France

The incoming Presidency informed the Council on its work programme in the justice sector.



Item based on a Commission proposal



Restricted item

Statements to the non-legislative "A" items set out in doc. 14626/21**Ad "A" item 9:****Council Decision on EU accession to the Judgments Convention**
*Request for the consent of the European Parliament***STATEMENT BY THE COMMISSION**

“The Decision concerning the accession of the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters should indicate the Commission as responsible to designate the person(s) empowered to deposit, on behalf of the Union, the instrument of accession referred to in Article 24(4) of the Convention. The changes to Article 2 that indicate that the President of the Council is responsible for such designation are thus not in accordance with the Treaties.

The designation of the person(s) empowered to deposit, on behalf of the Union, the instrument of accession to an international agreement is an act of external representation of the Union, which, in accordance with Article 17(1) TEU, is the institutional prerogative of the Commission.

The Court of Justice has emphasized that consistent practice by Union institutions that is not in accordance with the EU Treaties ‘cannot alter the rules of the Treaties that the institutions are obliged to respect’ (Case C-687/15 Commission v Council, EU:C:2017:803, para. 42).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.”

STATEMENT BY AUSTRIA

“The Republic of Austria would like to reiterate its concerns over the possible implications of an accession, without sufficient clarification, to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (in the following the “Convention”) by the European Union (EU) with respect to state immunity and Article 4 of the EU Blocking Statute (Council Regulation (EC) No. 2271/96). An accession of the EU to the Convention might oblige EU Member States to enforce foreign judgments even in cases where such judgments were rendered against an EU Member State in violation of the rules of state immunity under international law or by the extra-territorial application of national laws of third states, which would both constitute a violation of international law and thus not respect the fundamental principles of Union law. Austria would thus like to highlight the relevant parts of the Convention and of the Council Decision which allow the courts of EU Member States to refuse recognition or enforcement of such foreign judgments:

1. Art. 2 para. 5 of the Convention foresees that “[n]othing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property”.
2. Art. 7 para. 1 lit. c of the Convention permits a State Party to refuse recognition or enforcement of a foreign judgement also “in situations involving infringements of security or sovereignty”.
3. According to the recitals of the Council Decision, “the Convention should only allow the recognition and enforcement of third-country judgments in the Union, where fundamental principles of Union law are respected”.

In accordance with these provisions, the Republic of Austria takes the view that EU Member States should refuse recognition or enforcement of a foreign judgment rendered in violation of international law either under the rules of state immunity or by the extra-territorial application of national laws of third states.”
