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COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
6 and 7 December 2018

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HOME AFFAIRS

1. Adoption of the agenda 14833/18

The Council adopted the agenda set out in doc. 14833/18.

2. Approval of "A" items

a) Non-legislative list 14834/18

The Council adopted the "A" items listed in doc. 12665/18 including COR and REV documents presented for adoption. Statements related to these items are set out in the Addendum.

b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union) 14835/18

Justice and Home Affairs

**1. Regulation amending Regulation (EU) No 216/2013 on the electronic publication of the Official Journal of the European Union  14201/18
14463/17
JURINFO**

Adoption

approved by Coreper, Part 2, on 21.11.2018

The Council adopted the Regulation as set out in doc. 14463/17 (Legal basis: Article 352 TFEU).

Transport

**2. Revision of Regulation on wet-lease  14831/1/18 REV 1
Adoption of the legislative act PE-CONS 61/18
approved by Coreper, Part 1, on 05.12.2018 AVIATION**

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the United Kingdom delegation voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 100(2) TFEU).

Legislative deliberations


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

3. **Regulation amending the European Border and Coast Guard Regulation**  14860/1/18 REV 1 + COR 1 + COR 2
Policy debate/Partial general approach


The Council agreed unanimously on a partial general approach regarding the action by Frontex in the area of return and in relation to the cooperation with third countries. A statement by Italy to this item is set out in the Annex.

4. **Return Directive (recast)**  14859/18
Progress report

The Council confirmed the outcome of the discussions in the Mixed Committee at Ministerial level (doc. 15487/18).

5. **Regulation on preventing the dissemination of terrorist content online**  14978/18 + COR 1
General approach

The Council approved the general approach on the proposed Regulation as set out in the Annex of doc. 14978/18 and took note of the written statements by Denmark and Malta, as set out in the Annex.

6. **Reform of the Common European Asylum System and Resettlement**  14597/18 + COR 1
- a) **Dublin Regulation**
 - b) **Reception Conditions Directive (recast)**
 - c) **Qualification Regulation**
 - d) **Asylum Procedure Regulation**
 - e) **Eurodac Regulation (recast)**
 - f) **EU Asylum Agency Regulation**
 - g) **Resettlement Framework Regulation**
- Progress report*

The Presidency informed the Council on the progress of the reform of the Common European Asylum System and Resettlement as set out in doc. 14597/18.

7. **Any other business**

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

The Council addressed the following non-legislative discussion items (8-10)

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|-----|---|------------------|
| 8. | Fight against people smuggling networks: a comprehensive and operational set of measures
<i>Approval</i> | 14576/1/18 REV 1 |
| 9. | Justice and Home Affairs: Priorities for the next MFF
<i>Policy debate</i> | 14608/18 |
| 10. | Any other business | |
| | a) Regional Ministerial Forum on counteraction of internal corruption (Sofia, 26-27 November 2018)
<i>Information from Bulgaria</i> | |
| | b) EU-US JHA Ministerial Meeting (Washington, 8-9 November 2018)
<i>Information from the Presidency</i> | 12894/18 |
| | c) High Level Conference "European values, rule of law, security" (Vienna, 19-20 November 2018)
<i>Information from the Presidency</i> | |
| | d) Vienna Process
<i>Results and follow-up</i> | |
| | e) Work programme of the incoming Presidency
<i>Presentation by Romania</i> | |

Legislative deliberations

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


11. **Contract Law - Directive on Contracts for the sales of goods (SGD)**  14951/18 + COR 1
General approach

The Council agreed on a general approach on the text of the Annex to doc. 14951/18.

Statements by Germany, Poland and Portugal, Malta and Italy to this item are set out in the Annex.

12. **Brussels IIa Regulation (recast)**  14784/18
General approach

The Council approved the general approach as set out in doc. 14784/18.

13. **Regulation on the assignments of claims**  14498/18
Progress report

The Council took note of the progress report as set out in doc. 14498/18.

14. **Regulation on European Production and Preservation Orders for e-evidence**  15020/18 + COR 1
General approach

The Council approved the general approach on the proposed Regulation as set out in the annex of doc. 15020/18.

15. **Any other business**

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

The Council addressed the following non-legislative discussion items (16-22)

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|-----|--|------------------|
| 16. | Negotiating mandate for the 2nd Additional Protocol to the Budapest Convention
<i>State of play</i> | |
| 17. | Negotiating mandate for an agreement between the EU and the US facilitating the access to e-evidence
<i>State of play</i> | |
| 18. | EPPO Regulation: Implementation
<i>Information from the Commission on the state of play</i> | |
| 19. | Data Retention: Retention of electronic communication data
<i>State of play</i> | 14319/18 |
| 20. | Mutual recognition in criminal matters - Conclusions
<i>Adoption</i> | 14540/18 + COR 1 |
| 21. | EU Accession to ECHR
<i>State of play</i> | |
| 22. | Any other business | |
| | a) "Towards digital criminal justice in the EU"
<i>Presentation by Eurojust</i> | 14585/18 |
| | b) EU-US JHA Ministerial Meeting
(Washington, 8-9 November 2018)
<i>Information from the Presidency</i> | 12894/18 |
| | c) Work programme of the incoming Presidency
<i>Presentation by Romania</i> | |

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|----------|-------------------------------------|
| I | First reading |
| S | Special legislative procedure |
| C | Item based on a Commission proposal |
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STATEMENTS TO THE LEGISLATIVE "B" ITEMS SET OUT IN DOC. 14833/18

Ad "B" item 3: **Regulation amending the European Border and Coast Guard Regulation**
Policy debate/Partial general approach

STATEMENT BY ITALY

"With respect to the partial general approach on the Regulation amending the European Border and Coast Guard Regulation, Italy understands the aim of the information to the Commission on the bilateral or multilateral initiatives on border management and return signed by Member States with Third Countries. However, Italy stresses the need to acquire the explicit and prior consent of the Third Country on the possibility to notify the text of those cooperation's agreements, being understood that Italy agrees on the communication of the conclusion of such agreements and their general content."

Ad "B" item 5: **Regulation on preventing the dissemination of terrorist content online**
General approach

STATEMENT BY DENMARK

"The Danish Government stresses its firm support for the aim and spirit of the proposed regulation and the efforts of the Presidency to advance the adoption of the proposal. It is the strong belief of the Danish Government that the proposed regulation will strengthen the efforts to quickly and efficiently remove terrorist content online across the EU, thereby making an effective contribution to the essential battle against terrorism.

Under the Danish constitution, Danish authorities are granted exclusive power to exercise public authority in Denmark, including the power to issue legally binding decisions addressed to companies and citizens in Denmark which are intended to produce legal effects in Denmark. Such powers may be delegated to an international authority such as the European Union, as indeed they have been under the Danish Act of Accession to the European Union in accordance with the procedure provided for by the constitution. However, such powers may not under the Danish constitution be delegated to another state.

Accordingly, the proposed Article 15 on jurisdiction raises a constitutional issue on the part of Denmark. As the provision stands, it will give the competent authorities in other Member States the power to issue binding decisions on hosting service providers in Denmark without any prior involvement by the Danish authorities.

The Danish Government therefore stresses that it is of critical importance to Denmark that the proposal be amended in such a manner as to resolve this constitutional issue. Failing such amendment, it will not be possible for the Danish Government to support the proposal at the first reading.

A possible solution would be to add a paragraph to the proposed Article 15, stating that where the legal system of the Member State does not provide for removal orders or referrals being addressed directly from the competent authority of another Member State to a hosting service provider which has its main establishment or legal representative within the Member State, this Article and Articles 4 and 5 may be applied in such a manner that removal orders or referrals are sent to the competent authority referred to in Article 17. Furthermore, it should be added that the competent authority referred to in Article 17 shall immediately forward the removal order or referral to the hosting service provider or legal representative and that the authority of the Member State which has originally issued the removal order or referral should remain the competent authority as referred to in Article 4 or 5. Member States which apply this paragraph shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by [DATE] and, without delay, any subsequent amendment law or amendment affecting them.

Furthermore, in order to avoid uncertainty as to the competence for judicial remedies, a recital should be added stating that when a Member State applies Articles 4, 5 and 15 in the manner referred to above, the courts of the Member State in which the removal order or referral in question has been issued shall remain competent to ensure effective legal protection of the removal order or referral."

STATEMENT BY MALTA

"In view of the importance and urgency of the Proposal on preventing the dissemination of terrorist content online, Malta is not objecting to the General Approach on the text as set out in document st14978/18.

That said, Malta believes that some issues, mainly those relating to jurisdiction to issue removal orders and jurisdiction for judicial redress would have benefitted from further technical discussions to address any outstanding concerns.

Malta also emphasises that the compromise set out in this General Approach should not constitute a precedent for future dossiers or negotiations, and is only being supported in the context of addressing terrorist activities."

Ad "B" item 11: **Contract Law - Directive on Contracts for the sales of goods (SGD)
*General approach***

STATEMENT BY GERMANY

"Germany accepts the present compromise text 14951/18 of 3 December 2018 on the assumption that the solution in Article 8b(1a) of the compromise text 14951/18 was reached with the aim of enabling Member States whose national law contains a longer period than one year to retain that period. We assume that further Member States will introduce into their national law a period of one year for reversal of the burden of proof."

STATEMENT BY PORTUGAL AND POLAND

"The current version of the compromise text, by extending the period of time on the reversal of the burden of proof, reflects in part the concerns expressed by Portugal and Poland in the negotiation towards a text that effectively protects consumers' rights and the level of protection in force in these Member States.

However, the signatories of this statement maintain their serious concerns on the solution for the hierarchy of rights.

On the basis of Directive 1999/44/CE Member States were allowed to go beyond the Union standards and introduce rules that ensure higher levels of consumer protection than those enshrined in that Directive. Some Member States, such as Portugal and Poland, decided to use this prerogative and strengthen consumer protection by not introducing a hierarchy of rights into their legal systems.

Bearing in mind that consumer protection is crucial to strengthening confidence of the internal market, during the negotiation we had the ambition that the high level of consumer protection could be maintained.

Contrary to our expectations, the Directive as proposed has not taken into account the absence of a hierarchy of rights, presenting a solution which, we believe, can weaken consumer protection and confidence.

In this context, with a constructive spirit and in light of the positive developments regarding the reversal of the burden of proof, the signatories of this statement wish to reserve the right to seek improvements of the current compromise text in the future interinstitutional negotiation, stressing that it is necessary to achieve a more ambitious directive on consumer protection in the European Union, in particular regarding the remedies."

STATEMENT BY MALTA

"Malta recalls that the main objective of the proposal for a Directive on contracts for the supply of digital content (DCD) and the proposal for a Directive on contracts for the sales of goods (SGD) was to eliminate the key contract law-related barriers hindering cross-border trade in order to remove the problems faced by businesses and consumers due to the complexity of the legal framework and the costs incurred by businesses resulting from differences in national contract law. While the general approach on the DCD secures such an objective, Malta considers that the general approach on the SGD does not. Malta regrets that the principle of maximum harmonisation in the SGD has been substantially eroded, thus failing to eliminate disparities in national laws. A better attempt could also have been made to better align the DCD with the SGD. Malta augurs that further discussions on these files will attempt to better align the two proposals and that decisions to be taken on the SGD during the inter-institutional negotiations will not result in a dilution of the added value achieved in the general approach of the DCD."

STATEMENT BY ITALY

"Italy accepts the General Approach text only in the light of a compromise solution, while recalling the main issues which still lead to an important degree of criticism. Italy strongly believes they all should be tackled in the future interinstitutional negotiation.

First of all, Italy believes that the actual drafting has a high level of complexity and many solutions, as adopted in SGD, are not in line with the Directive on contracts for the supply of digital contents (DCD). The overall legislative results, deriving from the future adoption of DCD and SGC, might not be clear and understandable for consumers and professionals, in particular SME (small and medium enterprises) who will face difficulties while selling abroad as far as important issues as liability of the seller, burden of proof and limitation period are concerned, thus leading to a great level of confusion, especially in relation to goods that are not easily identifiable as regulated by DCD or SGD. Furthermore Italy believes that the "doubt cases" solution (art. 2A par. 2) should be amended, as it risks to create unjust duties on the sellers and impede judges to investigate the real will of the parties in each specific case.

Therefore, it is very important that during the future Trilogues the co-legislators should work on simplification and alignments of the two directives, with an aim at streamlining their text and without searching a compromise at any cost.

In that respect, instead of creating ineffective rules we would rather prefer to limit the scope of the Directive only to those provisions whose added value is broadly recognized.

Italy wishes also to recall that maximum harmonization on contractual remedies is, from a national point of view but also for the sake of consistency of EU law, a very relevant issue related to the most important aim of this Directive and hope that Trilogues will consider the deletion of art. 2 par. 6.

Italy still maintains serious worries in relation to the new rules on updates and on goods with digital elements where the sales contract provides for continuous supply of the digital content or digital service over a period of time. Indeed, from an economic point of view, the effects of the rules on updates still remain uncertain (there is a total lack of data concerning the impact of the new rules) and seem to impose on the seller (and not on the producer, who is usually the one who knows how to do it) the burden of updating the digital part of the goods, and to respond for omission of updating, without leaving the choice to the consumer in order to eventually refuse it. In relation to goods with digital elements where the sales contract provides for continuous supply of the digital content or digital service over a period of time there are objective elements (related to the strict connection between the duration of liability, burden of proof and limitation period) which show that the actual text will lead to unfair situations, with a risk of impacts on the entire markets of this type of goods.
