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**DRAFT MINUTES**  
COUNCIL OF THE EUROPEAN UNION  
(Justice and Home Affairs)  
8 and 9 December 2022

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### Non-legislative activities

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

**Non-legislative activities**

**3. Full application of the Schengen acquis in Bulgaria, Croatia and Romania**

- a) **Council Decision on the full application of the provisions of the Schengen acquis in Bulgaria and Romania** (\*) 15218/22

(Legal basis: Article 4 (2) of the 2005 Act of Accession of Bulgaria and Romania)  
(*poss.*) *Adoption*

- b) **Council Decision on the full application of the provisions of the Schengen acquis in Croatia** (\*) 14239/22

(Legal basis: Article 4 (2) of the 2011 Act of Accession of Croatia)  
(*poss.*) *Adoption*

The Council took note of the discussion that took place at the meeting of the Mixed Committee at Ministerial level (document 16183/22).

- a) The draft Council Decision on the full application of the Schengen acquis in Bulgaria and Romania, to be adopted by unanimity of the Member States as set out in Article 4 (2) of the 2005 Act of Accession, was put to a vote.

The required unanimity has not been attained, therefore the Decision was not adopted.

Romania presented a statement as set out in the Annex.

- b) The Council adopted the Decision on the full application of the Schengen acquis in Croatia. Croatia and Slovenia presented statements as set out in the Annex.

**4. Overall state of the Schengen area**

- a) Schengen barometer
- b) Schengen Council cycle
- c) Internal security: counteracting migrant smuggling
- d) Interoperability

15674/22

15271/1/22 REV 1

15086/22

*State of play*

The Council took note of the information provided at the meeting of the Mixed Committee at Ministerial level (document 16183/22).

The Council endorsed the priority actions aimed to strengthen the responses to migrant smuggling (document 15086/22).

The Council took note of the state of play of the Schengen Area and endorsed the priority actions aimed to strengthen the responses to migrant smuggling and the revised timeline of 7 March 2023 for the entry into operation of the Schengen Information System (SIS Recast) provided at the meeting of the Mixed Committee at Ministerial level.

**OTHER HOME AFFAIRS ISSUES**

**Non-legislative activities**

**8. Russia's aggression against Ukraine<sup>1 2</sup>**

14684/1/22 REV 1

- a) The situation of Ukrainian refugees in the EU
- b) Internal security dialogue

*Exchange of views*

Following a presentation by the Commission, the Council held an exchange of views on the consequences of Russia's aggression against Ukraine regarding the situation of refugees and the internal security.

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

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

9. **External dimension of migration and the situation along the main migratory routes** <sup>1 2</sup> 15270/22 + COR 1  
*Exchange of views* + COR 1 REV 1 (el)  
*Follow-up to extraordinary JHA Council meeting on* 15749/22  
*25 November 2022*

The Council held an exchange of views on the external aspects of migration and reviewed the situation along the main migratory routes.

10. **Asylum and migration** <sup>1</sup> 15265/22 + ADD 1  
*State of play*

The Council took note of the state of play of the discussions on the reform of the EU asylum system based on balanced solidarity and responsibility presented by the Presidency. Work will continue on the legislative texts of the respective legal instruments under the Swedish Presidency.

11. **Cooperation between competent authorities dealing with counter-terrorism** <sup>1 3</sup>  
*State of play presented by the Presidency of the Counter Terrorism Group (CTG)*



The Ministers received a six-monthly update on cooperation between competent authorities dealing with counter-terrorism in the presence of the Presidency of the Counter Terrorism Group (CTG).

12. **Council Recommendation on the resilience of critical infrastructure** (\*) 15454/22  
*Adoption*

The Council adopted the Council Recommendation on the Union-wide coordinated approach to strengthen the resilience of critical infrastructure.

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

<sup>3</sup> The EU Agency Europol is invited to this point.

### 13. Any other business

- a) **Prague Process Ministerial Conference (Prague 24 and 25 October 2022)** 12629/22 + ADD 1

*Information from the Presidency*

The Council took note of the information provided by the Presidency on the outcome of the Fourth Prague Process Ministerial Conference, which took place on 24 and 25 October in Prague.

- b) **EU-Western Balkans Ministerial Forum on Justice and Home Affairs (Tirana, 3-4 November 2022)** 14331/22

*Debrief by the Presidency*

The Presidency debriefed the Council on the outcome of the EU-Western Balkans Ministerial Forum on Justice and Home Affairs that was held in Tirana on 3-4 November 2022.

- c) **EU-US Justice and Home Affairs Ministerial Meeting, Washington (14-15 December 2022)** 14779/22

*Information from the Presidency*

The Presidency informed the Council on the agenda and the preparation of the forthcoming EU-US Justice and Home Affairs Ministerial Meeting, which would be held in Washington on 15 December 2022.

- d) **Wildfire preparedness in the context of the Union Civil Protection Mechanism**

*Information from the Commission*

The Council took note of the information provided by the Commission on the work done on prevention and preparedness for wildfires in the context of the Union Civil Protection Mechanism.

**e) Union Civil Protection Mechanism response to the challenges arising from the war in Ukraine**

*Information from the Commission*

The Council took note of the information provided by the Commission on the response provided under the Union Civil Protection Mechanism to the challenges arising from the war in Ukraine.

**f) Designation of the Director General of the International Organisation for Migration (IOM)**

*Information from Portugal*

15637/22

Portugal informed the Council of the application by the current Director-General in the selection procedure for the post of Director-General of International Organisation for Migration to take place in 2023.

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

*Presentation by the Swedish delegation*

The Council took note of the oral presentation by the incoming Presidency of its work programme in the Home Affairs area.



**Non-legislative activities**

**19. Fight against antisemitism <sup>4</sup> 15165/22**

*Exchange of views*

The Council held an exchange of views on the fight against antisemitism on the basis of a Presidency discussion paper (document 15165/22).

**20. Conclusions on the fight against impunity regarding crimes committed in connection with Russia's war of aggression against Ukraine 15237/22**

*Approval*

The Council approved the conclusions on the fight against impunity regarding crimes committed in connection with Russia's war of aggression against Ukraine.

**21. Conclusions on enhancing the capacities of the European Judicial Cybercrime Network (EJCN) 15003/22**

*Approval*

The Council approved the conclusions on enhancing the capacities of the European Judicial Cybercrime Network (EJCN).

**22. EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 14858/22  
13873/22**

*Policy debate*

The Council held a debate on the key outstanding issue in the relevant negotiations regarding the question of jurisdiction of the CJEU in CFSP matters. Work will continue with a view to concluding the accession agreement.

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<sup>4</sup> The Fundamental Rights Agency is invited to this point.

## 23. Any other business

- a) **EU-Western Balkans Ministerial Forum on Justice and Home Affairs, Tirana, 3-4 November 2022** 14331/22  
*Debrief by the Presidency*
- b) **EU-US Justice and Home Affairs Ministerial Meeting, Washington, 14-15 December 2022** 14779/22  
*Information from the Presidency*
- c) **Conference on whistleblowing (Prague, 26-27 October 2022)**  
*Information from the Presidency*
- d) **Workshop on digitalisation of justice (Brussels, 24 October 2022)**  
*Information from the Presidency*
- e) **Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions** 15292/22  
*Information from the Commission*
- f) **EU 2022 Annual Report on the application of the EU Charter of Fundamental Rights** 15737/22  
*Information from the Commission*

The Council took note of the information provided by the Commission and by the Presidency on the above-mentioned information points.

- g) **Work programme of the incoming Presidency**  
*Presentation by the Swedish delegation*

The Council took note of the oral presentation by the incoming Presidency of its work programme in the justice sector.



First reading



Restricted item



Item based on a Commission proposal



Item on which a vote may be requested

**Statements to the non-legislative "B" items set out in doc. 15556/22**

**Full application of the Schengen acquis in Bulgaria, Croatia and Romania**

**a) Council Decision on the full application of the provisions of the Schengen acquis in Bulgaria and Romania**

(Legal basis: Article 4 (2) of the 2005 Act of Accession of Bulgaria and Romania)

*(poss.) Adoption*

**Ad "B" item 3:**

**STATEMENT BY ROMANIA**

“Romania expresses its strong disappointment with the lack of unanimity on the adoption of the Council Decision on the full application of the Schengen acquis and the lifting of control at internal borders in Romania, given the veto of the Austrian delegation.

The negative position expressed by only one delegation has no justification, not only from the legal point of view but also because of the unfounded arguments invoked. All other Member States agree that Romania fully complies with all the applicable Schengen acquis, as it was also certified by the European Commission in accordance with the relevant procedures agreed at the EU level. Romania expresses full appreciation for their support. This regretful development disregards the progress achieved by Romania and its contribution to the wide internal security of the Schengen area. Moreover, such conduct goes against the EU unity and the principle of solidarity and is all the more regrettable in the current geopolitical context.

Romania has a perfectly justified legitimate expectation that the Council and, in particular, the Member State concerned will act in a European spirit and continue the efforts for reaching unanimity as soon as possible.

Romania remains strongly committed to continue to act in a serious and responsible manner to ensure the protection of the external border of the EU, thus contributing to the wider security of the Schengen area.”

**Full application of the Schengen acquis in Bulgaria, Croatia and Romania**

**Ad "B" item 3:**

**b) Council Decision on the full application of the provisions of the Schengen acquis in Croatia**

(Legal basis: Article 4 (2) of the 2011 Act of Accession of Croatia)

(*poss.*) *Adoption*

**STATEMENT BY CROATIA**

“In reference to the statement of the Republic of Slovenia concerning the Council Decision on the full application of the provisions of the Schengen *acquis* in the Republic of Croatia, Croatia recalls that pursuant to the unanimous conclusion of the Croatian Parliament of 29 July 2015 it withdrew from the arbitration proceedings due to material breaches of the Arbitration Agreement. Croatia thus reiterates its position that it is not bound in any way by the arbitral award rendered in 2017 and it would not implement it.

Therefore, the common land and sea border between the Republic of Croatia and the Republic of Slovenia is yet to be definitely determined by peaceful means of settlement, in accordance with international law. In this regard, Croatia remains open to the continuation of bilateral dialogue with Slovenia in order to find a common solution. This statement is without prejudice to continued sincere cooperation with Slovenia on the full application of the Schengen *acquis*.”

**STATEMENT BY SLOVENIA**

“The accession of the Republic of Croatia to Schengen is supported by the Republic of Slovenia and is in our common European interest. The Republic of Slovenia underlines that both the land and maritime boundaries between the two states were fully and definitively settled in the arbitration award of 29 June 2017, which, pursuant to Article 7 of the Arbitration Agreement of 4 November 2009, is final and binding. The Republic of Slovenia has implemented the arbitration award in its national legislation, including by means of the Act recording the national border with the Republic of Croatia (Official Gazette of the Republic of Slovenia, No 69/17).”

**Statements to the non-legislative "A" items set out in doc. 15558/22**

**Ad "A" item 5:**                    **Conclusions on human rights-based approach in drug policies**  
*Approval*

**STATEMENT BY ITALY**

“Italy stresses the crucial importance of ensuring the provision of preventive action, early detection and intervention, as well as early access to treatment and therapy, and social and work rehabilitation programmes, free of charge and without any kind of discrimination or limitation. Thus, we reaffirm the importance of recovery (total recovery of the addicted person) and of scientific research, as well as of risk reduction interventions aimed at preventing pathologies related to drug addiction, in accordance with national legislation and based on scientific evidence.

Finally, we also reiterate our firm opposition to the legalisation of any kind of drugs.”

**Ad "A" item 6:**                    **Public access to documents**  
**Confirmatory application No 19/c/01/22**  
*Adoption*

**STATEMENT BY FINLAND**

“Finland cannot concur with the draft reply to confirmatory application No 19/c/01/22. Finland is not fully convinced that full disclosure of the document would undermine the protection of privacy and the integrity of the individual, nor how this risk is reasonably foreseeable and not purely hypothetical. Moreover at least partial access to the documents should be granted.”

**STATEMENT BY SWEDEN**

“Sweden cannot concur with the draft reply to confirmatory application No 19/c/01/22. Sweden is not fully convinced that full disclosure of the document would undermine the protection of privacy and the integrity of the individual, nor how this risk is reasonably foreseeable and not purely hypothetical. Moreover at least partial access to the documents should be granted.”

**Ad "A" item 11:**

**STATEMENT BY BULGARIA, CROATIA, HUNGARY, LITHUANIA, POLAND AND SLOVENIA**

“Bulgaria, Croatia, Hungary, Lithuania, Poland and Slovenia express the following interpretation of the wording “agreed” as stated in the point 7 of Council conclusions on “Special Report No 19/2022 by the European Court of Auditors on COVID-19 vaccine procurement” which corresponds to the point 48 of above mentioned ECA report: i.e.: „On 9 April 2021, the Commission presented to the steering board the conditions negotiated between the President of the Commission and Pfizer/BioNTech, and the steering board agreed to launch a call for tender”.

Bearing in mind that the Steering Board does not have competence to agree or disagree with the participation in the contracts nor with the tendering procedures launching by the Commission, we believe that a reference to the wording “agreed” should be interpreted as “took note” on launching a call for tender as such approach would reflect the factual scope of the mandate of the Steering Board.”

**STATEMENT BY BULGARIA, CROATIA, ESTONIA, HUNGARY, LATVIA, LITHUANIA, POLAND, ROMANIA, SLOVAKIA AND SLOVENIA**

“Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia appreciate the Special Report No 19/2022 by the European Court of Auditors on COVID-19 vaccine procurement, which contains important findings, as outlined in the Council Conclusions. In order to complete the context, we believe that the perspective of the Member States is essential. The attached two letters<sup>5</sup>, signed by the Ministers of Health of the above listed ten Member States of the European Union and submitted to the Commission on 3 June 2022 and 24 October 2022, are part of the numerous letters sent to the Commission, and provide important contribution on the way to future improvements.”

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<sup>5</sup> See 15471/22 ADD 1 p. 3-8.