



Council of the
European Union

Brussels, 20 December 2023
(OR. en)

16460/23
PV CONS 66
JAI 1627
COMIX 571

DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
4 and 5 December 2023

JUSTICE

1. Adoption of the agenda

The Council adopted the agenda set out in document 15812/23.

**2. Approval of "A" items
Non-legislative list**

16058/23

The Council adopted all "A" items listed in the document above, including all linguistic COR and REV documents presented for adoption. Statements to these items are set out in the Addendum.

Legislative deliberations

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

3. Regulation on the transfer of proceedings in criminal matters
General approach



15657/23
+ ADD 1-2

The Council reached a general approach on the proposed Regulation. Statements by Ireland and a joint statement by Czechia, Estonia and Slovakia are set out in the Annex.

4. Directive amending Directive 2012/29/EU on the rights of victims
Policy debate



15710/23

The Council held a policy debate on the proposed Directive.

5. Any other business
Current legislative proposals
Information from the Presidency

15734/23

The Council took note of the information provided by the Presidency on the state of play of different legislative proposals in the field of justice.

Non-legislative activities

- | | | |
|-----|--|---|
| 6. | Russia's war of aggression against Ukraine: fight against impunity ¹
<i>State of play</i> | 15658/23 + COR 1 |
| 7. | European Public Prosecutor's Office ²
a) Study on the functioning of the EPPO
b) Relations with national authorities
<i>Exchange of views</i> | 15711/23
15779/23
+ ADD 1-3
15924/23 |
| 8. | Council position and findings on the application of the General Data Protection Regulation (GDPR)
<i>Approval</i> | 15507/23 |
| 9. | European e-Justice strategy 2024-2028
<i>Approval</i> | 15509/23 |
| 10. | EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
<i>State of play</i> | 15134/23 |
| 11. | Any other business
a) Appointment of the Director for the European Union Agency for Fundamental Rights (FRA)
<i>Information from the Presidency</i>
b) EU-Western Balkans Ministerial Forum on Justice and Home Affairs, Skopje, 26-27 October 2023
<i>Information from the Presidency</i>
c) EU-US Ministerial meeting on Justice and Home Affairs, Washington, 13-14 November 2023
<i>Information from the Presidency</i>
d) EU-US negotiations on an e-evidence agreement
<i>Information from the Commission</i>
e) Annual Report on the application of the EU Charter of Fundamental Rights
<i>Information from the Commission</i>
f) Work programme of the incoming Presidency
<i>Presentation by Belgium</i> | 14960/23

11958/23

14011/23 |

¹ The EU agencies Eurojust and Europol were invited to this item.

² The European Public Prosecutor was invited to this item.

TUESDAY 5 DECEMBER 2023

HOME AFFAIRS

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

Non-legislative activities

12. Overall state of the Schengen area
- a) Schengen barometer 15315/23
- b) Making the return systems more effective 15925/23
- Exchange of views*
13. Council Decision on the full application of the provisions of the Schengen acquis in Bulgaria and Romania 16090/23
- State of play*

OTHER HOME AFFAIRS ISSUES

Legislative deliberations

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

14. **Pact on Migration and Asylum**³ 
Progress report
- The Council took note of the progress report.
15. **Any other business**
- a) **Regulation to prevent and combat child sexual abuse** 
Information from the Commission
- The Council took note of the information provided by the Commission.
- b) **Regulation on automated data exchange for police cooperation ("Prüm II")** 
Information from the Presidency
- The Council took note of the information provided by the Presidency.

³ Exceptionally in the presence of the Schengen Associated States.

c) Current legislative proposals
Information from the Presidency

15734/23

The Council took note of the information provided by the Presidency on the state of play of different legislative proposals in the field of home affairs.

Non-legislative activities

16. Migration and asylum: external dimension ^{3 4}
Progress report
17. Consequences of Russia's aggression against Ukraine ^{3 5} 15443/23
Internal security
Exchange of views
18. The implications of the situation in the Middle East for the EU's internal security ^{3 5}  15443/23
Exchange of views
19. Countering security challenges: assessment by the Intelligence Advisory Board ^{3 6} 
Presentation by the President of the Counter Terrorism Group (CTG)
State of play
20. Council recommendation on a blueprint regarding critical infrastructure  15825/23
Progress report

⁴ The EU agencies Frontex, Europol and EUAA were invited to this item.

⁵ The EU agencies Frontex and Europol were invited to this item.

⁶ The EU agency Europol and the President of the Counter Terrorism Group (CTG) were invited to this item.

21. 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
 - b) EU-US Ministerial Meeting on Justice and Home Affairs, Washington, 13-14 November 2023 14011/23
Information from the Presidency
 - c) 2nd plenary meeting of the High-Level Group on access to data for effective law enforcement, Brussels, 21 November 2023
Information from the Presidency
 - d) Consultation meeting of states bordering Russia and Belarus, Vilnius, 27 October 2023 15292/23
Information from Lithuania
 - e) Work programme of the incoming Presidency
Presentation by Belgium



First reading



Restricted item



Item based on a Commission proposal

Statements to the legislative "B" items set out in doc. 15812/23**Ad "B" item 3:****Regulation on the transfer of proceedings in criminal matters**
*General approach***JOINT STATEMENT BY THE CZECH REPUBLIC, ESTONIA AND SLOVAKIA**

“The Czech Republic, the Slovak Republic and the Republic of Estonia considered the proposal for a Regulation on the transfer of criminal proceedings as an opportunity to simplify, improve and harmonise the procedure for transferring criminal proceedings between Member States. That is why they took a very active part in the negotiations from the very beginning.

The Czech Republic, the Slovak Republic and the Republic of Estonia appreciate very much that the Presidency has taken into account many of their comments and has also taken into account many of their proposals made during the negotiation process.

The Czech Republic, the Slovak Republic and the Republic of Estonia consider it particularly positive that the Regulation:

- creates a uniform framework for the transfer of criminal proceedings,
- allows for the transfer of criminal proceedings even against an unknown offender,
- maintains the system of requests,
- provides for the possibility to refuse the transfer of criminal proceedings in certain cases,
- is limited exclusively to the transfer of criminal proceedings, and
- establishes a uniform form for the request for transfer of criminal proceedings and sets time limits for the individual acts of the transfer procedure.

From the beginning of the negotiations on the draft of the Regulation, the Czech Republic, the Slovak Republic and the Republic of Estonia have opposed the introduction of a legal remedy for suspects/accused/victims against the decision to transfer of criminal proceeding. Unfortunately, the arguments we have continuously put forward were not considered during the negotiations and this obligation in the Regulation therefore remains. We perceive this as fundamentally negative.

- If the rights and freedoms of suspected/accused persons guaranteed by EU law are to be infringed by the transfer of criminal proceedings, those rights of the suspected/accused persons that could be affected by the transfer of proceedings must be clearly identified. There is, however, no right to be prosecuted or not prosecuted in a particular EU Member State. A key element of transfer of proceedings and its main concern is the principle of the proper administration of justice and its effective enforcement. The suspected/accused persons can hardly be expected to share this principle; their interests will often be quite different.

- Similarly, there is no violation of victims' rights by transferring criminal proceedings. In EU Member States bound by the Victims' Rights Directive, standards of protection of victims' rights in criminal proceedings are respected. In some Member States, the exercise of the victim's right may be “less comfortable”, but this should not be a reason to hinder or obstruct the transfer of criminal proceedings.
- The right of legal remedy (the same applies to the obligation to consult in advance and obtain an opinion on the transfer of criminal proceedings, albeit partially limited in the current wording) is not provided for in any of the normative provisions of Regulation (EU) 2017/1939 implementing enhanced cooperation for the establishment of the European Public Prosecutor's Office. While this Regulation does not regulate the transfer of criminal proceedings, given that the EPPO does not exercise its own jurisdiction, but the criminal jurisdiction of the EU Member States bound by Regulation (EU) 2017/1939, this Regulation provides rules for the transfer of a criminal case from the jurisdiction of one Member State to another. We are thus creating an environment in which suspects/accused in certain types of criminal proceedings will be favored over others.
- It is rather paradoxical that, although the Regulation newly grants a right of a legal remedy, it also effectively restricts it for those persons who will not, under certain conditions, be served with decisions to take over criminal proceedings; the assessment of these conditions is completely unreviewable and dependent on the discretion of the judicial authority of the requested State. We do not see this de facto restriction on access to a remedy, which may be potentially problematic from a constitutional point of view, as a pragmatic solution.

The transfer of criminal proceedings between Member States is the last area of international judicial cooperation in criminal matters that is not uniformly regulated between EU Member States. In order to fulfil the original intention, so to create a modern, effective, simple, clear and easy to apply Regulation for practitioners, it would be appropriate to devote even more time to its discussion in the COPEN working group format.

In spite of the above, the Czech Republic, the Slovak Republic and the Republic of Estonia perceive and appreciate the efforts made by the Presidency in the course of the negotiations of the draft Regulation, in an endeavor to achieve the compromise wording of the currently presented text.”

STATEMENT BY IRELAND

“Ireland notified its intention to take part in the adoption and application of this proposal under Article 3.1 of Protocol 21 to the Treaty on European Union and to the Treaty on the Functioning of the European Union (TFEU) (on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice) by letter dated 13th July 2023.

This is in line with the Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice (Declaration C. 56), in which Ireland declares its firm intention to exercise its right under Article 3 to the maximum extent it deems possible.

Ireland wishes to recall Article 67(1) of the TFEU, which sets out that “The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.”

Ireland has demonstrated its clear desire to co-operate as regards transfers of criminal proceedings by opting in to this proposal. However, in order for Ireland to be able to operationalise the Regulation and to co-operate effectively with other EU Member States, the final text adopted must take into account common law criminal justice systems.

Ireland is of the view that this aim is achieved by the proposed General Approach contained in the Annex to document 15657/23 of 24 November 2023, which we support.

The amended definition of “requested authority” at Article 2(4) ensures that the decision on a transfer of proceedings in criminal matters is taken by a judge, a court, an investigating judge or a public prosecutor. However, it decouples this decision-making from the taking of preparatory or subsequent measures. In this way, the definition can be applied in a common law system, in which investigators, prosecutors and judges act independently in the exercise of their powers and exercise separate, distinct functions.

We wish to thank the Presidency, General Secretariat of the Council, Council Legal Service and Member States for their assistance in finding a solution that is legally sound, respects the legal basis of the Regulation, and does not negatively impact Member States with a different legal tradition.

We are strongly of the view that the amended version of Article 2(4) included in the General Approach should be retained in trilogue negotiations so as not to seriously impact Ireland’s ability to ensure this Regulation is operable within its criminal justice system.”
