

Brussels, 16 January 2025
(OR. en)

16938/24
PV CONS 68
JAI 1880
COMIX 515

DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(Justice and Home Affairs)
12 and 13 December 2024

HOME AFFAIRS

1. Adoption of the agenda

16454/24

The Council adopted the agenda set out in document 16454/24.

2. Approval of "A" items

a) Non-legislative list

16500/24 + COR 1

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.

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

16501/24

Justice and Home Affairs

1. Regulation on advance passenger information (API): enforcement



16520/24
PE-CONS 69/24
IXIM

Adoption of the legislative act

The Council approved the European Parliament's position at first reading and the proposed act has been adopted pursuant to Article 294(4) of the Treaty on the Functioning of the European Union (legal basis: Article 82(1), point (d), and Article 87(2), point (a) TFEU). In accordance with the relevant Protocols annexed to the Treaties, Denmark did not participate in the vote.

2. Regulation on advance passenger information (API): borders



16519/24
PE-CONS 68/24
IXIM

Adoption of the legislative act

The Council approved the European Parliament's position at first reading and the proposed act has been adopted pursuant to Article 294(4) of the Treaty on the Functioning of the European Union (legal basis: Article 77(2), points (b) and (d), and Article 79(2), point (c) TFEU). In accordance with the relevant Protocols annexed to the Treaties, Denmark did not participate in the vote.

3. Regulation amending Regulation (EU) 2018/1806 as regards Vanuatu



16522/24
PE-CONS 100/24
VISA

Adoption of the legislative act

The Council approved the European Parliament's position at first reading and the proposed act has been adopted pursuant to Article 294(4) of the Treaty on the Functioning of the European Union (legal basis: Article 77(2), point (a) TFEU). In accordance with the relevant Protocols annexed to the Treaties, Ireland did not participate in the vote.

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


Non-legislative activities

3. Overall state of the Schengen area 16302/24
Implementation of the priorities of the annual Schengen Council cycle: increasing overall security through digitalisation
Exchange of views
4. Implementation of interoperability 16430/24
Exchange of views
5. Council Decision setting the date for the lifting of checks on persons at internal land borders with and between the Republic of Bulgaria and Romania (*) 16327/24
(Legal basis: Article 4(2) of the 2005 Act of Accession of Bulgaria and Romania)
Adoption

OTHER HOME AFFAIRS ISSUES

Legislative deliberations

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


6. **Regulation to prevent and combat child sexual abuse**  16329/24 + ADD 1
Partial general approach

The Council did not reach a partial general approach.
Austria, Germany and Slovenia presented statements as set out in the Annex.

7. **Any other business** 16121/24
Current legislative proposals
Information from the Presidency

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

8. Legislative and operational planning within the area of freedom, security and justice
State of play
9. Migration and asylum
- a) Addressing migration^{1 2} 16238/24 + COR 1
Exchange of views
- b) Implementation of migration and asylum reforms^{1 3}
Exchange of views
10. Countering security challenges: assessment by the European domestic security intelligence services ^{1 4} 
State of play
11. Access to data for effective law enforcement: concluding report of the High-Level Group⁵ 16307/24
Exchange of views
12. The fight against drug trafficking and organised crime⁶ 16293/24
Progress report
13. Any other business
- a) EU-Western Balkans Ministerial Forum on Justice and Home Affairs (Budva, 28-29 October 2024) 13161/24
Debrief by the Presidency
- b) 7th Ministerial Conference of the Budapest Process (Budapest, 11-12 November 2024) 16208/24
Information from the Presidency
- c) Preparedness of the Union 16565/24
Information from Finland
- d) Work programme of the incoming Presidency 16793/24
Presentation by Poland

¹ Exceptionally in the presence of the Schengen Associated Countries.

² In the presence of the European agencies EUAA and Frontex.

³ In the presence of the European agencies EUAA, eu-LISA, Europol and Frontex.

⁴ In the presence of the European agency Europol and the Co-Chairs of the European domestic security and intelligence services.

⁵ In the presence of the European agencies Eurojust and Europol.

⁶ In the presence of the European agencies EUDA and Europol.

FRIDAY 13 DECEMBER 2024


JUSTICE

Legislative deliberations


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

14. **Directive on minimum rules to prevent migrant smuggling**  **15916/1/24 REV 1**
General approach

The Council reached a general approach on the proposed Directive.
Germany presented a statement as set out in the Annex.

15. **Directive on combating the sexual abuse and the sexual exploitation of children**  **16674/24 + ADD 1**
General approach **+ ADD 2**
+ ADD 2 COR 1

The Council reached a general approach on the proposed Directive.
Austria presented a statement and Belgium, Finland, Ireland, Latvia, Luxembourg, Slovenia and Sweden presented a joint statement as set out in the Annex.

16. **Directive harmonising certain aspects of insolvency law**  **16283/24**
Partial general approach

The Council reached a partial general approach on the proposed Directive.

17. **Any other business** **16121/24**
Current legislative proposals
Information from the Presidency

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

18. **Legislative and operational planning within the area of freedom, security and justice**
State of play

19. **The future of criminal law⁷** **16101/24 + COR 1**
Exchange of views

⁷ In the presence of the European agency Eurojust.

20.	Access to data for effective law enforcement: concluding report of the High-Level Group ⁷ <i>State of play</i>	16306/24
21.	The fight against drug trafficking and organised crime ⁷ <i>Progress report</i>	16293/24
22.	Russia's war of aggression against Ukraine: fight against impunity ⁷ <i>State of play</i>	15658/24
23.	Enhancing the European Investigation Order: results from the final report on mutual evaluations (10th round) ⁷ <i>State of play</i>	15834/1/24 REV 1
24.	Any other business	
	a) EU-Western Balkans Ministerial Forum on Justice and Home Affairs (Budva, 28-29 October 2024) <i>Debrief by the Presidency</i>	13161/24
	b) EU-US negotiations on an e-evidence agreement <i>Information from the Commission</i>	16781/24
	c) Fight against antisemitism: developments in the area of combatting antisemitism <i>Information from the Presidency and the Commission</i>	14245/24
	d) Work programme of the incoming Presidency <i>Presentation by Poland</i>	16792/24



First reading



Restricted item



Item based on a Commission proposal

(*) Item on which a vote may be requested

Statements to the legislative "B" items set out in doc. 16501/24**Ad “B” item 6: Regulation to prevent and combat child sexual abuse**
*Partial general approach***STATEMENT BY AUSTRIA**

“Austria abstains from the Council’s partial general approach on the proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse.

Protection of children is a major priority for Austria. Austria welcomes the fact that a legal framework is to be established at EU level to protect children, in particular to cover the online dimension. It is important to protect children, make providers accountable and create effective reporting obligations. This requires a clear legal basis at European level.

From a children’s rights perspective, we strongly support efforts to protect children’s right to physical integrity and their image rights. Children’s right to privacy online must also be safeguarded. These children’s rights must be taken into account as part of the necessary balancing of interests.

The compromise proposal now presented by the Presidency is moving in the right direction from both a children’s rights and an investigative perspective.

In the negotiations to date, Austria has consistently called for the proposed measures to be drafted in line with fundamental rights and the requirements in the binding opinion of the Austrian Parliament. Accordingly, we have called for maintenance of the confidentiality of interpersonal communications, in particular end-to-end encryption. More specifically, we have a number of concerns in the area of fundamental rights and data protection in respect of the detection order. The proposed measures must not give rise to indiscriminate monitoring of all interpersonal communication. Further work is therefore needed on the design of the detection order.

In view of the above considerations, Austria abstains.”

STATEMENT BY GERMANY

“Germany cannot agree to the Council’s partial general approach to the proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse.

Combating the sexual abuse of children and minors has the highest priority for Germany’s Federal Government. The Federal Government therefore very much welcomes a shared European project which will create a clear and lasting legal basis. Establishing a single European regulatory framework with effective reporting channels is a crucial step in the fight against the sexual abuse of children. As part of this effort, it is important to make the providers of relevant information society services more accountable. At the same time, the planned provisions must uphold fundamental rights, in particular when it comes to protecting the confidentiality of communication and protecting privacy in the digital sphere. For the Federal Government, a high level of data protection and cyber security, including complete and secure end-to-end encryption in electronic communications, is essential.

Despite the progress achieved so far, the Federal Government believes that key revisions still need to be made to the proposed Regulation. In Germany’s view, measures which lead to the scanning of private encrypted communications and measures which break, weaken, modify or circumvent end-to-end encryption must be excluded from the proposed Regulation. This includes in particular the client-side scanning technologies applied to users’ devices.

With this in mind, Germany abstains from the vote.”

STATEMENT BY SLOVENIA

“The Republic of Slovenia acknowledges the need to fight child sexual abuse offline and online and to establish a sound, permanent legal framework, which will enable the effective fight against child sexual abuse online in accordance with fundamental rights. We appreciate the efforts made by the Czech, Swedish, Spanish, Belgian and Hungarian Presidencies in reaching an agreement within the Council. However, we consider that the proposed text of the partial general approach (doc. 16329/24) still does not strike the appropriate balance between the effectiveness of the proposed Regulation and ensuring proportionality and the respect for fundamental rights.

Slovenia supports the provisions in the proposed Regulation regarding risk assessments, risk mitigation measures, the cooperation with service providers and the role of the EU Centre to prevent and combat child sexual abuse. These chapters enjoy our full support in the proposed partial general approach.

The main concern for Slovenia since the start of deliberations within the Council have been the provisions introducing a “detection order”, which would allow for interference with the right to privacy of communication. In accordance with the Constitution of the Republic of Slovenia, the privacy of correspondence and other means of communication may only be suspended for a set time on the basis of a court order where this is necessary for the institution or course of criminal proceedings or for reasons of national security. Slovenia maintains that the proposed detection order amounts to screening of interpersonal communications of all users of a particular service solely on the basis of the likelihood that a particular service is being used or abused to transmit child sexual abuse material, which constitutes a disproportionate interference with the right to privacy of communications.

With a view of the above, the Republic of Slovenia is therefore abstaining on the text of the partial general approach on the *Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse.*”

Ad “B” item 14: Directive on minimum rules to prevent migrant smuggling
General approach

STATEMENT BY GERMANY

“Germany agreed to the Council’s general approach on the proposal for a Directive laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA.

Germany supports the aim of the Directive to combat and prevent migrant smuggling.

At the same time, it is important that there is clarity and legal certainty about the distinction between facilitation of irregular migration and humanitarian assistance.

From Germany's perspective, according to the recitals 4 and 7 the final text of the general approach does not contain any obligation for the Member States to criminalize

- humanitarian assistance or the support of basic human needs, including legal, linguistic or social advice or support and
- the assistance provided to close family members

respectively provided to third-country nationals.

In our view, this particularly applies to search and rescue efforts at sea as required by international law up to and including the subsequent disembarkation.”

Ad “B” item 15: Directive on combating the sexual abuse and the sexual exploitation of children
General approach

STATEMENT BY AUSTRIA

“Austria acknowledges the efforts made to align the provisions on the liability of and penalties for legal persons in Articles 13 and 14 of the proposal with those in existing Directives or proposals for Directives. Consistency with other legal acts of the Union is essential for Austria when adopting new legal acts in order to create a harmonised EU legal system and to enable Member States to implement it in a uniform manner.

However, in our opinion, Article 14 of the proposal for a Directive on combating child sexual abuse regrettably does not fulfil these requirements: the proposed system of penalties for legal persons does not correspond to the system used in other Directives (in particular the Directive on the protection of the environment through criminal law or the Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures) or in other proposals for Directives, such as the proposal for a Directive on trafficking in human beings, in that it proposes a different regime in the relationship between the levels of penalties for natural and legal persons. The system used so far provides for a fine of 1 % of global turnover or EUR 8 million as a fixed amount for legal persons, which corresponds to a custodial sentence of one year for natural persons, and for a fine of 5 % of global turnover or EUR 40 million as a fixed amount for legal persons, which corresponds to a custodial sentence of five years for natural persons. While the present proposal for the amount of the fine corresponding to a custodial sentence of one year adheres to this system, it deviates from it in the case of a custodial sentence of five years and provides for only 3 % instead of the 5 % that has always been used to date.

Austria regrets this deviation. It risks creating fragmentation of Union law and implementation difficulties for Member States. In addition, this approach also undermines the parallel efforts to create so-called ‘model provisions’ for criminal law.”

STATEMENT BY BELGIUM, FINLAND, IRELAND, LATVIA, LUXEMBOURG, SLOVENIA AND SWEDEN

“We welcome the revision of the Directive on combating sexual abuse and sexual exploitation of children and child sexual abuse material and wish to declare the following.

About one in five children are victims of some form of sexual violence. This includes sexual touching, rape, sexual harassment, grooming, exhibitionism, exploitation in prostitution and pornography, online sexual extortion, and coercion.⁸

⁸ According to the ONE in FIVE Campaign by the Council of Europe, <https://human-rights-channel.coe.int/stop-child-sexual-abuse-in-sport-en.html>.

Although children, **who have reached the age of sexual consent**, can consent to sexual acts, they are particularly vulnerable and deserve a comprehensive legal protection. We stand ready to protect the personal and sexual integrity of these young persons in the EU.

We welcomed the Commission's proposal to introduce the concept of lack of consent in the definition of rape concerning children, who have reached the age of sexual consent. In this concept it is clearly stated **when consent can be given** and when it is **not possible for a child to consent**, such as when the child is **unconscious, asleep** or in the state of **frozen fright**. It is also stated that the **absence of consent cannot be refuted exclusively by the child's silence, verbal or physical non-resistance or past sexual conduct**.

However, the Council has deleted essential parts of this text. We strongly regret that the majority of Member States proved unable to get behind a more ambitious approach in ensuring that children, who have reached the age of sexual consent, are provided with the strongest and most comprehensive **legal protection** as possible against unwanted sexual acts.

For us, it goes without saying that **unconscious** or **sleeping** children cannot consent to sexual acts. Neither can the absence of consent be refuted exclusively by the child's silence, **verbal or physical non-resistance** or **past sexual conduct**. This should all be made clear in the operative part of the Directive.

Furthermore, research shows that **frozen fright** is a common reaction to rape and sexual violence. For example, the study "Tonic immobility during rape" shows that 70 percent of the victims of rape experienced a freeze reaction by becoming immobile and unable to resist when subjected to rape, and almost 50 percent had experienced an extreme freezing reaction. The state of frozen fright is not giving consent. It is an instinctive survival response, and this should be clearly stated in the operative part of the Directive, as suggested by the Commission.

To conclude, we strongly regret the inability of the majority of Member States to join forces in advocating a more ambitious and comprehensive approach to protect children, who have reached the age of sexual consent, from unwanted sexual acts."