



Council of the  
European Union

Brussels, 23 March 2018  
(OR. en)

6996/18  
PV CONS 13  
JAI 211  
COMIX 122

**DRAFT MINUTES**  
COUNCIL OF THE EUROPEAN UNION  
(Justice and Home Affairs)  
8 and 9 March 2018

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## **THURSDAY 8 MARCH 2018**

### **HOME AFFAIRS**

#### **1. Adoption of the agenda**

The Council adopted the agenda set out in 6639/18.

#### **2. Approval of "A" items**

##### **a) Non-legislative list**

6640/18

The Council adopted the "A" items listed in 6640/18 including COR and REV documents presented for adoption. Statements related to these items are set out in the Addendum.

For the following item, the related documents should read as follows:

#### **Justice and Home Affairs**

1. Conclusions on Best Practices regarding the On-line Publication of Court Decisions  
*Adoption*  
approved by Coreper, Part 2, on 21.02.2018

5306/18

**+ REV 1 (de)**

#### **Non-legislative activities**

The Council addressed the following non-legislative discussion items. (3-8)

3. **Cooperation between CSDP missions/operations and EU JHA agencies**  
*Political endorsement*
4. **PNR Directive: Implementation**  
*Exchange of views*
5. **Cooperation with the Western Balkans in the area of Internal Security and Counter-terrorism<sup>1</sup>**  
*Exchange of views*
6. **EU JHA agencies' role in counter-terrorism**  
*Policy debate*
7. **Migration: state of play<sup>2</sup>**  
*Exchange of views*
8. **Any other business**

6440/18

6017/18

6325/18

6146/18 + COR 1  
+ ADD 1

6283/1/18 REV 1

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

<sup>2</sup> Exceptionally, in the presence of the Schengen Associated States.

**Legislative deliberations**

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

9. **Interoperability between EU information systems** **Ⓢ** 6396/18  
**Ⓒ**
- a) **Interoperability Regulation (borders and visa)**
- b) **Interoperability Regulation (police and judicial cooperation, asylum and migration)**

*Policy debate*

The Council confirmed the outcome of the discussions in the Mixed Committee at Ministerial level (7182/18).

10. **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.

**FRIDAY 9 MARCH 2018**

**JUSTICE**

2. **Approval of "A" items**
- b) **Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)** 6641/18

**Economic and Financial Affairs**

**Insurance Distribution Directive (IDD) Quick fix**  
*Adoption of the legislative act*  
approved by Coreper, Part 2, on 07.03.2018

**Ⓢ** 6670/1/18 REV 1  
**Ⓒ** 6670/18 ADD 1  
**+ ADD 1 REV 1**  
**(ga)**  
PE-CONS 1/18  
EF

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with the German delegation abstaining, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 53(1) and 62 TFEU).

A statement by the Commission is set out in the Annex.

## Legislative deliberations

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

11. **Brussels IIa Regulation: recast**  
*Policy debate*

☐ 6300/18

The Council held a policy debate on the issue of strengthening the role of the Central Authorities cooperating under the Brussels IIa Regulation. In conclusion, the Civil Law Working Party should work on introducing a recital about providing adequate human and financial resources to central authorities, taking into account the subsidiarity principle. On other ways to enhance their roles, Ministers highlighted the importance of improving the cooperation among the central authorities, for example by using the European judicial network (EJN) or central authorities staff exchange programmes. The Commission was called to identify appropriate funding for these purposes.

12. **Non-cash fraud Directive**  
*General approach*

☐ 6472/1/18 REV 1  
☐

The Council concluded that the general approach as set out in 6472/1/18/REV 1 has been reached and took note of a statement by Germany to this item as set out in the Annex.

13. **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. (14-16)

- |  |         |
|--|---------|
| <b>14. EPRO Regulation: Implementation</b>             | 6467/18 |
| <i>State of play</i>                                   |         |
| <b>15. Improving cross-border access to e-evidence</b> | 6339/18 |
| <i>Exchange of views</i>                               |         |
| <b>16. Any other business</b>                          |         |
| – <b>Countering illegal hate speech online</b>         | 6717/18 |
| <i>Information from the Commission</i>                 |         |

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**1** First reading

**C** Item based on a Commission proposal

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STATEMENTS FOR THE COUNCIL MINUTES

Statements discussion items

Ad "B" item 12:      **Non-cash fraud Directive**  
*General approach*

**STATEMENT BY GERMANY**

"The German Basic Law and the Federal Constitutional Court's case-law set strict limits on the possibility for Germany to participate in European criminal law legislation. In its 2009 judgment on the Treaty of Lisbon, the Federal Constitutional Court emphasised that the core content of criminal law does not serve the execution of international cooperation but represents a particularly sensitive democratic decision on the legal ethical minimum standard of society. It added that this is also recognised by the Treaty of Lisbon, which in Article 83(3) refers to fundamental aspects of national criminal justice systems and makes it possible for a Member State to decide against participation on that basis. It concluded that the power to define criminal offences and sanctions under Article 83(1) of the Treaty on the Functioning of the European Union should be interpreted in an accordingly limitative manner.

The Federal Republic of Germany is therefore concerned to note that discussions in the field of criminal law prioritise the facilitation of international cooperation and partly for that reason are above all aimed at maximising criminal liability. However, the function of criminal law also consists in setting the necessary limits on the exercise of a state's punitive power. For that reason the – strict – conditions of the legal basis must be fully complied with and sufficient consideration must be given to the fundamental aspects of national criminal justice systems."

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## **Statements to the legislative "A" item set out in 6641/18**

### **Insurance Distribution Directive (IDD) Quick fix** *Adoption of the legislative act*

#### **STATEMENT BY THE COMMISSION**

"The Commission recalls that under the Interinstitutional Agreement on Better Law-Making of 13 April 2016 the European Parliament, the Council and the Commission agreed that in order to swiftly and correctly apply Union legislation in the Member States, the time limit for transposition of directives would be as short as possible and, generally, not exceed two years.

In view of the particular timeframe for the application of Directive (EU) 2016/97 and of the Delegated Regulations adopted under this Directive, which resulted in difficulties for small and medium-sized insurance companies and insurance distributors to implement the required changes in time for the application date of 23 February 2017, the Commission exceptionally submitted a proposal to amend Directive (EU) 2016/97 by setting the date for application to 1 October 2018.

The co-legislators have also agreed to postpone the transposition date for Directive (EU) 2016/97 to 1 July 2018. The Commission considers that this cannot be interpreted as creating a precedent, as it must be ensured that all Member States are treated equally, but notes that exceptionally it will not stand in the way of this agreement. The Commission expects Member States to fully comply with their obligation to bring their national transposition measures into force at this date at the latest, in order to give insurance companies and insurance distributors enough time to finalise their preparation and adaptation measures with the full knowledge of the European and national legislative frameworks."