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OUTCOME OF THE COUNCIL MEETING

3415th Council meeting

Justice and Home Affairs

Luxembourg, 8 and 9 October 2015

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¹ • Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
 • Documents for which references are given in the text are available on the Council's Internet site (<http://www.consilium.europa.eu>).
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ITEMS DEBATED

HOME AFFAIRS

The future management of the EU external borders

Ministers had a discussion on the future management of the EU external borders, such as the evolving collective responsibility of member states and Frontex, the use of new technologies and how to improve the use of the current monitoring and evaluation mechanism to verify the application of the Schengen acquis.

An overwhelming majority of member states were in favour of strengthening the collective responsibility for external border controls and expressed the necessity of strengthening Frontex's roles and capacity.

The discussion will provide input for the preparations for the forthcoming European Council. It will also provide input to the Commission, which has announced that it will present legislative proposals very soon in this area (amending the Frontex mandate and revised proposals on the Smart Borders Package).

The future of the return policy

The Commission presented its recent proposals to improve the return policies of member states: an EU Action Plan on Return and a common Return Handbook.

The Council had a discussion on the future of the return policy and adopted a set of [conclusions](#).

Relocation

Ministers were briefed by the European Commission and the Italian and Greek delegations on the implementation of the decision of the Council adopted on 14 and 22 September regarding the relocation of 160 000 persons in need of international protection.

Ministers welcomed the first relocations, which will start to take place already on 9 October 2015.

Visa policy

The Council agreed to take into account a number of suggestions ([12382/15](#)) made by the presidency for the continuation of the work on the "Visa Package" presented by the Commission on 2 April 2014.

The "Visa Package" contains the proposal for the recast of the regulation on the Union Code on Visas (the "Visa Code") and the proposal for a regulation aimed at establishing a touring visa.

The draft Regulation recasting the Visa Code takes into account the increased political emphasis given to the positive impact of the visa policy on the wider European Union economy and, in particular, on tourism. Its aim is to ensure greater coherence with the growth objectives of the Europe 2020 strategy and contribute to generating economic growth while preserving coherence with other Union policies, such as external relations, trade, education, culture and tourism.

In order to achieve this, the proposal contains some amendments which facilitate travel opportunities for legitimate travellers and simplify the legal framework. It also establishes new categories of visa applicants who would benefit from these procedural facilitations.

As regards the second proposal, it establishes a new type of visa called the "touring visa". It aims at filling a legal gap by introducing a new authorisation for persons who have a legitimate interest or need to stay longer than 90 days in the Schengen area, but not long enough in any member state to take up residence there. It would therefore provide a solution for certain categories of persons who have such legitimate interest or need such as live performers, sportspersons and their crews who tour from one member state to another. The length of authorised stay within the Schengen area would go up to one year, with the possibility of extension for another year, but would be limited to 90 days in any 180-day period for each member state.

Follow up to the European Commission proposals on 9 September 2015

The Council was briefed by the presidency on the progress of discussions ([12557/15](#)) on a regulation establishing an EU common list of safe countries of origin and on a regulation establishing an emergency relocation mechanism and amending the Dublin regulation.

Fight against international organised and serious crime

The Council heard a presentation by Europol on the results of the large-scale law enforcement operation which took place between 4 May and 24 June 2015 ([Operation Blue Amber](#)).

The Belgian delegation briefed ministers about their concerns regarding the rising tensions and increasing occurrence of violent confrontation between outlaw motorcycle gangs, especially in the border region with the Netherlands and Germany. Ministers agreed to further reinforce their cooperation within the European Union.

Counter-terrorism

The Council adopted [conclusions](#) on strengthening measures to fight trafficking in firearms.

The Council was also briefed by the presidency and the EU Counter-terrorism coordinator about the implementation of measures regarding counter-terrorism following the statement by EU leaders on 12 February 2015. Ministers agreed that, on the following five priorities, progress should be made by the December Council meeting:

- Operationalisation of the common risk indicators by FRONTEX
- Reinforcing border checks through better use of SIS II and SLTD: a report with concrete statistical data
- Information exchange: improving contributions to Europol
- Prevention of radicalisation on the internet: continuing financial and other support to the Europol internet referral unit and to SSCAT
- Internal/external link: improve the use of Justice and Home Affairs tools in Counter-terrorism assistance to third countries

The EU CTC was invited to present, in close cooperation with the Commission and the EEAS, a report to the December Council on the progress made on the above-mentioned priorities.

The Council was also briefed on recent developments on railway safety.

Renewed European Union Internal Security Strategy

The Council took note of the implementation paper on the Renewed European Union Internal Security Strategy.

EU PNR Directive

The presidency informed the Council on the work progress on the proposal for a directive on the use of passenger name record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

The draft directive aims to regulate the transfer from airlines to the member states of PNR data of passengers of international flights, as well as the processing of this data by the competent authorities. The directive establishes that PNR data collected may only be processed for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

In April 2012 the Justice and Home Affairs Council agreed on a general approach regarding the draft directive.

The Council and the European Council have regularly highlighted the urgency of finalising this directive, in light of the growing threat posed by foreign fighters.

On 15 July 2015, the committee in charge of the proposal at the European Parliament adopted a revised report on the directive and a mandate to open negotiations with the Council.

Negotiations between the institutions on the draft directive are ongoing.

Mixed Committee

The Council in the Mixed Committee format (the EU plus Norway, Iceland, Liechtenstein and Switzerland) discussed the following items:

On Thursday, home affairs ministers had a discussion on the future management of the EU external borders, the future of the return policy and the "Visa Package" ([12382/15](#)).

On Friday, justice ministers discussed the draft directive on the protection of personal data processed for law enforcement purposes.

For more information see items above.

JUSTICE

Data protection for police and judicial cooperation in criminal matters

The Council agreed its negotiating position on the draft data protection directive. This draft directive is aimed at protecting personal data processed for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties or the safeguarding against and the prevention of threats to public security. This agreement enables the Luxembourg presidency to start discussions with the European Parliament also on this part of the data protection package. The other part of the package is the general data protection regulation on which talks with the Parliament have already started following agreement by the Council on its position on 15 June 2015. Contacts with the European Parliament to organise a first trilogue are underway. The presidency's objective is to reach an agreement on the whole data protection package by the end of the year.

See [press release](#)

Consequences of the judgement on the safe harbour decision

The Commission informed the Council about the consequences of the judgement of the European Court of Justice declaring the Commission's safe harbour decision invalid (C-362/14).

On 6 October 2015 the European Court of Justice ruled that national supervisory authorities may examine whether the transfer of a person's data to a third country complies with EU law, even where there is a Commission decision finding that a third country offers an adequate level of data protection. In the event that the authorities consider that the Commission's decision is not valid they must bring the matter before the national courts, which can ask for a preliminary ruling for the purpose of examining that decision's validity.

European public prosecutor's office

The Council provisionally agreed certain articles of the draft regulation establishing the European public prosecutor's office (EPPO).

The agreement covers articles 24-37 of the draft regulation. They establish rules notably for the conduct of cross-border investigations, for criminal prosecution before national courts and the procedural rights of suspected and accused persons. Articles 34 and 36 on transactions and judicial control will for the time being be exempted from the agreement.

The Council was also briefed by the presidency on the state of play on the articles on which more work is still needed to reach an agreement.

The proposed regulation is aimed at helping combat crimes against the EU's financial interests by introducing a European Public Prosecutor's Office with competence in that area. The legal basis and the rules for setting up the EPPO are laid down in article 86 of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation requires the unanimous support of the Council which will adopt it after having obtained the consent of the European Parliament.

The Commission presented its [proposal](#) on 17 July 2013.

Migration crisis

Over lunch, the ministers for justice discussed judicial cooperation and the fight against xenophobia in the migration crisis. The discussion took place on the basis of a presidency note outlining a number of possible priority actions in this field.

As regards judicial cooperation, the presidency suggested better use of the tools of Eurojust by the judicial authorities of the member states, better cooperation between the judicial authorities of third countries, and training. Concerning the fight against xenophobia, the presidency proposed improving the conditions for combating xenophobia, cooperating with internet providers to act against on-line hate speech, and protecting children's rights and best interests throughout the migratory and asylum chain, including any administrative and judicial proceedings.

European Convention for the Protection of Human Rights and Fundamental Freedoms

During lunch, ministers were briefed by the presidency on the state of play of the EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

The Lisbon Treaty requires the accession of the EU to the ECHR. Art. 6 (2) of the TEU stipulates: "The EU shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms".

In an opinion delivered on 18 December 2014, the Court of Justice of the European Union concluded that the draft accession agreement is not compatible with EU law.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Schengen *acquis* on data protection and Schengen Information System for the UK

The Council took note of the state of play in relation to the implementation of the Schengen *acquis* on data protection and the provisional implementation of the *acquis* on the Schengen Information System (SIS) for the UK ([12246/15](#)).

Asylum, Migration and Integration Fund - supplementation of specific provisions

The Council decided not raise an objection to a delegated act submitted by the Commission ([10801/15](#)). The act supplements specific provisions on the reporting of irregularities concerning the Asylum, Migration and Integration Fund and the instrument for financial support for police cooperation. The delegated act will enter into force if no objection is expressed by the European Parliament.

Evaluation of Latvia with regard to automated exchange of vehicle registration data

The Council adopted an evaluation report assessing Latvia's implementation of provisions relating to data protection and vehicle registration data (VRD) exchange. The report concludes that Latvia has fully implemented the relevant data protection provisions in the area of VRD automated data exchange.

CEPOL 2014 report

The Council took note of and endorsed the CEPOL (European Police College) report for the year 2014 ([10829/15](#)), following its adoption by the Governing Board, as required by [decision 2005/681/JHA¹](#).

The report will be forwarded to the European Parliament and to the Commission for information.

¹ Decision establishing the European Police College (*OJL* 256, 1.10.2005)

Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways

The Council authorised Belgium, Poland and Austria to ratify, or accede to, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI). The convention entered into force in 2005 and aims to harmonise contractual and navigational standards on inland waterways among its states parties.

Control measures for psychoactive substances

The Council adopted an implementing decision on subjecting to control measures the following substances, in conformity with article 8(3) of [Decision 2005/387/JHA](#):

- 5-(2-aminopropyl)indole ([10012/15](#))
- 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe),
- 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921),
- 3,4-methylenedioxypyrovalerone (MDPV),
- 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine) ([10011/15](#)),
- 4-methyl-5-(4-methylphenyl)-4,5-dihydrooxazol-2-amine (4,4'-DMAR),
- 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45) ([10009/15](#)),
- 4-methylamphetamine ([10010/15](#))

The decisions will be published in the Official Journal.

BUDGETS

Additional budgetary EU support for the refugee crisis

The Council accepted draft amending budget no 7 for 2015 reinforcing EU support under the European agenda on migration by €401.3 million in commitments and €57.0 million in payments. This includes an increase by

- €300 million in commitments for the European Neighbourhood Instrument to provide assistance to third countries hosting refugees from Syria through the Madad Trust Fund
- €100 million in commitments to finance emergency assistance provided under the Asylum, Migration and Integration Fund, and the Internal Security Fund
- €55.7 million in payments for humanitarian aid

Draft amending budget 7/2015 also adds 120 new posts in the three EU agencies working on migration-related areas: Frontex (+60), the European Asylum Support Office (+30) and Europol (+30); this entails additional costs of €1.3 million in commitments and payments in 2015.

The Council also approved a Commission proposal to transfer €175 million in commitments and €14.3 million in payments to reinforce humanitarian assistance under heading 4 (Global Europe). The transfer's objective is to cover the most urgent needs of the population in Syria, displaced persons in Iraq and within the refugee hosting and transit countries Turkey, Lebanon, Jordan and the Western Balkans.

See [press release](#)

COHESION POLICY

Faster mobilisation of EU funds for the benefit of Greece

The Council adopted a regulation helping Greece to maximise its use of EU funds and improve liquidity for boosting growth and creating jobs (PE-CONS 50/15). The regulation's main objective is to address the lack of public funds available for much needed investments in Greece, and to ensure that the European structural and investment funds concerned deliver their benefits as rapidly as possible on the ground. The adopted measures are exceptional and designed to respond to the unique situation created by the financial crisis in Greece. The adopted text reflects an agreement reached with the European Parliament, which approved it on 6 October 2015.

See [press release](#)

CUSTOMS UNION

Union Customs Code detailed rules

The Council decided not to object to a Commission regulation supplementing the Union Customs Code with regard to detailed rules specifying some of its provisions ([11507/15](#); [11507/15 ADD 1](#); [11507/15 ADD 2](#) and [11507/15 ADD 3](#)).

The [Union Customs Code](#) will become applicable from 1 May 2016, once the related Commission delegated and implementing acts have entered into force before that date.

The regulation is a delegated act pursuant to article 290 of the Treaty on the Functioning of the EU. This means that now that the Council has decided not to object to it, the act can enter into force, unless the European Parliament objects.

Statement by the Danish delegation, supported by the Austrian delegation ([12635/15 ADD 1](#)).

TRANSPORT

Port reception facilities

The Council decided not to oppose adoption by the Commission of a directive updating annex II to the 2000 directive on port reception facilities for ship-generated waste and cargo residues.

The update incorporates into the directive measures taken by the International Maritime Organisation (IMO) and improves the information provisions contained in the directive's annex II.

The draft directive is subject to the regulatory procedure with scrutiny. This means that now that the Council has given its consent, the Commission may adopt it, unless the European Parliament objects.

[Draft Commission directive amending annex II to the directive on port reception facilities for ship-generated waste and cargo residues](#)

[Annex 1 to draft Commission directive amending annex II to the directive on port reception facilities for ship-generated waste and cargo residues](#)

Flight recorders, underwater locating devices and aircraft tracking systems

The Council decided not to oppose adoption by the Commission of a regulation amending Commission regulation no 965/2012 laying down technical requirements and administrative procedures related to air operations. The amendments concern requirements for flight recorders, underwater locating devices and aircraft tracking systems.

The Commission regulation is subject to the regulatory procedure with scrutiny. This means that now that the Council has given its consent, the Commission may adopt the regulation, unless the European Parliament objects.

[Draft Commission regulation amending regulation 965/2012](#)

[Annex to draft Commission regulation amending regulation 965/2012](#)

Civil aviation rules - noise standards

The Council decided not to oppose adoption by the Commission of a regulation amending regulation 216/2008 (EASA basic regulation) as regards essential requirements for environmental protection. This update relates to new noise standards as introduced in the Chicago Convention in 2014.

The environmental protection requirements were implemented in EU law by Commission regulation 748/2012. In this context, the Council also decided not to oppose adoption by the Commission of a regulation amending Commission regulation 748/2012 as regards the implementation of essential requirements for environmental protection.

The Commission regulations are subject to the regulatory procedure with scrutiny. This means that now that the Council has given its consent, the Commission may adopt the regulations, unless the European Parliament objects.

[Draft Commission regulation amending regulation 216/2008 as regards essential requirements for environmental protection](#)

[Draft Commission regulation amending regulation 748/2012 as regards the implementation of essential requirements for environmental protection](#)