



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 June 2010

11653/10

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COMIX 462
CODEC 629**

NOTE

from : General Secretariat of the Council
to : Delegations

Subject: Summary record of the meeting of the European Parliament **Committee on Civil Liberties, Justice and Home Affairs (LIBE)**, held in Brussels on 23-24 June 2010

The meeting was chaired by Mr López Aguilar (S&D, ES).

I. Conclusion of the Spanish EU Council Presidency in the area of Immigration

Ms Terrón i Cusí, State Secretary for Immigration and Emigration, presented the results of the Spanish presidency and mentioned in particular the first annual report on the pact on immigration and asylum, which was underpinned by a series of principles and commitments, and the setting up of the European Asylum Support Office. On legal immigration, she considered that the Spanish Presidency had done important work on the "Single Permit" Directive and in particular defended

broad scope; this work would now be continued by the Belgian presidency. She also highlighted the action plan for unaccompanied minors and explained its main elements, inter alia the prevention of trafficking of human beings, protection and reception and cooperation with third countries. She considered that the ministerial conference on integration in Zaragoza had consolidated the work done by previous presidencies.

During the discussion, Mr Diaz de Mera (EPP, ES) and Ms Angelilli (EPP, IT) welcomed the action plan for unaccompanied minors. Concerning integration, Mr Diaz de Mera and Mr Moraes (S&D, UK) underlined that it was a matter of national competence in the first place and wondered what form measures at European level would take; Mr Romeva i Rueda (Greens/EFA, ES) was concerned that the integration debate was being misused to stigmatise immigrants. Mr Moraes and Mr Lambert (Greens/EFA, BE) were concerned about the lack of progress on the "Single Permit" Directive, Mr Tavares (GUE/NGL, PT) suggested more action on legal immigration, while Mr Busuttil (EPP, MT) and Ms Angelilli considered that more openness towards legal migration had to go hand in hand with a robust policy against illegal migration.

In her reply, Ms Terrón i Cusí agreed with Mr Romeva i Rueda on eliminating discrimination against immigrants and noted that during the ministerial conference on integration the need for dialogue and cooperation with Muslim communities had been stressed.

II. Proposal for a Regulation of the European Parliament and of the Council establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

2009/0089(COD)

Rapporteur: Mr Coelho (EPP, PT)

A representative of the Parliament's Legal Service replied to a question from the rapporteur as to whether the proposal should be split into several instruments because of differing participation by the United Kingdom, Ireland and Denmark in the various systems affected by the Proposal. She noted a recent decision of the European Court of Justice which held that a Member State could not participate in an act based on the Schengen acquis without accepting that acquis. She went on to state that whether to split the proposal or not was a matter of political choice, but in any case, the wording of the recitals concerning the participation of the United Kingdom, Ireland and Denmark needed to be clarified.

A representative of the Council Legal Service expressed the opinion that a split would not be easy for practical reasons. Instead, she proposed a solution based on Article 4 of the Protocol on the Schengen acquis integrated into the framework of the European Union, which allowed Ireland and the United Kingdom to take part in some or all provisions of the acquis, at their request and after a unanimous decision by the Council. She added that the United Kingdom had already agreed to the proposal and Ireland was still considering it. In her opinion, this would avoid the legal problem resulting from the case law of the Court.

As a first reaction, the rapporteur and a Commission representative expressed a positive view on the solution proposed by the Council Legal Service.

Addressing the substance of the proposal, the rapporteur considered that there was no alternative to the creation of an agency and suggested that its responsibility should only be expanded by legislative instruments adopted under the ordinary legislative procedure. Therefore, he was in favour of rules to prevent the aims of the agency being expanded de facto by pilot projects. He did not want to interfere in the Council's choice of the seat but proposed to set some parameters for the choice.

Mr Albrecht (Greens/EFA, DE) was concerned that a centralised infrastructure could lead to a merging of databases in the future which would affect data protection; Ms Ludford (ALDE, UK) was confident that this could be prevented by strict rules.

A representative of the Council Presidency considered that the Council position was close to the Parliament's, but he was in favour of maintaining the possibility of pilot projects. He confirmed that it was also the position of the Council that new tasks could only be added by a legislative instrument under the ordinary legislative procedure.

A Commission representative commented on several amendments made, stating inter alia that the limits of interoperability were fixed in the legal instruments setting up the databases. Therefore, a new system would necessarily set up the limits in the ordinary legislative procedure.

The rapporteur considered that his amendments addressed the concerns expressed by Mr Albrecht.

Timetable:

Deadline for tabling amendments: 12 July 2010

III. Joint debate:

a) Proposal for a Council Decision concerning the conclusion of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas

2010/0106(NLE)

b) Proposal for a Council Decision concerning the conclusion of the Agreement between the European Union and Georgia on the readmission of persons residing without authorisation

2010/0108(NLE)

Rapporteur for a) and b): Ms Griesbeck (ALDE, FR)

A Commission representative recalled that the initiative for the negotiation of a visa facilitation and readmission agreements had come from the extraordinary European Council of September 2008, after the crisis in Georgia. The agreements closely followed the standard model applied for other countries. After the entry into force of the Treaty of Lisbon, the consent of the Parliament was now necessary.

A representative of the Council Presidency expressed satisfaction at the outcome of negotiations.

The rapporteur welcomed Georgia's aspiration for rapprochement with the EU and recalled that there were several EP resolutions along the same lines. She considered that this case could not be compared with Pakistan as Georgia had signed the European Convention on Human Rights as well as the Geneva Convention on refugees.

Ms Zdanoka (Greens/EFA, LV) was in favour of the Visa agreement, but expressed concerns about readmission, asking whether the safety of persons returned could be guaranteed. Mr Busuttill welcomed both agreements and underlined the necessary link between them.

The Commission representative pointed out that the readmission agreement concerned only persons against whom an expulsion decision had already been taken.

IV. Proposal for a Council Regulation (EU) implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

2010/0067(CNS)

Draftsperson: Ms Gebhardt (S&D, DE)

The rapporteur welcomed the proposal for the first enhanced cooperation ever and expressed the hope that more Member States would join. She suggested clear and understandable rules which would prevent forum shopping and allow an informed choice by spouses. She expressed concern about the possibility of choosing the *lex fori* without further conditions. She was taking the report adopted by the previous Parliament as a guideline for her opinion.

A Commission representative explained that the choice of jurisdiction was limited by the "Brussels II Bis" Regulation, so that *lex fori* was not a free choice. Unlike the 2006 proposal, the enhanced cooperation proposal did not contain jurisdiction rules, because jurisdiction was already covered by EU legislation and could therefore not be subject to enhanced cooperation.

Ms In 't Veld observed that the rules had to take into account the possibility of other Member States joining the enhanced cooperation. Ms Romero López (S&D, ES) was concerned about the application of third countries' discriminatory legal systems and Ms Keller (Greens/EFA, DE) underlined the need for informed choice of the applicable law.

The Commission representative added that the Commission was currently preparing a proposal for matrimonial regimes, which would also cover the applicable law.

The rapporteur agreed with Ms Romero López and promised to look into the involvement of third countries.

Timetable:

Presentation of a draft opinion: 27 September 2010

Vote in Committee: 26 October 2010

V. Proposal for a Regulation of the European Parliament and of the Council of the European Union amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement

2010/0137(COD)

Rapporteur: Ms Fajon (S&D, SI)

A Commission representative presented the proposal and noted that evaluation missions to verify the fulfilment of the remaining conditions were scheduled for July. He considered that, if the timetable was respected, the Commission would be able to present its evaluation report in September. The method applied had proven successful and had led to spectacular reforms.

A representative of the Council Presidency welcomed the proposal and the reforms in Bosnia-Herzegovina and in Albania. She hoped that efforts would continue so that the remaining conditions could be fulfilled.

The rapporteur welcomed the proposal and agreed that all conditions had to be fulfilled, but suggested mentioning the intended date of entry into force in the proposal. She invited the Commission to present the evaluation report by 3 September, so that the visa liberalisation could be voted on at the September II plenary.

Ms Bozkurt (S&D, NL) and Mr Busuttil agreed with the rapporteur, Mr Busuttil warned the authorities in Bosnia-Herzegovina and Albania not to create false expectations.

The Commission representative did not want to make a commitment to present the written report on 3 September but promised an oral presentation at least. He replied to Mr Busuttil that the governments involved were aware of the problem and had launched information campaigns.

Timetable:

Presentation of a draft report: 12-13 July 2010

Deadline for tabling amendments: September 2010 (after evaluation report)

VI. Parliament's position on the 2011 Draft Budget as modified by the Council - Section III - Commission

2010/2001(BUD)

Draftsman: Mr López Aguilar (S&D, ES)

The rapporteur presented a second working document and stated that, given the economic crisis, priorities had to be established among the pilot projects and preparatory actions proposed. He expressed doubts about the proposal to increase the budget for Frontex, which had had problems executing its current budget, and about the 50% increase in its budget requested by the Fundamental Rights Agency (FRA). On the other hand, he expressed his willingness to support the Article 29 Committee.

A Commission representative asked the Committee to limit its preparatory actions and pilot projects as much as possible. She explained that the Frontex budget took account of the amounts not yet spent and imposed a freeze on the creation of new posts, owing to the significant number of vacant posts at the moment. On the other hand, she was not opposed to a reasonable increase in the FRA budget if it corresponded to specific needs and expressed her understanding of the needs of the Article 29 Committee, adding that the Commission was in discussions with its chairman.

All Members who took the floor agreed with the rapporteur's approach concerning the FRA. Mr van den Camp (EPP, NL) and Mr Busuttill were concerned about how to retain a LIBE presence in relation to preparatory actions and pilot projects, given the high number of other requests. Mr Busuttill suggested taking into account the possibility that Frontex could buy own assets.

The Commission representative stated that part of the Frontex surplus was due to late requests by Member States to have their expenditure reimbursed. The Commission would examine individual requests for funding of own assets on a case-by-case basis.

VII. Conclusion of the Spanish EU Council Presidency in the area of Home Affairs

Mr Pérez Rubalcaba, Minister for the Interior, presented the outcome of the Spanish Presidency in the area of Home Affairs, expressing his satisfaction with the results achieved. He mentioned several long-term initiatives, in particular the adoption of the internal security strategy and the

setting up of the COSI, as well as the adoption of the Action Plan implementing the Stockholm Programme. He noted the importance of relations with the US and said that the Spanish Presidency had tried to strengthen them. He also mentioned measures of an operational nature, such as the creation of Joint Cooperation Teams in police cooperation and the creation of an Erasmus-like system for police officers. Furthermore, the Spanish Presidency had focused on the search for dirty money and had worked on the fight against trafficking in human beings.

As representatives of the political groups, the following Members took the floor:

Mr Diaz de Mera (EPP, ES) welcomed the establishment of the European Asylum Support Office and the action plan on unaccompanied minors, but suggested agreements with third countries, in particular with Morocco. He expressed his satisfaction with the way the Spanish Presidency had dealt with the issue of data transfer to the US for the Terrorist Finance Tracking Programme (TFTP).

Mr Moraes (S&D, UK) particularly welcomed the adoption of a Directive on the rights to translation and interpretation and of the Action Plan implementing the Stockholm Programme. He was concerned about the possible splitting of the Asylum Package. Concerning the TFTP issue, he acknowledged improvements, but considered that there were still significant issues; he agreed in particular with the rapporteur's suggestion that there be a commitment to denounce the agreement after three years.

Mr Alvaro (ALDE, DE) (also rapporteur on the new agreement to make financial payment messaging data available to the United States Treasury Department for the purposes of the Terrorist Finance Tracking Programme (TFTP agreement)) considered the issue mentioned by Mr Moraes to be the focal point of the TFTP agreement. In particular, he recalled that the agreement would be extended automatically after the initial five-year duration, but that each side had the option of denouncing it without justification with 6 months' notice. In this context, he suggested a binding commitment by the Council to denounce the agreement after three years. He regretted a lack of cooperation by the Spanish Presidency and considered the fact that Article 12 of the Agreement had been changed at request of the Parliament to be proof that further changes were still possible. In his view, the argument by the Council showed that there was no political will to set up a European TFTP scheme. He announced that, if the Council did not follow his suggestion, he would not prepare his report in time for a vote during the July plenary.

Mr Romeva i Rueda (Greens/EFA, ES) considered that there was still no proof of the usefulness of the TFTP agreement and was concerned about its human rights implications.

Mr Kirkhope (ECR, UK) observed that the US side's interest in the work of the Parliament had increased significantly since the first rejection of the agreement in February, adding that the US administration was sometimes more helpful than EU institutions. He was concerned about the current security vacuum and hoped for rapid conclusion of the agreement. In his view, the three-year issue should not be too difficult to resolve.

Mr Tavares (GUE/NGL, PT) regretted that the current agreement did not permit European data to be processed in Europe under European law and was concerned that other countries such as Russia might demand similar agreements. He suggested that the European Data Protection Officer should be responsible instead of Europol. He supported the rapporteur's approach on the denunciation of the agreement.

Mr Borghezio (EFD, IT) recalled the success achieved in stopping immigration in the Mediterranean, in particular through bilateral agreements with Libya, and suggested more firmness against the threat of terrorism.

Mr Brons (NI, UK) was opposed to the political values of social liberalism.

Mr Pérez Rubalcaba reacted by underlining the difficulties in reaching a European Asylum system, particularly with the "Qualification" and "Procedure" Directives. Concerning the TFTP agreement, he underlined the urgency since there had been no transmission of data since September. He acknowledged that the new agreement with its significant changes was the fruit of the negative vote by the Parliament. He explained that the Council Decision contained a binding commitment by the Commission to present a proposal for a TFTP scheme within a year. Furthermore, the Council would review certain considerations in the agreement if an EU TFTP scheme had not been achieved within five years. Mr Pérez Rubalcaba considered that a unilateral clause to review the agreement within three years would be difficult to explain to the US side.

Of the individual speakers who took the floor, Ms In 't Veld, Mr Albrecht, Ms Ludford and Mr Lambrinidis (S&D, EL) shared the concerns expressed on the new TFTP agreement. Mr Busuttil also considered that the Parliament had not yet reached its goal of transmission of bulk data only under strict conditions and with a commitment to create a European system which would end this transfer. Other issues addressed were the Asylum package (Ms Guillaume (S&D, FR)), support for victims of terrorism (Ms Jimenez Becerril (EPP, ES)) and cooperation by intelligence services (Ms Romero López (S&D, ES)).

The European Data Protection Supervisor, Mr Hustinx, presented an opinion on the new TFTP agreement, which highlighted significant improvements, but also concerns which remained and even some backward steps. He expressed serious doubts about whether the rights would be enforceable in the US and doubted the necessity for and proportionality of the agreement.

For the Commission, Director-General Faull considered that sending bulk data was necessary to enable the TFTP to work. He agreed with Mr Pérez Rubalcaba that it was impossible to conclude a 5-year-agreement while at the same time making a commitment to denounce it after three years. Mr Faull also recalled that Europol had a joint supervisory body which was also responsible for data protection and was subject to the jurisdiction of the European Court of Justice.

VIII. Conclusion of the Spanish EU Council Presidency in the area of Justice

For the Spanish Presidency of the Council, Mr Caamano Dominguez, Minister for Justice, presented the results of the Spanish Presidency, highlighting its success with the Directive on the rights to translation and interpretation. He regretted the Commission's opposition to the initiative for a Directive on the European Protection Order. He welcomed the adoption of a mandate for the negotiation of the accession of the EU to the European Convention on Human Rights as well as the agreement on enhanced cooperation on the applicable law on divorce and legal separation.

Mr Busuttil expressed doubts about the choice of a Member States' initiative in cases where it was clear that the Commission intended to present a proposal as well, an approach which would lead to institutional conflicts in his opinion, while Ms Romero López considered that the Commission was not yet able to act. Ms Jimenez Becerril regretted that the European Protection Order concerned only gender violence.

Mr Caamano Dominguez replied that the Member States' initiatives had been discussed with the Commission beforehand, and it had not seen any problems. Furthermore, neither the Parliament's nor the Council's Legal Service had seen a problem with the legal basis, but no written opinion was available from the Commission Legal Service.

IX. Votes:

- a) **Proposal for a Regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers**

2010/0051(COD)

Draftsman: Mr López Aguilar (S&D, ES)

The draft opinion was adopted as amended.

- b) **Proposal for a Council Decision on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters**

2009/0188(NLE)

Rapporteur: Mr Iacolino (EPP, IT)

The draft report was adopted, no amendments having been tabled.

X. Date and venue of the next meeting

12-13 July 2010 in Brussels.
