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3508th Council meeting

Justice and Home Affairs

Brussels, 8 and 9 December 2016

Presidents **Lucia Žitňanská**
Minister for Justice
Robert Kaliňák
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- 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>).
- Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's internet site or may be obtained from the Press Office.

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ITEMS DEBATED

JUSTICE

Fight against fraud to the Union's financial interests ('PIF' directive)

The Council reached an agreement on the directive on the protection of the financial interests of the EU, paving the way for formal adoption of the text in the coming weeks.

The objective of the PIF directive is to deter fraudsters, improve the prosecution and sanctioning of crimes against the EU budget, and facilitate the recovery of misused EU funds thereby increasing the protection of EU taxpayers' money. These common rules will help to ensure a level playing field and improved investigation and prosecution across the EU.

For more information, see [press release](#).

European Public Prosecutor's Office

The Council continued to discuss the proposed regulation.

At the end of the debate, the presidency noted the broad support from member states for the text as a good basis on which further technical work could be done in the last few days of the year. The presidency also noted that a majority of member states supports the principle of the establishment of the public prosecutor. However, the presidency took note of the clear positions of certain delegations and concluded that these give a clear indication of the likely procedural way forward to ensure agreement on this regulation.

The proposed regulation aims to help combat crimes against the EU's financial interests by introducing a European Public Prosecutor's Office with competence in that area. The proposed regulation requires unanimous support in the Council, which will adopt it after having obtained the consent of the European Parliament. The proposal was presented by the Commission on 17 July 2013.

In previous meetings, the Council already reached provisional agreement on a number of articles, including the structure and organisation of the office, the rules on investigation and prosecution, the case management system and data protection, simplified prosecution procedures, general provisions and financial and staff provisions.

For more information:

- [Outcome of the Council meeting, October 2016](#)

Digital single market: supply of digital content

Ministers held a policy debate on the proposal for a directive on certain aspects concerning contracts for the supply of digital content. The objective of the discussion was to provide some further guidelines for the work to continue at technical level.

Ministers in particular discussed:

- the question of which rules should apply to 'embedded digital content'. On this issue, a slight majority of ministers favoured the option of taking the rules designed for the sale of goods as a starting point for further work. However, at the same time a significant number of delegations were in favour of following the rules designed for the supply of digital content (as presented in this directive) by way of rebuttable assumption. Therefore, the presidency proposed that work continue at technical level, including to discuss the possibility of combining both options, and underlined the need for the rules to be coherent and consistent with those on the sale of goods;
- the question of whether 'other data' (i.e. data other than personal data) should be considered as a possible counter-performance under the directive and hence be covered by the directive. On this issue, the Council concluded that further work was needed at technical level to better define the concept of 'other data' before the discussion could be brought forward;
- the need to find the right balance between subjective conformity criteria (i.e. criteria agreed in the contract) and objective conformity criteria (i.e. criteria stipulated in the law). Ministers agreed that this balance would be achieved if consumers were made aware and expressly accepted in the contract a deviation from the objective conformity criteria.

The proposed directive on certain aspects concerning contracts for the supply of digital content was presented by the Commission on 9 December 2015 together with a proposal for a directive on certain aspects concerning contracts for the online and other distance sales of goods. The two proposals were among the first legislative initiatives presented as part of the digital single market strategy.

The directive on digital content is intended to regulate contracts for the supply of digital content in business-to-consumer (B2C) contracts. The scope of the proposal is broad as it covers: data produced and supplied in digital form (e.g. music, online video, etc.), services allowing the creation, processing or storage of data in digital form (e.g. cloud storage), services allowing sharing of data (e.g. Facebook, YouTube, etc.) and any durable medium used exclusively as a carrier of digital content (e.g. DVDs).

For more information:

- [Council website: Digital single market strategy](#)

Criminal justice in cyberspace

Under the non-legislative items and on the basis of an intermediary report from the Commission, ministers discussed the implementation of the Council conclusions on improving criminal justice in cyberspace.

The Commission concluded that it will work to put forward practical measures such as a secure e-platform, legislative initiatives or a combination of such measures to form a common approach on e-evidence. Ministers reconfirmed the need for a common approach and provided useful guidelines on how to continue the work.

The Council conclusions on improving criminal justice in cyberspace, adopted in June 2016, set out concrete measures for future follow-up and action to streamline mutual legal assistance (MLA) proceedings, enhance cooperation with service providers and review the rules on enforcement jurisdiction in cyberspace.

Ministers also discussed the challenges of criminal justice in relation to the use of encryption technologies, based on a report from the presidency ([14711/16](#)). Ministers expressed different views both on the technical and political aspects of the matter, all underlining the need to approach this issue carefully. They were in favour of continuing the discussion in order to identify solutions that struck a balance between individual rights/citizens' security and privacy and allowing law enforcement agencies to do their work. The Commission underlined that cooperation with non-EU member states, such as the US authorities, is also crucial in this area.

The use of encryption for communications over the internet has developed dramatically in the last few years. While encryption is a legitimate tool to preserve privacy and cybersecurity, the opportunities offered by encryption technologies are also exploited by criminals in order to hide their data and potential evidence, and to protect their communications and financial transactions.

For more information:

- [Press release: Fight against criminal activities in cyberspace, June 2016](#)

Any other business

The presidency updated the Council on the state of play of a number of legislative proposals.

The presidency informed ministers about the political agreement reached with the Parliament on the directive on combatting terrorism. For more information, see [press release](#).

The presidency informed the Council about the [outcome of the EU-US JHA ministerial meeting](#) that took place in Washington on 4 and 5 December. It underlined the commitment of the US authorities to put into effect the redress bill so that the [umbrella agreement](#) can enter into force.

The presidency outlined the agenda of the next EU-Western Balkans ministerial conference on justice and home affairs, which will take place in Brdo (Slovenia) on 15 and 16 December. The agenda includes discussions on judicial cooperation in civil and criminal matters.

The Maltese Justice Minister Owen Bonnici, on behalf of the incoming Maltese presidency, informed the Council about its priorities in the justice area, on which it aims to achieve as much progress as possible.

The Maltese presidency will seek to keep the citizen at the centre of the agenda; hence it will endeavour to take forward discussion on the contracts proposals – digital content and the online sale of goods - which are very relevant to consumers as well as businesses.

The Maltese presidency will also start discussions on the recently adopted proposal on business insolvency, which should provide tools to allow viable businesses in distress to be rescued and honest entrepreneurs to be given a second chance.

In line with the Commission action plan for strengthening the fight against terrorist financing, the Maltese presidency will also initiate discussions on the upcoming proposals relating to the harmonisation of money laundering criminal offences and sanctions and on the strengthening of mutual recognition of criminal assets' freezing and confiscation orders.

The Commission updated the Council on the implementation of the code of conduct on countering illegal hate speech online agreed a few months ago by Facebook, Microsoft, Twitter and YouTube ('the IT companies').

Finally, Eurojust informed ministers of the findings of its fourth foreign terrorist fighters report.

HOME AFFAIRS

Entry/exit system (EES)

The Council took stock of the work done on the proposal to establish an entry/exit system (EES). Ministers tasked EU ambassadors with continuing work in order to agree on a mandate for negotiations with the European Parliament on the whole text as soon as possible.

This proposal aims to speed up, facilitate and reinforce border check procedures for non-EU nationals travelling to the EU. The EES will modernise external border management by improving the quality and efficiency of controls and help member states cope with the increasing numbers of travellers entering and exiting the EU. The legislative proposal is part of the broader 'Smart Borders Package', addressing the role of information systems in enhancing external border management, internal security and the fight against terrorism and organised crime.

For more information see:

- [Progress report on the entry/exit system](#)

Fight against terrorism and organised crime

The Council took note of the proposals made by France and Germany on the need to improve cooperation between law enforcement agencies and electronic service providers, particularly those not based in the EU, and to ensure greater speed and reply rates in the processing of requisitions by judicial authorities when requesting information, as set out in a letter from their ministers for the interior.

The Council took note of a report from the EU Counter-Terrorism Coordinator setting out policy options to tackle the phenomenon of foreign terrorist fighter returnees and tasked experts with continuing the discussion with a view to the possible development of EU policy measures regarding this phenomenon.

The report lists areas where the EU could support member states and is based on the deliberations of the group of 13 member states, together with Norway and Switzerland (known as the G15), which are most affected by the phenomenon of foreign terrorist fighters.

For more information:

- [German-French letter concerning cooperation between law enforcement agencies and electronic communication service providers](#)
- [Council website: Response to foreign terrorist fighters and recent terrorist attacks in Europe](#)

Migration

Home affairs ministers discussed migration. The discussion focused on the situation on the ground and the flows along the main migration routes, and on the evaluation of the EU response agreed and implemented so far. Ministers specifically addressed issues such as the deployment of national experts to agencies (in particular EASO and Frontex), relocations, the implementation of the European border and coast guard regulation and the partnership framework, especially the results achieved on returns and readmission with the five priority countries.

Ministers supported the efforts of the European Asylum Support Office (EASO) to take all necessary steps to enable experts to be recruited directly by the agency in order to alleviate critical staff shortages.

For more information:

- [Council website: Finding solutions to migratory pressures](#)

Management of the consequences following terrorist attacks

The Council discussed ways in which the EU could help the member states strengthen the civil protection services' preparedness and response and their cooperation with the other emergency and security services involved. Based on the guidelines provided by ministers, work will continue in relevant fora and the presidency will report regularly on the progress to the Council.

To illustrate the Council discussion, an exhibition of the member states' civil protection, security and medical capabilities involved in the consequence management of terrorist attacks was held in the Council premises. The event showcased member states' assets such as a field hospital, mobile chemical, biological, radiological and nuclear treatment facilities, ambulances and fire trucks, demonstrating synergies and cooperation among member states and at EU level.

The recent terrorist attacks in some member states have proven that member states' emergency services need to be prepared for rapid and coordinated interventions in difficult security conditions. This requires enhancing even further cooperation between different actors at national and EU level, including civil protection, other emergency services and security services.

Reform of the Common European Asylum System and resettlement

The Council discussed the reform of the Common European Asylum System (CEAS). Ministers agreed a mandate for negotiations with the European Parliament ('partial general approach') on the recast of the Eurodac regulation.

For more information see [press release](#).

Ministers were also briefed by the presidency on the state of play of the outstanding issues concerning the reform of the CEAS and resettlement. The Council took note of a progress report covering the Dublin regulation, the reception conditions directive, the qualification regulation, the asylum procedure regulation and the resettlement framework regulation ([14708/16](#)). It also took note of a separate report covering the EU asylum agency regulation ([14106/1/16 REV 1](#)).

Any other business

The presidency updated the Council on the state of play of a number of legislative proposals.

The presidency informed the Council of the [outcome of the EU-US JHA ministerial meeting](#) that took place in Washington on 4 and 5 December.

The presidency outlined to the Council the agenda of the next EU-Western Balkans ministerial conference on justice and home affairs, which will take place in Brdo (Slovenia) on 15 and 16 December. The agenda includes discussions on operational cooperation in matters such as migration, border management and cooperation on internal security, including counter-terrorism and firearms trafficking. The Integrative Internal Security Governance (IISG) model of cooperation in the Western Balkans region will be also presented.

Ministers were informed by the Commission of the outcome of the second high-level meeting of the EU Internet Forum, which took place in Brussels on 8 December 2016.

The Maltese Minister for Home Affairs and National Security Carmelo Abela outlined the work programme of the upcoming Maltese presidency of the Council of the EU.

The Maltese presidency will work on the reform of the Common European Asylum System (CEAS) as a matter of priority. This will include discussions on the reform of the Dublin regulation and the new EU asylum agency (to replace EASO). The presidency will continue following up on the implementation of measures which have already been agreed to, particularly relocation decisions, hotspots and the deployment of experts.

On external border management, the Maltese presidency will build on the work done with regard to smart borders and will also take forward work on the European Travel Information and Authorisation System (ETIAS) to strengthen security of travel to the Schengen area under visa-free agreements. The Maltese presidency will take forward the work on the new proposals on the operation and use of the Schengen Information System. The aim is to strike a balance between security and smooth border crossings.

Border management and a strong asylum system are not enough without cooperation with countries of origin and transit. In this regard, a senior officials' meeting will be organised to follow up on last year's Valletta Summit on Migration. The Maltese presidency will also follow up on the new partnership frameworks with third countries.

Carmelo Abela said that the Maltese presidency would carry forward the Council's work on legal migration and visas, including by facilitating continued work on the blue card directive.

He highlighted initiatives which the Maltese presidency will be taking forward with regard to internal security and the fight against terrorism, amongst which the implementation of the renewed internal security strategy and the roadmap to enhance information exchange and information management will be given their due importance.

MIXED COMMITTEE

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

Entry/exit system (EES)

See above.

Migration

See above.

Fight against terrorism and organised crime

See above.

Other business

The Slovak presidency informed the committee about the agreements reached with the European Parliament to reinforce [checks at the external borders](#) and on the [visa suspension mechanism](#).

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

New psychoactive substances

The Council adopted a general approach on the regulation of the European Parliament and of the Council amending regulation (EC) no 1920/2006 as regards information exchange, early warning system and risk assessment procedure on new psychoactive substances and on the directive of the European Parliament and of the Council amending Council framework decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, as regards the definition of drug.

For more information, see [press release](#).

Internal Security Fund - Norway

The Council adopted a decision ([13710/16](#)) on the signing, on behalf of the European Union, and provisional application of an agreement between the European Union and the Kingdom of Norway on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund for the period 2014 to 2020 ([13711/16](#)).

The Council also decided to forward the draft decision on the conclusion of the agreement to the European Parliament for its consent once the agreement has been signed ([13712/16](#)).

EU internal security - Western Balkans

The Council adopted conclusions on strengthening the EU internal security's external dimension in the Western Balkans including via Integrative Internal Security Governance (IISG) ([15413/16](#)).

The presidency intends to present these conclusions to the EU Western Balkans Ministerial Forum on Justice and Home Affairs on 15 and 16 December in Brdo pri Kranju (Slovenia).

Integration of third-country nationals

The Council and the representatives of the governments of the member states adopted conclusions on the integration of third-country nationals legally residing in the EU.

Read the full text of the conclusions ([15312/16](#)).

Countering environmental crime

The Council adopted conclusions on countering environmental crime.

Read the full text of the conclusions ([15412/16](#)).

e-Justice

The Council adopted the report from the working party on e-law (14411/16). The working party focused its work on three main sectors, namely the ongoing discussions on e-communications in the area of justice, including the implementation of the e-IDAS regulation in the area of justice, work carried out by the expert groups active in the area of e-justice and the ongoing enhancement of the e-Justice Portal.

The Council also adopted the roadmap on e-Codex ([14465/16](#)).

Judicial network in civil and commercial matters

The Council adopted conclusions on the European Judicial Network in civil and commercial matters ([15349/16](#)).

Standard operating procedures - Mali

The Council endorsed the standard operating procedures between the EU and the Republic of Mali for the identification and return of persons without an authorisation to stay (15050/16).

Civil protection

The Council took note of a report from the presidency on the main achievements at EU level in the field of civil protection ([14395/1/16 REV 1](#)).

GENERAL AFFAIRS

Amendment to the Council's rules of procedure - update of EU population figures

The Council adopted a decision amending its rules of procedure in order to update the population figures of each member state for the year 2017 ([14730/16](#)).

According to the rules in force since 1 November 2014, when a decision is to be taken by the Council by qualified majority it must be verified that the member states constituting the qualified majority represent at least 65% of the population of the EU. A decision by qualified majority requires the support of at least 55% of the member states, i.e. currently 16 member states.

ENLARGEMENT

Association with Serbia

The Council established the EU's position for the third EU-Serbia stabilisation and association Council meeting.

TRANSPARENCY

Public access to documents

On 8 December 2016, the Council approved:

- the replies to confirmatory applications No 19/c/1/16 ([11735/1/16 REV 1](#)) and No 23/c/08/16 ([13479/1/16 REV 1](#))