



**COUNCIL OF THE
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NOTE

from : General Secretariat of the Council
to : Delegations

Subject: Summary of the meeting of the European Parliament **Committee on Civil Liberties, Justice and Home Affairs (LIBE)**, held in Brussels on 26-27 January 2010

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

I. Priorities of the Spanish EU Council Presidency in the area of Home Affairs

The Minister for the Interior, Mr Pérez Rubalcaba, President-in-Office of the Council, noted the crucial moment of the Spanish Presidency after the entry into force of the Lisbon Treaty, and the adoption of the Stockholm Programme. His main objective was that citizens felt the added value of the EU. Concerning the initiatives to be taken by the Spanish Presidency, he mentioned the action

plan for the implementation of the Stockholm Programme, which he hoped would be adopted under the Spanish Presidency, progress on the common asylum system, the creation of an internal security strategy and better transatlantic relations. Furthermore, he wanted to improve operational cooperation between security forces, in particular through joint operation teams, information exchange, but also an "Erasmus"-style system for exchange of police forces. Other issues to be pursued during Spanish Presidency included the strategy in the fight against terrorism, the fight against organised crime and measures against gender violence.

Speaking for their respective political groups, Mr Diaz de Mera (EPP, ES) raised inter alia the issues of gender violence and help for the victims of terrorism as well as the current topics of civil liberties, namely Passenger Name Records (PNR), body scanners and Swift. Ms Göncz (S&D, HU) asked the Minister about the visa situation with the Western Balkans as well as the problem between Canada and the Czech Republic. Ms In 't Veld (ALDE, NL) welcomed the priority given to combating violence against women, but regretted the current situation concerning the "Swift" Agreement. Mr Romeva i Rueda (Greens/EFA, ES) focused on immigration issues, while Mr Tavares (GUE/NGL, PT) was critical of transatlantic cooperation in the fight against terrorism. Mr Borghezio (EFD, IT) wanted to know what was the European policy for tackling illegal immigration.

In his replies, Mr Pérez Rubalcaba considered the Terrorist Finance Tracking Programme as the subject of the "Swift" Agreement to be useful, but reminded the Committee that it was the Minister of Justice's remit. He was in favour of the creation of a European PNR system and wanted to wait for a Commission report before deciding about the use of body scanners. He considered the possibility of legal immigration to be the flipside of the fight against illegal immigration and noted the link between immigration and development, stressing the importance of cooperation with third countries.

Other issues raised by individual speakers included the SIS II system (Mr Coelho (EPP, PT)), the review of all data collection instruments (Ms Ludford (ALDE, UK)), burden sharing (Ms Angelilli (EPP, IT)) and the fight against organised crime (Mr Crocetta (S&D, IT)).

II. Priorities of the Spanish EU Council Presidency in the area of Immigration and Asylum

Mr Corbacho Chavez, Minister for Labour and Immigration, President-in-Office of the Council, noted that for the area of immigration and asylum, the Lisbon Treaty offered a clear legal basis for the rights of third-country nationals, while making clear at the same time that it was for Member States to decide on the number of immigrants to be admitted. For him, a key objective of the Stockholm Programme was the development of an overarching migration policy. For the Spanish Presidency, he saw two key aims, the relaunch of the work on legal immigration, and the development of a new European policy on immigration. The creation of an action plan on foreign unaccompanied minors was also a priority, a subject that gave particular cause for concern. Integration was a new legal basis in the Lisbon Treaty, and a ministerial conference was to be held on the issue in April. Mr Corbacho Chavez expressed the hope that the Commission would soon present proposals on legal migration, namely on intra-corporate transferees and on seasonal workers.

Of the speakers from the political groups, Mr Busuttil (EPP, MT) was concerned about proposals blocked in the Council, in particular the lack of progress on the Pact on Immigration and Asylum, whereas Mr Jauregui (S&D, ES) raised the issue of the demographic situation and called for more immigration. Ms Wikström (ALDE, SE) suggested reinforcing the social dimension of migration. Mr Romeva i Rueda asked about agreements with countries of origin and was concerned about the situation in detention camps. Mr Tavares mentioned the recent riots in southern Italy, while Mr Claeys (NI, BE) was concerned about mass regularisations of illegal immigrants.

In his reply, Mr Corbacho Chavez considered the Pact on Immigration and Asylum to be a major step, but admitted that it was now necessary to go further. He was in favour of more legal immigration, which would be needed for future economic growth. On the other hand, he recalled that Member States committed themselves in the Pact to avoiding mass regularisations.

Issues raised by individual speakers included the situation of irregular migrants in Europe (Mr Diaz de Mera and Ms Flautre (Greens/EFA, FR)) as well as the integration of migrants (Ms Bilbao Barandica (ALDE, ES) and Ms Gomes (S&D, PT)).

III. Agreement between the EC and Pakistan on readmission

2009/0036(CNS)

Rapporteur: Mr Sógor (PPE, HU)

A Commission representative explained that the mandate had been given to the Commission ten years ago, which showed the difficulty in reaching an agreement. He considered the readmission agreement to be extremely important, as it covered also third -country nationals arriving through Pakistan, and that it might also facilitate the negotiations of a readmission agreement with Turkey, which were currently ongoing. Concerning the content, the agreement contained the usual provisions such as similar agreements.

A representative of the Presidency of the Council once again stressed the difficulty in reaching the agreement and stated that the request for the Parliament's consent in accordance with Article 218 TFEU was underway.

On behalf of the rapporteur, Mr Busuttil welcomed the conclusion of the agreement, but noted with disappointment that the formal Council decision to request the Parliament's consent had not yet been received by the Parliament. He reported that Mr Sógor suggested that the Committee could approve the agreement without further comment, but needed to wait for the opinion to be issued by the AFET Committee. He wanted to know at what stage the agreement was in the Pakistani Parliament.

Ms Guillaume (S&D, FR), Ms Ernst (Greens/EFA, DE) and Ms Flautre voiced criticisms of the agreement, namely because of the human rights situation in Pakistan, while Ms Hennis-Plasschaert (ALDE, NL) was in favour.

The Commission representative replied by warning that, if the Parliament refused consent to this agreement, there was a high risk that it would no longer be possible to reach any agreement at all .

Ms Flautre was particularly upset by this reply which she considered to be a blackmailing of the Parliament.

IV. Participation by Switzerland and Liechtenstein in Frontex activities

2009/0073(CNS)

Rapporteur: Mr Claeys (NI, BE)

A Commission representative explained the contents of the agreement with Switzerland and Liechtenstein, which made changes in secondary law relevant for the Schengen area applicable in these countries; similar agreements had already been signed with Norway and Iceland. Although the protocol of the accession of Liechtenstein to the Schengen area was not ratified yet, this country had already been included in order to avoid the need to repeat the exercise in the future. The agreement had been transmitted for consultation following the old procedure, but would now be retransmitted for consent.

A representative of the Presidency of the Council agreed with the explanations given by the Commission representative and underscored the need for the agreement.

The rapporteur suggested that the Committee should give its consent. Mr Busuttil and Mr Kirkhope (ECR, UK) also welcomed the agreement. Replying to a question by Mr Busuttil, the Commission representative expected to receive the ratification of the accession protocol of Liechtenstein in a few weeks, the procedures could then go on in parallel.

V. Priorities of the Spanish EU Council Presidency in the area of justice

Mr Caamano Dominguez, Minister for Justice, stated the intention of the Spanish Presidency to, inter alia, strengthen citizens' rights, improve the services of judicial authorities, fine-tune the tools to combat terrorism and organised crime and improve judicial cooperation with third countries. In particular, he mentioned the establishment of the Action Plan to implement the Stockholm Programme, the accession to the European Convention on Human Rights and improved protection for victims of crime, inviting the Commission to present an overarching instrument on the protection of victims (European Protection Order). Mr Caamano Dominguez also wanted to strengthen the mutual recognition of evidence in criminal matters and to optimise the use of information and communication technologies in the administration of justice. Stressing the

importance of the external dimension of Justice and Home Affairs, he suggested improving judicial cooperation with third countries, in particular in the framework of a renewed transatlantic cooperation, while also protecting personal data. Finally, Mr Caamano Dominguez suggested that Europe should not show weakness on terrorism, inter alia by adopting the interim agreement on providing data for the Terrorist Finance Tracking Programme (TFTP).

The questions asked by representatives of political groups mostly revolved around the issue of the "Swift" Agreement on providing data for the TFTP. Mr Busuttil and Ms Vergiat (GUE/NGL, FR) were disappointed about the procedure chosen by the Council while Ms In 't Veld asked for access to an opinion by the Council Legal Service; Ms Vergiat and Mr Romeva i Rueda also raised concerns about the content of the agreement. Other issue mentioned included the protection of minors (Ms Göncz) and the European Protection Order (Mr Romeva i Rueda).

In his replies, Mr Caamano Dominguez justified the need for an interim agreement, saying it was important not to lag behind in the fight against terrorism and suggested using the nine-month period for a careful analysis.

Also, many individual speakers made critical remarks about the "Swift" Agreement (inter alia Mr Voss (EPP, DE), Mr Albrecht (Greens/EFA, DE) and Mr de Jong (GUE/NGL, NL)). Others addressed problems in the application of the European Arrest Warrant (Ms Ludford (ALDE, UK)), eJustice (Mr Iacolino (EPP, IT)), the fight against trafficking in human beings (Ms Hedh (S&D, SE)) and against organised crime (Ms Borsellino (S&D, IT)).

In his reply, Mr Caamano Dominguez stated that the fight against trafficking in human beings was a fundamental theme for the Spanish Presidency. Europe should take a lead in dealing with the issue. Concerning the fight against organised crime, he suggested a strengthening of the existing Directive on confiscation of assets.

VI. Recent developments in Counter-terrorism policies (body scanners, "Detroit flight", ...)

Mr de Kerchove, EU Counterterrorism Coordinator, drew conclusions from the Detroit incident, stating that it had confirmed that civil aviation was still a key target for terrorists and underlined the particular importance of integration of data from different sources, in addition to their collection

and exchange. Furthermore, this incident had shown the intention of regional franchises of Al Qaeda to mount attacks outside their region and the growing importance of addressing radicalisation, as well as the problem of failing or failed states which could provide safe havens for terrorists. He reported that the informal Council meeting in Toledo had addressed most of these issues. He suggested a multi-layered approach on airport security, including body scanners if they could be used in a privacy-friendly, health-inoffensive and effective way. Data integration could be achieved by fusion centres, which should be set up by all Member States. More should be done against radicalisation, including working together to better understand its functioning and support to failed states to address this problem. Mr de Kerchove expressed the hope for a rapid presentation of a Commission study on body scanners, of a new proposal for a European PNR system and of a draft mandate to negotiate an EU-US agreement on data protection.

During the discussion, most speakers focused on body scanners, wondering whether they would be effective (Mr Busuttil and Ms Sargentini), and expressing concerns about health and data protection issues (Mr Kirkhope, Mr Alvaro). Mr Strasser and Ms In 't Veld called for an evaluation of the existing instruments, Mr de Jong (GUE/NGL, NL) and Mr Brons (NI, UK) addressed the relation with third countries.

The Assistant European Data Protection Supervisor (EDPS), Mr Buttarelli, noted that the EDPS had prepared a document containing its position on body scanners, explaining how a privacy-by-design approach could be applied.

In his reply, Mr de Kerchove preferred to wait for the Commission report on body scanners before taking a position on them. He added that Judge Bruguière would issue a second evaluation report on the "Swift" Agreement the following week. On the latter point, Ms In 't Veld reacted by criticising its timing in the context of the request for the Parliament's consent and its provisional application.

VII. International agreements (EU-USA PNR, EU-USA "TFTP", readmission, ...)

Mr Faull, Director-General of the Commission's Justice, Liberties and Security Directorate-General, recalled that the Parliament had been requested to give its consent to the interim agreement on providing data for the use of the Terrorist Finance Tracking Programme (TFTP) ("Swift"

Agreement). He added that the provisional application of the interim agreement was a separate matter, but would end if the Parliament refused its consent. In his view, the programme had produced important security leads and should therefore be continued. He announced a general review of the existing legislation as promised by Commissioner-designate Ms Malmström in her hearing and confirmed that Judge Bruguière would present his second evaluation report on the "Swift" arrangement in place at the LIBE meeting the following week.

The discussion focused on the "Swift" Agreement. Several speakers expressed critical views, in particular Mr Alvaro cited several points on which the agreement did not fulfil the criteria laid down in the Parliament's resolution of September 2009. Mr Lambrinidis (S&D, EL) joined Ms In 't Veld's critique of the timing of the new Bruguière report; Mr Tavares and Mr Albrecht expressed critical views about his first report. Mr Strasser (EPP, AT) and Mr Weber (EPP, DE) expressed doubts about the possible "security gap" invoked to justify the provisional application of the interim agreement, Mr Weber expressing concerns that the conclusion of an interim agreement would lower the chances of achieving improvements in a definitive agreement. Mr Busuttil considered that there was not enough information available to scrutinise the draft agreement, while Mr Kirkhope suggested accepting the provisional application and only giving an opinion after thorough reflection.

Assistant EDPS Mr Buttarelli presented a written opinion of the EDPS on the Agreement, which considered that there were not enough elements available to justify the necessity and proportionality of the Agreement, which to a great extent overlapped with existing agreements. Mr Buttarelli considered that the added value had to be clearly demonstrated, in particular as the Agreement concerned data on European transactions, which were in no way connected with the US. He highlighted several problematical points, including the possibility of bulk transfer, the definition of purpose, the storage period and the limitation of the verification by European data protection authorities. For him, the logic of the provisions on judicial redress was unprecedented and difficult to understand; there was no clear way to enforce them.

Mr Faull replied by considering that, if the agreement would not enter into force, the US would seek information using the normal mechanisms of mutual legal assistance from Member States most closely connected with the matter. In this case, European data protection law would apply, but not the specific data protection rules that the US authorities had undertaken to apply in the agreement.

On the latter point, Mr Buttarelli disagreed, stating that national data protection rules were stronger than the ones contained in the agreement.

VIII. European Protection Order

2010/0802(COD)

Rapporteur: Ms Romero López (S&D, ES)

A representative of the Presidency of the Council presented the initiative by twelve Member States, explaining that it aimed at filling a gap in EU legislation - measures against criminals can cross borders, but protection of victims was so far stopped at the national borders. Gender violence was at the heart of the measure, but it also applied to other crimes. Furthermore, he noted a lack of reliable statistics on protection orders.

A Commission representative fully supported the proposal and noted that evaluation of existing legislation had concluded that more work was needed on the issue. Also Commissioner-designate Ms Reding had confirmed that this was one of her priorities. The Commission was currently preparing a study with a view to future legislative proposals.

IX. Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

2008/0140(CNS)

Rapporteur: Mr Romeva i Rueda (Greens/EFA, ES)

The agenda item was postponed to the following meeting.

X. Date and venue of the next meeting

4 February 2010 in Brussels.