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Justice and Home Affairs

Luxembourg, 4 and 5 June 2018

Presidents **Tsetska Tsacheva**
Minister for justice of Bulgaria
Valentin Radev
Minister for the interior of Bulgaria

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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>).
• 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

HOME AFFAIRS

Visa code

Home affairs ministers discussed the proposal to reform the visa code, focusing in particular on the link between visa policy and readmission.

The Presidency took note of the positions expressed by ministers on whether it is preferable to have a negative incentives approach or one combining negative incentives with positive ones for those countries who do cooperate. Most delegations expressed a preference for the negative incentives approach.

Regarding the decision making process, most member states were in favour of any measures being adopted through a Council implementing act.

Following the guidance provided by ministers, discussions on the visa code proposal will continue at technical level with a view to adopting a mandate for negotiations with the European Parliament as soon as possible.

Reform of the Common European asylum system and resettlement

Ministers took stock of progress on all the asylum reform files. Negotiations with the European Parliament on the EU Asylum Agency regulation have been concluded, pending the provisions linked with the rest of the asylum package. Negotiations with the European Parliament on the Reception Conditions Directive, the Qualification Regulation and the resettlement Regulation are advancing, and the Presidency aims to reach a political agreement with the Parliament by the end of June. On the Eurodac Regulation negotiations with the European Parliament have also progressed. On the Asylum Procedure Regulation and the Dublin Regulation discussions have continued at technical level within the Council.

Before the Council meeting, ministers held informal discussions on the application of the principles of responsibility and solidarity in the context of the common European asylum system. The results of these discussions, together with the latest compromise text, will form the basis for further work in the run-up to the European Council meeting at the end of June.

Ministers also informally covered the Asylum Procedure Regulation, broadly supporting the idea of having an EU list of safe third countries by the time of adoption of the regulation.

Counter-terrorism¹

Ministers were updated, in the presence of the counter-terrorism group (CTG), on possible opportunities for further cooperation between competent authorities dealing with counter-terrorism. The Presidency called for cooperation projects among the relevant actors to start as soon as possible.

The Council also took note of ongoing work on the role of JHA agencies in counterterrorism and of the report of the high level expert group on radicalisation.

¹ Exceptionally, in the presence of the Schengen Associated States

EU policy cycle for organised and serious crime

Ministers took stock of the impact of the EU policy cycle for organised and serious crime, following the completion of the first EU policy cycle (2014-2017). They confirmed its added value and highlighted its multidisciplinary component as a clear example of a successful EU initiative. This multidisciplinary aspect involves:

- cooperation between different actors at national, EU and international level
- integration and alignment of the wide range of activities developed to tackle the EU crime priorities, including administrative approaches, prevention campaigns and strategic and operational activities

Further efforts will focus on strengthening coordination at national level, increasing awareness of the EU policy cycle among competent authorities, strengthening external outreach, promoting engagement of EU agencies and bodies, and promoting new solutions beyond traditional law enforcement approaches to tackle EU crime priorities.

Cooperation between CSDP missions/operations and EU JHA agencies

Ministers took stock of the latest developments regarding the setting up of a pilot project on a crime information cell in EU NAVFOR MED Operation Sophia.

On 14 May 2018, the Council adopted a decision allowing for the creation of the crime information cell. The cell will be composed of up to 10 staff members from relevant law enforcement authorities of member states and from the EU agencies Frontex and Europol, to improve information sharing. It will be tasked with facilitating the reception, collection and transmission of information on human smuggling and trafficking, the implementation of the UN arms embargo on Libya, illegal trafficking, as well as crimes relevant to the security of the operation itself.

Ministers will next be informed of the activity of the crime information cell at the Justice and Home Affairs Council meeting in October 2018.

Any other business

– ***Current legislative proposals***

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

– ***Seventh Brdo process ministerial meeting and second IISG board meeting***

Slovenia informed ministers about the seventh Brdo process ministerial meeting and the second integrative internal security governance (IISG) board meeting, which took place on 15 and 16 March 2018.

– ***Work program of the incoming Presidency***

The Austrian interior minister, Herbert Kickl, informed the Council of the priorities of the incoming Austrian Presidency in the area of home affairs. These include efficient external border protection, a crisis resistant European asylum policy, the fight against terrorism and extremism, the fight against serious and organised crime (including combatting migrant smuggling and strengthening community policing), promoting interoperability for a better sharing of information and digital security.

Migration¹

Over lunch, ministers discussed the state of play and way forward on a number of migration issues, covering all three Mediterranean routes. They considered how to strengthen ongoing work on different fields including:

- engaging with Turkey to ensure the commitments under the EU-Turkey statement continue to be respected
- stepping up support to EU agencies, in particular Frontex, EASO and Europol
- ensuring sufficient and timely funding to the EU Trust Fund for Africa, to keep up EU efforts on the Central and Western Mediterranean routes
- supporting partners along the Western Balkans in stemming the flows in the region

The actions taken by the EU and member states in the past years to protect the external borders and to manage migration flows have resulted in tangible results. In the first four months of 2018, the total number of irregular border crossings dropped 44% compared to 2017. However, the situation remains volatile and continuous monitoring and action on the different routes is of utmost importance.

¹ Exceptionally, in the presence of the Schengen Associated States

MIXED COMMITTEE

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

- *Visa code*

See above

- *Any other business*

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

Lithuania presented the results of the ministerial forum for member states of the Schengen Area with external land borders, which took place in Vilnius on 17-18 May.

JUSTICE

Directive on Insolvency, Restructuring and Second Chance

The Council reached a partial general approach on the directive on insolvency, restructuring and second chance ([8830/18 ADD 1](#)).

The partial agreement covers the articles of titles Title III (Discharge of debts and disqualifications), Title IV (Measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt) and Title V (Monitoring of procedures) as well as key related recitals.

Overall, the agreement reached intends to clarify some aspects of the initial proposal and provides for more flexibility where necessary for member states to implement the new rules in their national legal systems.

The proposal was presented by the Commission on 22 November 2016. It aims to provide access for viable enterprises in financial difficulties to national insolvency frameworks that enable them to restructure at an early stage with a view of preventing their insolvency. It also aims at giving honest bankrupt entrepreneurs a second chance across the Union and introduces measures to increase the efficiency of restructuring, insolvency and discharge procedures.

The overall objective of the text is to reduce the most significant barriers to the free flow of capital stemming from differences in member states' restructuring and insolvency frameworks and to enhance the rescue culture in the EU. In doing so, the proposal aims to strike an appropriate balance between the interests of the debtors and the creditors.

The text is a minimum harmonization directive. It introduces a set of principles along with more targeted rules in some specific cases, while allowing member states to go further when transposing the rules into national law.

Contract law - Sales of goods directive

The Council held a policy debate on the sales of goods directive ([9261/18](#)).

This directive is closely linked to the digital content directive (DCD) on which the Council adopted its [general approach in June 2017](#) and for which negotiations with the Parliament are ongoing.

Ministers were asked to provide political guidance on the interrelationship and consistency between both proposals in order to ensure further progress in the negotiations.

Ministers were asked in particular to discuss the following issues :

- Whether goods with embedded digital content or services ('smart goods') should be included within the DCD or the sales of goods directive. The presidency concluded that the Council is committed to regulate goods with embedded digital content and clearly supports the inclusion of all goods, including smart goods, in the sales of goods directive. For the clear majority of member states the added value of amending the sales of goods rules is to adapt them to the digital world, while ensuring a regime that is simple to apply and easy to understand for consumers. Work will continue to convince the European Parliament of the advantages of this approach to apply the sales rules to all types of goods;
- The type of remedies and conditions to claim them for consumers. The presidency noted that the compromise reached within the digital content directive (i.e. leaving enough flexibility for member states in the hierarchy of remedies) can serve as a basis for the sales of goods directive. However, the presidency underlined it cannot be a copy paste and that work will continue at technical level to properly reflect in the rules the different nature of goods;
- The level of harmonisation regarding legal guarantee periods. The presidency concluded that flexibility is needed on this aspect to reach a compromise and so that the way forward is to follow the approach adopted within the digital content directive.

Both directives are part of the 'Digital Single Market Strategy for Europe' presented by the Commission in December 2015. The proposed sales of goods directive, initially limited online and other distance sales, was modified by the Commission in 2017 to also include face-to-face sales.

Revision of Brussels IIa: Recognition and enforcement of decisions in matrimonial matters and parental responsibility

The Council held a policy debate ([8886/18](#)) on the revision of so called Brussels IIa Regulation (regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction).

Ministers were asked to express their views on three topics:

- the circulation of provisional, including protective, measures in urgent cases. This issue refers to urgent cases where such provisional measures are ordered outside of the member state having jurisdiction over the substance of parental responsibility. Ministers were asked their views on whether those measures should be recognized and enforced in another member state where they aim to facilitate the return of an abducted child;
- the placement of a child in another member state. This issue relates to the need for consent from the member state where a child is to be placed, regardless of the role of public authorities in that member state for domestic cases of such child placement;
- the way forward on how to complete the abolition of exequatur. In December 2017, the Council agreed on the abolition of exequatur, subject to appropriate safeguards. As a follow-up to discussion that took place at technical level, ministers will be invited to share views on whether it is appropriate to introduce a system of recognition and enforcement of decisions in matters of parental responsibility with special rules for "privileged" decisions ("privileged" decision is a decision given in a Member State to be recognised in another Member State without any special procedure being required and without any possibility of opposing its recognition).

The presidency concluded there is a broad understanding to further strengthen the rules on the first and second topic of discussion in order to make them more efficient and increase child protection. On the third topic, the presidency noted there is enough support to continue the work at technical level where a compromise can be achieved. Finally, the presidency noted the Council's aim to reach a broad political agreement by the end of the year, noting however that this is an objective rather than a strict deadline.

It was the fourth policy debate on this Regulation. In [March 2018](#), the Council debated on the issue of the role and tasks of central authorities. In [June 2017](#), the Council exchanged views on the issue of the hearing of the child during proceedings while in [December 2017](#) ministers touched on the issue of the abolition of exequatur.

The proposal was presented by the Commission on 30 June 2016. It aims at improving the current legal EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction. A key objective of the new rules is to ensure quicker overall procedures given that time is of the essence in order to protect the best interests of the child in these cross-border parental responsibility disputes.

The proposed regulation is subject to the special legislative procedure which foresees the need to have unanimity of the Council after consultation of the European Parliament. The [opinion of the Parliament](#) was delivered on 18 January 2018. All Member states, except Denmark, are participating to this legislation.

For more information:

[Commission website : new rules to better protect children in cross-border family proceedings](#)

Strategy and action plan on e-justice

Justice ministers were informed by the presidency ([8990/18](#)) on the state of play regarding the preparation of the strategy and action on e-justice for the period 2019-2023. Both the strategy and action plan are expected to be adopted under Austrian presidency at the end of 2018.

e-Justice is a policy development tool through which access to justice is being simplified and improved while cross-border legal procedures are being digitalised. e-Justice is not limited to one particular field of law. It is a horizontal domain encompassing all fields of law which have cross-border dimensions in the areas of civil, criminal and administrative law.

The current 2014-2018 e-Justice action plan aimed to build upon the work already undertaken and to continue this necessary development towards modernisation of justice at national and European level. The work in the action plan focused on access to information in the field of justice, access to courts and extrajudicial procedures and, finally, communication between judicial authorities.

For more information:

[E-justice portal](#)

[E-justice strategy 2014-2018](#)

European Public Prosecutor's Office (EPPO regulation)

Justice ministers were informed by the Commission on the state of play of the implementation of the EPPO regulation ([8939/18](#)). The Commission mentioned the current ongoing work regarding, among other things, the appointment of an interim executive director, the rules of procedures for the selection panel for the selection of the European chief prosecutor and European prosecutors, or the 2019 budget.

The EPPO will have the authority, under certain conditions, to investigate and prosecute EU-fraud and other crimes affecting the Union's financial interests. It will bring together European and national law-enforcement efforts to counter EU fraud.

The EPPO central office will be based in Luxembourg. The date on which the EPPO will assume its investigative and prosecutorial tasks will be set by the Commission on the basis of a proposal from the European Chief Prosecutor once the EPPO has been set up. This date will not be earlier than three years after the entry into force of this Regulation.

20 Member states have so far formally decided to join the EPPO. On top of these, the Netherlands has officially notified its wish to join the EPPO while the Maltese government announced its intention to do so during the last Justice Council in March.

For more information:

[Council press release on the agreement of the EPPO regulation](#)
[Commission Q&A on the EPPO](#)

E-evidence package

The Council held a policy debate on the new e-evidence package tabled by the Commission in April 2018.

The package is made of two legislative proposals: a regulation on European production and preservation orders for electronic evidence in criminal matters and a directive laying down harmonised rules on the appointment of legal representatives for the purposes of gathering evidence in criminal proceedings.

The objective of the proposals is to improve cross-border access to e-evidence by creating a legal framework for judicial orders addressed directly to legal representatives of service providers in another member states, without the intervention of an authority in the other member state.

During the debate, ministers exchanged views on:

- the scope of the directive and, in particular, whether the issues of direct access to e-evidence and real-time interception should be considered as part of the future EU legal framework. The Council agreed on the need to consider expanding the scope of the regulation and tasked the Commission to continue the expert process on those two topics and report at the October JHA meeting. The Council will then discuss whether to include or not those or one of those elements within the scope of the current regulation.
- the current international developments on e-evidence and, in particular, the impact of the US CLOUD Act adopted in March 2018. On the latter, the Council confirmed the common EU approach towards the US regarding the conclusion of an executive agreement under the US CLOUD Act. The Council asked the Commission to continue contacts with the US authorities and to urgently submit a negotiation mandate, if possible before the summer recess.
- With regards to the second protocol to the Budapest convention on cybercrime currently being discussed at the Council of Europe, the presidency noted the need for a similar common approach at EU level.

For more information:

[Commission - press release on the new e-evidence proposals](#)

[Commission - Factsheet: Facilitating Access to electronic evidence](#)

[Press release on the fight against criminal activities in cyberspace, June 2016](#)

[Council of Europe - Towards a Protocol to the Budapest Convention](#)

Victims of terrorism

Ministers discussed aspects related to the protection and support of victims of terrorism. They focused on implementation of existing legislation as regards victims, in particular the EU directive on combating terrorism. They also discussed other possible measures which could be explored at EU level to support and assist victims of terrorism.

Following this debate, the Council adopted conclusions on victims of terrorism. The objective of these conclusions is to promote effective cooperation between the authorities and entities responsible for the protection of victims of terrorism in order to facilitate the rapid exchange of information and assistance in the event of a terrorist attack.

[Council conclusions on victims of terrorism](#)

Any other business

– ***Misuse of Facebook data: exchange on possible responses***

Upon request of the German delegation, the Council exchanged views on the issue of the misuse of facebook data, in particular in the context of the Cambridge Analytica revelations.

EU Heads of State and government discussed the issue during the Leaders' informal meeting in Sofia on 16 May.

The presidency concluded that it is clear the Union and member states face fundamental challenges in light of the ever increasing processing of data. These challenges require both member states and the EU institutions to enforce the Union's data protection rules in an effective manner. They also require appropriate action to fight disinformation and protect the rule of law and the integrity of the democratic process.

– ***Work programme of the incoming Austrian presidency***

The Austrian Minister of Constitutional Affairs, Reforms, Deregulation and Justice, Josef Moser, informed the Council of the priorities of the incoming Austrian Presidency in the area of Justice.

In the field of criminal law, the presidency will focus on the directive for combating money laundering, on the regulation on freezing and confiscation orders and on the ECRIS-TCN proposal in order to adopt them formally before the end of the year. The same goes for the Eurojust regulation. The Presidency also wishes to advance the proposed directive on combating fraud and counterfeiting of non-cash means of payment as much as possible. To be able to counter the technological challenges with effective law enforcement instruments, an early conclusion of the very important work on the so-called "e-evidence" proposals is indispensable. The presidency aims at an orientation debate in October and at a general approach in December.

Concerning civil law, the presidency is particularly interested in achieving a political consensus on the revision of the Brussels IIa regulation by December. In order to give failed but honest entrepreneurs a second chance, the present proposed directive on insolvency law will be an important instrument. If a general approach succeeds in October, trilogue negotiations should commence as soon as possible. So that modernisation potential of regulations on the service of documents and taking of evidence can be fully utilised also in the future, the presidency wishes to deal with the new proposed revisions for the two regulations in an intensive manner.

Modernising the legal acts towards increased digitalisation requires a future-oriented technical foundation. Therefore, e-codex is most important for the Presidency.

Also, the contractual files with their complicated challenges are serving the implementation of the digital Single Market. The Presidency wants to achieve a General Approach by December concerning the “sales of goods” proposal.

– ***Current legislative proposals***

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

– ***EU-U.S. justice and home affairs ministerial meeting***

The presidency updated both justice and home affairs ministers on the outcome of the EU-US justice and home affairs meeting which took place in Sofia on 22-23 May.

For more information, see [joint EU-US statement](#)

– ***European day of remembrance for victims of all totalitarian and authoritarian regimes***

The minister of Justice of Estonia intervene to pass on an invitation to his colleagues to a ministerial meeting to discuss how to go further with prosecution of perpetrators of the past crimes of Communist regimes on the international level. The meeting is to be held on the 23rd of August, 2018 in Tallinn on the occasion of the European Day of Remembrance for victims of all totalitarian and authoritarian regimes,

OTHER ITEMS APPROVED

JUSTICE

Conclusions of the Eurojust annual report 2017

The Council adopted conclusions on the Eurojust annual report 2017 ([9005/18](#)).

The Council welcomed Eurojust's annual report 2017, and the overall progress made by Eurojust in fulfilling its mission as a key player in facilitating and strengthening judicial coordination and cooperation between national authorities in the investigation and prosecution of the most serious forms of cross-border crime, including terrorism.

For more information, see [Eurojust annual report 2017](#)

JUSTICE AND HOME AFFAIRS

Counter-terrorism

The Council adopted two decisions on the conclusion of the Council of Europe convention on the prevention of terrorism and of its additional protocol. ([14494/1/17 REV 1](#), [14498/1/17 REV 1](#))

Schengen evaluation - France

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of France on the application of the Schengen acquis in the field of management of the external border. ([9656/18](#))

Integrated border management

The Council adopted conclusions on European integrated border management. In the conclusions it invites Frontex to prepare, in close cooperation with the member states and the commission, a technical and operational EU integrated border management strategy, which should be established by the end of 2018. It also invites the member states to prepare or align appropriate national integrated border management strategies. ([9000/18](#))

The aim of the EU integrated border management is to manage the crossing of the external borders efficiently, as well as to address migratory challenges and potential future threats at those borders.

Civil protection Presidency report

The Council took note of the report on the main achievements at EU level in the field of civil protection during the Bulgarian presidency. ([8995/18](#))

Combating domestic violence

The Council adopted conclusions on improving police cooperation in combating domestic violence, including violence against women. These conclusions call for further EU support for member states' actions, as well as for member states to improve the identification of cases and to further develop their response, including to cyber violence. They also call on CEPOL to further develop trainings on combating domestic violence.

Europol - exchange of personal data with third countries

The Council adopted eight decisions authorising the opening of negotiations for EU agreements with Turkey, Lebanon, Israel, Tunisia, Morocco, Egypt, Algeria and Jordan on the exchange of personal data between Europol and the authorities of those countries competent for fighting serious crime and terrorism. These decisions contain a mandate for the Commission to enter into negotiations with the respective countries.

Since the entry into application of the new Europol regulation on 1 May 2017, the European Commission is responsible for negotiating, on behalf of the EU, international agreements with third countries for the exchange of personal data with Europol.

Schengen information system - terrorism

The Council adopted conclusions on strengthening the cooperation and use of the Schengen information system (SIS) to deal with persons involved in terrorism or terrorism-related activities, including foreign terrorist fighters. The conclusions aim to facilitate the identification and tracing of foreign terrorist fighters, based on SIS-hits. They call on member states to ensure that the relevant information is provided and to ensure that, unless legal or operational reasons require otherwise, information is shared with Europol. They also invite Europol to make full use of its current right to access SIS, VIS and Eurodac, to step up efforts to identify travel patterns and connections of persons involved in terrorism and to share the outcome of these efforts with member states. ([8974/18](#))

FOREIGN AFFAIRS

Sanctions against Iran

The Council completed its mandatory regular review of persons and entities who remain subject to restrictive measures against Iran, in accordance with the Joint Comprehensive Plan of Action (JCPOA). Following the review, some technical adjustments to the information related to certain persons and entities were made. The relevant legal acts will be published in the Official Journal of 6 June 2018.

[EU restrictive measures against Iran](#)

ECONOMIC AND FINANCIAL AFFAIRS

Money laundering

The Council decided not to object to a Commission regulation supplementing directive 2015/849 on money laundering with regulatory technical standards on the criteria for the appointment of central contact points for electronic money issuers and payment service providers ([9260/1/18 REV 1](#) + [8720/18](#)).

The regulation is a delegate act pursuant to article 290 of the Treaty on the Functioning of the European Union. It can now enter into force, unless the European Parliament objects.

TRANSPORT

Flight and cabin crew; turbine-powered aeroplanes

The Council decided not to oppose the adoption by the Commission of a regulation amending regulation 965/2012, as regards technical requirements and administrative procedures related to introducing support programmes, psychological assessment of flight crew, as well as systematic and random testing of psychoactive substances to ensure medical fitness of flight and cabin crew members, and as regards equipping newly manufactured turbine-powered aeroplanes with a maximum certified take-off mass of 5 700 kg or less and approved to carry six to nine passengers with a terrain awareness warning system ([7555/18](#) + ADD1)

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.

FISHERIES

Black Sea fisheries and aquaculture: Sofia Declaration

The Council endorsed the text of a draft ministerial declaration, the "Sofia Declaration", as the position to be taken by the EU and its member states at the High level Conference on Black Sea fisheries and aquaculture that will take place in Sofia on 6-7 June 2018. It also authorised the Commission to sign the declaration on behalf of the European Union.

The objective of the declaration is to enhance cooperation on Black Sea fisheries and aquaculture, including on data collection, establishment of an ecosystem-based fisheries framework, support to sustainable small-scale fisheries and aquaculture and greater solidarity.

EU-Madagascar: conclusion of a Sustainable Fisheries Partnership Agreement and a Protocol

The Council adopted a decision authorising the opening of negotiations between the EU and the Republic of Madagascar for the conclusion of a Sustainable Fisheries Partnership Agreement and a Protocol. It also agreed on the negotiating directives

The objective of the negotiations is to reach a new sustainable fisheries partnership agreement and to promote sustainable and responsible fishing.

EU-Cabo Verde: negotiations for the renewal of the Protocol to the Fisheries Partnership Agreement

The Council adopted a decision authorising the opening of negotiations on behalf of the EU for the renewal of the protocol to the Fisheries partnership agreement between the European Union and the Republic of Cabo Verde.

The objectives of the new protocol is to promote sustainable and responsible fishing in line with regulation N 1380/2013.

TRANSPARENCY

Public access to documents

On 4 June 2018, the Council approved the reply to confirmatory application No 08/c/01/18 (doc. 8128/18).
