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3641st Council meeting

Justice and Home Affairs

Luxembourg, 11 and 12 October 2018

Presidents **Josef Moser**
Federal Minister for Constitutional Affairs, Reforms,
Deregulation and Justice
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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

European border and coast guard

Home affairs ministers discussed a Commission proposal on the European Border and Coast Guard Agency (EBCG). They expressed their general wish to strengthen the mandate of the EBCG, in particular on returns and cooperation with third countries. They also shared their views on the size, composition, tasks and powers of the EBCG standing corps, as well as on the timeframe needed to fully establish the corps. ([12768/18](#))

In particular, several ministers mentioned the need to take a practical approach, by firstly looking at the supporting tasks to be carried out by the agency to respond to operational needs, taking account of national responsibility. On this basis, the question of structure and size of the staff, as well as the budget and timing could then be approached.

On the basis of this discussion, work will continue at technical level.

Return directive

Ministers discussed a Commission proposal reforming the return directive. They generally welcomed the proposal and agreed that the number of returns of those without the right to stay needs to be improved. Ministers focused, in particular, on one of the new elements introduced by the proposal: the border procedure for returns, including its links with the asylum border procedure. ([12562/18](#))

The border procedure would allow for those whose asylum applications have been rejected during asylum border procedures to be subject to a simplified return procedure, ensuring decisions can be quickly adopted and enforced at the border.

Member states were generally in favour of introducing the border procedure but raised several points which will need to be further discussed, including if and when the border procedure should be compulsory and the need to take account of the different situations at different borders.

On the basis of political guidance provided by ministers, work will continue at technical level.

Multiannual Financial Framework

Ministers held a debate on the Commission sectoral proposals for the field of home affairs in the context of the Multiannual Financial Framework. They discussed the question of the implementation of the external aspects of migration in these three proposals, namely whether the thematic facility should reserve a share of its financial envelope to tackle the external dimension of migration and how to ensure coherence and complementarity between the different possibilities of EU funding on migration. (12777/18)

Most member states agreed on the inclusion of dedicated components for the purpose of addressing the external dimension of migration in the thematic facility of each home affairs fund. They also agreed that better coordination will be key in order to achieve the objectives of the different funds and instruments.

Work on these lines will continue at technical level.

Reform of the Common European Asylum System and Resettlement

The Presidency presented a progress report on the reform of the Common European Asylum System (CEAS) and resettlement. ([12826/18](#))

On three files, the **qualification regulation**, the **resettlement regulation** and the **reception conditions directive**, a provisional agreement was reached between the Council Presidency and the European Parliament rapporteur in June. However, these provisional agreements did not achieve the necessary support from member states. Discussions within the Council have continued with a view to identifying the minimum amendments required to achieve the necessary support by both institutions. The European Parliament has indicated that it stands by the provisional agreements and does not intend to continue the negotiations with the Council for the time being.

On **Eurodac**, significant progress has already been achieved in inter-institutional negotiations with the European Parliament and negotiations continue on the resettlement related provisions of the regulation. In addition, there are other issues which are still open, in particular the data storage period, which is linked to the Dublin regulation.

On the **EU asylum agency**, a provisional agreement with the European Parliament was reached in 2017, excluding the parts of the text related to other legislative proposals in the package. In September 2018, the European Commission presented an amended proposal, which builds on the existing agreement and aims to reinforce the operational support provided by the agency and the cooperation with other relevant experts, including from the European Border and Coast Guard Agency or Europol. Technical examination of the proposal has started at the Council preparatory bodies, with the aim of reaching an agreement on a mandate as soon as possible.

On the **asylum procedures regulation**, the Council has not yet adopted its negotiating mandate. Discussions continue at the level of JHA Counsellors with the aim of reaching an agreement on a mandate very soon.

On **Dublin**, the European Council concluded that a consensus needs to be found based on a balance of responsibility and solidarity, taking into account the persons disembarked following search and rescue operations. Bilateral discussions held with member states have confirmed that a solution has not been found yet.

Migration

Over lunch, ministers took stock of the migratory situation along the Mediterranean migratory routes, where action taken by the EU and member states in recent years has resulted in a decrease in the total number of arrivals. They exchanged views on ongoing work on several aspects of this comprehensive response, including internal and external elements, as well as the asylum reform and, in particular, the reform of Dublin and the concept of "mandatory solidarity".

Any Other business

– ***Vienna process***

The Presidency updated ministers on the Vienna process, which is a reflection process on current internal security challenges.

– ***Current legislative proposals***

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

– ***Conference "security and migration - promoting partnership and resilience"***

The presidency updated home affairs ministers on the outcome of the Conference "security and migration - promoting partnership and resilience, which took place in Vienna on 13-14 September 2018.

For more information [see presidency statement](#)

– ***EU-Western Balkans ministerial forum on Justice and Home affairs***

The presidency updated home affairs ministers on the outcome of the EU-Western Balkans ministerial forum on Justice and Home affairs which took place in Tirana on 4-5 October 2018.

For more information, [see joint press statement](#)

– ***Legal migration***

The Commission updated ministers of ongoing work in the field of legal migration, following its communication of 12 September on this topic.

[Commission Communication: "Enhancing legal pathways to Europe: an indispensable part of a balanced and comprehensive migration policy"](#)

MIXED COMMITTEE

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

– **European border and coast guard**

See above

– **Return *directive***

See above

– ***Multiannual* Financial Framework (border management and visa instrument)**

See above

– **Any *other* business**

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

JUSTICE

Directive on Insolvency, Restructuring and Second Chance

The Council reached a general approach on the directive on insolvency, restructuring and second chance ([12334/18](#)).

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

European Public Prosecutor's Office (EPPO)

Justice ministers were informed by the Commission of the state of play on the implementation of the EPPO regulation.

The Commission informed that it will submit a proposal for a Council implementing decision on the transitional rules for the first European Prosecutors in the EPPO College still this year. This is necessary to establish the rules of rotation in the first EPPO College before its appointment.

On the internal rules of procedure, the Commission intends to bring forward a proposal in the first half of 2019.

Finally, on the creation of the case management system, the Commission informed of the current business analysis being conducted.

On 7 September, the Council adopted the list of the members of the selection panel ([11513/18](#)) which will play a key role in the selection of both the European Chief Prosecutor and the European prosecutors based in each member state.

22 Member states have so far formally decided to join the enhanced cooperation on the creation of the EPPO.

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.

For more information:

[Council press release on the agreement of the EPPO regulation](#)

[Commission Q&A on the EPPO](#)

E-evidence package: regulation on European production and preservation orders

The Council held a policy debate on the regulation on European production and preservation orders for e-evidence in criminal matters ([12856/18](#)).

Ministers were invited to discuss whether the approach taken in the proposal (i.e. that production/preservation orders could be addressed directly to service providers without the involvement of any other MS at the stage of the request) should be kept or modified by introducing a notification procedure.

The presidency noted that it is a complex question with different views among ministers but noted a willingness of many to find a compromise around some sort of notification. It concluded that work will continue at expert level looking in particular the sensitivity of the different categories of data (content and non-content data) and how they should be treated when envisaging a possible notification procedure. Moreover, the presidency indicated that experts will continue discussion on which member state would be the most relevant one to receive such notification: the enforcing one or the member state of the affected person.

The presidency noted the support of the Council not to include real-time interception in the scope of the current proposal.

Finally, the presidency took note of the commitment of the Commission to present as soon as possible negotiation mandates for the conclusions of an executive agreement under the US CLOUD Act and for the ongoing discussion on a second protocol to the Budapest convention on cybercrime.

The proposed regulation seeks to introduce an alternative mechanism to the existing tools of international cooperation and mutual legal assistance. It addresses specifically the problems stemming from the volatile nature of e-evidence and the "loss of location" aspect by setting new procedures for quick, efficient and effective cross-border access.

The regulation on European production and preservation orders for e-evidence in criminal matters is part of a package tabled by the Commission in April 2018 which includes also a directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings. The objective of the package is to improve cross-border access to e-evidence by creating a legal framework for judicial orders addressed directly to service providers in another member state.

For more information:

[Council - outcome of the June 2018 Justice and Home affairs meeting](#)

[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](#)

Fundamental rights

As usual during the October meeting, ministers exchanged views on current fundamental rights challenges with the Director of the Fundamental Rights Agency (FRA).

The discussion was held on the basis of the Fundamental Rights Report produced by FRA and of the annual Commission report on the application of the EU Charter of Fundamental Rights

Following this, ministers discussed the draft Conclusions on the application of the EU Charter on Fundamental Rights in 2017. Noting the absence of consensus following opposition of one delegation, the presidency decided to publish presidency conclusions to take stock of the current debate. The presidency conclusions are based on the version of the draft Council conclusions presented today to ministers.

For more information:

presidency conclusions on the application of the EU Charter on Fundamental Rights in 2017
(document not yet available)

[Draft Council conclusions presented to ministers](#)

[Fundamental Rights Agency - Fundamental Rights Report 2018](#)

[European Commission - Annual reports on the application of the Charter](#)

Ensuring free and fair elections including from personal data misuse and cyber incidents

Ministers were informed by the European Commission of its proposals to address potential threats to elections, in particular in the context of the European elections taking place next year.

In his State of the Union speech in September 2018, President Juncker announced a set of concrete measures to address potential threats to elections and thereby strengthen the resilience of the Union's democratic systems. The proposed measures also aim at greater transparency in online political advertisements and provide for the possibility to impose sanctions for the illegal use of personal data aimed at deliberately influencing the outcome of the European elections

The package includes:

- guidance on the application of Union data protection law in the electoral context,
- A Recommendation on election cooperation networks, online transparency and protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament,
- A Communication on Securing free and fair European elections,
- A Regulation amending Regulation 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament.

For more information:

[Commission Press release - European Commission proposes measures for securing free and fair European elections](#)

Mutual recognition in criminal matters

Ministers were invited to discuss how to enhance mutual trust between judicial authorities. They exchanged information on best practices as well as on possible legal measures taken at national level to enhance mutual recognition/mutual trust (e.g. awareness raising and training for practitioners, bilateral activities, etc.), also in view of recent case law of the Court of Justice of the EU.

The elements discussed will feed into the expert work preparing Council conclusions in view of the December Justice and Home Affairs Council.

Judicial cooperation in criminal matters in the EU is based on the principle of mutual recognition of judgments and judicial decisions. While some actions are taken at EU level to ensure the effective application of the principle of mutual recognition (e.g. legislation on the mutual recognition of freezing and confiscation), enhancing mutual trust at national level is the key to smooth cooperation.

This discussion was a follow-up to the exchange of views ministers held during the informal meeting of Justice Ministers in Innsbruck in July 2018.

For more information:

[Press release following the informal meeting of Justice Ministers in Innsbruck](#)
[Commission website: mutual recognition of judgments](#)

Any Other business

– *Current legislative proposals*

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

– *EU-Western Balkans ministerial forum on Justice and Home affairs*

The presidency updated justice ministers on the outcome of the EU-Western Balkans ministerial forum on Justice and Home affairs which took place in Tirana on 4-5 October 2018.

For more information, see [joint press statement](#)

OTHER ITEMS APPROVED*

JUSTICE AFFAIRS

Adoption of the Regulation on data protection by EU institutions and bodies

The Council formally adopted the regulation on the handling of personal data by EU institutions and other EU bodies. The new rules are aligned with the general data protection regulation (GDPR) which enters into force on 25 May 2018.

The new provisions will apply to data processing by Union institutions, bodies, offices and agencies. They will increase the protection of personal data and ensure a free flow of that data between the institutions and the different bodies, insofar as it is necessary.

For more information:

[Regulation on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data \(PE-CONS 31/18\)](#)

[Press release published on 23 May 2018](#)

Money laundering directive

The Council today adopted a new anti money laundering directive. This directive introduces new criminal law provisions which will disrupt and block access by criminals to financial resources, including those used for terrorist activities.

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

Ratification of amended Convention 108 on data protection

The Council adopted a Decision authorising member states to ratify, in the interest of the European Union, the Protocol amending the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data ([10923/18](#))

* The Council adopted the "A" items without exceptions as they figure in the document [12666/18](#).

HOME AFFAIRS

Schengen evaluation

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Spain on the application of the Schengen acquis in the field of the common **visa policy**. ([13003/18](#))

Schengen evaluation

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of **Spain** on the application of the Schengen acquis in the field of the **Schengen Information System**. ([13004/18](#))

Schengen evaluation

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of **Norway** on the application of the Schengen acquis in the field of the **Schengen Information System**. ([13005/18](#))

Prüm data exchange - United Kingdom

The Council adopted conclusions acknowledging that the UK has fully implemented the general provisions on data protection required for the purpose of Prüm automated DNA data exchange. However, the Council requested in its conclusions that the UK review, within 12 months from the launching of that exchange, its policy of excluding suspects' DNA data files from the exchange. If by that point the UK has not notified the Council that it will make these data available, the Council will re-evaluate the continuation or termination of Prüm automated DNA data exchange with the UK. ([13079/18](#))

Following the adoption of the above conclusions, the Council will adopt, after consultation with the European Parliament, the implementing decision, which would allow UK access to Prüm DNA data exchange.

Convention on integrated safety at football matches and other sports events

The Council agreed in principle on a draft Council decision authorising member states to become party, in the interest of the EU, to the Council of Europe convention on an integrated safety, security and service approach at football matches and other sports events, and decided to forward it to the European Parliament for its consent. ([12527/18](#))

eu-LISA: Schengen associated states

The Council adopted a decision on signing ([12042/18](#)) a complementary arrangement between the EU and the Schengen associated states (Norway, Iceland, Switzerland, Liechtenstein) on their participation in eu-LISA, the European agency for the operational management of large-scale IT systems in the area of freedom, security and justice. The Council also adopted the text of the arrangement. ([12367/18](#))

This allows the Schengen associated states to participate fully in the activities of eu-LISA related to the IT systems in which they take part. This includes voting rights in management board decisions, representation in advisory groups of the agency, budgetary contributions and staff.

AGRICULTURE

EU-Vietnam: Voluntary partnership agreement on forest law enforcement, governance and trade

The Council adopted a decision on the signing of a voluntary partnership agreement between the European Union and the Socialist Republic of Viet Nam on forest law enforcement, governance and trade ([10860/18](#)).

It also agreed in principle on the draft decision on the conclusion of the above mentioned agreement ([10861/18](#)), as well as on the text of the agreement itself ([10877/18](#)).

The European Parliament will be informed in accordance with Article 218(10) TFEU.
