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3677th Council meeting

Justice and Home Affairs

Brussels, 7 and 8 March 2019

Presidents **Carmen Daniela Dan**
Minister of the Interior
Tudorel Toader
Minister of 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, 7 MARCH 2019

European Border and Coast Guard

The presidency briefed ministers on the progress of negotiations with the European Parliament on the regulation on the European Border and Coast Guard (Frontex). Political discussion with the Parliament started on 27 February and both institutions reiterated their support for the objective of the regulation. Work continues with the aim of reaching an agreement on this file before the European elections.

Some member states intervened to welcome the work done and to reiterate key elements of the Council's position, notably the progressive build up of the standing corps and the importance of the role of Frontex on return and on cooperation with third countries.

The Council agreed its negotiating position on 20 February 2019. This position foresees the setting up of a standing corps to respond to situations of crisis, with up to 10 000 operational staff by 2027. To be able to adapt to future situations and capabilities, a mid-term review would take place, followed by a proposal by the Commission to confirm or amend the number by March 2024. Staff deployed would be able to exercise some executive powers to carry out border controls or return tasks, always subject to the authorisation of the host member state.

In addition, under the Council position Frontex would be allowed to provide technical and operational support to member states in return operations. The proposed rules would also contribute to strengthening cooperation with third countries, by giving the agency wider scope for action and not limiting its possibilities for cooperation to neighbouring countries.

For more information:

[European Border and Coast Guard: Council agrees negotiating position \(press release\)](#)

[Strengthening the EU's external borders \(background information\)](#)

Reform of the Common European Asylum System and Resettlement

The presidency presented a progress report on the reform of the Common European Asylum System ([6600/19](#)). This was followed by a discussion as to whether work towards an agreement and a possible adoption should take place separately on those files where most progress has been achieved with the aim of finalising them before the European elections or whether all files should be agreed and adopted together (package approach). The presidency indicated its continued commitment to strive for the best possible solution.

For more information:

[Reforming the common European asylum system \(background information\)](#)

Migration - EU cooperation with third countries

Ministers reviewed where the EU stands in its cooperation on migration with North African countries and explored where further assistance can be provided.

The EU, in close partnership with the North African countries, is ready to continue assisting these countries in enhancing their migration management capacities, including on border control, search and rescue at sea, adoption and implementation of asylum and migration legislation, fighting migrant smuggling, reintegration, return and readmission.

Ministers highlighted the importance of continuing to work with these countries, as well as other partners along the migratory routes. They also emphasized the need to coordinate between member states' and EU actions, as well as to ensure the necessary funds are made available.

Discussions on this topic will continue at technical level.

For more information:

[EU migration policy \(background information\)](#)

EU response to terrorism

Ministers discussed the state of play and way forward on the EU's response to terrorism. They focused on identifying gaps which needed to be addressed, as well as areas which should be regarded as a priority.

They underlined the importance of implementing the measures already adopted. Several member states mentioned the need to continue work on radicalisation, including in prisons and online, terrorist financing, cooperation with third countries, access and exchange of information, and the threats and opportunities posed by new technologies.

On the basis of this discussion, the process of reflecting on the way forward will continue at technical level.

[Response to the terrorist threat and recent terrorist attacks in Europe \(background information\)](#)

Enhancing democratic resilience: Securing free and fair elections and countering disinformation

In the run up to the European elections, the presidency updated ministers on ongoing activity on securing free and fair elections and on countering disinformation.

In recent years, a number of attempts to manipulate democratic elections have been reported in Europe and elsewhere. Threats can take various forms, including misuse of personal data for online campaigns, spreading of disinformation on messaging platforms and cyber attacks on candidates and political parties. This unprecedented situation calls for a strong response.

On securing free and fair elections, the EU is developing a coordinated approach at both national and European level, pooling expertise and sharing information in order to meet any disruption attempt with a strong and immediate response.

The EU will soon adopt a regulation amending the rules on the statute and funding of European political parties and political foundations. The new rules will allow for financial sanctions to parties and foundations who try to take advantage of breaches of data protection rules to influence European Parliament elections.

On 19 February 2019, the Council also adopted conclusions covering a number of non-legislative actions to be taken in order to tackle disinformation campaigns from inside and outside the EU and increase cybersecurity in the run-up to the European elections in May 2019.

On the connected topic of countering disinformation, work is ongoing to implement the action plan presented by the European Commission and the high representative for foreign affairs. A rapid alert system, currently under development, will allow member states and institutions to share information related to disinformation and coordinate their response. The Council Presidency has also initiated a mapping of national practices to counter disinformation. Work on this matter will continue beyond the elections to develop a long-term strategy and reinforce resilience.

Any other business

– *Current legislative proposals*

The presidency updated the Council on the state of play of a number of legislative proposals. ([6667/19](#))

Home affairs 2014-2019 - achievements and perspectives

Over lunch, ministers reviewed the progress made in the home affairs area in the past five years and discussed the challenges ahead. This debate took place in the context of the preparations for a new Strategic Agenda, to be adopted by the European Council in June.

Some of the matters raised include the need for more integration between different policy areas, the development of cooperation and partnerships with third countries to address shared challenges and the implementation of the legislation agreed.

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

– ***Current legislative proposals***

The presidency updated the Mixed Committee on the state of play of a number of legislative proposals. ([6667/19](#))

JUSTICE, 8 MARCH 2019

Whistleblowers protection

Justice ministers were updated on the progress made in the negotiations with the European Parliament on the directive on the protection of whistleblowers ([6631/19](#)).

The presidency insisted on the limited time left to reach an agreement in order to have the directive adopted at the last Parliament plenary session before the elections. In this respect, it welcomed the additional flexibility given by the Council during the Coreper (EU member states ambassadors) meeting on 6 March.

The Council had adopted its position on the directive on 25 January with the trilogue negotiations starting shortly after that. Discussions with the

The new directive will impose the creation of safe channels for reporting both within an organisation -private or public if above 50 employees - and to public authorities. It will also give a high level of protection to whistleblowers against retaliation, and require national authorities to adequately inform citizens and train public officials on how to deal with whistleblowing.

Whistleblowers are individuals who speak up when they encounter, in the context of their work, wrongdoing that can harm the public interest. Whistleblowers' reports can lead to effective detection, investigation and prosecution of violations of EU law that would otherwise remain unknown.

For more information:

[Council press release - Council's position on the whistleblowers directive](#)

[Commission website - factsheet on the whistleblowers directive](#)

E-evidence package: Directive on the appointment of a legal representative for the gathering of evidence in criminal proceedings

The Council adopted a general approach on the directive on the appointment of a legal representative for the gathering of evidence in criminal proceedings.

This directive is an essential tool for the application of the future regulation on European production and preservation orders for electronic evidence in criminal matters, on which the Council adopted its position last December, as it sets out the rules for the appointment of service providers' legal representatives, whose role is to receive and respond to such orders. The creation of legal representatives was necessary because of the lack of a general legal requirement for non-EU service providers to be physically present in the Union when providing services within the Union. Moreover, the legal representatives designated under this directive could be used for domestic procedures as well.

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

Negotiating mandates for the 2nd additional protocol to the Budapest Convention and for an agreement between the EU and the US on facilitating access to e-evidence

The Council debated on the two negotiating mandates presented by the Commission on 5 February. Ministers were invited to provide orientation and political directions to guide the work at technical level on the finalisation of the mandates. They were also asked to reflect on the scope of the mandates and their coordination with the legislation on e-evidence currently being discussed by EU institutions.

The presidency concluded that work will continue at experts level with a view to adopt the mandates before the end of the Romanian presidency.

– *2nd additional protocol to the Budapest Convention*

In September 2017, the Council of Europe undertook to prepare a second additional protocol to the Budapest Convention on Cybercrime. The objective of the protocol is to lay down provisions for a more effective and simplified MLA regime, allowing direct cooperation with service providers in other state parties to the Convention as well as extending searches cross-border. It is to be equipped with strong safeguards and data protection requirements. The advantage of such an agreement is its potential wide application across the globe. Currently, 62 countries are party to the Convention, including 26 member states. The preparatory work on the protocol is foreseen to be finalised by December 2019.

– ***EU-US agreement on facilitating access to e-evidence***

The Clarifying Lawful Overseas Use of Data (CLOUD) Act was introduced in the US Congress on 6 February 2018. The CLOUD Act obliges US service providers to preserve and disclose data, including content, without the need for a mutual legal assistance request, directly to the US government, even if the data are located outside the US. The Act also allows US service providers to deliver such data, also without the need for a MLA request and regardless of where the data are located, to a foreign government with whom the US has concluded an executive agreement. If a non-US person is concerned, the CLOUD Act allows the service providers under the "comity clause" to challenge the order on the basis of strict conditions.

The conclusion of an executive agreement is subject to a positive determination by the US Attorney General, to be submitted to the US Congress, that the foreign government meets a number of criteria (such as adequate substantive and procedural laws on cybercrime and e-evidence, respect for the rule of law, non-discrimination and human rights, accountability and transparency mechanisms, etc.).

In June 2018, Justice ministers reaffirmed that, given the EU competence on the matter, it is the EU, rather than individual Member States, that should pursue the conclusion of an agreement with the US in order to facilitate the access to e-evidence. At the recently held EU-US Ministerial meeting in Washington DC (8-9 November 2018), both sides expressed once again their intention to explore the possibilities of a such agreement between the EU and the US.

[Commission press release - Commission recommends negotiating international rules for obtaining electronic evidence](#)

[Recommendation for a Council decision authorising the opening of negotiations in view of an agreement between the EU and the USA on cross-border access to electronic evidence for judicial cooperation in criminal matters](#)

[Recommendation for a Council decision authorising the participation in negotiations on a second Additional Protocol to the Council of Europe Convention on Cybercrime \(CETS No. 185\)](#)

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.

Reference was made to the selection of the European Chief Prosecutor that is ongoing, with the Council and European Parliament to agree in the coming weeks on the candidate to be appointed following the shortlisting done by the selection panel. The Commission invited member states to start their selection procedure to nominate three candidates per member state by the end of March 2019 for the posts of European prosecutors.

Transitional rules for the appointment of the first European prosecutors should be endorsed in the coming weeks. Those provides that 8 European prosecutors will serve a shorter term of three years, in order to comply with the need for a renewal of a third of the college of prosecutors every three years. Lots will be drawn to decide who those 8 prosecutors will be.

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. 22 Member states have so far formally decided to join the EPPO.

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](#)

Any other business

– ***Current legislative proposals***

The presidency updated the Council on the state of play of a number of legislative proposals. It mentioned in particular that the following files should be finally adopted before the end of the current Parliament: directive on non cash fraud, directive on the digital content, directive on the sales of goods.

See [update on current legislative proposals](#)

– ***Countering hate speech online***

The Commission presented the fourth evaluation of the implementation of the code of conduct on countering illegal hate speech online.

The code of conduct was agreed in May 2016 by the Commission with IT companies (Microsoft, YouTube, Facebook and Twitter). It aims to ensure the effective countering of illegal hate speech online.

See [Commission press release](#)

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Civil protection mechanism

The Council today adopted a decision to amend the EU civil protection mechanism. The new rules foresee the setting-up of an additional pool of resources, rescEU, to provide assistance in situations where existing capacities prove to be insufficient. Risk prevention and knowledge sharing will also be improved.

[Civil protection: Council adopts new rules to strengthen support in case of disasters \(press release\)](#)

Prüm Council conclusions: vehicle registration data - Ireland

The Council adopted conclusions acknowledging that Ireland has fully implemented the general provisions on data protection required for automated Prüm vehicle registration data (VRD) exchange (7062/19).

Following the adoption of the above conclusions, the Council can adopt, after consultation of the European Parliament, the implementing decision, which would allow Ireland to launch automated Prüm VRD exchange.

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 data protection (7278/19).

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of Switzerland on the application of the Schengen acquis in the field of data protection (7281/19).

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of Finland on the application of the Schengen acquis in the field of data protection (7282/19)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of Finland on the application of the Schengen acquis in the field of police cooperation (7283/19).

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of Latvia on the application of the Schengen acquis in the field of police cooperation (7286/19)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of Latvia on the application of the Schengen acquis in the field of management of the external border (7288/19).

Eurodac - Switzerland, Liechtenstein, Norway, Iceland and Denmark

The Council adopted decisions on the signing ([15779/18](#), [15793/18](#), [15825/18](#)), on behalf of the EU, of protocols extending the agreements on Eurodac between the EU and Switzerland, Liechtenstein, Norway, Iceland and Denmark to access for law enforcement purposes ([15781/18](#), [15792/18](#), [15823/18](#)).

These protocols aim to strengthen cooperation with these countries on the prevention, detection and investigation of terrorist offences and other serious criminal offences. They will allow designated law enforcement authorities to request the comparison of fingerprint data transmitted to Eurodac.

The Council also decided to forward the draft Council decisions on the conclusion of the protocols to the European Parliament for its consent ([15783/18](#), [15791/18](#), [15822/18](#)).

ECONOMIC AND FINANCIAL AFFAIRS

Financial services delegated acts

The Council adopted decisions not to raise objections to the following delegated acts published by the Commission:

- a delegated act regarding the exemption of the Bank of England the United Kingdom Debt Management Office from the scope of the market abuse regulation ([6891/19](#), [6007/19](#))
- a delegated act amending the European market infrastructure regulation with regard to the list of exempted entities ([6891/19](#), [6041/19](#))
- a delegated act amending the regulation on transparency of securities financing transactions with regard to the list of exempted entities ([6891/19](#), [6044/19](#))
- a delegated act as regards the exemption of the Bank of England from the pre- and post-trade transparency requirements in the markets in financial instruments regulation ([6891/19](#), [6045/19](#))

EU list of high-risk third countries for anti-money laundering and terrorist financing

The Council unanimously decided to reject a draft list put forward by the Commission of 23 "high-risk third countries" in the area of money laundering and terrorist financing.

In a statement, the Council justifies its decision on the grounds that it "cannot support the current proposal that was not established in a transparent and resilient process that actively incentivises affected countries to take decisive action while also respecting their right to be heard".

The Commission will now have to propose a new draft list of high-risk third countries that will address member states' concerns.

For further information, check the [press release](#).

TRANSPORT

Technical prescriptions for wheeled vehicles

The Council adopted a decision on the position to be taken on behalf of the EU in the relevant Committees of the United Nations Economic Commission for Europe (UNECE) during the 177th session of the World Forum to be held between 11 and 15 March 2019, when the Committees are to adopt a mega decision in relation to the administrative provisions and uniform technical prescriptions for the approval of and global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles ([6439/19](#), [6334/19](#)).
