



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 April 2012**

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**PE 178  
JAI 295  
ASIM 48  
JUST 9  
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VISA 88**

**NOTE**

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from: General Secretariat of the Council  
to: Delegations

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Subject: Summary record of the meeting of the European Parliament **Committee on Civil Liberties, Justice and Home Affairs (LIBE)**, held in Brussels on 25 and 26 April 2012

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**1. Adoption of agenda**

The meeting was chaired by Ms Göncz (S&D, HU), Ms Gál (EPP, HU) and Ms In't Veld, (ALDE, NL). The committee adopted the agenda with a few changes as set out below.

**2. Chair's announcements**

- Ms Macovei (EPP, RO), was nominated as rapporteur on the Commission proposal on the freezing and confiscation of proceeds of crime in the EU;
- Mr Droutsas (S&D, EL) was nominated as rapporteur on the "Data protection Directive"<sup>1</sup>;
- One of the observers from Croatia, Ms Antičević Marinović, will be attending LIBE committee meetings.

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<sup>1</sup> Proposal for a directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data

### 3. Consular protection for citizens of the Union abroad

Rapporteur: Edit Bauer (PPE)

Responsible: LIBE –

Opinions: AFET – Kristiina Ojuland (ALDE); DEVE – Decision: no opinion; JURI – Tadeusz Zwiefka (PPE)

- Presentation by the Commission and first exchange of views

The Commission representative presented the proposal. The rapporteur, Ms Bauer (EPP, SK), supported the proposal but wanted to clarify the added-value of the proposal compared with Decision 95/553/EC and the Vienna Convention on consular relations. She also mentioned that, in some Member States, consular protection was free of charge.

Mr Michel (ALDE, BE) asked the Commission what recourse unrepresented EU citizens would have, if protection were not granted. He also asked whether same-sex married couples would be recognised as family members. Ms Zdanoka (Greens/EFA, LV) asked about the inclusion of refugees, asylum seekers and stateless persons. Mr Brons (NI, UK) was fairly positive towards the proposal.

Ms Göncz, on behalf of Ms Fajon (S&D, SI), fully supported the objectives of the proposal. She thought that registered partners should be considered as family members and that the role of the lead state had to be further specified.

The Commission representative replied that, as regards recourse before the Court, Article 23 TFEU was already now of direct applicability. She mentioned recital 9 of the Commission proposal, which referred to Directive 2004/38/EC on the definition of family members. She added that bilateral and local arrangements on burden-sharing were possible. She considered that including refugees, asylum seekers and stateless persons in the scope of the proposal would go beyond Article 23 TFEU.

Next steps: draft report to be presented during the LIBE meeting of 20 and 21 June

#### 4. Establishing the European Border Surveillance System (EUROSUR)

Rapporteur: Jan Mulder (ALDE)

Responsible: LIBE –

Opinions: AFET – Decision: no opinion; DEVE – Decision: no opinion; BUDG – Dominique Riquet (PPE)

- Presentation by the Commission

The Commission representative presented the proposal. The rapporteur, Mr Mulder (ALDE, NL), strongly welcomed this proposal, stressing the need for coordination to better protect external borders and to save lives at sea. He felt that the setting up of national coordination centres was a good idea but was concerned about the costs involved.

The Council Presidency representative hoped to finalise the first reading of the proposal by the end of the Presidency and thought that negotiations with the European Parliament would take place under the next Presidency.

Mr Scurria (EPP, IT) considered that it was important to address the scope of the proposal and to examine how proposed measures would be applied. He spoke about the possibility of cooperating with Mediterranean countries to prevent illegal immigration and organised crime.

Mr Enciu (S&D, RO) welcomed the proposal and asked what would happen if there was a difficulty in a low impact area, and why national coordination centres would not be set up at the same time.

Ms Hedh (S&D, SE) was concerned about respect for the principle of subsidiarity. Ms Sippel (S&D, DE) also questioned whether the proposed measures were part of EU competences.

Mr Albrecht (Greens/EFA, DE) asked what would be the role of Eurosur to search for and rescue people at sea. He considered that there was no transparency concerning bilateral and multilateral cooperation with third countries and that the role of various agencies and authorities in the system was not clear. He also wondered who would bear the political responsibility for the measures taken. He finally asked for clear delimitations on data protection and for a cost/benefit analysis of the system.

Mr Diaz de Mera (EPP, ES) welcomed the initiative but was concerned about the proportionality and costs of the system. He said that it would be impossible to control all EU borders but that the system could be useful to save lives.

Mr Busuttil (EPP, MT) welcomed the proposal, arguing that it would be an indispensable tool for FRONTEX to carry out its tasks. Like Mr Iacolino (EPP, IT), he asked whether the Commission was envisaging the creation of new infrastructures or the use of existing ones and whether the Commission would envisage EUROSUR helping third countries in building their own infrastructure. He was disappointed that the Danish Presidency had left negotiations to the Cyprus Presidency and called on them to speed up the process.

Ms Ernst (GUE/NGL, DE) had several difficulties with this proposal, in particular with the exchange of data with third countries, the lack of emphasis on human rights, proportionality and the costs of the measures.

The Commission representative replied that, as regards costs, the Commission had looked at the US experience; efficiency gains could be reached by coordination measures and EU funding was envisaged. As regards relations with third countries, she referred to the broader EU approach on migration and mobility. She added that a high-impact external border section could receive further assistance, for example from Frontex. She thought that a phased approach was realistic since a lot of work was already being done in preparing for Eurosur. She indicated that Eurosur would not have an impact on Member States' obligations under international conventions, in particular on search and rescue of people at sea. She also mentioned that the proposal would only allow the exchange of personal data in limited cases. On the issue of subsidiarity, she said that the primary responsibility would lie with Member States and that the main financing would go to national coordination centres.

The Council Presidency representative considered that it was an important proposal which needed careful examination.

## 5. Use of Passenger Name Record data (EU PNR)

Rapporteur: Timothy Kirkhope (ECR)

Responsible: LIBE –

Opinions: AFET – Baroness Sarah Ludford (ALDE); TRAN – Eva Lichtenberger (Verts/ALE) □

- Consideration of amendments

The rapporteur, Mr Kirkhope (ECR, UK), informed LIBE that more than 400 amendments had been submitted and that he would try to move forward with compromise amendments. He summarised the main amendments:

- Some amendments limited the scope of the instrument, making it exclusively for the purpose of terrorism. The rapporteur considered that transnational crimes, such as trafficking in drugs or human beings, should also be addressed under this system.
- Targeted flights versus 100 % collection: the rapporteur noted some divisions on this issue and repeated his position in favour of 100 % coverage of flights. He believed that targeting high-risk flights would create gaps in the system and discrimination between passengers.
- The inclusion of intra-EU flights was also controversial. The rapporteur pleaded for the inclusion of intra-EU flights, arguing that there was a need for a complete and fully operational system from the outset.
- The necessity of the system was questioned in some amendments.

The Commission representative shared the rapporteur's assessment concerning the purpose limitation, adding that PNR was mostly used to fight serious crime. She said that risk assessment was very sensitive, but that it was lawful, and she could not support amendments which aimed at reducing retention periods. She reiterated that the Commission proposal did not include intra-EU flights but provided for an evaluation on this issue two years after the transposition of the Directive. She advocated a step-by-step approach saying that a system including intra-EU flights would be difficult to implement from the beginning.

The Council Presidency representative was concerned that several amendments limited the scope and operational use of an EU PNR system. She agreed with the rapporteur that intra-EU flights should be included in the system and informed the committee that the Presidency would present the file to the JHA Council meeting on the following day in view of an agreement on a general approach.

Like Ms Sippel (S&D, DE), Ms Romero Lopez (S&D, ES) strongly questioned the need and proportionality of the initiative and recalled the negative opinions of the EDPS and the Article 29 Working Party.

Mr Voss (EPP, DE) pleaded for the introduction of a centralised PNR system. Given the controversies around the proposal, he suggested trying to reach agreement on the lowest common denominator, i.e. a voluntary system.

Mr Alvaro (ALDE, DE) said that ALDE was opposed to the proposal and considered that crime should be combated on the basis of existing instruments. Mr Albrecht (Greens/EFA) had major reservations on the proposal and Ms Ernst (GUE/NGL, DE) asked the Commission to withdraw it.

Mr Engel (EPP, LU) considered that only serious crime punishable by a minimum period of five years could be covered by the Directive. Replying to Mr Engel, the Commission representative clarified that low cost airlines were covered by the proposal.

Next steps: vote in LIBE: 31 May (tbc)

## **6. Update on the situation in Greece as regards migration, asylum and borders - follow-up of the plenary debate of 19 April 2012**

- Presentation by Mr Michalis Chrisochoidis, Greek Minister for Citizen Protection

Mr Chrisochoidis stressed the severe humanitarian crisis in Greece caused by the huge influx of irregular immigrants. He regretted that the readmission agreement had not yet been signed with Turkey and said that Greece could only protect its borders if counterparts acted in the same manner.

He highlighted the need to protect the rights of migrants and indicated that Greece was strongly determined to protect its borders. He thanked the Commission for its support and indicated that the first reception centre would shortly be operational.

Mr Busuttil (EPP, MT) considered that the Greek challenges were EU challenges. He found it unfortunate that the Greek action plan had not been implemented as it should have been, but deemed that the Dublin Regulation did not treat Greece in a fair way. Like Mr Iacolino (EPP, IT), he said that Greece had a great deal of responsibility but deserved more EU solidarity.

Mr Diaz de Mera (EPP, ES), Mr Iacolino (EPP, IT), Mr Moraes (S&D, UK), Ms Hirsch (ALDE, DE), and Ms Griesbeck (ALDE, FR) asked what concrete support Greece was looking for from the European Parliament.

Mr Chrysogelos (Greens/EFA, EL) criticised the fact that Greece did not make full use of EU support. Like Ms Griesbeck (ALDE, FR), Mr Kirkhope (ECR, UK) considered that Greece had to improve the quality and standards of its reception conditions in compliance with fundamental rights.

Ms Triantaphyllides (GUE/NGL, CY) stressed the need for more European solidarity but asked Greece how it was planning to deal with the current backlog. Mr Papanikolaou (EPP, EL) considered that the EU had to contribute to the Greek burden.

Mr Ilchev (ALDE, BG) deplored the fact that the EU-Turkey readmission agreement had not been signed. Mr Droutsas (S&D, EL) said that the EU had not done enough to tackle the roots of the problems.

The Minister replied that he was expecting the following action from the EU: progress on the readmission agreement with Turkey; action on the obligations of concerned third countries regarding the reintegration of their citizens; recognition of the need for additional funding for refugee centres and the transfer of knowledge.

\*\*\* *Electronic vote* \*\*\*

**7. Amendment of Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement**

Rapporteur: Agustín Díaz de Mera García Consuegra (PPE)

Responsible: LIBE –

Opinions: AFET – Andrey Kovatchev (PPE)

The orientation vote was adopted as amended by 51 votes in favour, 3 votes against and 3 abstentions.

The draft report provides for the specific conditions to activate and decide upon a "suspension mechanism/safeguard clause" to suspend the exemption of the visa requirement for nationals of a third country concerned, in case of an emergency situation (COMP 2). LIBE also adopted an amendment (AM 28) which introduces an automatic mechanism by which, when a third country introduces a visa requirement for nationals of a Member State, the Commission is to propose, under certain conditions, the restoration of the visa requirement for nationals of the third country in question.

**8. Amendment of Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances**

Rapporteur: Renate Weber (ALDE)

Responsible: LIBE –

Opinions: AFET – Decision: no opinion; DEVE – Decision: no opinion

The orientation vote was adopted as amended by 47 votes in favour, 7 votes against and 2 abstentions.



The draft report:

- reiterates that "*migration and the crossing of external borders by a large number of third-country nationals should not per se be considered a threat to public policy or internal security*";
- stresses that the reintroduction of certain controls at internal borders must remain an exceptional measure of last resort;
- sets out several scenarios that might justify reintroducing border control at internal borders:
  - in the event of a serious and imminent threat to public order or internal security, controls could be reintroduced for up to six months by the Member State(s) in accordance with a coordination and consultation procedure involving the Commission and other affected Member States;
  - in the event of an emergency requiring immediate action, a Member State may reintroduce controls on its own initiative, for up to ten days;
  - finally, in the event of "persistent, serious deficiencies" in a Member State's management of part of its external border, the Commission could decide, by means of an implementing act, that internal border controls must be reintroduced (COMP 2).

Mr Coelho (EPP, PT) indicated that the EPP would abstain on this compromise amendment in order to give a negotiation mandate to the rapporteur but he made clear that the EPP was in favour of his AM 88 (Council decision on the basis of a Commission recommendation).

## **9. Conditions of entry and residence of third-country nationals for the purposes of seasonal employment**

Rapporteur: Claude Moraes (S&D)

Responsible: LIBE –

Opinions: EMPL – Sergio Gaetano Cofferati (S&D); JURI – Jiří Maštálka (GUE/NGL) ; FEMM – Antigoni Papadopoulou (S&D)

The orientation vote was adopted as amended.

**\*\*\* End of electronic vote \*\*\***

## 10. EUROPOL: EU Terrorism Situation and Trend report (TE-SAT) 2012

- Presentation by Rob Wainwright, Director of Europol

Following the presentation of the report, Mr Diaz de Mera (EPP, ES) said that he was disappointed that it did not include any recommendations to Member States. He would have liked more specific references to lone operators and thought that religiously-inspired terrorism should be defined as jihadism.

Ms Romero Lopez (S&D, ES) raised the difficulty of predicting individual attacks, but deemed that Member States should for example improve their monitoring of precursors. She also thought there was a need to enhance EU police and judicial cooperation and to track down sources of funding on the basis of existing instruments.

Ms Hankiss (EPP, HU) asked about non-profit organisations which could be involved in terrorism funding and wondered about cooperation between different extremist and terrorist groups.

Ms Bozkurt (S&D, NL) agreed with the report that the threats of right-wing extremism were being underestimated, but found that recommendations were lacking in the report.

Ms In'tVeld (ALDE, NL) was of the opinion that Europol should not make recommendations since it was the competence of policy-makers. She requested one definition of terrorism, criticising the inflation of the term "terrorism". She pleaded for more effectiveness and cooperation but was against new measures. She added that there was a need to look at how to fight lone actors.

Mr Ilchev (ALDE, BG) asked for care to be taken when speaking about jihadism and preferred to keep the terminology of religiously-inspired terrorism.

Mr Wainwright replied that the definition of terrorism differed among Member States and that there was no common EU definition. He recalled that counter-terrorism was mainly led by national authorities. He said that extreme right activities were increasing and referred to the radicalisation awareness network set up by the Commission and to the Europol analysis team. He indicated that Europol was keen to increase cooperation with Turkey but needed a political signal from Ankara.

## **11. The right of access to a lawyer in criminal proceedings and the right to communicate upon arrest**

Rapporteur: Elena Oana Antonescu (PPE)

Responsible: LIBE –

Opinions: JURI – Jan Philipp Albrecht (Verts/ALE)

- Consideration of amendments and presentation of the opinion of the EP Legal Service

The rapporteur, Ms Antonescu (EPP, RO), presented the 133 amendments, which related in particular to the definition of a lawyer, the scope of the proposal, the possibility for the lawyer to check detention conditions, the confidentiality between the lawyer and the suspect or accused, and the waiver of the right of access to a lawyer. She indicated that the most sensitive issue concerned the provisions relating to the exclusion of evidence obtained in violation of the Directive.

The EP Legal Service representative outlined its opinion concerning the provisions of the proposal relating to the exclusion of evidence obtained in violation of the Directive and notably their compliance with EU Treaties. He recalled that Articles 10 and 13 of the proposal prohibited the use of statements/evidence made by a person in violation of his right of access to a lawyer. The EP legal service representative considered that these rules were compatible with the Treaties and that they fell within the scope of the proposed legal basis. He also added that they reflected existing ECHR case law.

Ms Romero Lopez (S&D, ES) deemed that the concrete application of the right of access to a lawyer depended upon free legal aid and that this issue needed to be covered. Mr Mulder (ALDE, NL) on behalf of Ms Ludford (ALDE, UK), said that confidentiality could only be broken in exceptional circumstances if there was clear evidence of collusion, that it was up to the court to determine whether statements or evidence obtained in breach of the right to a lawyer could be used or not and that, in some limited minor cases, communication with the lawyer could take place by phone.

Mr Albrecht (Greens/EFA, DE) wanted to stick to strict confidentiality rules without any exceptions and agreed with the EP legal service opinion on Articles 10 and 13. Mr Kirkhope (ECR, UK) considered that the issue of legal aid should be dealt with separately. He considered that the right of access to a lawyer could only be denied if a real necessity was proven and that the draft report struck the right balance between such a right and the needs of the investigation.

Ms Sippel (S&D, DE) was opposed to any restrictions on the right of access to a lawyer, even in the case of minor offences, and on the confidentiality rule. Mr Voss (EPP, DE) considered that issues dealt with under Articles 10, 2 and 13 of the proposal should be separate from the Directive since they related to procedures under Member States' laws. He took the view that exceptions to the confidentiality rule should be made only on the basis of strict legal criteria.

The Commission representative welcomed the amendments in general and broadly agreed with the EP legal opinion. The Council Presidency representative said that he had no mandate to make comments on the amendments since the Council was in the process of establishing its position. He thought that it was feasible to reach a negotiating position within the term of the Presidency.

The rapporteur concluded that there was a need for a separate Directive on legal aid and asked the Commission to submit a proposal. She mentioned that a meeting would be organised with the shadow rapporteurs and that the vote could be postponed.

Next steps: LIBE orientation vote: 30-31 May (tbc)

## **12. Council Decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by FRONTEX**

- Presentation by the EP Legal Service of the opinion of Advocate General Mengozzi in Case C-355/10 (European Parliament v Council of the EU)

The EP Legal Service presented the conclusions of the ECJ Advocate General which were in favour of the European Parliament's position. Mr Cashman (S&D, UK) welcomed the Advocate General's opinion and asked the Commission to reply once the ECJ had delivered its judgment.

Mr Busuttil (EPP, MT) also welcomed this opinion and was disappointed that the Commission did not intervene to explain what it was planning to do since, in his view, a new proposal should be adopted by codecision.

### **13. General EU-US Data Protection Agreement - Debriefing (*in camera*)**

- Presentation by Françoise Le Bail, Director General for Justice, European Commission

### **14. Anti-Counterfeiting Trade Agreement between the EU and its Member States, Australia, Canada, Japan, the Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the USA**

Rapporteur for the opinion: Dimitrios Droutsas (S&D)

Responsible: INTA – David Martin (S&D)

- Presentation of the second opinion of the EDPS<sup>2</sup> on ACTA

Mr Droutsas (S&D, EL), the rapporteur, explained that INTA agreed to delay the vote so that LIBE had more time to give its opinion aimed at assessing the compatibility of the agreement with fundamental rights. He gave the new timetable:

- Presentation draft report in LIBE: 8 May (EN version available on 3 May)
- Deadline for amendments: 9 May, (11-14 May if amendments in EN only)
- Vote LIBE: 30-31 May

Mr Busuttil (EPP, MT) objected to this timetable since there would not be enough time to submit amendments. The chair suggested that coordinators would discuss the timetable further.

Mr Buttarelli, Assistant Supervisor, presented the second opinion of the EDPS. Mr Busuttil (EPP, MT) was struck by the possible disproportionate intrusion that could be caused to individuals by ACTA. He added that ACTA was a vague document including many "may" provisions and he asked why the EDPS assumed that Member States would breach EU law.

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<sup>2</sup> European Data Protection Supervisor

Ms Roithova (EPP, CZ) said that the EDPS' opinion was in line with the opinions of other experts. Ms Weber (ALDE, RO) welcomed the EDPS' analysis which showed that ACTA would infringe the Charter of Fundamental Rights. Mr Albrecht (Greens/EFA, DE) asked to what extent ACTA would have an impact on EU data protection provisions. Ms Ernst (GUE/NGL, DE) agreed with the EDPS' criticisms.

The Commission representative was very critical towards the EDPS' opinion, arguing that the EDPS had provided selective analysis which systematically avoided references to ACTA-specific safeguards and to provisions dealing with data protection. He added that the Commission would react in writing in due course.

Mr Buttarelli replied that ACTA would open the door to a fragmented approach at national level and that there was a real ambiguity as to how its provisions would work in practice. Mr Busuttil asked to receive the Commission position in writing in good time.

The rapporteur, Mr Droutsas, concluded that the EDPS' opinion was valuable and that one had to accept that ACTA was politically dead and that there was a need to think about the "right new ACTA".

## **15. Any other business**

## **16. Next meeting(s)**

- 8 May 2012, 9.00 – 12.30 (Brussels)