



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 1 June 2012

10739/12

**PE 237
JAI 387
JUST 12
SCHENGEN 43
ASIM 68
DATAPROTECT 69**

NOTE

from: General Secretariat of the Council
to: Delegations

Subject: Summary record of the meeting of the European Parliament **Committee on Civil Liberties, Justice and Home Affairs (LIBE)**, held in Brussels on 30-31 May 2012

The meeting was chaired by Mr LÓPEZ AGUILAR (S&D, ES) and by Ms in 't VELD (ALDE, NL). The agenda was adopted with the following changes: item 7 on "Attacks against information systems" (rapporteur Ms HOHLMEIER (EPP, DE)) was postponed, and item 17 on the "Dublin Regulation" and item 18 on the "Reception Conditions Directive" were heard under Chair's announcements.

Item 2 on the agenda

Chair's announcements

• **"Procedures Directive"¹**

The Chair recalled that the European Parliament had completed its first reading on the Procedures Directive on 6 April 2011 and that on 1 June 2011 the Commission had presented an amended proposal.

¹ Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast)

He added that the European Parliament's first-reading position as adopted in plenary in April 2011 still constituted Parliament's mandate to negotiate with the Council. However, after the amended Commission proposal was presented, the LIBE Committee's rapporteur, Ms GUILLAUME (S&D, FR), and the shadow rapporteurs had agreed on an approach on the new parts of the amended Commission proposal. The LIBE committee had authorised the Chair to send a letter to the Danish Presidency containing Parliament's first-reading position and the approach of the rapporteur and the shadow rapporteurs on the new parts, in view of the upcoming negotiations with the Council.

- **Application for international protection lodged in one of the Member States by a third country national or a stateless person (recast version)**

- Presentation of the state of play of the Dublin II Regulation after trilogues: the rapporteur, Ms WIKSTRÖM (ALDE, SE), explained that two trilogues had already taken place and that the Danish Presidency would like to reach an agreement by June. She said that the European Parliament also wanted to go ahead but did not want to rush since there was a need to reach a good deal. She indicated that Article 26 on remedies and Article 27 on detention were among the most complicated to solve and that they were close to an agreement on Article 31 on the early warning mechanism.

- **Minimum standards for the reception of asylum seekers (recast version)**

- Presentation of the state of play after trilogues: the rapporteur, Mr MASIP HIDALGO (S&D, ES), informed the committee that two trilogues had taken place and that there were still several disagreements between the European Parliament and the Council. He attached great importance to achieving consistency in the asylum package as a whole and to agreeing on concepts which had already been accepted in other related texts, i.e. definitions, access to justice, and legal aid. He highlighted that one of the most difficult issues concerned access to the labour market.

Item 3 on the agenda

Report "Lives lost on the Mediterranean Sea: who is responsible?" by the Committee on Migration, Refugees and Displaced Persons (PACE - Parliamentary Assembly of the Council of Europe)

LIBE/7/09621

- Presentation by the PACE rapporteur, Ms STRIK in the presence of the Chair of the migration committee, Mr SANTINI

Ms STRIK gave a summary of the subject of the report – a tragic case in which a small boat left Tripoli in spring 2011 with 72 people on board and after two weeks at sea drifted back to Libya with only nine survivors. She drew the committee's attention to the resolution of the Parliamentary Assembly of the Council of Europe on this issue which recommended that *"the European Parliament makes use of its institutional power to request and obtain further information, including relevant satellite imagery, so that the full facts concerning this incident can be brought to light"*. She also highlighted the need to fill in the legal gaps in maritime law and to amend the International Maritime Search and Rescue Convention and urged that a binding EU protocol for the Mediterranean region be developed based on sharing of responsibility. Mr SANTINI was of the view that NATO and the Italian and Spanish authorities had responsibilities in this incident.

Mr BUSUTTIL (EPP, MT) deplored that this tragedy was still continuing. He said that smugglers who were organising such journeys through criminal networks had a huge responsibility and advocated their extradition from the countries concerned. He pointed to the difficulty of determining the country of disembarkation since countries were reluctant to take the responsibility after people had been saved.

Ms ROMERO LÓPEZ (S&D, ES) stressed the need to develop bilateral cooperation, mentioning the example of joint Spanish-Moroccan patrols. Ms WEBER (ALDE, RO) stated that the EU had to act in this area. Ms SARGENTINI (Greens/EFA, NL) pleaded for an operational EU asylum policy and for a greater degree of solidarity. Mr TRIANTAPHYLIDIS (GUE/NGL, CY) said that the reception centre in Lampedusa should be reopened.

Mr DIAZ de MERA (EPP, ES) trusted the replies of the Spanish navy and added that evidence was needed when making allegations. Mr CROCETTA (S&D, IT) considered that judicial authorities had a duty to look into this extremely serious case. Ms McINTYRE (ECR, UK) believed that the Eurosur² proposal could help to tackle similar incidents in the future. Mr IACOLINO (EPP, IT) emphasised the necessity to develop bilateral agreements between the EU and third countries concerned. Mr BRONS (NI, UK) blamed the traffickers, people travelling to Europe as well as EU political and judicial authorities which, in his view, rewarded illegal migrants.

Item 4 on the agenda

LIBE Delegation to Washington D.C., USA from 18 to 22 March 2012

LIBE/7/09370

- □ Presentation and debriefing by Mr ALVARO (ALDE, DE), Delegation Chair

The Chair explained that the delegation had had in-depth discussions with US counterparts on:

- the EU and US frameworks and recent initiatives in the field of data protection and privacy as a follow-up to the 19 March Commission conference on "Privacy and Protection of personal data";
- the implementation of the mutual legal assistance and extradition agreements and of the EU-US Terrorist Financing Tracking Programme (TFTP) agreement;
- threats to freedom of expression, freedom of internet and privacy. He added that the EU-US Passenger Name Record (PNR) Agreement was also a topic of discussion.

Mr ALVARO (ALDE, DE) explained that meetings with the US authorities had made it possible to hear their first response to the proposed EU data protection package and to the US white paper on data protection. He added that the delegation had also expressed its concerns on the TFTP agreement. He supported the development of closer and long-term EU-US dialogue in JHA, in particular on data protection issues, and announced that the next meeting was planned at the European Parliament this autumn.

Several MEPs (Mr DIAZ DE MERA (EPP, ES) Ms ROMERO LÓPEZ (S&D, ES), Mr PAPANIKOLAOU (EPP, EL) and Mr ALBRECHT (Greens/EFA, DE)) considered that members of the US Congress should be involved in future meetings. Ms SIPPEL (S&D, DE) feared that there would be no unified legislation on data protection in the US and insisted for the European Parliament to speak with one voice with US representatives.

Mr ALVARO thought that it was a good idea to invite Congressmen in the European Parliament (or senior staff as a fall back option given the US elections in November).

Next steps: the Chair said that, in early autumn, the European Parliament would invite the US Administration and Congress alongside the annual interparliamentary dialogue between the European Parliament and national parliaments on JHA.

Item 5 on the agenda

Enhanced intra-EU solidarity in the field of asylum

LIBE/7/08916

Rapporteur: Mr TRIANTAPHYLLIDES (GUE/NGL, CY)

- Consideration of draft report

Mr TRIANTAPHYLLIDES presented his draft report, emphasising the need to support Member States facing disproportionate pressures and costs.

Mr BUSUTTIL (EPP, MT) welcomed the draft report but considered that the EUREMA³ project should not be considered successful and should be extended. He also asked the Commission to make use of the Temporary Protection Directive when it could do so, deploring that it had not used it at the peak of the Libyan crisis.

Ms GUILLAUME (S&D, FR) said that EASO⁴ needed increased funding in order to further develop practical cooperation and specified that harmonisation of laws was also required. She added that EU funding should not replace national budgets.

³ EU relocation Malta project

⁴ European Asylum Support Office

Mr PAPANIKOLAOU (EPP, EL), Ms HIRSCH (ALDE, DE), Mr ROMEVA I RUEDA (Greens/EFA, ES) welcomed the report, stressing that solidarity and burden-sharing should take place in practice. Mr KIRKHOPE (ECR, UK) supported helping those Member States under particular pressure.

Ms ROMERO LÓPEZ (S&D, ES) considered that the core of the problem was the Dublin Regulation. Mr PIRKER (EPP, AT) deemed that the Dublin Regulation was appropriate if a clear distinction was made between asylum seekers and other migrants and emphasised that asylum procedures had to be completed as soon as possible.

The Commission representative generally welcomed the draft report. However, he could not agree with specific points of the draft report, e.g. the rapporteur's position that infringement proceedings should be considered as a last resort, recalling the Commission's role of guardian of the Treaty.

Next steps:

- deadline for tabling amendments: 6 June 2012, 12.00
- Exchange of views in LIBE: 20-21 June 2012
- LIBE vote: 10 July

Item 6 on the agenda

**Debate on recent terrorist attacks in the EU with the EU Counter-Terrorism Coordinator,
Mr de KERCHOVE**

LIBE/7/09622

Mr de KERCHOVE presented reflections and suggestions on how to deal with lone-actor terrorism through prevention. As regards "foreign fighters", he thought that PNR information was one way to detect terrorism. He considered that legislation on terrorism should be amended in order to criminalise travel abroad to participate in terrorist training camps. He also suggested developing closer cooperation with relevant third countries. He informed the committee that the EU CTC "food for thought" paper including suggestions on this issue had been discussed informally at the JHA Council meeting on 26 April 2012.

During the discussion, Ms FLAUTRE (Greens/EFA, FR), said that Mohammed Merah had been known to the French secret services and that this case seriously put into question counter-terrorism tools and methods. Mr PIRKER (EPP, AT) asked whether Al-Qaeda in Sahel was collecting money for the financing of terrorism. Mr KIRKHOPE (ECR, UK) and Ms LUDFORD (ALDE, UK) asked how to promote a model of parliamentary scrutiny of intelligence services in all EU Member States. Ms LUDFORD deemed that PNR systems had to contain safeguards against profiling. Ms JIMÉNEZ BECERRIL (EPP, ES) asked about the credibility of the ETA ceasefire.

Mr de Kerchove replied that intelligence services were under the Member States' jurisdiction and that it was not up to him to evaluate their work. He supported national parliamentary scrutiny on intelligence services and thought that it would be useful to set up a network of national parliamentary committees in the EU and with third countries. He considered that one should help Arab Spring countries rebuilding efficient intelligence services respecting the rule of law. He mentioned that Al-Qaeda in Islamic Maghreb (AQMI) financing sources included, for example, human and drug trafficking. He thought that Europol could be more proactive in internet monitoring given its expertise in this area.

As regards PNR, he said that one of the main issues concerned the length of the data retention and added that information should be deleted after screening. In the area of prevention, he supported the Anti-Radicalisation Awareness Network set up by the European Commission and added that a ministerial meeting would take place in November to exchange best practices.

Item 8 on the agenda (In camera)

Coordinators' meeting

After the coordinators' meeting, the Chair indicated that, in the context of the LIBE Committee's own-initiative report requested by the plenary in its resolution of 16 February 2012 on recent political developments in Hungary (rapporteur, Mr TAVARES (Greens/EFA, PT), coordinators had discussed a future LIBE committee delegation to Hungary and its composition. Mr TAVARES explained that Prime Minister Orban had invited the European Parliament and that, during the first exchange of views on this issue on 26 March, MEPs had been in favour of a LIBE committee delegation to Hungary. He added that the delegation could be sent during the last week of September and that its composition should be balanced. The committee agreed to send a letter to the Conference of Presidents asking them to discuss this issue.

Item 9 on the agenda (In camera)

FRONTEX - The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU

LIBE/7/09623

- Presentation of the operations in 2012 by Mr LAITINEN, Frontex Executive Director

Item 10 on the agenda

UNDP/FRA report "The situation of Roma in 11 EU Member States: Survey results at a glance"

LIBE/7/09628

- Presentation of the report with representatives of the EU Agency for Fundamental Rights (FRA), UN Development Programme (UNDP), World Bank and European Commission

After the presentation of the report, Ms GÖNCZ (S&D, HU) considered that it was an important achievement to have national strategies on Roma and data in this report. She stressed the Commission's role monitoring the implementation of the national strategies and whether they correspond to reality. Ms VERGIAT (GUE/NGL, FR) particularly criticised the French strategy and asked how to make sure that national strategies on Roma were translated into reality. Ms HEDH (S&D, SE) asked for Roma to be involved in the discussions. The Chair said that, given time constraints, replies to MEPs would be given in writing by the institutions involved in the project.

Joint debate on the data protection package

Item 11 on the agenda

Protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)

LIBE/7/08739

Rapporteur: Mr ALBRECHT (Greens/EFA, DE)

- Exchange of views – see under item 12

Item 12 on the agenda

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

LIBE/7/08742

Rapporteur: Mr DROUTSAS (S&D, EL)

- Exchange of views

Mr ALBRECHT (Greens/EFA, DE) hoped that the European Parliament could adopt its position by the end of the year and could negotiate with the Council next year. He advocated looking at the package as a whole and making links between the Regulation and the Directive.

Mr DROUTSAS (S&D, EL) was disappointed that the Commission had submitted a Regulation and a Directive, deploring that the Directive provided for a lower level of protection. He also argued in favour of treating both proposals as a package. He said that transfer of data to third countries and organisations would require specific attention.

Mr ALVARO (ALDE, DE) thanked the Commission for the proposals and was particularly pleased that data protection was targeted at EU citizens even when their data was processed outside the EU. He thought that the "one stop shop" was a good approach but questioned the capacity of national supervisory authorities to cope with their new tasks. He also asked why EU institutions were exempt. Mr VOSS (EPP, DE) took the view that some provisions required more clarity in order to match with the real world.

Mr KELLY (EPP, IE), rapporteur for the ITRE committee, argued for cooperation between committees and added that it had yet to be decided whether to apply Rule 49 (committee giving an opinion to the lead committee) or Rule 50 (associated committees) of the European Parliament's Rules of Procedure. He took the view that the Commission impact assessment on the proposal was not adequate that the European Parliament Impact Assessment Directorate will have to contribute on this file.

Ms ERNST (GUE/NGL, DE) stressed the importance of strengthening national data protection supervisors as well as children's rights. She also wanted to further discuss the scope, the terminology and the issue of delegated acts. Ms HEDH (S&D, SE) welcomed the Commission proposals but questioned the distinction between the Regulation and the Directive.

The Commission representative replied that:

- The first objective of the proposals was to reach a higher level of protection for citizens;
- The second element was to try to simplify the environment for business;
- The third element was to ensure a strong enforcement by data protection authorities and see what would be the implications in terms of resources;
- The fourth element was the need to keep the package together since principles should apply to both sectors, adding that the police area would be subject to some exemptions;
- The fifth element was the timing, the Commission would like to see this package adopted during this Commission and European Parliament mandates.

The Council Presidency representative said that there was an agreement in the Council on the need to update the 1995 Directive and to have a package meeting the test of time and high standards.

Mr ALBRECHT concluded by saying he was looking forward to have informal meetings with the Council and good cooperation with other EP committees.

***** *Electronic vote* *****

Item 13 on the agenda

13. 2013 Budget - Mandate for Trilogue

LIBE/7/08811

Rapporteur for the opinion: Mr IACOLINO (EPP, IT)

Rapporteur for the responsible committee (BUDG): Mr LA VIA (EPP, IT)

The draft opinion was adopted as amended.

Item 14 on the agenda

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

LIBE/7/08659

Rapporteur for the opinion: Mr DROUTSAS (S&D, EL)

Rapporteur for the responsible committee (INTA): Mr MARTIN (S&D, UK)

The draft opinion was adopted as amended by 36 votes to one, with 21 abstentions. The opinion stated that ACTA did not comply with the rights enshrined in the EU Charter of Fundamental Rights and that the INTA committee should "*recommend that Parliament declines to consent to the conclusion to ACTA*".

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

Item 15 on the agenda

Criminal sanctions for insider dealing and market manipulation

LIBE/7/07611

Rapporteur for the opinion: Ms BOZKURT (S&D, NL)

Rapporteur for the responsible committee (ECON): Ms McCARTHY (S&D, UK)

- Consideration of draft opinion (Rule 50 with the ECON committee)

Ms BOZKURT (S&D, NL) presented her draft opinion and took the view that, as one of the main concerns raised on the current legal framework was the weak and heterogeneous sanctioning regime, harmonising at least the minimum of the maximum sanction was appropriate

Mr BRATKOWSKY (EPP, PL), on behalf of Mr SONIK (EPP, PL), did not agree that sanctions should be harmonised, arguing that this should be left to the Member States to decide.

The Commission representative generally supported the draft report and agreed with the need to ensure consistency between the draft Regulation and draft Directive on the matter. She explained that the Commission did not want to propose minimum or maximum sanctions since it was the first time the Commission had proposed a measure under Article 83(2) of the TFEU and it had therefore decided to take a careful approach.

Moreover, she said that the Commission did not have a clear picture about current Member States' situations on sanctions. She added that the Commission would report on the application of this Directive and, if necessary, on the need to review it, with particular regard to the appropriateness of introducing common minimum rules on types and levels of criminal sanctions. She also considered that a distinction should be made between administrative and criminal sanctions since administrative sanctions were not concerned by the "ne bis in idem" principle except if they had a punitive effect.

Next steps: Deadline for tabling amendments: 5 June 2012, 12.00

Item 16 on the agenda

Communication from the Commission to the European Parliament and the Council: Biannual report on the functioning of the Schengen area 1 November 2011-30 April 2012

- Presentation by the European Commission

The Commission representative presented this report as well as guidelines to ensure a coherent implementation and interpretation of the Schengen acquis.

The Council Presidency representative considered that the report described the situation well and recalled the Council conclusions of 8 March 2012 regarding guidelines for the strengthening of political governance in the Schengen cooperation.

MEPs who intervened welcomed and supported the Commission report (Mr COELHO (EPP, PT), Mr ENCIU (S&D, RO), Ms WEBER (ALDE, RO) Ms ŽDANOKA (Greens/EFA, LV)).

Mr COELHO appreciated the Commission's Community approach on Schengen and its attitude of respect towards the European Parliament. Mr ENCIU (S&D, RO) took the view that a new mechanism to identify shortcomings and find remedies should be set up.

Several MEPs expressed strong critical views on the Council position on the legal basis of the amended proposal for a Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

The rapporteur, Mr COELHO (EPP, PT), considered that the Presidency proposal to change the legal basis of this proposal to Article 70 of the TFEU, instead of Article 77 of the TFEU, would be a real step backwards and against the spirit of Schengen.

Mr ENCIU (S&D, RO) said that at yesterday's COREPER meeting, Member States – except for Romania – had tried to marginalise the European Parliament on this file. In view of the JHA Council next week, he called on MEPs to make a strong appeal to Member States to act correctly vis-à-vis the European Parliament. If the Council attempted to change the legal basis, the S&D would request that the EP appeal to the Court of Justice, and he hoped that other political groups would take the same position.

Ms ROMERO LÓPEZ (S&D, ES) and Ms WEBER (ALDE, RO) also found a change of legal basis unacceptable. Ms WEBER mentioned that the LIBE committee coordinators' meeting of 30 May asked the Chair to send a letter to the Council about sincere cooperation, considering that the Council was not acting fairly in this case.

The Council Presidency representative replied that the European Parliament had been consulted on the substance of the proposal and that the current text took EP comments into account. He noted that there was no qualified majority in the Council to base the proposal on Article 77 of the TFEU. He also referred to the recent opinion of the Council Legal Service which clarified and confirmed its previous opinion on the legal basis.

Mr COELHO replied that Schengen should be a Community priority and not a matter for intergovernmental decision. He recognised the Presidency's efforts to take EP concerns on board but added that these efforts would be worthless since the Council could change the text tomorrow given the fact that the EP was not associated.

Next step: an extraordinary meeting of the LIBE Committee would be held in Strasbourg on 11 June. It seems that the agenda would include two votes for EP first reading on:

- the amended proposal for a Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (rapporteur Mr COELHO (EPP, PT))

- 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: Ms WEBER (ALDE, RO))

Item 20 on the agenda

Next meeting(s)

- Extraordinary meeting on 11 June 2012, 19.00 (Strasbourg)
 - 20 June 2012, 9.00-12.30 and 15.00-18.30 (Brussels)
 - 21 June 2012, 9.00-12.30 and 15.00-18.30 (Brussels)
-