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NOTE

from: General Secretariat of the Council
to: Delegations
Subject: Partial summary of the meeting of the European Parliament **Committee on Civil Liberties, Justice and Home Affairs**, held in Brussels on 24 and 25 September 2014

This well-attended meeting was chaired by Mr Moraes (S&D, UK), with a number of very active MEPs discussing the immigration and asylum issues, EASO annual report, protection of unaccompanied minors, and issues of drug policies. An exchange of views was held on the Budapest Convention on Cybercrime, with a heated debate between LIBE members opposing negotiations on a new protocol and the representative of the Convention Committee defending its importance for the law enforcement community.

2. Chair's announcements

LIBE adopted the decisions on the opening of negotiations on draft legislation on Europol (Rapporteur Diaz de Mera, EPP, ES), the transfer of funds (Rapporteur Kirkoppe, ECR, UK, together with ECON), money laundering (Rapporteur Sargentini, Greens/EFA, NL, together with ECON) and the fight against fraud (Rapporteur Lopez Aguilar, S&D, ES, together with CONT).

Coordinators were to discuss the question of the latest developments in Hungary, as referred to by the Conference of Presidents. Ms Lunacek (Greens/EFA, AT) was reappointed Rapporteur for the Directive on equal treatment; Mr Hortefeux (EPP, FR) for the touring visa; and Ms Gal (EPP, HU) on the CEPOL regulation.

6. Communication from the Commission to the European Parliament and the Council: 5th Annual Report on Immigration and Asylum (2013)

Ms Corrado, European Commission, presented the report, highlighting the main achievements as well as ongoing files in recent years, notably in the area of legal migration. She referred to increased migratory flows into the EU and the creation of the Mediterranean Task Force. The implementation of legislation was being regularly monitored and guidelines published. She also pointed out that immigration-specific recommendations would be included in the European Semester, notably regarding better labour market integration. She stressed the importance of fully integrating migration issues into various policies, notably development policy.

During the discussion MEPs raised the following issues: whether there was any discussion on new forms of legal migration; the need to improve communication for the beneficiaries of such measures; concerns about reception standards in certain Member States; the need to step up the fight against criminal organisations facilitating migration, in particular in relation to minors; the need to comprehensively assess the situation within Member States; the pull factor of the EU asylum system and more emphasis to be given to improved controls at the borders; the need to better facilitate highly skilled workers' access to the EU; a certain lack of methodological consistency in European Semester reporting; the relocation of refugees within the EU and solidarity among Member States; improving the integration of immigrants; the implementation of the seasonal workers directive.

The Commission representative explained *inter alia* that immigration issues would be a priority of the next Commission as well as the implementation of existing legislation. The highly skilled access scheme was to be reviewed in the future. The work of the Task Force Mediterranean was ongoing, including on the fight against smuggling, and in cooperation with EASO, Frontex and Europol. Specific recommendations of the European Semester were prepared taking into account objective criteria on Member States' labour markets. The issue of relocation and solidarity remained on the table.

4. EASO - Annual report on the situation of asylum in the European Union (2013), the Annual Activity Report 2013 and the EASO multi-annual work programme 2014 - 2016 "Towards a coherent implementation of the Common European Asylum System"
LIBE/8/01164

Dr. Visser, Executive Director (EASO), presented the major key challenges in 2013 regarding migratory flows. The majority of asylum seekers came from Syria, Russia (the majority from Chechnya) and the Western Balkans; the rates of recognition varied considerably. Due to recent developments there was also a substantial increase in asylum seekers from Iraq and Ukraine. EASO supports Member States in their implementation of new asylum rules (country security situation reports, manuals etc.).

During the discussion MEPs raised the following issues: the role of the consultative forum and the early warning system; regional protection programmes; budgetary issues; the content of the mandate to cooperate with third countries; Frontex Plus; immigrants with disabilities and vulnerable groups, such as LGBT people; the situation in Calais; the length of asylum examination procedures; and environmental issues.

In his replies Dr. Visser explained that EASO was about providing added value in terms of data compilation and analysis, *inter alia* also on secondary movements within the EU and pointing out that many migrants come to the EU through legal means. Asylum package implementation was clearly central, with tailor-made support projects offered to Member States. He stressed the need for a realistic approach regarding relations with third countries on migration issues. He stressed the voluntary nature of relocation programmes.

5. European Court of Auditors' Special Report "Lessons from the European Commission's development of the second generation Schengen Information System (SIS II)"

Mr Russo, European Court of Auditors, briefly presented the findings of the report which recommended that the Commission improve its management of large-scale projects.

During the discussion the MEPs raised the following issues: the EP's criticism was justified and the Commission should learn from past mistakes, however the EP supported the project itself and SIS II was a good tool; despite some objective difficulties, tenders should be carried out more professionally in the future.

The Commission representative explained that the Commission accepted the recommendations made, but believed the analysis was not complete and the role of the Council was under-assessed (Council's own initiative, evolving requests). On the other hand SIS II was a very well-performing tool. For the future, notably for the smart borders package, the Commission would be careful not to carry out any premature tendering.

6. Request for a preliminary ruling by the High Court of Ireland in the case of Schrems v. Data Protection Commission (C-362/14) - Safe Harbour Decision
LIBE/8/00818

The presentation by the EP Legal Service was held in camera.

7. Exchange of views on the Council of Europe Cyber-Crime Convention (ETS 185, "Budapest Convention")
LIBE/8/01166

The Chair introduced the debate by pointing to a number of concerns LIBE had on the current issues discussed in the framework of work Budapest Convention. This was already included in the NSA Surveillance Report.

The first invited speaker, Mr Planken, Cyber-Crime Convention Committee (T-CY) Chair, Ministry of Justice of the Netherlands, first took the floor and outlined the role of Cyber-Crime Convention committee, namely assessing the implementation of convention, preparing guidance notes on more effective implementation in light of new developments - currently discussing Article 32 (Trans border access to stored computer data); as well as consideration of additional instruments - currently

a new Protocol to the Budapest Convention. He emphasised that Cybercrime Convention was a criminal justice treaty used by law enforcement for individual criminal investigations. In relation to currently discussed Article 32 about voluntary disclosure of data by service providers he stressed that there was never a proposal that would allow for *'unfettered remote access'* as considered by LIBE in its NSA Surveillance Report. He warned about dangers of growing cybercrime and called on LIBE to assist law enforcement actors with a view of protecting citizens from cybercrimes. For the time being most went unpunished and this was a clear risk to rule of law and human rights of citizens. He stressed that committees work was fully transparent. He acknowledged that negotiations were adversely impacted by previous revelations of mass surveillance. He pointed out to LIBE that in its report on NSA Inquiry EP expressed strong criticism of this convention. He called for continued and transparent dialogue on the issue.

The second invited speaker Mr Seger, Executive Secretary Cybercrime Convention Committee, Head of Cybercrime programme Office (C-PROC), stressed that categorical positions on a complex matter such as trans border transfer were not helpful. The Convention was working closely with Article 29 committee and EDPS. There was clearly confusion in public debate between criminal justice and national security controls. He regretted that LIBE had not invited Cybercrime Convention Committee to its hearings and called on LIBE to make own proposals for enhancing cyber security.

The third invited speaker, Mr Buttarelli, Assistant European Data Protection Supervisor, presented some background information to additional protocol discussions, which would represent a significant change for remote access for law enforcement, with several options under discussion. The aim of the amendments was to facilitate legitimate purpose investigations. Aware of LIBE concerns regarding remote access, he stressed that safeguards were extremely important. So far all options under discussion in his view raised concerns and were not satisfactorily resolved. Despite good intentions of all those involved, workable solutions were still far off. He called for prudence and pointed to the wide scope of convention. He suggested the EP focus on the Data Protection Package (DPP) and that no new international agreement on personal data exchanges for law enforcement purposes be concluded until the DPP were agreed in order to have the necessary consistency between both.

The fourth invited speaker, Mr Wiewiórowski, Inspector General for Protection of Personal Data, Polish Data Protection Authority, Vice-Chair of the Article 29 Working Party (Directive 95/46/EC) gave a detailed presentation of the Article 29 Working Party opinion on the issue of direct access by third countries' law enforcement authorities to data stored in other jurisdictions, from 5 December 2013. It was important to guarantee adequate data protection standards in the EU.

During the discussion the MEP raised the following issues : disagreement on proposed changes to Article 32 , which would in view of Ms In 't Veld (ALDE, NL) '*legalize illegal practices*'; the request for the EP legal service to study whether there was an exclusive EU competence on international agreements with data protection subject-mater; the need to speed up the adoption of DPP; data retention judgment implications; necessary transparency for citizens to report cyber crimes.

Both Mr Planken and Mr Seber reacted to the critical views expressed by MEPs and stressed that matters should be further discussed in a more constructive manner. Both confirmed they are against unfettered access, as investigations were focused on individuals, and called on LIBE to propose its own solutions that would protect citizens adequately. This particular comment prompted a reaction from both Mr Albrecht and Mr Moraes asserting their competence and experience in the matter and their clear disagreement with work of the Cyber-Crime Convention Committee.

8. EU-US agreement on data protection for exchanges of personal data for law enforcement purposes ("umbrella agreement")

LIBE/8/00729

The presentation by the Commission (DG JUST) on the state of play of negotiations was held in camera.

Joint debate

9 -10. EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) - The European Drug Report 2014: Trends and Developments and EMCDDA's General Report of Activities 2013: Key achievements and governance: a year in review

Mr Götz, Director of the EMCDDA, highlighted some of the most important features of the report, pointing also to the close cooperation with Europol, FRA, and the European Medicines Agency. The EMCDDA also closely followed various regulatory developments around the world, notably regarding the decriminalisation of cannabis use. He thanked the EP for its increased financial support to the agency.

During the discussion the MEPs raised the following issues: swift progress on drugs package legislation; more sociological analysis into drug use; the danger of new drugs; awareness-raising campaigns against drug use; exploring new policy options and possible legalisation and the control of drug production in the wake of the current failures of the 'war on drugs'.

The Chair concluded that LIBE would organise a further session on this topic in order to reflect the interests of its members.

11. The Member State responsible for examining the application for international protection of unaccompanied minors

***I 2014/0202(COD) COM(2014)0382 – C8-0040/2014

Rapporteur: Cecilia Wikström (ADLE)

Responsible: LIBE –

The Commission representative explained that this was a targeted proposal to codify an issue settled by the ECJ in its June 2013 case regarding the right of unaccompanied minors to remain in the country where they had lodged their most recent asylum application. This issue had been left "unresolved" by negotiation between the EP and the Council when recasting Article 8(4) and it was agreed to follow the ECJ interpretation on the matter. The Rapporteur and the shadows were also hoping for swift progress and a rapid adoption of this proposal.

The Italian Presidency explained that whilst protection of minors was its priority, it could not comment before this had been discussed by the Council.

Next LIBE meeting :

6 October 2014, 15.00 – 18.30 (Brussels)

Hearings of Commissioners-designate falling into the competence of the Committee on Civil Liberties, Justice and Home Affairs)

- Tuesday, 30 September, 13:30 - 16:30 (Dimitris AVRAMOPOULOS)
 - Wednesday, 1st October, 13:30 - 16:30 (Věra JOUROVÁ)
 - Tuesday, 7 October, 9:00 - 12:00 (Frans TIMMERMANS)
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