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## OUTCOME OF THE COUNCIL MEETING

3603rd Council meeting

### Justice and Home Affairs

Brussels, 8 and 9 March 2018

Presidents **Valentin Radev**  
Minister for the Interior of Bulgaria  
**Tsetska Tsacheva**  
Minister for Justice of Bulgaria

# P R E S S

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- 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**

#### **Cooperation between CSDP missions/operations and EU JHA agencies**

Ministers exchanged views on cooperation between CSDP missions and EU justice and home affairs agencies. The Council endorsed the principle of the participation of EU JHA agencies in a pilot project for a crime information cell in operation Sophia. This follows the presentation on 5 March of the joint concept for the pilot project by the Commission and the European External Action Service.

The pilot project will contribute to improve the exchange of information between EUNAVFOR MED Operation Sophia and JHA agencies through a crime information cell (hub) to be located within Operation Sophia. The framework and modalities for this pilot project will be discussed in the relevant Council preparatory bodies, with a view to launching the project as soon as possible.

#### **PNR directive implementation**

Ministers discussed the state of implementation of the passenger name record (PNR) directive. They underlined the importance of the directive and exchanged views on the challenges ahead to meet the near implementation deadline. Ministers, as well as the Commission, emphasized the continuing need for coordinated efforts by all stakeholders and welcomed the current peer-to peer support for the implementation process.

The PNR directive was adopted in 2016 and is to be transposed by 25 May 2018.

#### **Cooperation with the Western Balkans on security<sup>1</sup>**

Ministers exchanged views on cooperation with the Western Balkans in the area of internal security and counter-terrorism, on the basis of the Commission communication of 6 February.

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<sup>1</sup> Exceptionally in the presence of the Schengen Associated States

They focused on how to enhance member states' engagement with the Western Balkans and where to focus follow-up action. They highlighted the importance of cooperating in areas including counter-terrorism, radicalisation, arms and drugs trafficking and migrant smuggling.

The outcome of this discussion will feed into the upcoming EU-Western Balkans summit, which will take place in Sofia on 17 May. The Presidency also announced its intention to convene, in close cooperation with the Commission, a meeting in June with Western Balkans partners at senior officials level, in preparation of the annual ministerial meeting expected to take place in October.

### **EU JHA agencies' role in counter-terrorism**

Ministers discussed the increasing role of EU JHA agencies' in counter-terrorism. They welcomed the update by the Counter Terrorism Coordinator on the work done by these agencies in the field of counter terrorism. The Presidency invited the agencies and the Commission to take into account the points raised, including ensuring sufficient budget, better cooperation between agencies and early involvement of Europol.

### **Migration<sup>1</sup>**

Ministers discussed the state of play and next steps regarding migration, including further strengthening the external borders, improving return and readmission and ensuring effective cooperation with countries of origin and transit. They agreed to continue monitoring the situation in all migratory routes.

The actions taken by the EU and member states in 2017 to protect the external borders and to manage migration flows resulted in tangible results. In 2017, the number of irregular border crossing into the EU was 60% lower than in 2016.

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<sup>1</sup> Exceptionally in the presence of the Schengen Associated States

## Interoperability

Ministers discussed the Commission proposals on interoperability between EU information systems. These proposals aim to improve the searching and comparing of data available in EU information systems, through establishing the following interoperability components:

- A European search portal, which would allow competent authorities to search multiple information systems simultaneously, using both biographical and biometric data.
- A shared biometric matching service, which would enable the searching and comparing of biometric data (fingerprints and facial images) from several systems.
- A common identity repository, which would contain biographical and biometric identity data of third-country nationals available in several EU information systems.
- A multiple identity detector, which checks whether the biographical identity data contained in the search exists in other systems covered, to enable the detection of multiple identities linked to the same set of biometric data.

Ministers agreed that the proposed interoperability components adequately address the needs of the end users and will help enhance external border management and internal security.

They acknowledged that the development of central interoperability components will require action at national level and welcomed coordination at EU level to prepare implementation. The Commission was invited to further address the impact of interoperability at national level.

Most ministers expressed that, at this time, work should focus on the elements currently on the table, in order to make progress on these as quickly as possible.

Ministers also agreed that the Commission, together with member states, should examine the feasibility of other longer-term recommendations of the high-level expert group on information systems and interoperability to address the remaining information gaps and contribute to the completion of the interoperability landscape.

Following this discussion, examination of the proposals will continue at a technical level.

### **Any other business**

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

### **Terrorism content online**

Ministers informally discussed how to tackle terrorist content online most effectively. They highlighted the importance of making the internet companies live up to their commitments, and did not exclude having to look at the possibility of introducing legislative measures.

## MIXED COMMITTEE

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

- *Interoperability*

See above

- *Any other business*

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

## **JUSTICE**

### **Revision of Brussels IIa : Recognition and enforcement of decisions in matrimonial matters and parental responsibility**

The Council had a policy debate ([6300/18](#)) on the revision of so called Brussels IIa Regulation (regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction).

Ministers were asked to express their views on the role and tasks of central authorities. In particular, they were invited to discuss how to ensure, in the regulation, that central authorities have enough financial and human resources.

Ministers confirmed that the role and functions of the central authorities should be strengthened due to the increase of workload in cross border cases regarding children. As a first mean to achieve this, the Council instructed experts to further work on introducing a recital in the regulation with the aim to provide adequate human and financial resources to central authorities, taking into account the subsidiarity principle. On other broader means to enhance their roles, ministers have highlighted the importance of improving the cooperation among the central authorities. This could be achieved for example by using the European judicial network (EJN) or central authorities staff exchange programmes. The Commission was called to identify appropriate funding for these purposes.

Central authorities perform various tasks in cross-border cases in matters of parental responsibility. For example, they have a crucial role in intra-EU child abduction cases. Considering the steady increase in the number of international couples, it is likely that cross-border child related cases will increase in the years to come.

It was the third policy debate on this Regulation. In [June 2017](#), the Council debated on the issue of the hearing of the child during proceedings while in [December 2017](#) ministers touched on the issue of the abolition of exequatur.

The proposal was presented by the Commission on 30 June 2016. It aims at improving the current legal EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction. A key objective of the new rules is to ensure quicker overall procedures given that time is of the essence in order to protect the best interests of the child in these cross-border parental responsibility disputes.

The proposed regulation is subject to the special legislative procedure which foresees the need to have unanimity of the Council after consultation of the European Parliament. The [opinion of the Parliament](#) was delivered on 18 January 2018. All Member states, except Denmark, are participating to this legislation.

For more information:

- [Commission website : new rules to better protect children in cross-border family proceedings](#)

### **Directive on combating fraud and counterfeiting of non-cash means of payment**

The Council adopted its position on the directive on combating fraud and counterfeiting of non-cash means of payment. The Council is now ready to start negotiations with the Parliament as soon as the latter agrees on its position.

See [press release](#)

### **European Public Prosecutor's Office (EPPO regulation)**

Justice ministers were informed on the state of play of the implementation of the EPPO regulation ([6467/18](#)) as well as on the issue of the cooperation between the EPPO and other relevant EU bodies and agencies, namely Eurojust, OLAF and Europol.

– *State of play of implementation*

Since the formal adoption of the EPPO regulation, the Commission has taken a number of steps foreseen for the creation of the Office. Those concern notably: the appointment of the interim Administrative Director, the setting up of the EPPO Expert Group, the delegated Act listing the categories of operational personal data and the categories of data subjects, the selection and appointment of the European Chief Prosecutor, the vacancy notice for the European Chief Prosecutor, the selection of the European Prosecutors, the Case Management System, the budget.

– *Cooperation between EPPO and other EU bodies*

With regard to the relation with OLAF, the Council (in ECOFIN formation) had already debated the need to update the OLAF regulation, in particular to ensure a good future cooperation between OLAF and EPPO. This debate has led to the adoption of an outcome of proceedings document (6004/18) which indicates how a revision of the OLAF regulation could be approached in the most effective way. The revision should first focus primarily on the topics that are necessary to enable OLAF to cooperate smoothly with EPPO. This includes provisions that clarify the competences of OLAF in view of EPPO's competences, provisions ensuring that there will be no duplication in their activities, provisions that regulate the exchange of information and provisions that regulate the cooperation of OLAF with Member States that do not participate in EPPO.

When it comes to Eurojust, the rules on the future relations between the agency and the EPPO are still under discussion in trilogues with the European Parliament. The presidency indicated it is confident a conclusion will be possible shortly.

– *Background*

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.

20 Member states have so far formally decided to join the EPPO. During the meeting, Malta announced its intention to join the EPPO.

For more information:

- [Council press release on the agreement of the EPPO regulation](#)
- [Commission Q&A on the EPPO](#)

### **Improving cross-border access to e-evidence**

Following an update from the Commission on the current state of preparation of the legislative proposal to be tabled on cross-border access to e-evidence, ministers exchanged views on the subject, in particular on the recent international developments. They were also invited to share any relevant national developments, emerging needs or new challenges stemming from on-going investigations and criminal proceedings.

At the end of the debate, the Council called for the Commission's legislative proposal to be finalised as soon as possible. The Commission committed to present its proposal in April 2018. The Council also asked the Commission to convey to US authorities the wish of the EU to ensure a close cooperation between the Union as a whole and the USA on this matter, in particular in the context of the CLOUD act currently being discussed in the US congress.

#### – ***Background***

In June 2016, the Council adopted conclusions on improving criminal justice in cyberspace. The conclusions set out concrete measures for future follow-up and action to streamline mutual legal assistance (MLA) proceedings, enhance cooperation with service providers and review the rules on enforcement jurisdiction in cyberspace.

In December 2017, the Commission presented an intermediary report on the implementation of the Council conclusions. It indicated that it will work to put forward practical measures, such as a secure e-platform, as well as legislative initiatives to form a common approach on e-evidence. Member states have reiterated their positive view on establishing a legal framework that would allow national authorities to directly request or compel a service provider in another Member state to disclose e-evidence processed in the EU on the basis of certain conditions and safeguards.

In the meantime, developments are taking place at international level.

First, the Council of Europe decided to draft an additional protocol to the Budapest Convention of Cybercrime in order to lay down provisions for a more simplified mutual legal assistance (MLA) regime and for provisions allowing for direct cooperation with service providers in other jurisdictions. The objective is to finish the drafting by December 2019 while coordinating closely with the preparation of the relevant legal instruments at EU level.

Second, a new bill has been introduced in the US Congress, the CLOUD act (Clarifying Lawful Overseas Use of Data). This bill, if adopted, would in particular set an obligation for US service providers to comply with US orders to disclose content data no matter where they stored. This bill also foresees the possibility for the US administration to conclude executive agreements which would allow US service providers to deliver content data to a partner foreign government, without the need for an MLA request.

For more information:

- [Press release on the fight against criminal activities in cyberspace, June 2016](#)
- [Council of Europe - Towards a Protocol to the Budapest Convention](#)

### **Other business**

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

The Commission informed the Council about the results of the third evaluation of the implementation of the **Code of Conduct against online hate speech** as well as on Commission Recommendation on measures to effectively tackle illegal content online that was presented on 1 March 2018.

- [Results of Commission's last round of monitoring of the Code of Conduct against online hate speech](#)
- [Recommendation on measures to effectively tackle illegal content online](#)

## **OTHER ITEMS APPROVED**

### **JUSTICE AND HOME AFFAIRS**

#### **Appointment of the new Executive Director of Europol**

The Council appointed Catherine De Bolle from Belgium as the next Executive Director of Europol.

[See press release](#)

#### **Schengen evaluation**

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Denmark on the application of the Schengen acquis in the field of data protection. [\(6923/18\)](#)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Denmark on the application of the Schengen acquis in the field of police cooperation. [\(6924/18\)](#)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Greece on the application of the Schengen acquis in the field of data protection. [\(6925/18\)](#)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of France on the application of the Schengen acquis in the field of data protection. [\(6926/18\)](#)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Iceland on the application of the Schengen acquis in the field of police cooperation. [\(6927/18\)](#)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Iceland on the application of the Schengen acquis in the field of return. [\(6928/18\)](#)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Sweden on the application of the Schengen acquis in the field of return. [\(6929/18\)](#)

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Sweden on the application of the Schengen acquis in the field of the common visa policy. [\(6930/18\)](#)

### **Conclusions on Best Practices regarding the On-line Publication of Court Decisions**

The Council adopted conclusions setting best practices Member states may follow with regards to the online publication of court decisions. The best practices touch on issues such as data protection, usability, selection of decisions to be published, etc. [\(5306/18\)](#)

### **Council Decision authorising negotiations on the conclusion of the "MAC Protocol"**

The Council adopted a decision authorising the opening of negotiations on the conclusion of a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment (MAC Protocol). [\(5985/1/18 REV 1\)](#)

### **61st Commission on Narcotic Drugs session**

The Council adopted a decision setting out the Union's position ahead of the in the sixty-first session of the Commission on Narcotic Drugs. [\(6084/18\)](#)

### **Prüm Implementing Decisions: launch of automated data with regard to vehicle registration data in Portugal**

The Council adopted an Implementing Decision on the launch of automated data with regard to vehicle registration data in Portugal [\(6008/18\)](#).

Prüm Decisions contains rules for operational police cooperation such as joint patrols and introduced procedures for fast and efficient data exchange in specific areas. The core of the Prüm framework lays down provisions under which EU Member States grant each other access to their automated DNA analysis files, automated fingerprint identification systems and vehicle registration data.

### **Prüm Council conclusions: implementation of the general provisions on data protection with regard to exchange of DNA data in Croatia**

The Council adopted conclusions on the implementation of the general provisions on data protection with regard to exchange of DNA data in Croatia. [\(6122/18\)](#)

### **Conclusions on promoting the use of alternatives to coercive sanctions for drug using offenders**

The Council adopted Conclusions on promoting the use of alternatives to coercive sanctions for drug using offenders [\(6931/18\)](#).

As part of the EU action plan on drugs 2017-2020, the EU has committed to develop alternatives to coercive sanctions for drug using offenders. Indeed, it recognises that actions such as education, treatment, rehabilitation and recovery, aftercare and social reintegration, can have a positive impact to end addiction of drug users and improve their social inclusion.

While at least one of those alternatives now exists in all member states, the Council encouraged today member states to continue their efforts and promote further those alternatives, in due respect of national legal framework, as well as to improve their monitoring and evaluation to then share best practices.

## **ECONOMIC AND FINANCIAL AFFAIRS**

### **Insurance distribution**

The Council adopted a directive postponing to 1 October 2018 the application date of new rules on insurance distribution.

The directive also extends to 1 July 2018 the deadline given to member states to transpose the new rules into national laws and regulations.

Directive 2016/97 is aimed at improving consumer protection for insurance products. Adopted in December 2015, it was due to apply from 23 February 2018 and member states initially had until then to transpose it.

The delay was decided in the light of implementing rules issued by the Commission in September 2017. The delay will enable the insurance industry to better prepare the changes necessary to comply with the implementing rules.

Enactment of the delay follows an agreement with the European Parliament. The Parliament approved the directive on 1 March 2018.

## **GENERAL AFFAIRS**

### **EU-Canada Ocean Partnership – opening of negotiations**

The Council authorised the Commission to open negotiations on the EU-Canada Ocean Partnership (6384/18).

The EU-Canada Ocean Partnership is intended to provide a general framework and establish areas of cooperation on ocean affairs, building on existing cooperation frameworks and based on the United Nations Convention on the Law of the Sea. It is a non-binding instrument, which does not create rights or obligations under international law.