

14044/14

(OR. en)

PRESSE 505  
PR CO 48

## PRESS RELEASE

3336th Council meeting

### Justice and Home Affairs

Luxembourg, 9 and 10 October 2014

Presidents **Angelino ALFANO**  
Minister for the Interior of Italy  
**Andrea ORLANDO**  
Minister for Justice of Italy

# P R E S S

## ***Main results of the Council***

### ***HOME AFFAIRS***

#### ***Taking action to better manage migratory flows***

*Ministers had a discussion on action to better manage migratory flows, on the basis of a paper presented by the presidency.*

*After the discussion, the Council decided to adopt the paper as [Council conclusions](#), stressing that the guiding principles for achieving a strategic and operational approach to better managing migration flows are:*

- (1) Action in cooperation with third countries*
- (2) Reinforced management of external borders and Frontex*
- (3) Action at member state level – reception and fingerprinting*

*The paper defines a sustainable approach to responding to migratory pressure in a structured manner, going beyond the immediate emergency measures. Such an approach could be used as a blueprint to address possible future challenges and could be adapted to the specific needs of any emerging situation.*

*Angelino Alfano, Italian Minister for the Interior and President of the Council, said: "I'm very happy to announce that the Presidency paper will be formally adopted as Council conclusions tomorrow. That means that we have speeded up the process and it shows that we are united in taking action on this."*

#### ***Task Force Mediterranean***

*The Council was briefed by the Commission, Frontex and the European Asylum Support Office (EASO) on the latest operational developments in the context of Task Force Mediterranean (TFM). It welcomed the progress achieved so far in the key areas identified and the active involvement of all stakeholders in the process.*

*The Council acknowledged that the situation in the Mediterranean is of great concern to all member states. The timely implementation of the initiatives identified by the task force, with the active contribution of all the stakeholders involved, is key to assisting member states under particular migratory pressure in addressing the challenges currently facing them.*

*In this context, the Council welcomed the announcement by the Commission and Frontex on the launch, by 1 November, of the EU-funded operation Triton, aimed at reinforcing border surveillance in the waters close to Italian shores.*

**Foreign fighters**

*The Council had an in-depth discussion on the issue of foreign fighters, as requested by the European Council in August 2014, on the basis of a document prepared by the presidency in cooperation with the Counter-Terrorism Coordinator.*

*Angelino Alfano, Italian Minister for the Interior and President of the Council, said: "Ministers agreed on the urgency of making progress on the EU PNR directive and called on the European Parliament to adopt its position to start negotiations with the Council and finalise the work as soon as possible."*

*The Council also agreed that checks at external borders should be improved without further delay under the existing legal framework. It also agreed on certain specific actions that will help to speed up the implementation of the measures already approved in this field.*

**JUSTICE****Data protection**

*The Council reached a partial general approach on specific aspects of the draft regulation setting out a general EU framework for data protection. The partial general approach includes chapter IV of the draft regulation (controller and processor).*

*The Council also held a policy debate on the "right to be forgotten" principle following the European Court of Justice judgment in the [Google Spain](#) case. That judgment acknowledges that, on the basis of the existing directive, data subjects may exercise their right to erasure of data and their right to object to personal data processing against online controllers such as search engines.*

*Andrea Orlando, Italian Minister for Justice and President of the Council, said: "The Council recognised the importance of the right to be forgotten and the right to object to data processing in particular in a digital environment. At the same time member states attach significant importance to the freedom of expression. The reconciliation of these general principles must be appropriately reflected in the general regulation."*

**European Public Prosecutor's Office**

*The Council was briefed by the presidency on the state of play concerning the proposal on the setting up of a European Public Prosecutor's Office (EPPO). It held a policy debate on the basis of a document prepared by the presidency. The debate was based on the concept of a "single legal area". The presidency took note of the fact that a majority of ministers were in favour of the EPPO being one single office and concluded that further work would be needed on the concept.*

*Minister Orlando said: "Member states have confirmed their willingness to go beyond the current national models and set up a system that could effectively tackle the kind of felonies that EPPO aims to address."*

***Insolvency proceedings***

*Without discussion, the Council reached a general approach on the proposal for a regulation amending the Council regulation on insolvency proceedings. That general approach, together with the June 2014 general approach, constitutes the basis for negotiations with the European Parliament in order to agree on the final text of the regulation.*

*The proposed regulation is aimed at making cross-border insolvency proceedings more efficient and effective with a view to ensuring the smooth functioning of the internal market and its resilience in economic crises.*

*Minister Orlando, Italian Minister for Justice and President of the Council, said: “The protection of businesses and creditors is particularly important given the present economic crisis. This objective is in line with the EU's current political priorities of promoting economic recovery and sustainable growth, a higher investment rate and the preservation of employment and ensuring smooth development and the survival of businesses.”*

\* \* \*

*A joint declaration establishing a **mobility partnership** between the Hashemite Kingdom of **Jordan** and the European Union and its member states was signed in the margins of the Council.*

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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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.....

**Commission:**

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Ms Cecilia MALMSTRÖM

Member

Member

## **ITEMS DEBATED**

### **HOME AFFAIRS**

#### **Implementation of the EU priorities in combatting serious and organised international crime**

The Council took note of and welcomed the results of and lessons learnt from the large-scale law enforcement operation (Operation Archimedes) which took place between 15 and 23 September 2014 (for more information see [background note](#)).

Following that presentation, ministers held a policy debate on the member states' role and input in the EU's fight against serious and organised crime, and in particular the setting of crime-related priorities and possibilities to effectively combine resources at EU level.

#### **Foreign fighters**

The Council had an in-depth discussion on the issue of foreign fighters, as requested by the European Council in August 2014, on the basis of a document prepared by the presidency in cooperation with the Counter-Terrorism Coordinator.

The aim of the discussion was to give political guidance on two topics where further progress must be achieved: the finalisation of the work on the EU PNR directive, and controls at external borders of the Schengen Area.

Regarding the EU PNR, ministers agreed on the urgency of making progress on this file and called on the European Parliament to adopt its position as soon as possible in order to start negotiations with the Council. The aim is to finalise the work before the end of the year, as requested by the European Council in August 2014.

Regarding checks at external borders, the Council agreed to improve such checks under the existing legal framework without further delay.

The Council also agreed on a number of specific actions that will help to speed up the implementation of the already approved measures. Those actions do not only relate to the work done at EU level so far; they also include the conclusions of the work of the Ministers of Interior of the member states most affected by the foreign fighters phenomenon.

The Council will come back to this issue at its next meeting in December.

For more information see [background note](#).

## **Taking action to better manage migratory flows**

Over lunch, ministers had a discussion on taking action to better manage migratory flows, on the basis of a paper presented by the presidency.

The aim of the presidency paper was to present some proposals for a possible way forward in order to define a sustainable approach, based on three pillars, so as to respond to migratory pressure in a structured manner and go beyond the immediate emergency measures. Such approach could be used as a blueprint to address possible future challenges and could be adapted to the specific needs of any emerging situation.

After the discussion, the Council decided to adopt the paper as Council conclusions ([14141/14](#)), stressing that the guiding principles for achieving a strategic and operational approach to better managing migration flows are:

- (1) Action in cooperation with third countries
- (2) Reinforced management of external borders and Frontex
- (3) Action at member state level – reception and fingerprinting.

Those priorities should be implemented without delay through operational actions by all players involved, under the coordination of the Commission and in close cooperation with the EEAS and the Council.

The Commission and the EEAS will report to the Council in December on the implementation of the above-mentioned principles.

## **Task Force Mediterranean**

The Council was briefed by the Commission, Frontex and EASO on the latest developments concerning operational actions within the context of Task Force Mediterranean (TFM). It welcomed the progress achieved so far in the key areas listed in the Commission's communication showing the active involvement of all stakeholders in the process.

The Council acknowledged that the situation in the Mediterranean is of great concern to all member states, as there are indications that the current trend will continue and the situation even risks deteriorating further. The timely implementation of the initiatives identified by the task force, with the active contribution of all the stakeholders involved, is key to assisting member states under particular migratory pressure in addressing the challenges currently facing them.

In this context, the Council welcomed the announcement by the Commission and Frontex regarding the launch, by the end of this year, of the EU-funded operation Triton, aimed at reinforcing border surveillance in the waters close to Italian shores.

It also invited the Commission to continue to inform the Council and its preparatory bodies about the implementation of the relevant actions in order to deal with the main challenges related to asylum and migration issues.

Task Force Mediterranean was set up following the JHA Council of 7-8 October 2013 in order to identify tools at the EU's disposal which could be used in a more effective way to avoid tragic events such as those that occurred off the coast of Lampedusa.

### **Other business**

Under other business, the Council was informed about the state of play of the directive on the conditions of entry and residency of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing.

The presidency informed ministers about the outcome of the conference on a renewed EU internal security strategy, organised by the Commission and the presidency, which took place in Brussels on 29 September 2014.

The Hungarian delegation invited ministers to the inauguration of CEPOL's new headquarters which will take place in November 2014 in Budapest.

## **JUSTICE**

### **Data protection**

The Council reached a partial general approach on specific issues of the draft regulation setting out a general EU framework for data protection ([13772/14](#)), on the understanding that:

- nothing is agreed until everything is agreed;
- it is without prejudice to any horizontal questions;
- it does not mandate the presidency to engage in informal trilogues with the European Parliament on the text.

The partial general approach includes chapter IV of the draft regulation (controller and processor) and the related recitals.

The Council also held a policy debate on the "right to be forgotten" principle following the European Court of Justice judgment in the [Google Spain case](#). That judgment acknowledges that, on the basis of the existing directive, data subjects may exercise their right to erasure of data and their right to object to personal data processing against online controllers such as search engines. The aim of the debate was not to discuss legislative drafting of the regulation; rather, it was a political discussion on the right to be forgotten, including its relationship to freedom of expression ([13619/14](#)).

The Council acknowledged the importance of the right to erasure and the right to oppose data processing, in particular in a digital environment. At the same time, the member states set great store by freedom of expression. Balancing the fundamental right to data protection with freedom of expression will have to be done on a case-by-case basis.

### **European Public Prosecutor's Office**

The Council was briefed by the presidency on the state of play of the proposal regarding the setting up of a European Public Prosecutor's Office (EPPO), and held a policy debate on the basis of a document prepared by the presidency ([13509/1/14 REV 1](#))

The debate was based on the concept of a "single legal area" (as used in article 25 of the Commission proposal). In practice, the question is whether the EPPO will be able to operate across the borders of participating member states as one single office, or if there is a need to have recourse to traditional mechanisms of mutual legal assistance and mutual recognition when, for example, two European Delegated Prosecutors based in two member states work on the same cross-border case.

The presidency took note that a majority of ministers spoke out to confirm that the EPPO should be one single office, and concluded that more work would be needed to further clarify the concept.

In March 2014, the Council held a discussion on the structure of the office, and on the delimitation of its tasks and competences. Ministers generally agreed that the European Public Prosecutor's Office would be organised on the basis of a college of prosecutors originating from the member states.

In June 2014, the Council confirmed, as the basis for further discussion, the principles of a collegially structured EPPO. Ministers also confirmed the principle that the EPPO would have a priority competence to investigate and prosecute offences affecting the Union's financial interests ([9834/1/14 REV 1](#)), but that national authorities would retain a concurrent competence in principle.

The proposed regulation aims to help combat crimes against the Union's financial interests by introducing a European Public Prosecutor's Office with competence in that area. The legal basis and the rules for setting up the EPPO are laid down in article 86 of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will be adopted in accordance with a special legislative procedure: the Council will decide unanimously after obtaining the consent of the European Parliament. If unanimity cannot be reached in the Council, the treaties provide that a group of at least nine member states may enter into an enhanced cooperation.

The Commission presented its proposal on 17 July 2013 ([12558/13](#)).

### **Presumption of innocence**

The Council held a policy debate on the proposal for a directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings.

The debate focused on the aspect of the burden of proof (article 5 of the proposal). On the basis of a document prepared by the presidency ([13538/14](#)), ministers confirmed that:

- the text of the article should take account of the fact that in some member states not only the prosecution but also judges are charged with seeking both inculpatory and exculpatory evidence;
- a reference should be made to the possibility of using presumptions of facts or law, while clearly stating that the rights of the defence should always be respected.

The Council invited the working party to continue its work on the draft directive in the light of the guidance given by the Council, so as to allow a general approach to be reached in December 2014.

The Commission presented its proposal on 27 November 2013 ([17621/13](#)).

## **Mutual recognition of public documents**

The Council held a policy debate on the draft regulation on promoting the free movement of citizens and businesses by simplifying the requirements for presenting certain public documents in the European Union.

The debate focused on three issues: the first relating to standard forms, the second to article 18 (on the relationship between the future regulation and other instruments) and the third to the future use of electronic means in the exchange of information between member states ([13566/14](#)).

The presidency took note of the views expressed with a view to continuing discussions on the proposal.

The proposed regulation is aimed at simplifying the procedures for cross-border use and acceptance of public documents between member states, thereby contributing to the creation of a citizens' Europe and a well-functioning single market for EU businesses.

The scope of the proposal covers public documents issued by authorities of the member states and having formal evidentiary value relating to birth, death, name, marriage, registered partnership, parenthood, adoption, residence, citizenship, nationality, real estate, legal status and representation of a company or other undertaking, intellectual property rights and absence of a criminal record. Under the proposed regulation, such documents will be exempted from all forms of legalisation and similar formalities. Documents drawn up by private persons and documents issued by authorities of third states are excluded from its scope.

The proposal also establishes EU multilingual standard forms concerning birth, death, marriage, registered partnership and legal status and representation of a company or other undertaking.

The Commission presented its proposal on 24 April 2013 ([9037/13](#)).

## **MIXED COMMITTEE**

### **Task Force Mediterranean**

The committee was briefed by the Commission, Frontex and EASO on the latest developments concerning operational actions within the context of Task Force Mediterranean.

See item above.

### **Revised Greek action plan on asylum and migration management**

The Council took note of information on the implementation of the revised Greek national action plan on asylum and migration.

### **Other business**

Under other business, the committee was informed about the state of play of a number of legislative proposals, including:

- the draft regulation on the recast of the Union Code on Visas;
- the draft directive 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.

The committee took note of information from the UK delegation on the application of article 10 of Protocol 36 to the treaties.

## **OTHER ITEMS APPROVED**

### **JUSTICE AND HOME AFFAIRS**

#### **COSI report**

The Council transmitted to the European Parliament and the national parliaments the report on the proceedings of the Standing Committee on operational cooperation on internal security (COSI) for the period January 2013-June 2014.

COSI activities over the reporting period were mainly concentrated on the implementation of the first two years of the EU policy cycle (2012-2013) and the setting up and implementation of the next cycle (2014-2017).

In 2010 the Council decided to establish a multi-annual policy cycle ([15358/10](#)) addressing serious international and organised crime in order to tackle the most important criminal threats in a coherent and methodological manner through improved cooperation between the relevant services of the member states, EU institutions and EU agencies, as well as relevant third countries and organisations.

#### **Stolen and Lost Travel Documents database**

The Council adopted conclusions on strengthening the use of Interpol's Stolen and Lost Travel Documents (SLTD) database ([13525/14](#)), which currently contains about 43 million records from 163 countries, including 28 million records from EU member states.

#### **CEPOL-FYROM working arrangements**

The Council approved the working arrangement between the European Police College (CEPOL) and the Ministry of Interior of the former Yugoslav Republic of Macedonia ([12640/1/14 REV 1](#)) concerning training courses for police officers which aim in particular to enhance the effectiveness of law enforcement agencies in the fight against cross-border crime, in accordance with decision 2005/681/JHA on the establishment of the European Police College (CEPOL)<sup>1</sup>.

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<sup>1</sup> OJ L 256, 1.10.2005, p. 63.

## **CEPOL-Bosnia and Herzegovina working arrangements**

The Council approved the working arrangement between the European Police College (CEPOL) and the Ministry of Security of Bosnia and Herzegovina (12639/14) concerning training courses for police officers, aiming in particular to improve cooperation and enhance the effectiveness of law enforcement agencies in the fight against cross-border crime, in accordance with decision 2005/681/JHA on the establishment of the European Police College (CEPOL)<sup>2</sup>.

## **Risk management capability**

The Council adopted conclusions on risk management capability ([13375/14](#)), which is defined in decision 1313/2013 on a Union Civil Protection Mechanism<sup>3</sup> as the ability of a member state or its regions to reduce, adapt to or mitigate risks (impacts and likelihood of a disaster).<sup>4</sup>

## **Automated data exchange (VRD) with Malta**

The Council adopted a decision on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Malta ([13056/14](#)). The evaluation procedure required by decision 2008/616/JHA (*OJ L 210, 6.8.2008, p. 12*) concluded that the general provisions on data protection have been fully implemented by the Republic of Malta, which is therefore entitled to receive and supply personal data as from the date of the entry into force of the decision.

## **Sisnet accounts 2013**

The General Secretariat of the Council has drawn up the revenue and expenditure account and balance sheet of Sisnet, following an audit of the accounts by the Court of Auditors.

Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland and Sweden, as well as Iceland and Norway, meeting within the Council, gave a discharge to the Secretary-General in respect of the Sisnet budget's implementation for the year 2013, in accordance with Council Decision 2000/265/EC<sup>5</sup> on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council of contracts concluded in his name, on behalf of certain member states, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'Sisnet'.

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<sup>2</sup> OJ L 256, 1.10.2005, p. 63.

<sup>3</sup> OJ L 347, 20.12.2013, p. 924.

<sup>4</sup> See also Risk Assessment and Mapping Guidelines for Disaster Management ([17833/10](#))

<sup>5</sup> OJ L 85, 6.4.2000, p. 12.

## **Insolvency proceedings**

The Council reached a general approach on the proposal for a regulation amending Council Regulation No 1346/2000 on insolvency proceedings ([13276/14](#)). That general approach includes the recitals and annexes of the draft regulation and will constitute, together with the June 2014 general approach ([10284/14](#)), the basis for negotiations with the European Parliament in order to agree on the final text of the regulation.

The proposed regulation is aimed at making cross-border insolvency proceedings more efficient and effective with a view to ensuring the smooth functioning of the internal market and its resilience in economic crises. That objective is in line with the European Union's current political priorities of promoting economic recovery and sustainable growth, a higher investment rate and the preservation of employment, as set out under the Europe 2020 strategy, and ensuring smooth development and the survival of businesses, as stated in the Small Business Act.

The proposed regulation will also bring the current insolvency regulation into line with developments in national insolvency laws introduced since its entry into force in 2002.

The proposal was submitted by the Commission in December 2012 ([17883/12](#)).

## **TRADE POLICY**

### **EU-Western Balkans – Preferential rules of origin**

The Council adopted decisions aimed at replacing the current rules of origin contained in the stabilisation and association agreements with Albania ([9971/14](#)), Montenegro ([12028/1/14 REV 1](#)), Serbia ([12029/14](#)) and the former Yugoslav Republic of Macedonia ([9953/14](#)) with the rules of the regional convention on pan-Euro-Mediterranean preferential rules of origin.

That convention aims to replace the protocols on rules of origin currently in force among the countries of the pan-Euro-Mediterranean area, which include Western Balkan countries, with a single legal act.

For more information see press release [PRES/12/135 26/03/2012](#).

**DEVELOPMENT COOPERATION**

**Centre for the Development of Enterprise**

The Council approved the EU position within the ACP-EU Committee of Ambassadors with regard to the closure of the Centre for the Development of Enterprise (CDE). The EU will support the authorisation of the executive board of the CDE to take all appropriate measures for the orderly closure of the CDE by 31 December 2016. The CDE was set up in the framework of the partnership between the EU and the African, Caribbean and Pacific group of states.

**Trade, Development and Cooperation Agreement with South Africa**

The Council approved the signature and provisional application of an additional protocol to the Trade, Development and Cooperation Agreement with South Africa, to take account of Croatia's accession to the EU.

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