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3546th Council meeting

Justice and Home Affairs

Luxembourg, 8 and 9 June 2017

Presidents **Urmas Reinsalu**
Estonian minister for Justice, on behalf of the Maltese
Presidency of the Council
Andres Anvelt
Estonian minister for Home Affairs, on behalf of the
Maltese Presidency 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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ITEMS DEBATED

JUSTICE

European Public Prosecutor's Office (EPPO Regulation)

The Council agreed on a general approach on the regulation on the creation of a European Public Prosecutor's office (EPPO).

The aim of the regulation is to create a European Public Prosecutor's Office with 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.

For more information, see [press release](#).

Digital single market strategy - Supply of digital content

The Council agreed a general approach on the directive on certain aspects concerning contracts for the supply of digital content.

The directive on digital content aims to regulate contracts for the supply of digital content in business-to-consumer (B2C) contracts. The objective is to provide a high level of consumer protection and increased legal certainty with a view to building greater confidence amongst European consumers when buying cross-border and to making it easier for businesses, especially SMEs, to sell EU-wide.

For more information, see [press release](#).

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

The Council held a policy debate ([9317/17](#)) on the revision of the 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).

During the debate, ministers confirmed that a provision giving a child the right to be heard in proceedings should be included in the regulation and that this provision should be inspired, at a minimum, by Article 12 of the UN Convention on the Rights of the Child. Ministers also agreed that when hearing children, member states should remain free to go beyond the requirements which will eventually be laid down in the regulation. Finally, ministers tasked experts to continue to explore whether or not the absence of the opportunity for the child to be heard should be included as a ground for refusal of recognition and enforcement of decisions and, if the inclusion of such a ground were considered appropriate, the conditions and modalities thereof.

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 establishes the need to have unanimity of the Council after consultation of the European Parliament. The opinion of the Parliament is expected before the end of 2017.

For more information:

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

Insolvency directive

The Council held a policy debate ([9316/17](#)) on the so-called insolvency directive, that is, the directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

Ministers confirmed the approach of the presidency of continuing to work on the premise that the general principle of limiting the role of the courts or administrative authority in preventive restructuring frameworks should allow more flexibility for Member States than currently provided for in the proposal.

They also confirmed the principle that the debtor should remain, at least partially, in possession of its business and its assets during preventive restructuring procedures.

Finally, member states confirmed that the directive should allow member states flexibility with regard to the mandatory appointment or involvement of a restructuring practitioner.

The objective of the proposed directive is to harmonise rules on insolvency and restructuring in order to reduce the most significant barriers to the free flow of capital stemming from differences in Member States' restructuring and insolvency frameworks, and to ensure that viable companies and entrepreneurs in financial difficulty have access to effective preventive restructuring and second chance procedures, while protecting the legitimate interests of creditors.

Overall, the new framework should help to reduce bankruptcy and avoid layoffs of staff. Currently, 200 000 firms go bankrupt every year in the EU, resulting in about 1.7 million job losses.

This proposal is part of the Capital markets union action plan and the Single market strategy, both presented by the Commission in 2015. It will complement the 2015 Insolvency regulation, which focuses on resolving conflicts of jurisdiction and laws in cross-border insolvency proceedings.

For more information:

- [Council website: policy page on capital markets union](#)
- [Council website: single market strategy](#)
- [Commission website: press release on the presentation of the proposal for a directive on business insolvency](#)
- [Commission website: capital markets union action plan](#)
- [Commission website: single market strategy](#)

Countering money laundering

The Council agreed a general approach on the directive on countering money laundering by criminal law.

The objective of the proposed directive is to establish minimum rules concerning the definition of criminal offences and sanctions relating to money laundering, to remove obstacles to cross-border judicial and police cooperation, and to bring EU rules into line with international obligations.

For more information: see [press release](#).

Data protection by EU institutions and bodies

The Council adopted a general approach on the regulation on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies ([9091/17](#)).

This regulation lays down rules on the processing of personal data by all Union institutions, bodies, offices and agencies, as well as on the free movement of such data in the Union. Furthermore, it sets out provisions on the European Data Protection Supervisor, whose role is to monitor the application of the rules to all processing of personal data carried out by Union institutions, bodies, offices and agencies.

This text is the last building block of the modernisation of the EU data protection regime. The objective is for rules on data protection applied by EU institutions and bodies to be aligned, as far as possible, with the general data protection rules adopted in April 2016.

For more information:

- [Website of the European data protection supervisor](#)
- [Council website - data protection reform](#)

Other business

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

The Estonian Justice Minister, Urmas Reinsalu, informed the Council of the **priorities of the incoming Estonian presidency in the justice area**. The Estonian presidency will seek to promote the principle of better regulation and wider use of electronic solutions.

With regard to fundamental rights, the Estonian presidency will aim to take forward work on data protection rules applicable to EU institutions and on EU accession to the Istanbul Convention on violence against women, as well as resuming discussions on EU accession to the European Convention on Human Rights.

In the field of contract law and with reference to the Digital Single Market, the Estonian presidency hopes to start negotiations with the European Parliament on the digital content proposal and to take forward discussions on the online sale of goods proposal, both of which are very relevant to consumers and businesses. Work will continue at working group level with the recast of the Brussels IIa regulation and the insolvency law proposal.

In the field of criminal law, priorities include the money laundering directive, finalising the modalities for the establishment of EPPO, Eurojust negotiations, the freezing and confiscation of criminal assets, and the upcoming proposal on ECRIS.

JOINT SESSION OF JUSTICE AND HOME AFFAIRS

Criminal justice in cyberspace

Ministers of Justice and Home Affairs discussed the way forward on **e-evidence** on the basis of the **practical solutions identified as a result of the Commission's expert process**. They supported the swift implementation of a number of practical measures to improve cooperation among judicial authorities and with service providers. These include the creation of an electronic user-friendly version of the European Investigation Order (EIO), the creation of single points of contact within the authorities of member states and service providers to facilitate cooperation, the streamlining of service providers' policies on procedures and conditions to request access, and the standardisation of forms used by member states to request access to e-evidence, amongst others. To improve cooperation with US authorities, a key partner when it comes to e-evidence, the exchange of best practices and the training of practitioners should also be further enhanced.

A large majority of them supported the need to consider EU legislative action regarding direct cooperation with service providers and setting EU common conditions and minimum safeguards for direct access to data by authorities from a computer system. Many underlined that in developing such a framework due account must be given to the issues of data protection as well as to the need to take into account, and where appropriate ensure synergies with, current discussions taking place at international level. In view of the sense of urgency raised by a number of ministers, the Commission announced its intention to present a legislative proposal early next year.

The European Commission briefed ministers on the work carried out in the expert process on encryption, which is scheduled to continue during the coming months. The Presidency also briefed ministers on the state of play with regard to data retention.

Protection of children in migration

Ministers of Justice and Home Affairs debated the current challenges relating to the increased number of children in migration travelling to and arriving in the European Union. They also adopted Council conclusions ([10085/17](#)) on this issue.

During the debate, ministers exchanged in particular on actions that have proved effective at national level and on how to ensure cooperation at all levels (national and EU) to develop integrated child protection systems. To feed into the discussion, the Maltese presidency had invited representatives of the Fundamental Rights Agency (FRA), the UNICEF and the UNHCR to take part in the debate.

In the context of the migration crisis, the number of child migrants arriving in Europe has increased significantly. In 2015 and 2016, 30 percent of asylum applicants in the EU were children, many of them traveling without their families.

As children in migration are exposed to high risks of violence, trafficking or exploitation along migration routes, or may go missing or become separated from their families, they require specific protection. Children have the right to be protected, in line with relevant provisions of EU law, including the EU Charter of Fundamental Rights, and with international law on the rights of the child.

Drawing on expertise from all relevant policy areas, the Commission published a Communication in April 2017 proposing a number of priority areas for Member States to focus on, supported by the Commission and EU Agencies, to improve the protection of children in migration and ensure a closer link between the asylum and child protection services.

For more information:

- [Commission Communication on the protection of children in migration](#)
- [Commission: factsheet on the protection of children in migration](#)
- [Council website: finding solutions to migratory pressures](#)

HOME AFFAIRS

Reform of the common European asylum system and resettlement

Ministers took stock of work carried out so far on the reform of the common European asylum system (CEAS) and discussed the way forward.

- [Progress report - Reform of the common European asylum system and resettlement](#)
- [Council website: Reforming the common European asylum system](#)

European travel information and authorisation system

The Council agreed a general approach on the proposal for a European travel information and authorisation system (ETIAS). The general approach constitutes the Council's position for negotiations with the European Parliament.

ETIAS will allow for advance checks and, if necessary, deny travel authorisation to visa-exempt third-country nationals travelling to the Schengen area. It will help improve internal security, prevent illegal immigration, limit public health risks and reduce delays at the borders by identifying persons who may pose a risk in one of these areas before they arrive at the external borders.

- [Press release: European travel information and authorisation system - Council agrees negotiating position](#)

Schengen information system

Ministers discussed the legislative proposals to improve the Schengen Information System (SIS), presented by the European Commission in December 2016. In particular, they focused on three points:

- preventive alerts for children at risk of abduction: whether preventive alerts in the SIS on children at risk of parental abduction should be included and whether they should also be envisaged for other cases where children are at risk of disappearance
- alerts on persons and objects for inquiry checks: whether it should be possible to create alerts for inquiry checks, a step between the discrete checks and the specific checks, in particular to support measures to counter terrorism and serious crime.

- enhancing the SIS in the area of judicial cooperation: exploring the use of SIS to other instruments in the area of judicial cooperation in criminal matters, beyond the execution of European arrest warrants.

They broadly agreed on the possibility to include preventive alerts for children at risk of abduction, as well as alerts on persons and objects for inquiry checks. The issue of enhancing the use of SIS in the area of judicial cooperation will be explored at a later stage. Work will continue at technical level on the basis of this guidance.

- [Issues for discussion - proposals on the SIS](#)
- [Proposal on returns](#)
- [Proposal on border checks](#)
- [Proposal on police cooperation](#)

Migration policy*

Ministers exchanged views on migration policy, in particular on the situation in the Central Mediterranean and on the implementation of the Malta declaration of 3 February 2017.

- [Council website: Finding solutions to migratory pressures \(background information\)](#)

Return policy*

Ministers were briefed on the state of play regarding the implementation of the European Commission recommendation on return, on the basis of a presidency report on the mapping of this implementation. They underlined the importance of further reinforcing EU return policy and making it more efficient. They highlighted, in particular, the need to improve cooperation with third countries in this field.

Information systems and interoperability*

Ministers exchanged views on improving information exchange and interoperability of information systems. Discussion took place on the basis of the second implementation report on the roadmap to enhance information exchange and information management, including interoperability solutions in the Justice and Home Affairs area.

* Exceptionally, in the presence of the Schengen Associated States.

Work on this topic will continue during the upcoming Estonian presidency, both at policy level and at legislative level (on the imminent Commission proposals for extending ECRIS to third country nationals and for reforming eu-LISA).

Other business

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

The Estonian Minister of the Interior Andres Anvelt, on behalf of the incoming Estonian presidency, informed the Council about its priorities in the area of Home Affairs.

The Estonian presidency will continue to work on the reform of the European Common Asylum System, building on the work of previous presidencies, including on the issue of solidarity. Work will continue to ensure the complementarity of the external and internal aspects of migration. Emphasis will be put on return policy and ensuring pathways of legal migration as the Estonian Presidency hopes to start discussions with the European Parliament on the Blue Card directive.

Protection of the EU's external borders, including land borders, should lead to resuming the normal functioning of the Schengen area. The Estonian presidency is convinced that to achieve this, the EU must make the best use of databases and modern IT-solutions, which allow for rapid exchange of information, when and if needed, also to make the fight against terrorism and organized crime more efficient. As such, the Estonian Presidency will continue the work towards interoperability of different IT systems in the Justice and Home Affairs area, focusing on the implementation of the Entry-Exit System and finding a political agreement on ETIAS by the end of this year.

Improvements to the Schengen Information System are crucial and the Estonian presidency aims to reach political agreement by the end of the year as a priority. It is also looking forward to starting the discussions to renew the mandate of eu-LISA.

The fight against terrorism will be taken forward, while enhancing the connections between relevant internal and external policies.

MIXED COMMITTEE

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

European travel information and authorisation system

See above.

Schengen information system

See above

Other business

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

Slovakia informed ministers on measures to alleviate times at border crossing points.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

EUROJUST

The Council adopted Conclusions on the 2016 Eurojust annual report ([9602/17](#)).

The Council welcomes Eurojust's 2016 annual report, and the overall progress made by Eurojust in fulfilling its mission as a key player in facilitating and strengthening judicial coordination and cooperation between national authorities in the investigation and prosecution of the most serious forms of cross-border of crime.

With a view to enhancing the judicial response to the evolving security threats and challenges affecting the security of the European Union, Eurojust is encouraged to further develop its structure and working methods as well as its strategic and operational goals and activities.

Information systems - interoperability

The Council adopted conclusions on improving information exchange and ensuring interoperability of EU information systems ([9448/17](#)). These conclusions follow the final report by the High Level Expert Group on Information Systems and Interoperability (HLEG), set up by the Commission in June 2016. The HLEG examined the ways in which member states implement and use existing systems as well as the possible development of new systems. With regard to three possible dimensions of interoperability, the Council conclusions invite the Commission to work on the creation of a European search portal and to explore the future implementation of a shared biometric matching service for all types of biometric data as well as the future establishment of a common identity repository.

Irregular migration - security checks

The Council adopted conclusions recommending security checks in the case of irregular migration ([9454/17](#)). These conclusions recommend that member states, when faced with irregular migrants, perform checks against, where relevant, a non-exhaustive list of national, European and international databases.

Return and readmission

The Council adopted conclusions on enhancing return and readmission of illegally staying third country nationals. ([9801/17](#)).

Civil protection

The Council adopted conclusions on European Court of Auditors special report 33/2016 - 'Union Civil Protection Mechanism: the coordination of responses to disasters outside the EU has been broadly effective'. ([9056/17](#))

It also took note of the report from the Maltese Presidency on the main achievements at EU level in the field of civil protection during the presidency. ([9179/17](#))

Disaster victim identification

The Council adopted conclusions on the creation of an informal network of experts competent in the field of disaster victim identification.

Combatting radicalisation and recruitment to terrorism - revised guidelines

The Council adopted the revised guidelines for the EU strategy for combating radicalisation and recruitment to terrorism ([9646/17](#)). The revision of the guidelines, which were agreed in 2014, duly reflects the changed threat picture as well as recent policy developments.

Automated data exchange

The Council adopted an implementing decision ([5318/17](#)) on the launch of automated data exchange with regard to vehicle registration data in Croatia. For the purposes of automated searching of vehicle registration data, Croatia is entitled to receive and supply personal data pursuant to Article 12 of Decision 2008/615/JHA as from the day of entry into force of this decision.

Schengen evaluation

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of data protection by Liechtenstein. ([10160/17](#))

FOREIGN AFFAIRS

Terrorist list

The Council updated the list of persons, groups and entities subject to specific measures to combat terrorism adopted in Council common position 931/2001. The Council decided to remove one group, 'Hofstadgroep', from the list.

The common position was adopted in December 2001 to attack the sources which fund terrorism. The specific measures are targeted against persons, groups and entities involved in terrorist acts.

[EU terrorist list](#)

Restrictive measures against Iran

The Council agreed to amend its restrictive measures against Iran. The modifications address practical difficulties that have arisen in the context of the implementation of the Joint Comprehensive Plan of Action (JCPOA). They simplify some administrative requirements when conducting trade with Iran. These changes do not affect the commitments of participants in the Joint Comprehensive Plan of Action (JCPOA).

On 14 July 2015, the E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy) and the Islamic Republic of Iran reached an agreement on a Joint Comprehensive Plan of Action (JCPOA). The full implementation of the JCPOA will ensure the exclusively peaceful nature of Iran's nuclear programme. In return, the JCPOA will produce a comprehensive lifting of all UN Security Council sanctions as well as EU restrictive measures related to Iran's nuclear programme.

[EU restrictive measures against Iran](#)

COMMON SECURITY AND DEFENCE POLICY

Establishment of the Military planning and conduct capability (MPCC)

The Council adopted the decision establishing the military planning and conduct capability (MPCC) within the EU military staff (EUMS). The terms of reference of the EUMS, which is part of the EEAS, have also been amended and approved.

The MPCC will assume command of EU non-executive military missions, currently: EU Training Mission (EUTM) Somalia, EUTM République Centrale Africaine (RCA) and EUTM Mali. The MPCC will be the static, out-of-area command and control structure at the military strategic level, responsible for the operational planning and conduct of non-executive missions, including the building up, launching, sustaining and recovery of European Union forces. This will allow the mission staff in the field to concentrate on the specific activities of their mission, with better support provided from Brussels.

The MPCC improves the crisis management structures of the EU. It will work under the political control and strategic guidance of the Political and Security Committee (PSC), which is composed of EU member states' ambassadors and is based in Brussels.

The MPCC will be composed initially of up to 25 staff but will also benefit from the support of other departments of the EUMS.

The Director-General of the EU Military Staff will also be the director of the MPCC. He will exercise command and control over the current three training missions and other possible future non-executive military missions. He will also exercise the responsibilities related to deployment and recovery of the missions as well as overall budgeting, auditing and reporting.

The MPCC will work closely with its existing civilian counterpart, the Civilian Planning and Conduct Capability (CPCC), through a joint support coordination cell. This cell will be able to share expertise, knowledge and best practices on issues relevant to both military and civilian missions, as well as capabilities when civilian and military missions are simultaneously deployed in the same area, including medical support or protective measures.

The decision will be published in the Official Journal of 9 June.

EULEX Kosovo

The Council a combined budget of EUR 90.9 million for EU rule of law mission (EULEX) in Kosovo for the period 15 June 2017 - 14 June 2018.

The budget cover the expenditure of EULEX KOSOVO for the implementation of its mandate in Kosovo at a level of EUR 49.6 million. EUR 41.3 million will support the specialist chambers and the specialist prosecutor office.

On 14 June 2016, The Council extended the mandate of the EU rule of law mission (EULEX) in Kosovo until 14 June 2018. The central aim of the civilian mission EULEX Kosovo is to assist and support the Kosovo authorities in the rule of law area, specifically in the police, judiciary and customs areas.

EULEX Kosovo was launched in 2008. The headquarters of the mission are located in Prishtinë/Priština, Kosovo.

[EULEX Kosovo](#)

DEVELOPMENT POLICY

Cooperation in the field of sustainable energy between the EU, France and Guinea

The Council endorsed a Joint Declaration between the EU, France and Guinea on reinforced cooperation in the field of sustainable energy. The Joint Declaration will allow increased cooperation in the energy sector, in particular in support of Guinea's commitment to increase access to sustainable and affordable energy for its population taking into account the promotion of renewable energy sources.

The Republic of Guinea ratified the Paris Agreement on 4 November 2016, thus confirming its commitment to the Nationally Determined Contribution, which identifies sustainable energy as a key priority.

Joint Declaration (9358/17)

BUDGETS

Budget surplus 2016

The Council approved a Commission proposal to incorporate the budget surplus for 2016 of €6.40 billion into the revenue side of the EU budget for 2017. Draft amending budget 2/2017 reduces member states' contributions to the financing of the 2017 EU budget accordingly.

The surplus of the 2016 EU budget is mainly the result of higher than expected revenue (€1.69 billion) and lower than predicted expenditure (€4.89 billion).

INTERNAL MARKET

Portability of digital services across the EU

The Council adopted new rules to allow consumers who have paid for online content services in their home country to access them when visiting another country within the EU.

The new [regulation on cross-border portability of online content services in the internal market](#) will start to apply in the first quarter of 2018.

For more information, see [press release](#).

ENLARGEMENT

Montenegro

The Council established the position of the EU for the 8th Stabilisation and Association Council meeting which will take place on 20 June in Luxembourg.

TRANSPARENCY

Public access to documents

On 8 June 2017, the Council approved:

- the replies to confirmatory applications No 09/c/01/17 (doc. 7657/17) and No 11/c/01/17 (doc. 7948/17)