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## OUTCOME OF THE COUNCIL MEETING

3528th Council meeting

### Justice and Home Affairs

Brussels, 27 and 28 March 2017

Presidents **Carmelo Abela**  
Minister for Home Affairs and National Security  
**Owen Bonnici**  
Minister for Justice, Culture and Local Government

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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**

#### **Digital single market strategy - Supply of digital content**

Ministers noted the progress made on the technical work regarding the directive on certain aspects concerning contracts for the supply of digital content ([7429/17](#)).

Based on the work of previous presidencies, the Maltese presidency has focused its work on finding compromises on the main concepts and key issues, such as the rules on conformity and remedies.

Noting the excellent spirit of compromise among the member states, the Maltese presidency said it is confident that a Council position can be adopted by June in order to start negotiations with the Parliament.

The proposed directive on certain aspects concerning contracts for the supply of digital content was presented by the Commission on 9 December 2015 together with a proposal for a directive on certain aspects concerning contracts for the online and other distances sales of goods.

The directive on digital content aims to regulate contracts for the supply of digital content in business-to-consumer (B2C) contracts. The scope of the proposal is broad, covering: data produced and supplied in digital form (e.g. music, online video, etc.), services allowing the creation, processing or storage of data in digital form (e.g. cloud storage), services allowing the sharing of data (e.g. Facebook, YouTube, etc.) and any durable medium used exclusively as a carrier of digital content (e.g. DVDs).

For more information:

- [Council website: Digital single market strategy](#)

## **Combatting financial crime and terrorist financing**

Ministers were updated on the work carried out at expert level on the regulation on the mutual recognition of freezing and confiscation orders as well as on the directive on countering money laundering by criminal law ([7435/17](#)).

The two proposals were tabled by the Commission in December 2016 and are part of the EU plan to strengthen the fight against terrorist financing and financial crimes. The overall objective is to further disrupt the sources of revenue used by terrorist organisations, as well as to improve the tracing of terrorists through financial movements.

Work on the directive on countering money laundering is progressing speedily so the Maltese presidency is expecting the Council to reach its position in June 2017, before starting negotiations with the Parliament.

The objective of the proposal for a directive on countering money laundering by criminal law is to establish minimum rules concerning the definition of criminal offences and sanctions relating to money laundering, supplementing the fourth anti-money laundering directive. This directive will also bring EU rules into line with international obligations, in particular the Council of Europe Warsaw Convention and the relevant Financial Action Task Force recommendations.

The proposal for a regulation on the mutual recognition of freezing and confiscation orders aims to facilitate the freezing and confiscation of financial assets that could be moved across borders by terrorists or other criminals.

The regulation will simplify the current framework by providing a single legal instrument with a broader scope of cross-border recognition rules. The speed and efficiency of freezing and confiscation orders will also be improved through the standardisation of documents and procedures. Lastly, the text ensures that victims' rights to compensation and restitution are respected in cross-border cases.

For more information:

- [Council website: Fight against money laundering and terrorist financing](#)

## **Criminal justice in cyberspace**

The Commission updated the Council on the work it has been carrying out at expert level since the Council adopted conclusions on improving criminal justice in cyberspace in June 2016. In particular, the Commission provided information on the ongoing work regarding access to and exchange of electronic evidence and on the issue of encryption in criminal investigations. Policy proposals will be presented at the June Council meeting, including possible legislative options on the issue of e-evidence.

Looking at the broader pictures of improving criminal justice in cyberspace, ministers debated and exchanged good practices on how to ensure a better cross-sector coordination and collaboration at national level.

The presidency concluded, in highlighting the sense of urgency to deal with these issues while, at the same time, ensuring that good mechanisms of coordination in place at national level among the relevant authorities are put in place so to make sure that a solution in one area would not turn out to be an impediment in another area.

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

For more information:

- [Press release on the fight against criminal activities in cyberspace, June 2016](#)

## **Foreign terrorist fighter returnees**

The Council held a policy debate on options for the criminal justice response to the issue of foreign terrorist fighter returnees.

Ministers exchanged views on the basis of the report presented by the EU counter-terrorism coordinator to Home Affairs ministers in December 2016. The report lists areas where the EU could support member states or where common action could be considered.

Ministers were invited to reflect on possible policy actions, in the field of criminal justice, that could facilitate bringing Daesh to justice. They also discussed other actions in relation to foreign terrorist fighter, such as the creation risk assessment tools and rehabilitation/reintegration programmes in prisons or the need for judicial cooperation with third states.

The issue of returnees is being considered closely by the group of 13 member states, together with Norway and Switzerland (known as the G15), which are most affected by the phenomenon of foreign terrorist fighters.

For more information:

- [Council website: Response to foreign terrorist fighters and recent terrorist attacks in Europe](#)

## **Data retention**

The presidency informed ministers on the ongoing work towards facilitating a common reflection process at EU level in light of recent European court of justice case-law. The presidency intends to work in a specific working group format to hold discussions on the requirements of the relevant judgements, to exchange best practices and to analyse what is needed for the purposes of criminal proceedings related to the availability of certain types of data.

The reflection process in the Council will also allow for synergies with the work undertaken by the Commission to provide guidance on bringing national data retention laws into line with the Tele 2 Judgment.

The presidency informed that it would bring back the issue at the June Council for stock taking and assessment of next steps.



## **HOME AFFAIRS**

### **Migration\***

On Monday, ministers took stock of developments in the area of migration policy, focusing on the implementation of the Malta declaration of 3 February 2017. They paid particular attention to how contributions from member states could help make implementation even more effective.

Ministers discussed how they could help efforts to reduce the pressure on Libya's land border and cooperate with neighbouring countries, how to best support IOM in stepping up assisted voluntary return activities and how to improve synergies between the Malta declaration and the joint Valletta action plan.

The Council also took note of information from the Presidency on the outcome of the Valletta Joint Action Plan Senior Officials meeting which took place on 8-9 February 2017.

Following the adoption of the Malta declaration on 3 February, the Maltese presidency presented a concrete plan for its implementation to the Committee of Permanent Representatives, in close cooperation with the European Commission and the High Representative. The Presidency coordinates the close monitoring of this implementation, with Coreper maintaining a steering role over it.

Over lunch, ministers discussed other aspects of migration policy, focusing on the deployment of resources by the member states as well as on relocation.

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

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

**Return policy\***

Ministers also discussed return and readmission policy, based on the Commission communication on a more effective return policy and a Commission recommendation on making returns more effective when implementing directive 2008/115/EC ("return directive"). The Council's discussion centred on two aspects – the external side: improving cooperation by third countries on readmission, and the internal side: making sure the right procedures and systems are in place for effective returns. The discussions enabled ministers to offer guidance for further technical level work on these issues.

The Commission communication sets out a renewed action plan on return, building on the action plan adopted in 2015. This renewed action plan aims to improve the efficiency of the EU return system and to increase return rates. It outlines two areas where action is required: making national administrative systems and return procedures more effective and overcoming the challenges of readmission.

The Commission recommendation contains a series of measures aimed at improving the return system through a more uniform implementation of the return directive by member states.

- [Managing migration flows and curbing migrant smuggling activities \(background information\)](#)

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## **European Border and Coast Guard**

Frontex and the European Commission updated ministers on the implementation of the European Border and Coast Guard. The Council took note of the progress accomplished.

The regulation on a European Border and Coast Guard was adopted on 14 September 2016. Its main role is to help provide integrated border management at the external borders. It consists of a European Border and Coast Guard Agency (the former Frontex agency with expanded tasks) and those national authorities responsible for border management. The European Border and Coast Guard started its activities on 6 October 2016.

- [Strengthening the EU's external borders \(background information\)](#)

## **Radicalisation Awareness Network\***

The Council was briefed on the state of play on the radicalisation awareness network (RAN) and the possibility of developing its center of excellence into an EU center for prevention and deradicalisation. The Commission committed itself to provide more detailed information at the Justice and Home Affairs Council meeting in June.

The RAN was launched in 2011 as a network to connect individuals working to prevent radicalisation and violent extremism in the EU member states and Norway. It is structured around thematic working groups, which are guided and supported by the RAN centre of excellence, established in 2015.

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

## **Reform of the common European asylum system and resettlement**

The Council took note of ongoing work on the reform of the common European asylum system and resettlement on the basis of a progress report from the presidency.

On the EU asylum agency regulation and Eurodac regulation, a partial general approach was adopted last December. On the asylum agency regulation, negotiations with the European Parliament started in January and have recently been intensified.

The remaining files have been examined by the Council preparatory bodies. In order to ensure consistency, certain key points across the qualification regulation, asylum procedure regulation, reception conditions directive and Dublin regulation have been examined thematically.

The presidency will continue its efforts to take forward work on as many proposals of the package as possible. Regarding the principles of solidarity and responsibility, the presidency is reflecting on the best way forward and intends to continue informal talks on the issue.

- [Progress report - reform of the common European asylum system and resettlement](#)
- [Reforming the common European asylum system \(background information\)](#)

## **Information technology measures related to border management**

The Council took stock of work on the proposal on a European travel and information authorisation system (ETIAS) and the proposal to establish an entry/exit system (EES).

On the ETIAS proposal, following examination at working party level, the presidency called for full commitment by member states to progress on this file, with a view to reaching an agreement by the end of June and engaging with the European Parliament thereafter.

A negotiating mandate on the entry/exit system proposal was agreed by the Permanent Representatives Committee (Coreper) on 2 March 2017. The Maltese presidency briefed ministers on the ongoing negotiations with the European Parliament.

- [Progress report - information technology measures related to border management](#)

**Any other business**

The Council took note of the information provided by the Austrian delegation on the results of the conference "Managing migration challenges together", led in Vienna on 8 February 2017.

Ministers were informed of the outcome of the recent meeting between the Commission and major internet companies in the United States, following the EU internet forum which took place in December 2016.

The Maltese presidency updated home affairs ministers on the ongoing reflection process regarding data retention, following the recent European Court of Justice case law.

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

## **MIXED COMMITTEE**

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

### **Information technology measures related to border management**

See above.

### **European Border and Coast Guard**

See above.

### **Any other business**

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

The European Commission informed the committee on the meeting with five member states on progress towards full visa reciprocity with the United States.



## **OTHER ITEMS APPROVED**

### **JUSTICE AND HOME AFFAIRS**

#### **Visas - China**

The Council adopted a decision authorising the European Commission to open negotiations, on behalf of the EU, for an agreement between EU and China on the facilitation of the issuance of short-stay visas.

#### **Cross border cooperation - automated data exchange**

The Council adopted an implementing decision allowing Greece to receive and supply personal data pursuant to Articles 3 and 4 of Decision 2008/615/JHA, for the purposes of automated searching and comparison of DNA data, from the day of entry into force of the decision. ([12211/1/16](#))

The Council adopted an implementing decision allowing Denmark to receive and supply personal data pursuant to Article 12 of Decision 2008/615/JHA, for the purposes of automated searching of vehicle registration data, from the day of entry into force of the decision. ([12212/1/16](#))

#### **EU policy cycle for organised and serious international crime**

The council adopted conclusions on the continuation of the EU Policy Cycle for organised and serious international crime for the period 2018-2021. ([7093/17](#))

#### **Schengen evaluation**

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of police cooperation ([7737/17](#)).

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Italy on the application of the Schengen acquis in the field of police cooperation ([7738/17](#)).

The Council adopted an implementing decision setting out a recommendation on addressing the deficiencies identified in the evaluation of Croatia in view of fulfilling the conditions necessary for the application of the Schengen acquis in the field of management of the external border ([7739/17](#)).

## **Travel document fraud**

The Council adopted without discussion conclusions on the action plan to strengthen the European response to travel document fraud. The conclusions focus on the importance of more secure breeder documents and the need for an overhaul of the FADO database (false and authentic documents online) through a change of its legal basis.

- [Council conclusions on the Commission action plan to strengthen the European response to travel document fraud](#)

## **FOREIGN AFFAIRS**

### **Relations with Lebanon**

The Council adopted a decision to conclude an additional protocol to the Euro Mediterranean Agreement establishing an Association between the EU and Lebanon. This additional protocol was needed in order to take account of the accession of the Republic of Croatia to the EU.

### **Relations with the Republic of Moldova**

The Council approved the EU position for the 3rd meeting of the EU- Moldova Association Council. The meeting will take place on 31 March 2017 in Brussels.

Key messages for the association council include reaffirming EU's commitment to EU- Moldova process of political association and economic integration, underlining the importance for Moldova to keep up with the commitments under the Association Agreement/DCFTA and encouraging the Moldovan government to step up efforts on effective communication of EU related policies and actions as well as their benefits.

## **ECONOMIC AND FINANCIAL AFFAIRS**

### **Bank recovery and resolution**

The Council decided not to object to a Commission regulation on classes of arrangements to be protected in a partial property transfer under article 76 of directive 2014/59/EU on the recovery and resolution of credit institutions and investment firms ([7298/17](#) + [6079/17](#)).

The regulation is a delegated act pursuant to article 290 of the Treaty on the Functioning of the European Union. It can now enter into force, unless the European Parliament objects.

## **EUROPEAN ECONOMIC AREA**

### **Amendment to annexes II and XVII to the EEA agreement**

The Council adopted a decision on the position to be adopted, on behalf of the EU, in the EEA joint committee concerning an amendment to annex II (technical regulations, standards, testing and certification) and annex XVII (intellectual property) to the EEA agreement ([5347/17](#)).

These amendments are necessary so that adaptations to the paediatric regulation and the regulation on supplementary protection certificate for medicinal products can be incorporated into the EEA agreement.

## **ENVIRONMENT**

### **Whaling: response to Japan's statement**

The Council approved the EU's support, alongside its member states, for a joint response with Australia, New Zealand and possibly other partners to the Government of Japan's statement on Resolution 2016-02 on improving the review process for whaling under special permit.

After the International Whaling Commission (IWC) adopted Resolution 2016-2 at its last meeting in October 2016, the Government of Japan expressed its position stating that the resolution was "an attempt to add further conditions, not envisaged under the existing Convention and its Schedule, for the grant of special permits" and therefore "should not be given effect".

Australia contacted some IWC members expressing its concerns for Japan's stated position and seeking the support of partners, including the EU and its member states, for a common response to Japan. The response is expected to take the form of a joint statement position by the signatories attached to a IWC secretariat's circular communication.

## **INTERNAL MARKET**

### **Safety of toys - Lower thresholds for lead content in toys**

The Council approved more stringent limit values for lead in toys in order to ensure adequate protection of children by amending the directive on toy safety (2009/48/EC).

The adoption by the Council of the Commission proposal ([12153/16](#) + [ADD1](#) + [ADD2](#) + [ADD3](#)) will align the current migration limits for lead in toys with the latest scientific data in order to reduce children's exposure to lead.

New scientific evidence shows that the level of protection against exposure to lead, as established in 2009 (point 13 of part III of annex II to [directive 2009/48/EC](#)) is no longer appropriate.

The European Parliament did not object to the adoption of the new migration limits.

The Toy Safety Directive sets out strict requirements for chemical substances in toys. It contains an obligation to systematically review the occurrence of hazardous chemicals in toys taking into account new scientific evidence.

## **CONSUMER PROTECTION**

### **Tourism - International convention on the protection of tourists**

The Council authorised the Commission to open negotiations on a future international Convention on the protection of tourists and rights and obligations of tourism service providers.

The United Nations World Tourism Organization (UNWTO) is preparing an international Convention on the protection of tourists and the rights and obligations of tourism service providers.

Through its participation in the negotiations the EU can influence the development of international standards and practices regarding package travel issues and accommodation services which are inspired by EU legislation.

The draft Convention might be submitted to the General Assembly of the UNWTO in September 2017.

## **FISHERIES**

### **Fisheries conservation measures in Denmark**

The Council decided not to oppose the adoption of two Commission acts amending delegated regulation (EU) 2017/117 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Regulation (EU) 2015/1778.

The adopted measures comprise the prohibition of fishing activities with mobile bottom contacting gear in reef zones (under habitat type 1170) and the surrounding buffer zones in three Natura 2000 sites in the Danish part of the Western Baltic Sea: Kattegat, Skagerrak and the North Sea ([6932/17](#) + [ADD 1](#)). They also include the prohibition of all fishing activities in bubbling reef zones (under habitat type 1180) in four Natura 2000 sites in the Danish part of the Kattegat, North Sea ([6724/17](#) + [ADD 1](#)).

Delegated regulation (EU) 2017/117 establishes fisheries conservation measures for the protection of the relevant reef zones in the Baltic Sea and the Kattegat, North Sea, on the basis of two joint recommendations submitted by the member states concerned (Denmark, Sweden, Germany and Poland).

## **Fishing opportunities**

The Council adopted a Council regulation amending regulation 2017/217 as regards fish opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and, for Union vessels, in certain non-Union waters ([7286/17](#)).

In particular the adopted regulation changes some catch limits on the basis of newly available scientific advice.

## **MedFish4Ever Ministerial Declaration**

The Council endorsed the text of the draft "Malta MedFish4Ever Ministerial Declaration on Mediterranean fisheries" as the position of the EU and its member states. It also authorised the Commission the declaration on behalf of the European Union.

## **TRANSPARENCY**

### **Public access to documents**

On 27 March 2017, the Council approved:

- the reply to confirmatory application No 02/c/01/17 (doc. [6226/17](#))
-