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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Partial summary of the meeting of the European Parliament Committee on Civil Liberties, Justice and Home Affairs, held in Brussels on 31 March and 1 April 2015

The main debates focused on the situation of fundamental rights in the EU, the implementation of the Blue Card directive, operation Amberlight and the negotiations within the Council of Europe on the Protocol to the Convention on terrorism.

- **MEPs asked for further clarifications regarding both operation Amberlight and the additional Protocol.**
- **Frontex director Fabrice Leggeri presented the agency's annual programme as well as recent trends and statistics about the situation at the EU's external borders.**
- **LIBE voted on the mandate for negotiations on the Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings, and adopted oral questions for the Commission and the Council on Smart borders for the April II Plenary session.**

**5. The situation of fundamental rights in the European Union (2013-2014)
2014/2254(INI)**

The rapporteur, Ms FERRARA (EFDD, IT) opened the discussion by presenting her report. The first part of the report examined general and institutional issues and the second part was on specific violations of fundamental rights and covered, *inter alia*, developing an internal strategy on fundamental rights, broadening the scope of the EU Justice Scoreboard to cover the assessment of criminal justice systems, freedom of expression, LGBT rights, rights of minorities, refugees, asylum seekers, and detention conditions. The rapporteur explained that she had consulted civil society during the preparation phase. The deadline for amendments was set for 20 April.

The Chair underlined that issues relating to the methodological approach taken always featured prominently in this type of annual report. During the discussion the EP shadow, Ms VOZEMBERG (EPP, EL) explained her group preferred the approach of not specifically indicating violations per Member State. She considered that the ‘name and shame’ approach was not very helpful. She was also against creating a criminal justice scoreboard. On behalf of the S&D group, Mr NIEDERMÜLLER (HU) spoke about overcoming the Copenhagen dilemma and said that he would be in favour of regular monitoring of fundamental rights in Member States and a corresponding Council report on the issue. He stressed that there were differences in the types of violations that arose in different Member States and that the aim was not to stigmatise any individual Member State. On behalf of ALDE, Mr MICHEL (BE) congratulated the rapporteur and expressed disappointment at the EPP’s position. He said that taking such a position meant limiting one’s own rights as parliamentarians and that it was important to go further in assessing the fundamental rights situation every year. He would focus on the situation in Member States and would support mechanisms that would involve national parliaments in such discussions as well. On behalf of GUE/NGL, MS VERGIAT (FR) said she agreed with the overall approach taken by the rapporteur and stressed that one cannot separate the EU from its Member States. She proposed the inclusion of Roma and a broader approach regarding migrants and asylum seekers. On behalf of the Greens/EFA, Ms SARGENTINI (NL) proposed that the report should also mention age-specific discrimination and legal migration. She also expressed support for ALDE’s approach of having country-by-country reporting.

6. Smart borders package

2015/2614(RSP)

QO – PE551.953v01-00

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Responsible: LIBE

The question for oral answer to the European Commission and the question for oral answer to the Council of the European Union were adopted.

7. Strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings

LIBE/8/00267

*****I 2013/0407(COD) COM(2013)0821 – C7-0427/2013**

Rapporteur: Nathalie Griesbeck (ALDE)

PR – PE546.756v01-00

AM – PE546.821v03-00

Responsible: LIBE

Opinions: JURI Pascal Durand (Greens/EFA) PA – PE546.831v01-00

AM – PE549.446v01-00

The draft report was adopted as amended.

8. Recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP)

2014/2228(INI)

Rapporteur Jan Philipp Albrecht (Greens/EFA)

PA – PE546.558v01-00

for the

AM – PE546.797v01-00

opinion:

Responsible: INTA Bernd Lange (S&D)

PR – PE549.135v01-00

DT – PE546.593v01-00

The draft opinion was adopted.

9. Accession of Croatia to the Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union
2014/0322(NLE)

Rapporteur: Filiz Hyusmenova (ALDE)

PR – PE544.462v02-00

Responsible: LIBE

The rapporteur expressed support for the accession to the convention and there was no further discussion. The deadline for tabling amendments was set for 13 April 2015.

10. Accession of Croatia to the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union
2014/0321(NLE)

Rapporteur: Birgit Sippel (S&D)

PR – PE544.468v02-00

Responsible: LIBE

The rapporteur expressed support for the accession to the convention and there was no further discussion. The deadline for tabling amendments was set for 13 April 2015.

12. Question for written answer to the Commission of 1st December 2014 on the revision of the ‘Blue Card’ Directive by Nathalie Griesbeck and Cecilia Wikström (E-010039-14)
LIBE/8/03079

LIBE had invited the European Commission for an exchange of views pursuant to Rule 130(4) of the EP Rules of Procedure. The question had not been answered within the time limit of six weeks (which lapsed on 6 February) set out in the EP Rules of procedure. The Commission's reply was made available on 24 March. Ms GRIESBECK (ALDE, FR), as one of the authors of the written question, introduced the debate by pointing out that the reply was vague and not to the point and that it had taken the Commission 15 weeks to reply.

On behalf of the Commission, Ms PYKE first apologized for the delay in replying to the written question. Regarding the content, she stressed that the revision of the Blue Card Directive would be featured in the Agenda for Migration, which should be adopted by the Commission by the end of May. This agenda would also deal with asylum, border management, and legal migration. Various options for the Blue Card were currently being considered and if there were to be a new legislative proposal in the future this would be preceded by a public consultation and appropriate impact assessment. It was essential to await the publication of the said Agenda in May.

The Chair, Mr MORAES, and Ms GRIESBECK both expressed disappointment at the fact that this directive, on which the EP was working very hard at the time and which had generated enthusiasm across political groups, was now left in the ‘cupboards of oblivion’.

13. Art. 29 Working party - Working document of 5 December 2014 on surveillance of electronic communications for intelligence and national security purposes

Ms Falque-Pierrotin, CNIL President and Chair of the Article 29 WP, presented a working document on surveillance of electronic communications for intelligence and national security purposes, which contained the results of discussions held within the Article 29 WP on the legal framework for mass surveillance, especially with regard to the applicability of European law to the surveillance activities that had been revealed by Edward Snowden.

During the subsequent discussion the following issues were raised: fundamental rights and the fight against terrorism; strengthening personal data protection in the EU and in relations with the US.

Ms Falque-Pierrotin called for a new agreement with the US to address the issue of intelligence access to the personal data of EU citizens and in order to provide an appropriate legal basis.

The EP would be discussing the follow-up to the NSA surveillance activities at its May Plenary session.

14. Study "National security and secret evidence in legislation and before the courts: exploring the challenges"

LIBE heard a presentation of the study by Professor Didier Bigo, Dr Sergio Carrera, Mr Nicholas Hernanz and Dr Amandine Scherrer on legal analysis of national security concepts in national legislation.

15. Study on the feasibility of the creation of a European System of Border Guards to control the external borders of the Union (ESBG)

Mr DE CEUSTER from DG HOME presented a study on the feasibility of the creation of a European System of Border Guards to control the external borders of the Union, which had been prepared by an external consultancy. He explained that the study identified three models, namely the optimal use of existing resources (status quo option), shared responsibility for hot spots, and full integration at EU level with a permanent EU structure for the daily management of borders. The study called for a gradual approach to move from the status quo to full integration. The models were not alternatives to choose from but rather a progressive timeline. The study also demonstrated that discussions were very sensitive and complex, due to sovereignty questions inherent in border control. He stressed that the Commission would address these issues in May in the Agenda for Migration, which would have a comprehensive approach and would be further discussed in the EP and the Council.

During the subsequent discussion, LIBE members raised the following issues: the need to have a more detailed analysis and distinguish better between external maritime and land borders, which had different specificities, better definition of Frontex's role according to the options presented, and pooling and sharing of maritime resources.

In his final reply Mr DE CEUSTER explained that this was only a feasibility study and clearly all relevant elements were on the table. He pointed out that these types of policies were usually incremental in nature.

Joint debate

16 - 17. Frontex - The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU

Mission to Frontex (Warsaw, Poland) on 16/17 February 2015

The Executive Director of Frontex, Mr LEGGERI, presented the Annual Risk Analysis and the Annual Work Programme 2015. He noted that there had been a clear increase in irregular border crossings into the EU, with the main nationality involved being Syrians. Facilitators had become more and more violent and ruthless; demand for their services was on the increase and was being exploited by criminal organisations. The security of shipping was also compromised. There was also increased smuggling of small firearms in the Western Balkans area. He also highlighted the pervasive problem of identity fraud and the increased phenomenon of foreign fighters, who were mostly EU citizens. On the annual work programme, he highlighted the following strategic priorities of the agency: Eurosur, Schengen evaluation mechanism, fundamental rights issues and reinforcing analytical capabilities.

During the subsequent discussion the MEPs raised the following issues: cooperation with the EU Libya mission and exchange of information between national intelligence services, concerns over the deaths of two Iraqi nationals in Bulgaria, situation with Ukrainian refugees, incidents involving armed smugglers, identification of jihadists among migrants intercepted, personnel issues at Frontex, cooperation with Eurojust.

In reply to the various issues raised, Mr LEGGERI explained that Frontex had not gathered evidence of people with profiles interesting for counter terrorism purposes so far. He spoke about possible cooperation with the EU Libya mission once this was again operational, as well as cooperation on Eurosur. Frontex was following the situation in Ukraine closely with Member States. In relation to the incident involving Frontex-coordinated boats he explained that Member States were taking steps to decrease the risks. He also assured LIBE of his commitment to improve the human resources management at the agency.

Ms KUDRYCKA (EPP, PL) briefly reported on the delegation's visit to Frontex on 16/17 February 2015. The visit was considered to be a success.

17a Exchange of views with the Council Presidency on the Presidency activity Amberlight

The Presidency had been invited by the Chair Moraes to exchange views with LIBE and answer questions regarding the running of Amberlight 2015.

The Presidency representative explained that Amberlight was a Presidency-led activity in which Members States and Schengen countries could participate. The purpose of the operation was to identify overstayers by monitoring airports. There would be no personal data collected and only general conclusions regarding trends would be drawn. He stressed that all activities would be carried out in full respect of EU law and human rights safeguards.

The MEPs raised a wide range of concerns regarding this joint operation, namely the lack of transparency and adequate information provided to the EP on this operation and the previous operation Mos Maiorum. Concerns were raised over the use of personal data, possible racial profiling, storage and exchange of data, the aim of the operation, and participating Member States, as well as links with the Smart Borders draft legislation.

In reply, the Presidency's representative explained that Joint Operation Amberlight was not a follow-up to the previous operation Mos Maiorum. The purpose was to collect data when a person was leaving the EU via an air border. Information would be collected for the duration of the joint operation in order to be exchanged and analysed. No personal data would be collected. It was up to individual Member States to decide whether to participate or not. Without giving any further details it was explained that the majority of the Member States had decided to take part.

Due to time constraints the Chair agreed with the Presidency to prepare a letter with questions raised during the meeting in order to receive a more detailed reply in writing from the Presidency.

19. Draft additional Protocol supplementing the Council of Europe Convention on the Prevention of Terrorism pursuant to Article 218 TFEU (“foreign fighters”, CETS No. 196)

The Vice Chair, Ms GAL, introduced the item for discussion and underlined that the European Commission had presented recommendations for a Council Decision authorising the opening of negotiations for an additional Protocol to the Convention on the Prevention of Terrorism implementing UNSCR Resolution 2178 (2014). As the Protocol currently being negotiated could have implications for the Framework Decision on Terrorism it was important that the EP was involved and informed.

The first invited speaker, Mr LUYCK, on behalf of the European Commission, recalled that the UNSC had adopted Resolution 2178 in September 2014, which created an obligation for UN members to further criminalise certain phenomena linked to foreign fighters. At the same time the EU was also considering whether to reopen the existing Council Framework Decision 2002/475/JHA on combating terrorism, as amended by Council Framework Decision 2008/919/JHA. The Council of Europe Ministerial Committee had decided on 21 January 2015 to take forward this work by way of an additional Protocol to the existing Convention. The discussions had already started at expert level, despite that fact that there was no Council mandate for the time being. The EU Member States already coordinated in practice with the help of the Commission. The Protocol dealt with issues such as the receiving of terrorist training, travelling for terrorist purposes and the funding of such travelling, as well as the exchange of information between the participating states. The draft mandate that had been presented to the Council contained the negotiating directives. The key issue was to criminalise behaviours contained in the UNSC resolution. In principle no new self-standing criminal offences should be created if equivalent provisions already existed in national legislations. This would allow for some room to create specific EU-level provisions if so decided. The so-called mother convention was open for signatures in 2005 and entered into force in 2007.

The second speaker, Ms MELNACE, on behalf of the Presidency, explained that the Council had started working on the mandate immediately after receiving the draft from the Commission, noting that Member States had already been participating in the negotiations and did not want to slow down the process in the Council of Europe. It was expected that the EU mandate should be adopted before the next Council of Europe meeting.

The third speaker, Mr KOEDJIKOV, Council of Europe Counter-terrorism Coordinator, explained that the Council of Europe considered terrorism a threat to democratic order in Member States and that it was unacceptable under any circumstances and in any culture. The Council of Europe strongly defended the fundamental rights of the victims and was concerned with the rights of suspected terrorists as well. He referred to the CIA rendition flights. Three meetings had been held regarding the Protocol and public versions of documents were available for information and consultation. He agreed that some difficult legal notions were under discussion but underlined that some Member States already had national definitions that went beyond what was being discussed for the Protocol. In this sense, the Protocol was not necessarily at the cutting edge. Its main added value consisted in harmonising existing legislation to the extent possible, in particular for the purpose of extraditions and the double criminality requirement among Council of Europe members. The work was proceeding fast and the Protocol should be adopted on 29 May.

During the discussion the MEPs raised the following issues: concerns over procedure and time frame, as well as over the substance, in particular regarding the criminalisation of intent (Ms IN 'T VELD, ALDE, NL), the role of EP in this process (Ms SARGENTINI, Greens/EFA, NL), fundamental rights considerations and better exchange of information between Member States' intelligence services (Ms GOMES, S&D, PT), how to deal with EU nationals returning from conflict zones (Ms FAJON, S&D, SI), the possible revision of the framework decision (Ms GAL, EPP, HU). Ms HOHLMEIER and Mr VOSS (both EPP, DE) disagreed with the critical comments made by Ms IN 'T VELD and Ms SARGENTINI. Ms REVAULT D'ALLONNES BONNEFOY (S&D, FR) stressed the need to have a common EU approach to countering terrorism.

In reply to the various issues raised, the Commission explained that EU law required both objective behaviour and intent. Some delay in the presentation of the mandate had arisen because there were simultaneous discussions within the EU on the possible revision of the Framework decision. Also some Member States had taken action at national level. Given this extremely tight deadline, for which neither the Commission or the Council Presidency was to blame, it was important to have a coherent EU approach, particularly as this would be the first time that the EU would exercise its competence externally, after having legislated in this area. A further discussion was necessary to distinguish clearly between areas of shared competence and those that were under exclusive EU competence. This would be done at a later stage, once the EU was in the process of adopting the decision to sign.

Ms MELNACE, on behalf of the Presidency, reassured the EP that the Council was fully aware of its prerogatives upon signature, but underscored that this was only the stage of the adoption of the EU mandate. The Protocol was welcomed by Member States, and was considered a good basis for minimum harmonisation among Council of Europe members. There was of course no obligation to sign the Protocol. Its main added value would be for mutual assistance and extradition purposes outside the EU. Regarding any new EU legislation, it was up to the Commission to evaluate the needs and make proposals.

Mr KOEDJIKOV explained that the planned Protocol was narrow in scope and focused on some urgent topical issues. He invited everybody to consult the documentation publicly available.

Visibly dissatisfied with the replies given, Ms IN 'T VELD and Ms SARGENTINI requested that further clarifications on the procedure be provided by the LIBE Secretariat as soon as possible.

21. Next meetings

- **13 April 2015, 15.00 – 18.30 (Brussels)**
 - **14 April 2015, 9.00 – 12.30 and 15.00 – 18.30 (Brussels)**
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