



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 March 2012

8397/12

**PE 141
JAI 211
JUST 7
VISA 72
SCHENGEN 24**

NOTE

from: General Secretariat of the Council
to: Delegations

Subject: Summary record of the meeting of the European Parliament **Committee on Civil Liberties, Justice and Home Affairs (LIBE)**, held in Brussels on 26 and 27 March 2012

The meeting was chaired by Mr López Aguilar (S&D, ES) and Ms Gal (EPP, HU). The committee adopted the agenda.

3. Anti-Counterfeiting Trade Agreement between the EU and its Member States, Australia, Canada, Japan, the Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the USA

Rapporteur for the opinion: Dimitrios Droutsas (S&D)

Responsible: INTA – David Martin (S&D)

- Exchange of views

Mr Droutsas (S&D, EL), the rapporteur, explained that INTA, the lead committee, was about to discuss the possibility for the European Parliament to refer ACTA to the European Court of Justice (ECJ). He also referred to the recent Commission decision to refer the issue to the ECJ. He asked for MEPs' views on how LIBE should approach this sensitive dossier.

The Commission representative indicated that the Commission should submit its questions on ACTA to the ECJ towards the end of April. He also informed MEPs that Cyprus intended to sign the agreement.

As regards a possible referral to the ECJ, Ms Weber (ALDE, RO) suggested that the European Parliament ask questions in addition to those of the Commission and stressed LIBE's role in that respect. Mr Schlyter (Greens/EFD, SE) asked for reinforced cooperation between LIBE and INTA. Independently of a possible referral to the ECJ, he thought that the European Parliament should pursue its work on the evaluation of fundamental rights aspects.

Mr Busutill (EPP, MT) agreed that the matter should be taken to the Court but added that LIBE should not stop discussing civil liberties issues. He asked the rapporteur to participate in INTA discussions. Mr Papanikolaou (EPP, EL) stressed the negative and positive aspects of the agreement.

Ms In't Veld (ALDE, NL) and Ms Fajon (S&D, SI) believed that a Court referral risked paralysing the debate in the European Parliament. They also considered that LIBE should be given access to all documents related to the ACTA negotiations. Ms Fajon added that a political discussion was needed on whether ACTA was the right tool to fight counterfeiting and protect intellectual property rights. Mr Enciu (S&D, RO) criticised the fact that negotiations took place in secrecy and stressed the need to listen to the voice on the street.

The Commission representative clarified that the Commission had decided to turn to the ECJ and that the Commission still had to take a decision on which questions it wished to address to the ECJ. He replied that if some Member States did not sign or ratify the agreement, there would be no agreement for the EU since it was a mixed agreement.

Mr Droutsas (S&D) recalled that the plenary had asked LIBE to draft an opinion on the compatibility of ACTA with the EU Charter of Fundamental Rights. He took the view that instead of an ECJ referral, the European Parliament Legal Service could answer legal questions. He agreed with the request for full access to negotiation documents.

4. Recent political developments in Hungary

- First exchange of views

The rapporteur, Mr Tavares (Greens/EFD, PT), proposed discussing the working methods of the LIBE report following the EP Plenary Resolution of 16 February 2012 (see point 6 in annex). He considered that the report should be a non-partisan and fact-based report about common values in the framework of the Lisbon Treaty and of the Charter of Fundamental Rights. He thought that work should take place in respect and in cooperation with the Hungarian authorities and citizens, EU institutions, the Council of Europe, other EP committees and between political groups.

Ms Fajon (S&D, SI), on behalf of Mr Lopez Aguilar (S&D, ES), underlined that the report should not judge a country and its government but that it should exclusively relate to the supremacy and safeguarding of EU law. She added that the report should assess potential problems with EU law and principles without prejudging tools and avoid rhetoric about Article 7 TFEU. She was in favour of a specific hearing and a field trip to Hungary. She was mainly concerned by the independence of the judiciary and by media pluralism and freedom of expression in Hungary.

Ms Weber (ALDE, RO) defended the fight for EU values and believed that it was important to have a broad view on all related issues. She therefore suggested inviting the Venice Commission, other experts and civil society.

Ms Morvai (NI, HU) strongly deplored the fact that the Hungarian system was constantly scrutinised and saw no justification for this difference of treatment compared to other Member States. She considered that Hungary was being discriminated against and that the report should not be produced.

Mr Engel (EPP, LU) pleaded for a non-partisan report and respect for the Hungarian government. He called for the report to be as exhaustive as possible so that the European Parliament would not need to return to these issues later. He considered that the report should not aim at initiating an Article 7 TFEU procedure but at replying to the EP Plenary Resolution. He thought that hearings had already taken place on these issues and was more in favour of a trip to Hungary.

Ms In't Veld (ALDE, NL) said that the issues at stake were about the enforcement of fundamental rights of the EU and not about Hungary itself. She indicated that the European Parliament had had critical views on other Member States, i.e. on media freedom in Italy. She said that the purpose was not to activate Article 7 TFEU and that there was a lack of instruments to implement fundamental rights.

Ms McIntyre (ECR, UK) stressed the need to be even-handed towards all Member States. She thought that it would be better to wait for the Commission to finalise the infringement process and would favour a report on all Member States. Finally, she agreed that enough hearings had been organised and that it was a good idea to go to Hungary.

Ms Ernst (GUE/NGL, DE) said that Hungarian law had to be in line with EU law. In her opinion, there was a need to be critical and to take action if necessary but without lashing out at Hungary.

The rapporteur, Mr Tavares, concluded that in general MEPs comments were compatible. He said that it was important to go to Hungary in order to dialogue with authorities and civil society without prejudgments. He agreed that there had been enough hearings but stressed the importance of listening to the Council of Europe and to the Venice Commission. He emphasised that there was no willingness to single out a particular country and that the report would not be an Article 7 report despite the fact that this Article was mentioned in the EP Resolution (point 7). He indicated that the main issues under review would relate to the independence of the judiciary, media pluralism and constitutional changes. He agreed with the principle of equality between Member States and mentioned past EP Resolutions on IT, LT and NL.

Next steps: presentation of a working document at the LIBE meeting of 25-26 April (tbc)

5. Freezing and confiscation of proceeds of crime in the European Union

Responsible: LIBE –

- Presentation by the Commission: the Commission representative presented the proposal. No interventions followed.

Next step: appointment of rapporteur.

6. The European Investigation Order in criminal matters

Rapporteur: Nuno Melo (PPE)

Responsible: LIBE –

- Consideration of amendments

The rapporteur, Mr Melo (EPP, PT), presented his amendments which related to:

- the proportionality of the EIO which should be assessed by the issuing state only;
- the need to establish a coherent system as regards double criminality between the EIO and the EAW; in particular the fact that Member States should not have control over double criminality in relation to certain crimes such as terrorism and trafficking;
- the right to a legal remedy by interested parties which should not be used to delay the investigations that justified the request;
- the equal sharing of costs between the issuing and the executing states except in certain cases;
- the obligation for an EIO to be validated by a judge.

The Council Presidency representative said that some amendments went in the direction of the Council general approach agreed last December such as the general test of proportionality performed by the issuing state. She added that the Council was aware that more intrusive cases required further safeguards for the executing state and had therefore included additional grounds for refusal and allowed less intrusive measures if possible. As regards the scope, she mentioned that the Council's objective was to include as many measures as possible including the interception of telecommunications. She shared the rapporteur's views on legal remedies but considered that this issue had to be regulated by national law. She also recalled the Council's compromise as regards the matter of a judicial authority acting as the issuing authority.

The European Commission representative stressed the need for a proper balance between the protection of persons who are being investigated on one side, and effective trans-border criminal justice cooperation on the other side.

Like Mr de Jong (GUE/NGL, NL), Mr Albrecht (Greens/EFA, DE) considered that in light of the experience of the European Arrest Warrant the proportionality test had to be carried out by both the issuing and executing states.

Mr Albrecht mentioned that other points needing further discussion were the grounds for refusal, the scope of the Directive, common standards and procedures for citizens' rights. Mr de Jong (GUE/NGL, NL) proposed excluding the interception of telecommunications from the scope.

Ms Weber (ALDE, RO), on behalf of Ms Ludford (ALDE, UK), considered that interception, controlled deliveries and covert investigation should not be included in the scope. She thought that the issuing authority could decide to withdraw an EIO in case of minor offences. As regards grounds for refusal, she considered that dual criminality had to be checked only if the measure sought was coercive. She pleaded for clear rules and respect for human rights in case of transfer of persons. Ms Hedh (S&D, SE) welcomed the proposal and insisted on the safeguarding of the mutual recognition principle and of fundamental rights.

The rapporteur concluded by saying that he was willing to find compromises where possible. He wondered how to incorporate the concept of minor offences since national definitions differed or sometimes did not exist. He also wished to avoid an excessive bureaucratic procedure concerning the issue about which state (issuing and/or executing state) would be responsible for intercepting funds. He was also resistant to appeals or cases lodged in both countries in order not to hamper the effectiveness of the investigation. He added that interception of telecommunications or covert investigation had to be treated with due seriousness between states.

7. Amendment of Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

Rapporteur: Agustín Díaz de Mera García Consuegra (PPE)

Responsible: LIBE –

Opinions: AFET – Andrey Kovatchev (PPE)

- Presentation of the opinion of the EP Legal Service

The representative of the European Parliament Legal Service presented its opinion on the legality of the proposed automatism of adoption of the Commission proposal to restore the visa requirement and the obligation imposed on the Commission to make a proposal as envisaged by amendment 28, co-signed by a number of Members and by amendment 10 by the rapporteur.

He considered that amendment 10 was problematic in so far as it provided for an obligation for the Commission to present a proposal and was not in compliance with the Commission's quasi-exclusive right of initiative provided for in the Treaty. He also added that the automatism mechanism under amendment 28 did not correspond to Article 77 TFEU and was therefore not in compliance with the Treaty provisions.

The rapporteur, Mr Díaz de Mera García Consuegra (EPP, ES), intended to be conciliatory and constructive, stressing that reciprocity was at the heart of the proposal. As regards amendment 10, he was concerned about the role of the European Parliament while respecting the Commission's right of initiative.

Like Ms Zdanoka (Greens/EFD, LV), Ms Fajon (S&D, SI) asked for a new legal and operational wording which should improve the current reciprocity mechanism and allow the possibility for all Member States to react to unilateral visa requirements from third countries.

Mr Alvaro (ALDE, DE) said that the automatism mechanism in amendment 28 came from the six pack on economic governance which had been endorsed by EU institutions while the European Parliament Legal Service was against it. He considered that the European Parliament had to support a reciprocity mechanism and take a political decision even if legally doubtful. Mr Enciu (S&D, RO) supported his views and defended equal rights for all Member States.

The representative of the EP Legal Service specified that its opinion did not consider the appropriateness of the measures.

Next steps: the rapporteur would work on compromise amendments. Vote in LIBE: April.

8. Hearing "What is new on the alleged CIA illegal detention and transfers of prisoners in Europe?": not covered.

*** *Electronic vote* ***

9. Conclusion of the Agreement between the USA and the EU on the use and transfer of PNR to the US Department of Homeland Security

Rapporteur: Sophia in 't Veld (ALDE) PR – PE480.773v01-00

Responsible: LIBE –

Opinions: AFET – Traian Ungureanu (PPE)

TRAN – Decision: no opinion

- The LIBE committee voted against the draft recommendation of the rapporteur meaning a vote for giving consent to the agreement (31 votes against the draft recommendation, 23 votes in favour, 1 abstention).

10. Amendment of Schengen border code and Convention implementing the Schengen Agreement

Rapporteur: Georgios Papanikolaou (PPE)

Responsible: LIBE –

Opinions: AFET – Decision: no opinion; DEVE – Decision: no opinion

- The draft report was adopted as amended (orientation vote).

11. Attacks against information systems and repealing Council Framework Decision 2005/222/JHA

Rapporteur: Monika Hohlmeier (PPE)

Responsible: LIBE –

Opinions: AFET – Kristiina Ojula (ALDE); BUDG – Decision: no opinion; ITRE – Christian Ehler (PPE)

- The draft report was adopted as amended (orientation vote).

12. Joint committee meeting (Rule 51) of LIBE and FEMM committees

The meeting was co-chaired by Mr Gustafsson (GUE/NGL, SE) Mr López Aguilar (S&D, ES).

*** *Electronic vote* ***

Minimum standards on the rights, support and protection of victims of crime

Rapporteurs: Teresa Jiménez-Becerril Barrio (PPE) Antonyia Parvanova (ALDE)

Responsible: LIBE, FEMM –

Opinions: JURI – Antonio López-Istúriz White (PPE)

Before the vote, Ms Sargentini (Greens/EFD, NL) said that she was opposed to proceeding to the vote, considering there was a need to take more time on such an important report. Mr Crocetta (S&D, IT) regretted that some of his amendments on terrorism had not been the subject of compromises.

- The draft report was adopted as amended (orientation vote)

*** *End of electronic vote* ***

13. Next meeting(s)

- 12 April 2012, 9.00 – 12.30 (Brussels)
