



Brussels, 1 June 2010

**BACKGROUND<sup>1</sup>**  
**JUSTICE AND HOME AFFAIRS COUNCIL**  
**Luxembourg, 3 & 4 June 2010**

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday, 3 and Friday, 4 June 2010 (under the chair of **Alfredo PÉREZ RUBALCABA, Minister for the Interior, Anna Terrón i Cusí, State Secretary for Immigration and Emigration, and Francisco CAAMAÑO DOMÍNGUEZ, Minister for Justice**) in the Conference Centre - FIL, 5, rue Carlo Hemmer, Luxembourg.*

*On Thursday, the Council is expected to discuss and adopt an **European pact to combat international drug trafficking** as well as a set of **conclusions** including:*

- on **facilitating entry for citizens** of the member states of the EU at external borders;*
- on the follow-up to the **European Pact on Immigration and Asylum**; and*
- on an action plan concerning **unaccompanied minors** from third countries.*

*The Council will also discuss the outcome of the recent **EU-Russia justice and home affairs permanent partnership council** and hold a general debate on **internal security**.*

*Agenda items related to terrorism include a discussion paper by the EU counter-terrorism coordinator on the implementation of the **EU strategy and action plan to combat terrorism** and an **EU-US declaration on counter-terrorism**.*

*On Friday and after a public debate, justice ministers are likely to take the next steps on authorising the **first enhanced cooperation in the history of EU legislation**. It concerns the **law applicable to divorce and legal separation**. On the content of the legislation, ministers are due to agree on key elements. Still in public, the Council will discuss the state of play on trialogue negotiations concerning the **rights of interpretation and translation in criminal procedures**.*

*Ministers will then examine a directive on **combating trafficking of human beings** as well as a member state proposal for a directive on an **European protection order**. On both files, ministers are expected to agree on a general approach. The Council is also expected to agree on a negotiating mandate concerning the **EU's accession to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms** and to adopt political guidelines for future work on **European rules concerning matters of succession**.*

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<sup>1</sup> This note has been drawn up under the responsibility of the Press office.

*Other justice items to be discussed include the **fight against sexual exploitation of children** as well as **eJustice**.*

*In the margin of the Council session on Thursday, the **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will examine the state of play concerning the development of the **Schengen Information System II (SIS II)**, including a comprehensive global schedule and budget as presented by the Commission. The committee will also discuss the issue of **visa liberalisation for Western Balkan states**.*

*Under any other business, the Council will examine:*

- *the issue of **visa reciprocity and Canada** in connection with the sixth Commission report regarding visa reciprocity as set out in regulation 539/2001;*
- *a study on **burden-sharing systems**;*
- *recent developments on the **fight against corruption**;*
- *the progress made on an **EU-Turkey readmission agreement**;*
- *the issue of **police cooperation in South-Eastern Europe**; and*
- *the outcome of the meeting of **interior ministers of the G6** in Varese, Italy.*

***A-items** to be adopted by the Council without discussion include conclusions on the Commission's **action plan implementing the Stockholm Programme**, on the **Eurojust Annual Report for 2009**, on **psychosocial support in the event of emergencies and disasters** and on the **European Arrest Warrant**. Besides that, on the subject of **security in connection with football matches**, the Council will approve an evaluation report on the degree of implementation of a related Council decision from 2007 as well as a resolution concerning an updated handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches.*

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*The presidency intends to organise **press conferences** on 3 June around 13.00 and at the end of the proceedings as well as on 4 April around 13.00 (tbc).*

***Press conferences and public deliberations can be followed by video streaming:***

*<http://video.consilium.europa.eu/>*

***Video coverage of the event will be available for preview and download in broadcast quality (MPEG4) on <http://tvnewsroom.consilium.europa.eu>***

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### **European pact to combat international drug trafficking**

Ministers are expected to adopt an European pact to combat international drug trafficking. It is focused, at this stage, on cocaine and heroin and should serve in the future as a model for the fight against other categories of drugs, primarily cannabis and synthetics.

The pact enumerates a number of common principles for the fight against this sort of crime and elaborates on three main commitments:

- disrupting cocaine routes,
- disrupting heroin routes, and
- countering the proceeds of crime.

For each of these three commitments the pact outlines specific actions as well as target deadlines until when these actions should be implemented.

The pact is an integral part of the law enforcement aspect of the EU's anti-drug strategy (established in 2005) and the EU action plan for 2009-2012 that advocate a global balanced approach based on simultaneous reduction of supply and demand. It is a practical application of the Stockholm Programme and of the European Internal Security Strategy endorsed by the European Council in December 2009 and March 2010, respectively.

### **Facilitating entry for citizens of the EU at external borders**

The Council is expected to discuss and adopt conclusions on facilitating entry for citizens of the EU at external borders.

The focus of these conclusions will be on the need to improve fast-track systems for external border crossings for the benefit of EU citizens while at the same time safeguarding the right balance between the right to free movement and guaranteeing the highest level of security.

### **European Pact on Immigration and Asylum**

The Council is expected to discuss and adopt conclusions on the follow-up to the European Pact on Immigration and Asylum.

When adopting the European Pact on Immigration and Asylum in October 2008, the European Council decided to hold an annual debate on immigration and asylum policies. To that end, it invited the Commission to present each year a report to the Council. This report should, where necessary, propose recommendations on the implementation of the pact. On 6 May 2010, the Commission adopted its first annual report on the implementation of the pact covering the period between October 2008 and the end of 2009.

## **Unaccompanied minors**

The Council is expected to adopt conclusions on the subject of unaccompanied minors coming to the EU regardless of whether they are asylum seekers, irregular immigrants or victims of trafficking in human beings.

In September 2009, the Council confirmed that this subject represents an important challenge for member states and raises issues of common concern. It was agreed that all member states would benefit from the development of common approaches and increased cooperation with countries of origin, including cooperation to facilitate minors' return. The Stockholm Programme, adopted in December 2009, welcomed the Commission's initiative to develop an action plan on this issue which supplements the relevant legislative and financial instruments and combines measures directed at prevention, protection and assisted return. The Commission adopted the communication on the action plan on 6 May 2010 ([IP/10/534](#)).

These Council conclusions envisage a global approach for all unaccompanied minors based on the respect of the EU Charter of Fundamental Rights and the United Nations Conventions on the Rights of the Child, stressing the importance of finding durable solutions based on the individual assessment of the best interest of the child and strengthen cooperation with countries of origin in the scopes of prevention, protection and return of unaccompanied minors.

## **EU-Russia Permanent Partnership Council**

The Council will be informed about the outcome of the EU-Russia Permanent Partnership Council on justice and home affairs issues, held in Kazan on 25-26 May 2010.

## **EU-US 2010 Declaration on Counter-Terrorism**

The Council is likely to agree on an EU-US Declaration on the fight against terrorism.

This declaration builds on the EU-US Joint Statement on the closure of the Guantanamo Detention Center ([10967/09](#)) and the Council conclusions from June 2009 ([10523/2/09](#)).

(see also the factsheet [The EU ready to help US in closing Guantanamo](#))

## **CTC discussion paper**

After a presentation by the EU counter-terrorism coordinator, the Council will examine the most recent discussion paper on the implementation of the EU strategy and action plan to combat terrorism.

In his report, the EU counter-terrorism coordinator focuses on four main challenges:

- creating a clearer picture of the threat Europe is facing,
- securing better public transport, especially in the field of land transport,
- ensuring the monitoring of terrorist travel, and
- connecting internal and external security.

For each of these challenges, the EU counter-terrorism coordinator suggests a number of concrete actions.

Other areas in which progress should be made include cyber security and the solidarity clause. Art. 222 TFEU asks the EU and the member states to act jointly in a spirit of solidarity if a member state is the object of a terrorist attack or victim of a natural or man-made disaster.

### **Internal Security**

The Council will hold a general debate on internal security. The so-called M.A.D.R.I.D report ([10203/10](#)) and the Internal Security Strategy for the European Union ([5842/2/10](#)) will provide the main elements for the discussion.

The M.A.D.R.I.D report is a document from the Trio Presidency that describes the current threats and challenges to internal security in the EU, based on three strategic documents: Europol's Organised Crime Threat Assessment (OCTA), the Terrorism Situation and Trend Report (TE-SAT) and Frontex' s Annual Risk Analysis.

At its meeting in February 2010, the Council approved the Internal Security Strategy for the European Union which the European Council endorsed one month later. The Commission is expected to adopt a communication on concrete actions in the area.

The strategy's main objectives are:

- to present to the public the existing EU instruments that already help to guarantee the security and freedom of EU citizens and the added value that EU action provides in this area;
- to further develop common tools and policies using a more integrated approach which addresses the causes of insecurity and not just the effects;
- to strengthen law enforcement and judicial cooperation, border management, civil protection and disaster management.

The strategy lays out a European security model, which integrates among others action on law enforcement and judicial cooperation, border management and civil protection, with due respect for shared European values, such as fundamental rights. It identifies the main threats and challenges the EU is facing, including terrorism, organised crime, cyber-crime, drug and arms trafficking, trafficking in human beings, sexual exploitation of minors and child pornography, economic crime and corruption and youth violence. Natural and man-made disasters, such as forest fires and energy shortages, also require cross-border preparedness and response. Another challenge is to address common phenomena that pose threats to citizens across Europe, for example road accidents.

## **Divorce and legal separation - a pioneer group of member states seeks common rules**

The Council is expected to take the next steps on authorising the first enhanced cooperation in the history of the EU. It concerns the law applicable to divorce and legal separation (Rome III) ([8143/1/10](#)). Ministers would request the European Parliament to give its consent to the enhanced cooperation. On the content of the legislation, ministers are due to agree on a general approach on key elements ([8176/1/10](#)). Both files, the decision on the authorisation of the enhanced cooperation and the regulation implementing it, will be debated in public.

The enhanced cooperation<sup>1</sup> has, so far, been requested by twelve member states. Other EU countries that are still reflecting about whether to join this pioneer group will be able to do so.

There are approximately 122 million marriages in the EU, about 16 million (13%) are assumed to be international. The regulation, once adopted, will have the following advantages:

- it allows international couples in the participating member states to know in advance which law will apply to their divorce;
- it increases flexibility and autonomy by giving the spouses the possibility to choose the applicable law; and
- where no applicable law is chosen, it introduces harmonised conflict-of-law rules on the basis of a scale of successive connecting factors.

Thereby enhanced cooperation in this field:

- improves legal certainty, predictability and flexibility for citizens;
- protects weaker partners during divorce disputes by preventing the so-called "rush to court", i.e. situations where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests; and
- lessens the burden on children in international divorce disputes.

In July 2006, the Commission adopted a proposal for a regulation amending regulation 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (Rome III) ([11818/06](#)). Its aim was to develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments. The text was discussed during several presidencies but at its meeting in June 2008, the Council concluded that it was not possible - both then and in the near future - to reach unanimous agreement on the proposal as required by the Nice Treaty.

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<sup>1</sup> EU rules governing enhanced cooperation are provided for in [Title IV, Article 20 TEU](#) as well as in [Title III, Articles 326-334 TFEU](#).

Given these circumstances, Greece, Spain, Italy, Hungary, Luxembourg, Austria, Romania and Slovenia addressed in July 2008 a request to the Commission indicating that they wished to establish enhanced cooperation between them in the area of applicable law in matrimonial matters and that they expected the Commission to submit a proposal to the Council to that end. Since then Greece withdrew from this request, and another five member states joined it: Bulgaria in August 2008, France in January 2009, Germany and Belgium in April 2010 and Latvia in May 2010.

### **Succession**

After a public debate, the Council is expected to adopt political guidelines for future work on proposed European rules concerning matters of succession as well as an European certificate of succession ([14722/09](#)).

On 14 October 2009, the Commission adopted a proposal that aims at simplifying the rules on successions with an international dimension in the EU. The proposed regulation aims to make life easier for heirs, legatees and other interested parties. Not least, the proposed rules would take some of the stress out of succession planning by enabling people to choose the law that will govern the transmission of all their assets.

The proposal aims to provide for the application of a single criterion for determining both the jurisdiction of the authorities and the law applicable to a cross-border succession, normally the place of the last habitual residence. This point, however, still is subject to debate: Some question whether there is a need to add further requirements to the mere notion of residence in order to qualify it as habitual residence. On the other hand, people living abroad will be able to opt to have the law of their country of nationality apply to the entirety of their succession.

All assets making up a succession will thus be governed by one and the same law, thereby reducing the risk that different member states will issue contradictory decisions. Likewise, a single authority will be competent for settling the succession. Lastly, there will be full mutual recognition of decisions and authentic acts in succession matters.

Under the proposed regulation, a European Certificate of Succession would also be created to enable a person to prove their capacity as heir or their powers as administrator or executor of a succession without further formalities.

It is to be noted that Denmark, the United Kingdom and Ireland will not take part in the adoption and application of the proposed regulation.

### **European Protection Order**

The Council is expected to agree on a general approach on the member state initiative for an European protection order ([17513/09](#)). The aim of the directive is to facilitate and enhance the protection granted to victims of crime, or possible victims of crime, who move between EU member states.

At the Council session in April 2010, a majority of member states spoke out in favour of the presidency approach and supported the presented compromise texts. Further progress has been made since then. Once agreement is reached in the Council, the text will be sent to the European Parliament (EP). Informal contacts with the EP have already taken place in view of the high political importance of the file.

Among the outstanding issues discussed is the question of scope. The presidency proposal supported by most member states considers that it is necessary to work on a text allowing European protection orders to be issued and executed in all member states, in accordance with their national law. European protection orders should be issued by any judicial or equivalent authority, independent of the legal nature of such authority (criminal, civil or administrative). It proposes a three-step approach: The issuing state makes a request for an European protection order, the receiving state recognises the European protection order and executes the order by taking a decision under its national law in order to continue the protection of the person concerned.

The proposal for a European protection order is based on a joint initiative of twelve EU member states. Once adopted, the directive will specify measures that allow the executing state to continue the protection of a person. These measures would include obligations or prohibitions imposed on the person causing danger. The focus of the initiative is on crimes which may endanger the victims' life, physical, psychological and sexual integrity, as well as their personal liberty. The ultimate goal is to avoid new acts of crime and to reduce the consequences of previous acts of crime.

### **Procedural rights - interpretation and translation**

The Council will discuss the state of play regarding a directive on the rights to interpretation and translation in criminal proceedings. Ministers will ratify the agreement reached on 27 May 2010 by the Permanent Representatives Committee ([10013/10](#)). This compromise text was negotiated in recent weeks between representatives of the Council, the European Parliament and the Commission.

It is very likely that the directive can soon be formally adopted in first reading.

The directive is based on an initiative taken by 13 member states (Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden) further to an agreement that was unanimously reached by the Council in October 2009 in respect of a Commission proposal from July 2009. The text also takes account of a proposal that was submitted by the Commission in March 2010.

The directive is the first concrete measure to be prepared subsequent to the Council's November 2009 "roadmap" for strengthening the procedural rights of suspected and accused persons in criminal proceedings<sup>1</sup>. It is aimed at achieving a more consistent implementation of the rights and guarantees set out in article 6 of the European Convention on Human Rights and to provide a further development within the European Union of the minimum standards set out in that convention and in the EU Charter of Fundamental Rights.



The directive will substantially enhance the rights for suspected and accused persons, in particular as regards:

- the right to interpretation
  - A suspected or accused person who does not understand or speak the language of the criminal proceedings concerned will be provided without delay with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, during all court hearings and during any necessary interim hearings.
  - Where necessary for the purpose of ensuring the fairness of the proceedings, interpretation will also be available for communication between the suspected or accused person and his legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications, such as for bail.
- the right to translation
  - A suspected or accused person who does not understand the language of the criminal proceedings concerned will be provided with a written translation of all documents which are essential to ensure that he is able to exercise the right to defend himself and to safeguard the fairness of the proceedings.
  - Essential documents include decisions depriving a person of his liberty, the charge/indictment and any judgment. The competent authorities shall decide in any given case whether any other document is essential. The suspected or accused person or his legal counsel may submit a reasoned request to this effect.
  - Passages of essential documents which are not relevant for the suspected or accused person to have knowledge of the case against him do not have to be translated.
  - As an exception to the general rules, an oral translation or an oral summary of essential documents may be provided instead of a written translation, on condition that such oral translation or oral summary does not affect the fairness of the proceedings.

The directive also contains provisions on the quality of interpretation and translation and on the training of judges, prosecutors and judicial staff.

### **Trafficking in human beings**

The Council is expected to agree on a general approach regarding a directive aimed at strengthening the fight against trafficking in human beings and the protection of victims.

In March 2010, the Commission adopted its proposal on the file ([8157/10](#)). Once adopted, the new rules will replace framework decision 2002/629/JHA. The goal is to further approximate national legislation and to improve international law enforcement and judicial cooperation. The provisions of the future directive include:

- a definition of the crime, aggravating circumstances and higher punishment;
- extraterritorial jurisdiction making it possible to prosecute EU nationals for crimes committed abroad and to use investigative tools such as phone listening and access to financial data;
- special treatment of the victims in criminal proceedings including non-punishment of victims who bear the consequences of the criminal activities;
- a higher standard of protection and assistance for victims, and in particular special protective measures for children;
- preventive measures aimed at discouraging the demand side of the phenomenon.

### **Sexual exploitation of children**

The Presidency will inform the Council about the state of play concerning a directive on combating the sexual abuse, sexual exploitation of children and child pornography.

In March 2010, the Commission adopted its proposal on the file ([8155/10](#)). Once adopted, the new rules will replace framework decision 2004/68/JHA. The goal is to further approximate national legislation and to improve international law enforcement and judicial cooperation.

Among the outstanding issues are:

- the definition of child pornography;
- the categorisation of offences;
- instigation, aiding and abetting, and preparatory acts for offences of this kind;
- the criminalisation of intentional access to child pornography by computerised means;
- how to deal with unintended access to web sites;
- the length of sentences;
- the extension of territorial jurisdiction;
- the blocking of websites with child pornography content as a complementary measure to the efforts to eliminate the source content;
- including unreal characters (images, cartoons, etc.) within the concept of child pornography. In this respect, the Commission has noted that the aim is to criminalise images which reproduce reality; and
- assessing and offering rehabilitation programmes to the perpetrators of these crimes.

### **EU accession to the ECHR**

The Council aims at adopting a negotiating mandate for the EU's accession to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

On 17 March 2010, the Commission tabled its recommendation for a negotiating mandate. Different Council working groups have discussed the proposal since then.

The Treaty of Lisbon provides the legal basis for the accession of the EU to the ECHR. Art. 6 (2) TEU stipulates: "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms".

Further to this, the Stockholm Programme calls for a "rapid" accession to the ECHR and invites the Commission to submit a recommendation to the Council "as a matter of urgency".

### **e-Justice**

The Council is expected to adopt a report and endorse a roadmap on e-Justice reflecting the state of play and future plans. Ministers will also aim to agree on a note on the assessment of the implementation structure's activities as foreseen in the European e-Justice action plan.

Concerning the European e-Justice portal, the Council will express its disappointment and regret that the portal would not be launched in the first half of 2010 as requested by the JHA Council in November 2009 and in April 2010. The Council will recall that this would be the second delay in this work since the initial deadline (end 2009).

In this context, the Council will request the Commission to take all possible measures to ensure the prompt delivery of the first release of the portal and to continue work on future releases.

The portal is aimed to promote the use of information and communication technologies in the field of justice. The use of new technologies will rationalise and simplify judicial procedures and reduce operating costs, for the benefit of citizens, undertakings, legal practitioners and the administration of justice. The portal will provide access to information and services in the field of justice, especially in the cross-border context. It is aimed to be a one-stop shop for justice-related information and functionalities in the EU.

The development of the portal takes place gradually. In the long-term, three aspects will be covered:

- firstly, access to law and information at EU and national level (N-Lex, EUR-Lex, case-law), including pan-European databases (e.g. to find a lawyer or notary in another Member State);
- secondly, electronic communication between a judicial authority and the citizen (submission of applications to court, exchange of documents in court proceedings, such as the European order for payment procedure etc.); and
- thirdly, secure communication between judicial authorities in the cross-border context (information about videoconferencing, its availability and possibilities, secure exchange of legal assistance requests etc.).

The roadmap on e-Justice reflects the state of play in concrete terms and aims to make a realistic planning for the months and years to come. The main conclusion of the assessment of the implementation structure is that no changes should be made to the implementation structure until 2013 and that another review of the structure should be carried out in the first half of 2012.

## **AOB**

Under any other business, the Council is expected to address a study commissioned by the European Parliament relating to a system of burden-sharing between member states for the reception of asylum seekers.

Following the EU-Canada summit on 5 May 2010, the Council will also be briefed by the Commission and the Czech Republic on the issue of the visa requirement imposed by Canada on Czech nationals.

After a report by the Commission, ministers will then exchange views on the state of play concerning the negotiations of an EU-Turkey readmission agreement. The mandate to negotiate a readmission agreement with Turkey was given to the Commission in November 2002.

The Austrian minister will then inform his colleagues about a conference on the fight against corruption that will take place in September 2010 in Vienna. Other points of information include the issue of police cooperation in South-Eastern Europe and the outcome of the meeting of interior ministers of the G6 (IT, DE, FR, UK, ES, PL) in Varese, Italy, on 28-29 May.

## **MIXED COMMITTEE: SIS II, VIS AND IT AGENCY**

In the margin of the Council session on Thursday, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will examine the state of play concerning the development of the Schengen Information System II (SIS II) and the issue of visa liberalisation for the Western Balkan states.

### **SIS II**

In April 2010, the Council concluded that - based on a Commission report on the milestone 1 test - development of SIS II would continue on the basis of the current SIS II project. Ministers also called upon the Commission to present a comprehensive global schedule and budgetary estimate to the Council at its meeting on 3-4 June 2010.

SIS II was launched to replace the existing Schengen Information System (SIS). It is supposed to facilitate the exchange of information on persons and objects between national authorities responsible, inter alia, for border controls and other customs and police checks.

### **Visa liberalisation Western Balkans**

On the issue of visa liberalisation for the Western Balkans, the Commission will present its recent proposal to modify Regulation 539/2001.

The Council decided in November 2009 to amend this regulation and to grant visa free travel to and throughout the Schengen area for citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia ([15521/09](#)). The visa waiver became effective on 19 December 2009 to holders of biometric passports.

Albania and Bosnia and Herzegovina were not considered to have met all the benchmarks agreed under the visa liberalisation dialogue. A political declaration, however, invited the Commission to propose visa liberalisation for these two countries as soon as they comply with all the benchmarks, with a view to achieving visa free travel for their citizens as soon as possible. The main areas where benchmarks were set under the visa liberalisation dialogue are border controls, passport security, fight against organised crime and corruption as well as external relations and fundamental rights.

