



Brussels, 28 February 2014

## BACKGROUND<sup>1</sup>

### JUSTICE and HOME AFFAIRS COUNCIL

#### Monday 3 and Tuesday 4 March in Brussels

The meeting will be chaired by **Ioannis MICHELAKIS**, Greek Minister of Interior, **Nikolaos DENDIAS**, Greek Minister of Public Order and Citizen Protection and **Charalambos ATHANASSIOU**, Greek Minister of Justice, Transparency and Human Rights.

On Monday, starting at 10.00, Home affairs ministers will hold a debate on the proposal for a regulation on the **European Agency for Law Enforcement Cooperation and Training (Europol)**.

The Council in the Mixed Committee format (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will be informed on the state of play of the **Data Protection Directive**.

It will also discuss **migratory pressures** (trends and outlook) and will be updated by the Commission about the calendar and the state of implementation of the operational actions within the context of the **Task Force Mediterranean**.

Under other business, the committee will be informed about the state of play of a number of legislative proposals. The Swiss delegation will inform ministers on the outcome of the constitutional referendum entitled "Against mass immigration" held on 9 February 2014.

On Tuesday, starting at 10.00, Justice ministers will have a discussion on certain issues of the **Data Protection Regulation** and will be informed on the state of play of the **Data Protection Directive**.

The Council will be invited to have a policy debate on the proposal regarding the setting up of a **European Public Prosecutor's Office** and in some key elements of the proposal for a directive on **procedural safeguards for children** suspected or accused in criminal proceedings.

Moreover, the Council is expected to adopt **conclusions on the civil and commercial justice systems** of the member states. The Commission will also make a short oral presentation of the **2014 Justice scoreboard**, scheduled to be adopted mid-March.

On Monday and Tuesday Justice and Home Affairs ministers will hear a presentation by the Commission on the main aspects of its forthcoming communication on the **future development of the Justice and Home Affairs area**. Ministers will have the opportunity to express their initial reactions to this presentation.

A joint declaration establishing a mobility partnership between Tunisia and the European Union and its member states (Belgium, Denmark, Germany, Spain, France, Italy, Poland, Portugal, Sweden and the United Kingdom) will be signed on Monday at 13.00 in the margins of the Council

#### Press conferences:

- Home Affairs Council (Monday, at the end of the meeting +/- 18.00);
- Justice Council (Tuesday, at the end of the meeting +/- 18.00)

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Press conferences and public events by video streaming: <http://video.consilium.europa.eu/>

Video coverage in broadcast quality (MPEG4): <http://tvnewsroom.consilium.europa.eu>

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

**P R E S S**

## HOME AFFAIRS

### Europol

#### – *State of play/Public debate*

The Council will hold a public debate on the proposal for a regulation on the European Agency for Law Enforcement Cooperation and Training (Europol) ([8229/13](#)). One of the aims of the Commission's proposal was for Europol to take over and build on the tasks currently carried out by CEPOL, creating a single European law enforcement agency and repealing the existing decisions on Europol<sup>2</sup> and CEPOL<sup>3</sup>.

The Presidency will present the state of play of ongoing discussions on the draft Regulation and on the progress made. Also, on the basis of a document prepared by the Presidency ([6476/14](#)), Ministers are expected to establish a position as regards the future of both Europol and CEPOL in order to finalise the discussions of the text at expert level.

At its meeting on 6-7 June 2013, the Council held its first orientation debate on the proposed regulation and a very large majority of delegations opposed the merger essentially because it would not be beneficial for either agency and they were not convinced that savings could be made through a merger.

In view of the above-mentioned position all the references to which are linked to the idea of merging Europol and CEPOL will be removed from the draft Europol regulation. In addition, ministers will have the opportunity to indicate at this meeting:

- whether they wish to update the existing CEPOL decision, in the light of the Treaties post-Lisbon;
- and if so, whether they wish to do so by: splitting the draft Europol regulation, or by inviting the Commission to submit it with a separate legislative proposal to amend or replace the existing CEPOL decision.

### Data protection directive

#### – *State of play*

The Council will be informed by the Presidency on the state of play ([6799/14](#)) of the proposal for a directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.

This proposal is part of the comprehensive data protection package which was adopted by the Commission on 25 January 2012. The package comprises two legislative proposals, one for a General Data Protection Regulation ([5853/12](#)), which is intended to replace the 1995 Data Protection Directive<sup>4</sup> (former first pillar), and one for a directive ([5833/12](#)) on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, which is intended to replace the 2008 Data Protection Framework Decision<sup>5</sup> (DFPD) (former third pillar).

The proposed directive aims to ensure a consistent and high level of data protection in this field, enhancing mutual trust between police and judicial authorities of different member states and facilitating the free flow of data and co-operation between police and judicial authorities. The European Parliament is for the first time co-legislator with respect to the areas covered by this Directive.

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<sup>2</sup> Decision 2009/371/JHA. ([OJ L 121, 15/05/2009, p. 37](#))

<sup>3</sup> Decision 2005/681/JHA. ([OJ L 256, 1/10/2005, p. 63](#))

<sup>4</sup> Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23/11/1995](#))

<sup>5</sup> Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ([OJ L 350, 30/12/2008, p. 60](#))

The DPFD has a limited scope of application. It applies to cross-border data processing and not to processing activities by the police and judiciary authorities at purely national level. This is liable to create difficulties for police and other competent authorities in the areas of judicial co-operation in criminal matters and police co-operation. They are not always able to easily distinguish between personal data that will remain purely domestic and personal data that might be used in cross-border exchanges. The proposed directive should meet the specific nature of these fields and lay down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

The previous Presidencies (the Danish, the Cyprus, the Irish and the Lithuanian) have dealt with the two proposals as a comprehensive legislative framework, while frontloading the work on the regulation in order to also benefit the discussions on the directive.

### **Migratory pressures: trends and outlook**

The Council will be briefed by the Commission, the EEAS, FRONTEX and EASO on the latest developments and trends concerning the migratory flows towards Europe. Ministers will have the opportunity to exchange views on this issue.

It is likely that some member states currently particularly affected by migratory pressures might wish to intervene regarding the situation and events in their country.

### **Task Force Mediterranean**

– *Follow up / Information from the Commission*

The Council will be briefed by the Commission about the calendar and the state of implementation of the operational actions within the context of the Task Force Mediterranean.

The Task Force Mediterranean was set up following the JHA Council of 7-8 October 2013 in order to identify the tools which the EU has at its disposal and which could be used in a more effective way to avoid the tragic events that had occurred off the coast of Lampedusa.

At its meeting on 24-25 October, the European Council agreed to take the appropriate measures in order to prevent and avoid such tragedies happening again, based on the imperative of prevention and protection and guided by the principle of solidarity and fair sharing of responsibility.

The European Council invited the Task Force Mediterranean, lead by the Commission and involving member states, the EEAS and a number of EU Agencies, to identify priority actions for a more efficient short-term use of European policies and tools.

On 4 December 2013 the Council had a discussion on the communication of the Commission on the work of the Task Force Mediterranean ([17398/13](#)) and welcomed the set of actions contained in the document.

The task force identified five main areas of action which will be pursued actively during the coming months:

- Actions in cooperation with third countries.
- Regional protection, resettlement and reinforced legal avenues to Europe.
- Fight against trafficking, smuggling and organised crime.
- Reinforced border surveillance contributing to enhancing the maritime situational picture and to the protection and saving of lives of migrants in the Mediterranean.
- Assistance and solidarity with member states dealing with high migration pressure.

The Presidency reported to the European Council on 20 December on this matter. In its [conclusions](#), the European Council welcomed the Commission communication and called for the mobilisation of all efforts in order to implement actions proposed in the communication with a clear timeframe to be indicated by the Commission.

It was considered that increased engagement with third countries in order to avoid that migrants embark on hazardous journeys towards the EU should be a priority. Information campaigns, regional protection programmes, mobility partnerships and an effective return policy were also considered important components of this comprehensive approach.

The European Council reiterated the importance it attaches to resettlement for persons in need of protection and to contributing to global efforts in this field. It also called for the reinforcement of FRONTEX border surveillance operations and actions to fight smuggling and human trafficking, as well as to ensure that appropriate solidarity is shown to all Member States under high migration pressure.

The European Council invited also the Council to regularly monitor the implementation of the actions and indicated that it will return to the issue of asylum and migration in June 2014 in a broader and longer term policy perspective, when strategic guidelines for further legislative and operational planning in the area of freedom, security and justice will be defined ("post-Stockholm"). Ahead of that meeting the Commission is invited to report to the Council on the implementation of the actions set out in its communication.

Therefore, the Presidency has invited the Commission to present at this Council the state of implementation of the 37 operational actions identified by the Task Force. Ministers will also be invited to comment on the information provided by the Commission and, if appropriate, provide information on how member states intend to participate in the implementation of the above operational actions.

## **JUSTICE**

### **Data protection regulation**

#### *– Public debate*

The Council will hold an orientation debate on certain issues of the proposal for a regulation setting out a general EU framework for data protection on the basis of a document prepared by the Presidency (6762/1/14 REV 1)

The discussion will focus on:

- international transfers of personal data. Following the discussion of the informal ministerial meeting in Athens on 23 January 2013, Ministers will be asked to confirm its broad support on the draft provisions as regards the territorial scope of the regulation (see annex I of the Presidency document). They will also be invited to discuss whether they confirm its common understanding on the key principles of chapter V as a basis to continue the work at technical level (see annex II).
- a number of key provisions of chapters I-VI of the regulation. Ministers will be asked to confirm that the work will continue at technical level on the basis of the progress achieved so far on: pseudonymisation as an element of the risk-based approach (see annex III), portability of personal data for the private sector (see annex IV) and obligations of controllers and processors (see annex V).
- profiling. Ministers will discuss whether the draft regulation, like Directive 95/46/EC, should limit itself to regulating automated decision-making namely (but not exclusively based on profiles) that provide legal effects or significantly affect individuals or should provide also for a specific regime regarding the creation and use of profiles

In January 2012, in the light of rapid technological developments and globalisation, the European Commission presented a legislative package to update and modernise the principles enshrined in the 1995 Data Protection Directive (Directive 95/46/EC)<sup>6</sup>, to guarantee data protection rights in the future. The package includes a policy communication setting out the Commission's objectives ([5852/12](#)), and two legislative proposals: a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (5853/12) and a directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities ([5833/12](#)).

These proposals are aimed at building a stronger and more coherent data protection framework in the EU, backed by strong enforcement that will allow the digital economy to develop across the internal market, put individuals in control of their own data and reinforce legal and practical certainty for economic operators and public authorities. Data protection in the European Union is a fundamental right. Europe already has the highest level of data protection in the world. The EU data protection reform seeks to ensure a very high level of protection of personal data.

### **European Public Prosecutor's Office**

#### *– State of play/Public debate*

The Council will be briefed by the Presidency on the state of play on the proposal regarding the setting up of a European Public Prosecutor's Office. On the basis of a document prepared by the Presidency (6490/1/14 REV 1), Ministers will have the opportunity to express their views on the structure of the Office, on the delimitation of its tasks and competences and on the regime of procedural rights applicable to suspects and victims.

According to the Commission proposal, the European Public Prosecutor's Office will be a decentralised prosecution office of the European Union with exclusive competence for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in offences against the EU financial interests. The proposal foresees that it will have uniform investigation powers throughout the Union based on and integrated into the national law systems of the member states.

The legal basis and the rules for the set-up of the European Public Prosecutor's Office are laid down in Article 86 of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will be adopted in accordance with a special legislative procedure: the Council will decide unanimously after obtaining the consent of the European Parliament. If unanimity cannot be reached in the Council, the Treaties foresee that a group of at least nine member states may enter into an enhanced cooperation.

The Commission presented its proposal on 17 July 2013 ([12558/13](#)).

### **Procedural safeguards for children in criminal proceedings**

The Council will have a policy debate on the proposal for a directive on procedural safeguards for children who are suspected or accused in criminal proceedings ([17633/13](#)). The proposal aims at ensuring that children are able to understand and follow the criminal proceedings to which they are subject, and that they can exercise their right to a fair trial. The proposal also seeks to prevent re-offending by children and foster their social integration.

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<sup>6</sup> Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23.11.1995](#))

The Presidency will focus the discussions on the following issues ([6403/14](#)):

- the scope: According to the proposal, the directive applies also to suspects and accused persons who are adults, if these persons were children when they committed the criminal offence and the criminal proceedings started when they were children. Ministers will be invited to indicate whether they accept this extended scope, or if they wish to limit the extension to only certain rights (to be defined at technical level) or to exclude that the directive applies when the children become of age. According to article 3, "child" means a person below the age of 18 years.
- the right of access to a lawyer: According to the proposal member states shall ensure that children are assisted by a lawyer throughout the criminal proceedings in accordance with Directive 2013/48/EU and that the right of access to a lawyer cannot be waived. Ministers will be asked to confirm the principle that children should not have the possibility to waive their right of access to a lawyer. They will also be invited to confirm if children should in principle always be assisted by a lawyer and, in the affirmative, if there is a difference if the child is deprived of liberty or not. Ministers will also discuss if there should be exceptions for minor cases.
- the right to protection of privacy: According to the proposal member states shall ensure that criminal proceedings involving children take place in the absence of the public, unless, after due consideration of the best interest of the child, exceptional circumstances justify a derogation. Ministers will be invited to express their preference for three different options: trials against children should normally be held without presence of the public, with flexibility to allow exceptions on a case-by-case basis (option A); trials against children should be normally held in public, with flexibility to allow exceptions on a case-by-case basis (option B); or the directive should not contain any principle, but state that member states should ensure the privacy of children, taking the interests of children duly into account (option C).

On the basis of the guidance to be provided by the Council, the preparatory bodies of the Council will continue the work on the proposal. The Presidency aims at reaching a general approach on the text in June, which will then constitute the basis for the negotiations with the European Parliament.

The Commission presented its proposal on 27 November 2013 together with a recommendation on procedural safeguards for vulnerable people suspected or accused in criminal proceedings. This recommendation, which is final, addresses adults.

In a package adopted on the same date, the Commission presented also the following texts:

- a proposal for a directive to strengthen the presumption of innocence and the right to be present at trial;
- a proposal for a directive on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant;
- a recommendation on procedural safeguards for vulnerable people suspected or accused in criminal proceedings;
- a recommendation on the right to legal aid for suspects or accused persons in criminal proceedings.

Since 2009, the work in the European Union on strengthening procedural rights for suspects and accused persons in criminal proceedings has been carried out on the basis of the [roadmap](#), which was adopted by the Council on 30 November 2009. The roadmap provides a step-by-step approach – one measure at a time – towards establishing a full catalogue of procedural rights for suspects and accused persons in criminal proceedings. The European Council has made the roadmap part of the Stockholm programme.

Three measures have already been adopted on the basis of the roadmap: Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings ([see press release](#)), Directive 2012/13/EU on the right to information in criminal proceedings ([see press release](#)), and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty ([see press release](#)).



## **Civil and commercial justice systems of the member states - conclusions**

– *Public debate*

The Council is expected to adopt conclusions on the civil and commercial justice systems of the member states ([6771/14](#)).

The conclusions underline the concerns expressed by member states about the methodology and system explored by the European Commission in 2013 with its Communication on a 2013 Justice Scoreboard; and especially highlight concerns about duplication of work and the importance of contextualisation when considering the analysis of any data in this area.

It also acknowledges that some areas of judicial work are very difficult to measure because of the fact that the most important aspect of its functioning is the quality of the judicial decisions which is difficult to quantify. According to the text, any work in this area must be objective and treat all member states equally, taking into account the specific characteristics of national justice systems. Moreover, the results of any such exercise should in any case be of a non-binding, non-compulsory nature and should not lead to any kind of ranking of the member states.

The conclusions also invite member states, the Council and the European Commission to further consider better mechanisms, in line with the Treaties and whilst respecting the competences of the European Union and its member states, for taking forward the discussion on the functioning of civil and commercial justice systems with the aim of improving their effectiveness.

## **2014 Justice Scoreboard**

– *Presentation by the Commission*

The Commission will make a short oral presentation of the 2014 Justice scoreboard, scheduled to be adopted mid-March.

In April 2013 the Commission prepared the EU Justice Scoreboard, a tool to promote effective justice and growth (8201/13). Its objective is to assist the EU and the member states in achieving more effective justice by providing objective, reliable and comparable data on the functioning of the justice systems.

## **Future development of the JHA Area**

Justice and Home Affairs ministers will hear a presentation by the Commission on the main aspects of its forthcoming communication on the future development of the Justice and Home Affairs area. Ministers will have the opportunity to express their opinions on these important matters.

In December 2009, the European Council adopted the [Stockholm Programme](#), a multi-annual instrument for the development of an area of freedom, security and justice for the years 2010-2014.

Since the Lisbon Treaty introduced major changes in the freedom, security and justice area, future developments on this field should be discussed in the light of Article 68 TFUE which provides that the European Council "shall define the strategic guidelines for legislative and operational planning" in this regard.

The European Council in its 27-28 June 2013 conclusions mandated the future Presidencies to start discussions on the future strategic guidelines in the area of freedom, security and justice with a view to its June 2014 meeting. The Lithuanian Presidency, being the first to take office after the conclusions were adopted, started this discussion by holding a ministerial debate on 18-19 July 2013 at the informal ministerial meeting in Vilnius. The Greek Presidency continued this debate at the informal ministerial meeting in Athens on 23-24 January.

## **Other business**

Under other business, the Council will be informed about the state of play of a number of legislative proposals, including:

- the directive on the conditions of entry and residency of third-country nationals for the purpose of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing;
- the directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer;
- the directive on the protection of the euro and others currencies against counterfeiting by criminal law;
- the regulation creating a European Account Preservation Order to facilitate cross border debt recovery in civil and commercial matters;
- the regulation amending regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- the regulation amending Council regulation 1346/2000 on insolvency proceedings

Furthermore, the Commission will present the 6th annual EU Disability High Level Group Report. This report gives an overview of progress made in ratifying and implementing the UN Convention on the Rights of Persons with Disabilities to which the EU is a party since 2011.



## **MIXED COMMITTEE**

### **Data protection directive**

The committee will be informed by the Presidency on the state of play ([6799/14](#)) of the proposal for a directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.

See item above.

### **Migratory pressures: trends and outlook**

The committee will be briefed by the Commission, the EEAS, FRONTEX and EASO on the latest developments and trends concerning the migratory flows towards Europe. Ministers will have the opportunity to exchange views on this issue.

It is likely that some member states currently particularly affected by migratory pressures might wish to intervene regarding the situation and events in their country.

### **Task Force Mediterranean**

The committee will be briefed by the Commission about the calendar and the state of implementation of the operational actions within the context of the Task Force Mediterranean.

See item above

### **Other business**

Under other business, the committee will be informed about the state of play of a number of legislative proposals, including:

- the decision introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Croatia and Cyprus of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period;
- the regulations amending 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 (amendment to Annexes) & (Moldova);
- the regulation establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;
- the Smart Borders Package.

Moreover, the Commission will inform the committee about the implementation of the financial programmes 2014-2020 for Home Affairs.

Finally, the Swiss delegation will inform ministers on the outcome of the constitutional referendum entitled "Against mass immigration" held on 9 February 2014.