



Brussels, 22 October 2009

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Luxembourg, 23 October 2009

*The Justice and Home Affairs Council (JHA) will hold a one-day meeting on Friday 23 October (under the chair of **Beatrice ASK, Minister for Justice** and of **Tobias BILLSTRÖM, Minister for Migration and Asylum Policy**) in the Conference Centre - FIL, 5, rue Carlo Hemmer, Luxembourg.*

*The Council session will be preceded by a meeting of the **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland), starting at 10.00 h. It will examine the state of play concerning the development of the **Visa Information System (VIS)** and the **Schengen Information System II (SIS II)**.*

*After that, the Council will have a first discussion on two Commission reports concerning **visa reciprocity**:*

- *the fifth report on certain third countries' maintenance of visa requirements in breach of the principle of reciprocity as stated in regulation 539/2001, and*
- *the special report on the re-introduction of the visa requirement by Canada for Czech citizens.*

*Ministers are also expected to reach a general approach on a draft framework decision on **accreditation of forensic laboratory activities** and a draft decision on setting up a **European Crime Prevention Network**.*

Under any other business Slovenia has requested to inform about the ministerial conference on illegal migration, organized crime, corruption and terrorism held in Brdo in September.

*The justice part of the Council will start in the afternoon. The Council is expected to hold a debate and reach agreement on a general approach on three documents concerning the strengthening of **procedural rights of suspected or accused persons in criminal proceedings**:*

- *a resolution on a roadmap for a wide range of such rights;*
- *a framework decision on the **right to interpretation and to translation**; as well as*
- *an accompanying resolution fostering the framework decision's implementation.*

¹ This note has been drawn up under the responsibility of the press office.

*Still on criminal procedures, ministers will exchange views on a framework decision on the **transfer of proceedings in criminal matters**. Ministers will also examine the state of play of a framework decision on **preventing and combating trafficking in human beings**.*

*Under any other business, the Commission will present its newly adopted proposal for a regulation on **successions with a cross-border dimension** and the creation of a European Certificate of Succession.*

*Without debate, the Council is expected to adopt a decision on the conclusion of an agreements on **extradition and mutual legal assistance** between the European Union and the United States of America as well as two sets of conclusions:*

- *on the **European financial coalition** and national financial coalitions **against child pornography on the internet** and*
- *on a strategy to ensure fulfilment of the rights of and improve support to **persons who fall victim to crime** in the European Union.*

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*The presidency intends to organise a **press conference** at the end of the morning (±12.30) and at the end of the afternoon session (±17.00).*

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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HOME AFFAIRS (morning session)

Schengen Information System II (SIS II) and Visa Information System (VIS)

In the margins of the Council, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will discuss the state of play concerning the development of the Schengen Information System II (SIS II) and the Visa Information System (VIS)

Visa reciprocity: General Commission report

After a presentation by the Commission, ministers will hold a first exchange of views on the fifth report on certain third countries' maintenance of visa requirements in breach of the principle of reciprocity as set out in regulation 539/2001.

According to the regulation, the Commission is meant to regularly report on these matters. The latest report was adopted on 19 October 2009.

Visa requirements imposed by Canada on Czech nationals

The Council will discuss a Commission report on the state of play regarding the reintroduction by Canada of a visa requirement for Czech nationals.

The Commission is required to present this special report after the Czech government had notified the Commission and the Council of this matter on 14 July 2009, the same day Canada unilaterally introduced the visa requirement. Since then and in consultation with the Czech authorities, the Commission has been examining the issue with the Canadian government with a view to restoring visa-free travel for Czech nationals as soon as possible.

Canada is among the third countries whose nationals are not subject to a visa requirement under regulation 539/2001. This regulation, however, as amended by regulation 851/2005, also foresees possible reciprocity measures in the case that a country enjoying visa-free travel to the EU introduces visa requirements for citizens of one or several EU member states.

Canada also continues to maintain a visa requirement for Bulgarian and Romanian citizens.

Information by Slovenia on the ministerial conference in Brdo

Slovenia will briefly present the conclusions of the ministerial conference on illegal migration, organised crime, corruption and terrorism held in Brdo in September. The topic of visa liberalisation in the Western Balkans formed a significant part of the conference.

Accreditation of forensic laboratory activities

Ministers will hold a general review of a draft framework decision on accreditation of forensic laboratory activities ([11419/09](#)).

The purpose of this framework decision is to ensure that the results of forensic laboratory activities carried out in one EU member state are recognised by the authorities responsible for the prevention, detection and investigation of criminal offences within any other member states. To this aim, a national accreditation body in each member state shall accredit forensic service providers carrying out laboratory activities as complying with the relevant international ISO-standard.

The overall aim of this framework decision is confidence-building between EU member states. As a consequence of EU legislation such as the Eurodac regulation and the Prüm agreement, the amount of data transferred across the EU increases. It will therefore become increasingly important to ensure that the quality of the data is sufficiently high.

As for information originating from forensic processes, there are always a number of steps that have to be taken into account using a controlled routine: how an item has been handled, what methods have been used and how the results have been interpreted. The competence of the persons involved in the forensic process is also essential to achieving a defined level of quality.

European Crime Prevention Network (EUCPN)

The Council will review a draft decision on the European Crime Prevention Network (EUCPN) established in 2001.

An external evaluation conducted in 2008-2009 identified inter alia the need for more engagement in the activities of the network by the national representatives and strengthening of the secretariat. To that end, decision 2001/427/JHA would be amended in a number of points, namely: provisions dealing with contact points, the tasks of the secretariat, the structure of the board and its tasks, including the appointment of the chair.

EUCPN's main goals are to develop crime prevention measures, to exchange best practices and to strengthen the network of competent national authorities. The network mainly focuses on juvenile, urban and drug-related crime.

JUSTICE AFFAIRS (afternoon session)

Procedural rights in criminal proceedings

The Council is expected to adopt a resolution on a roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. In this framework, it will discuss the general approach to the first legislative proposal, namely the framework decision on the right to interpretation and to translation ([11917/09](#)), as well as an accompanying resolution fostering its implementation.

Considering the importance of procedural rights of suspected or accused persons in criminal proceedings and the complexity of harmonising them at EU level, the Presidency decided to address them in a step-by-step approach. The roadmap groups the various rights and sets out the priority issues on which legislative initiatives are desirable over the coming months and years.

On the first group of rights, the right to interpretation and to translation, the Commission has already tabled a proposal ([11917/09](#)) which ministers will discuss along with an accompanying resolution fostering its implementation via guidelines on and the exchange of best practices.

Procedural rights in criminal proceedings are considered important because the successful establishment of an area of freedom of movement and residence within the European Union has led to an increasing number of Europeans travelling, studying and working in other countries than that of their residence. As an inevitable consequence, EU citizens are also more likely to become involved in criminal proceedings in another member state. In those situations, ensuring the procedural guarantees of suspected or accused persons becomes particularly important in order to safeguard their right to a fair trial.

The Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights, constitutes the common basis for the protection of the rights of suspected or accused persons in criminal proceedings. It constitutes an important foundation for European countries to have trust in each other's criminal justice systems. Additional EU legislation in this area is aimed at increasing this mutual trust, enhancing judicial cooperation between member states and increasing the protection of citizens within the European Union.

Transfer of proceedings in criminal matters

The Council will review the progress made on a draft framework decision on transfer of proceedings in criminal matters ([13504/09](#)). Its purpose is to increase efficiency in criminal proceedings and to improve the proper administration of justice by establishing common rules facilitating the transfer of criminal proceedings between competent authorities of EU member states.

Currently, there are several legal instruments on transfer and coordination of proceedings applicable between the member states. There is, however, no common legal framework at EU level.

Some of the main issues under review by ministers at the October Council are:

- the procedure for requesting transfer of proceedings,
- the decision of the receiving authority,
- consultations between the requesting and receiving authorities, and
- cooperation with Eurojust and the European Judicial Network.

The importance of this initiative is highlighted by the fact that EU member states are increasingly confronted with situations where two or more countries have jurisdiction to investigate and bring to trial the same or related criminal offences. This so called overlapping jurisdictions could occur in situations where the offence has been committed in the territory of several member states, e.g. trafficking in human beings, or the effects of an offence are sustained in the territory of several member states, e.g. cyber attacks. Another example could be when the competence in one member state is based on the principle of territoriality and in another on the principle of personality.

In the light of the general aim of the EU to create a common area of freedom, security and justice and in the interests of proper administration of justice it would in many situations be more appropriate to concentrate proceedings to one member state. This would be consistent with traditional administration of proceedings at national level.

Furthermore, there are cases where only one member state has started investigations there could be, however, reasons for which the proceedings would be more effectively carried out in another Member State, and should thus be transferred. These situations could occur in cases where there are difficulties in securing evidence in the first member state or when the suspect is already undergoing a custodial sentence in the other member state.

Trafficking in human beings and victims support

The Council will examine the state of play regarding a draft framework decision aimed at strengthening the fight against trafficking in human beings ([8151/09](#)).

Ministers will pay particular attention to the proposed penalties' system and possible situations of parallel criminal proceedings.

The new framework decision has been tabled by the Commission in March 2009 and is intended to replace framework decision 2002/629/JHA. It aims at improving the existing instruments to combat trafficking in human beings and to protect victims. It includes:

- a definition of the crime, aggravating circumstances and higher punishment;
- extraterritorial jurisdiction allowing 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 the victims who bear the consequences of the criminal activities;
- higher standard of protection and assistance to the victims, and in particular special protective measures for children;
- preventive measures aimed at discouraging the demand side of the phenomenon.

The proposal will contribute to the approximation of national legislations in this field as well as to the improvement of international law enforcement and judicial cooperation.

Successions with a cross-border dimension

The Commission will present to the Council its proposal for a regulation on successions with an international dimension and for the creation of a European Certificate of Succession which was adopted on 14 October 2009 ([IP/09/1508](#)). Its main objective is to create greater predictability for individuals in cases of cross-border succession and to simplify the administration of such cases.

The proposal contains provisions on jurisdiction, applicable law, recognition and enforcement of decisions in matters of succession. It foresees that, by default, the competent authority and the law applicable are determined by the place of habitual residence of a deceased person. At the same time, it allows citizens to opt to have their succession governed by the law of their country of nationality.

The proposal also introduces a European Certificate on Succession - a document recognised throughout the EU which shows who inherits from a deceased person or has the right to administer this person's estate.
