



Brussels, 30 November 2010

*Background<sup>1</sup>*  
**JUSTICE AND HOME AFFAIRS COUNCIL**  
**Brussels, 2 and 3 December 2010**

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday, 2 and Friday, 3 December 2010 under the chair of **Mr Melchior WATHELET**, State Secretary in charge of Migration and Asylum Policy, **Mrs Annemie TURTELBOOM**, Minister for Home Affairs and **Mr Stefaan DE CLERCK**, Minister for Justice, in the Justus Lipsius building in Brussels.*

*On Thursday morning, the Council will hear a report by the Belgian Presidency on **asylum and migration policy**. Ministers will also look at the state of implementation of the **Greek national action plan on asylum reform and migration management**, the setting up of a **Mediterranean Office for Youth** and the outcome of a conference on **legal migration**.*

*On Thursday afternoon, interior ministers are expected to adopt negotiation directives for **PNR agreements with Australia, Canada and the United States of America**. Further discussions on the fight against terrorism will focus on:*

- the **EU counter-terrorism coordinator's most recent report and discussion paper**,*
- the question of **sharing information on terrorist threat levels** between the member states, and*
- the recommendations of the ad hoc High Level Group on **cargo security/civil aviation**.*

*The Commission will then present its communication on concrete actions regarding the EU's **Internal Security Strategy**, and the presidency will inform the Council on recent **meetings with Russia and the Western Balkan countries** where issues regarding the area of freedom, security and justice were addressed.*

*Interior ministers are also expected to discuss and adopt conclusions on preventing and combating **identity-related crimes** as well as on the fight against **crimes committed by mobile (itinerant) criminal groups**. Also for discussion and adoption: an action plan to combat **illegal trafficking in so called "heavy" firearms**.*

*On Friday, justice ministers are expected to adopt harmonised rules on the law applicable to **divorce and legal separation**. It is the **first enhanced cooperation** in the history of the EU in which currently 14 member states are taking part.*

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

*The Council is then due to confirm the agreement reached on EU wide minimum rules concerning the **fight against trafficking in human beings**. If everything goes as planned, the rules should be adopted by the Council and the Parliament in first reading in the coming weeks.*

*Ministers are also likely to reach a general approach, thus opening the way for negotiations with the European Parliament, on two directives regarding:*

- the **fight against sexual exploitation of children**, and*
- the **right to information in criminal proceedings** ("Letter of rights").*

*Furthermore, the Council will continue discussions on the creation of a **European Investigation Order (EIO)** in criminal matters and on a negotiation mandate for a **EU-US agreement on protection of personal data**. In this context, the Commission will present its **communication on data protection**.*

*Other subjects on the agenda of justice ministers include **international family mediation in cases of international child abduction** as well as progress made in the area of **European e-Justice**.*

*Preceding the Council session on Monday (starting at +/- 10.00), 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 measures for reinforcing the **protection of the external borders and combating illegal immigration**.*

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*The presidency intends to organise three **press conferences**: two on 2 December (around 13.00 and at the end of the proceedings), one on 3 December (around 13.00).*

***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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## **Asylum and migration**

The Belgian Presidency will report on the presidency programme on asylum and migration policy.

On legal migration, ministers held in October 2010 a first exchange of views on Commission proposals for two directives on conditions of entry and residence of third-country nationals concerning:

- intra-corporate transfers (regarding managerial and qualified employees for branches and subsidiaries of multinational companies) ([12211/10](#)), and
- seasonal employment ([12208/10](#)).

On illegal migration, the Council discussed revised rules for the external borders agency FRONTEX for which the Commission has submitted a proposal on 24 February 2010 ([6898/10](#)). Furthermore, Council preparatory bodies continued work on the Council Conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration which were adopted in February 2010 ([6975/10](#)). The Commission presented also a report on the implementation of the 29 measures.

On asylum policy, the Council addressed the establishment of a Common European Asylum System (CEAS) on several occasions. Most recently at the October Council on the basis of a discussion paper ([15561/10](#)). The CEAS includes a package of six legislative proposals which EU member states have committed to adopt by 2012.

Four of those six proposals have been identified as priority instruments: the Qualification and Long Term Residents Directives and the Regulations on Dublin II and Eurodac. On the Long Term Residents Directive a first reading agreement with the European Parliament has been reached (see [press release 16596/10](#)). On the other two legislative files that are part of the overall package, namely the Reception and Procedures Directives, the Commission announced its intention to submit in 2011 amended proposals.

Regarding the two other essential elements of the CEAS – practical cooperation and solidarity – the Belgian Presidency organised a ministerial conference on 13 and 14 September 2010, which focused on asylum seekers with special needs and decision making (two of the more contentious issues in the Reception and Procedures Directives) as well as intra-European solidarity and responsibility sharing. The conference brought together all relevant European stakeholders in the field of the asylum process for a constructive dialogue on the basis of a “bottom up” approach and building on existing good practices at national and EU level. The conference also provided useful input for the future work of the European Asylum Support Office, which will soon become operational.

## **PNR agreements with third countries**

The Council is expected to adopt negotiation directives for agreements on the transfer and use of passenger name records (PNR) with Australia, Canada and the United States of America. This would allow the Commission to start negotiating with these three countries.

The goal of the agreements is to prevent and combat terrorism and other forms of serious cross border crime. At the same time, the EU is also committed to ensure that any transmission of PNR data to third countries is done in a secure manner, in line with existing EU legal requirements, and that passengers are able to enforce their rights in relation to the processing of their data.

PNR is the information voluntarily provided by passengers and collected by air carriers during the reservation and check-in procedures. It includes dates of travel and travel itinerary, address and phone numbers, credit card number, travel agent, seat number and baggage information.

In May 2010, the European Parliament decided to postpone its vote on the request for consent on existing PNR agreements with the US and Australia. These two agreements have therefore not been concluded yet and are being applied on a provisional basis since 2007 and 2008, respectively. In a resolution, Parliament demanded that new agreements should be negotiated with the US and Australia as well as with Canada, with which a PNR agreement is in force since 2006.

As a result, the European Commission submitted in September 2010 proposals for negotiation mandates which were discussed at the Council on 7 October 2010 and subsequently amended in Council preparatory bodies. The Commission also issued a communication on the global approach to transfers of PNR data to third countries ([13954/10](#)).

## **Fight against terrorism**

The Council will address a number of issues concerning the fight against terrorism:

- The EU counter-terrorism coordinator will present his most recent discussion paper on the EU Counter-terrorism strategy as well as his yearly report on the implementation of the EU Action Plan for combating terrorism.
- The Council will address the question of sharing information on terrorist threat levels between the member states.
- The ad hoc High Level Group on cargo security/civil aviation will present its report.

## **EU Internal Security Strategy**

The Commission will present a communication on concrete actions regarding the Internal Security Strategy for the European Union ([16797/10](#)). The communication proposes to focus on five areas: organised crime, terrorism, cyber crime, border management, and crisis management. Within these five areas, the communication outlines 41 actions to be implemented within the next four years.

The Commission communication follows the adoption of the Internal Security Strategy for the European Union in February 2010 ([7120/10](#) or [PDF-brochure](#)) which was endorsed by the European Council in March 2010.

## **External relations regarding "Freedom, security and justice"**

The Council will be informed on recent meetings with third countries where issues regarding the area of freedom, security and justice were addressed.

Two such meetings took place in November:

- The ministerial meeting of the EU-Russia Permanent Partnership Council (18 and 19 November 2010) resulted in a [joint statement](#).
- At the EU-Western Balkans Ministerial Forum (23 and 24 November 2010) the main issues discussed included cooperation between the Western Balkans countries and the EU agencies Europol, Eurojust and Frontex; the question of data protection standards; the cooperation in criminal matters; the issue of visa liberalisation.

## **Identity fraud and identity management**

The Council is expected to discuss and adopt conclusions on preventing and combating identity-related crimes and on identity management, including the establishment and development of permanent structured cooperation between EU member states.

## **Illegal trafficking in so called “heavy” firearms**

The Council is expected to adopt a draft action plan to combat illegal trafficking in so called “heavy” firearms<sup>1</sup> which could be used or are used in criminal activities ([16427/10](#)).

The action plan lists a number of concrete actions that should be taken to:

- improve the existing crime image, i.e. improving the knowledge of the present situation relating to the different aspects of illegal trafficking in so called “heavy” firearms, the types of offenders, the types of weapons available on the criminal market and the different sources of illegal trafficking;
- strengthen cooperation between the member states’ law enforcement agencies and EU agencies, and between the different EU agencies, in order to dismantle criminal gangs active in this area;
- strengthen police or administrative control on the different potential sources of the illegal trafficking in so called “heavy” firearms and set up a policy to prevent thefts of such firearms.

The action plan was drawn up in the light of the significant and rising threat that the possession and use of so called “heavy” firearms by organised crime groups, as well as lower-level street gangs, pose to the general public and to law enforcement personnel. At present, many of those groups and gangs based in the EU have routine access to firearms or are able to rely on various channels to acquire them on demand.

These channels include above all suppliers in South East Europe that are able to meet a rise in demand due to the vast number of stockpiles and weapons in circulation in that region. In addition to criminals and organised crime groups operating across the EU, these stockpiles also serve as a supply for conflict zones outside Europe and for local organised crime groups based in South East Europe.

## **Crimes committed by mobile criminal groups**

The Council is expected to adopt conclusions on the fight against crimes committed by mobile (itinerant) criminal groups.

The goal of the conclusions is to raise awareness about and combat the activities of criminal groups who systematically acquire wealth through theft of property or fraud<sup>2</sup>, having a wide ranging area of operations and are internationally active.

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<sup>1</sup> E.g. assault rifles, sub-machine guns and rockets launchers.

<sup>2</sup> E.g. theft, residential and non-residential burglaries, organised shoplifting, pick-pocketing, cargo thefts, metal thefts, thefts on construction sites and ATM fraud (skimming).

## **Divorce and legal separation**

The Council is expected to adopt the implementation of the first enhanced cooperation<sup>1</sup> in the history of the EU. Currently, 14 member states are taking part in it.<sup>2</sup>

The regulation concerns the law applicable to divorce and legal separation (Rome III) ([9898/2/10](#)). It lays down clear rules on how international couples can seek divorce or legal separation in the participating countries. Other EU member states who are not yet ready but wish to join this pioneer group at a later stage will be able to do so.

The new rules provide for a comprehensive legal framework in matrimonial matters ensuring legal certainty and predictability. If the spouses agree, they can choose to a certain extent the law applicable to their divorce and legal separation. The proposal, however, does not cover the consequences of a divorce or legal separation relating to property, maintenance, parental responsibility or other issues as preliminary questions within the context of divorce.

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 on the ground of objective connecting factors; 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 and prevents 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.

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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](#).

<sup>2</sup> Spain, Italy, Hungary, Luxembourg, Austria, Romania, Slovenia, Bulgaria, France, Germany, Belgium, Latvia, Malta and Portugal.

## **Trafficking in human beings**

The Council is expected to confirm the agreement reached by the Permanent Representatives Committee of the Council on EU wide minimum rules concerning the definition of criminal offences and the level of sanctions in the area of trafficking in human beings. Once adopted, the new rules will also strengthen the prevention of the crime and the protection of victims of trafficking in human beings.

The text agreed upon today at member state level was previously negotiated with the European Parliament. If the Parliament confirms its agreement on the text as it now stands at its December plenary session, the Council will swiftly give its green light to the text, resulting in a first reading agreement. Member states will then have to comply with the new rules within two years.

For more information, see the following [press release 16913/10](#).

## **Sexual exploitation of children**

The Council is expected to reach a general approach on a Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework decision 29004/68/JHA. On the basis of the agreed text in Council, the Presidency will start negotiations with the European Parliament in the framework of the ordinary legislative procedure.

After its adoption, the Directive will not only establish minimum rules concerning criminal offences and sanctions, but will also strengthen prevention of these crimes and the protection of their victims by taking measures *inter alia*:

- against advertising and organising children sex tourism;
- against websites containing or disseminating child pornography including the removal or blocking of webpages containig or disseminating child pornography; and
- against sollicitation of children for sexual purposes by means of information and communication technologies (grooming).

## **Right to information in criminal proceeding**

The Council is expected to reach a general approach on EU-wide minimum standards as regards the right to information in criminal proceedings. The presidency will subsequently start negotiations with the European Parliament.

The directive was proposed by the Commission in July 2010 ([12564/10](#)). Its goal is to ensure that any person who is suspected or accused of having committed a criminal offence is provided with information concerning some fundamental procedural rights, as well as information on the accusation against him, free of charge and in a language he or she understands.



The text currently under discussion stipulates that any person arrested has the right to receive upon arrest a so-called "Letter of Rights" in a language that he or she understands. It should be drafted in a simple and accessible language so as to be easily understood by a lay person without any knowledge of criminal procedural law.

This "Letter of Rights" must contain information on a number of procedural rights:

- the right to know how long you can be deprived of liberty in the country concerned before being brought before a judicial authority after arrest;
- the right of access to a lawyer;
- any entitlement to legal advice free of charge and the conditions for obtaining it;
- the right to interpretation and translation;
- the right to remain silent.

The Commission proposal also provides for an indicative model of such "Letter of Rights", in order to facilitate the elaboration by the member states of a similar document adapted to their national law; the status and content of this indicative model will be discussed by Council at a later date.

Other information rights provided for in the current text of the directive include the right to access to the materials of the case. For this right, access to certain materials may be refused if it may lead to serious risk for the fundamental rights of another person. Access can also be refused if necessary to safeguard an important public interest, e.g. in cases where it risks jeopardizing an ongoing investigation, or where it may seriously harm the national security of the member state in which the proceedings take place.

The proposal is a second step in a wider package of legislative and non-legislative initiatives that aim to strengthen the procedural rights of suspected or accused persons in criminal proceedings.

The Council unanimously agreed on this wider package, or roadmap, in October 2009 ([14552/1/09](#)). It comprises six main areas:

- translation and interpretation; this file has already been adopted ([Directive 2010/64/EU of 20 October 2010, OJ L 26.10.2010 n. 280, p.1](#));
- information on rights and information about charges (as presented here);
- legal advice and legal aid;
- communication with relatives, employers and consular authorities;
- special safeguards for suspected or accused persons who are vulnerable; and
- a green paper on pre-trial detention.

## **European Investigation Order**

Mutual recognition as the basis to allow one EU member state to carry out investigative measures at the request of another EU member state - with this goal in mind ministers will continue work on the creation of a European Investigation Order (EIO) in criminal matters.

The EIO is an initiative which was presented in May 2010 by seven member states ([9288/10](#)).<sup>1</sup> The United Kingdom decided to participate in the EIO by using the opt-in option provided for in Protocol 21 of the Lisbon Treaty. Ireland and Denmark are not taking part.

The main goal of this initiative is to allow one EU member state ("the issuing state") to issue an European Investigation Order and forward it to another member state ("the executing state") in order to have one or several specific investigative measure(s) carried out with a view to gathering evidence. The investigative measures would, for example, include the hearing of witnesses, searches and seizures as well as, with additional safeguards, interceptions of telecommunications, observation, infiltration and monitoring of bank accounts.

At the November Council and on the basis of a working document ([15531/10](#)), ministers focused their debate on the following key issues which touch upon the core of the principle of mutual recognition:

- How to limit as much as possible grounds for refusal: Most member states supported the suggestion of the presidency to move away from a general ground for refusal and, instead, take a differentiated approach according to the intrusiveness of an investigative measure. Following this idea, a wide flexibility would be maintained for the most intrusive measures such as interception of telecommunications.
- How to safeguard the proportionality of a request without hampering cooperation: Most member states supported that it should be the issuing state which assesses the proportionality of a request. Some estimated, however, that the executing state should also have the right to do so.
- How to deal with the costs for the executing state, including the impact on its human resources: One possibility discussed is to consider the sharing of costs between the issuing and executing states in well-defined circumstances. Besides that, a majority of member states considered that the costs should not constitute a ground for refusal.

## **EU-US data protection agreement**

The Council will discuss the negotiation mandate for a EU-US agreement on protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters.

The goal of the Belgian presidency is to adopt the mandate.

The Commission presented its recommendation for authorising the opening of negotiations with the United States on 28 May 2010.

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<sup>1</sup> Austria, Belgium, Bulgaria, Estonia, Slovenia, Spain and Sweden.

## **Data protection communication**

After a presentation by the Commission, the Council will hold a policy debate on the Commission communication on data protection which is to be presented in the days preceding the Council meeting.

## **International family mediation in cases of international child abduction**

The Council will be informed of the conclusions made at a seminar on 14 October 2010 concerning international family mediation in cases of international child abduction ([16121/10](#)).

The participants of the conference consider that the international family mediation can, in the cases of international child abduction, represent an efficient way to prevent disputes and an efficient method to resolve these painful conflicts while always favouring the interest of the child.

They invite EU member states and the Commission to take their conclusions and recommendations into account in future work related to the subject.

## **e-Justice**

The Council will discuss the progress made in the area of European e-Justice on the basis of a presidency report ([16166/10](#)).

Concerning the European e-Justice portal, the report underlines:

- the first release of the portal on 16 July 2010 and the preparations for the second release in January 2011;
- the subsequent activities and measures taken at EU and national level to promote the portal;
- the outcome of reflections on the role of the European e-Justice in the wider EU justice policy.

The report also addresses the progress made on a number of other e-Justice projects, such as:

- the e-Justice Communication via **Online Data Exchange** (e-CODEX) that aims to develop horizontal technical solutions in the field of justice that could be used in several e-Justice projects, where pre-requisites include e-Identification, authentication, authorisation etc.;
- dynamic online forms for European payment procedures or European small claims procedures;
- interconnection of Member States' insolvency registers;
- cooperation with legal practitioners;
- a voluntary system of a common identifier for case-law (ECLI).

For more information on European e-Justice and the European e-Justice portal, see this [press release 12179/10](#).

## **AOB**

### Mediterranean Office for Youth

Under any other business, the French minister will brief his colleagues on the setting up of a Mediterranean Office for Youth at the beginning of next year. The main goal of the initiative is to create a mobility programme for Mediterranean youth. Among other things, it includes the certification of masters and doctoral programmes for which students can obtain grants as well as the launch of a platform for work experience and jobs.

The Mediterranean Office for Youth is an intergovernmental initiative. It was launched by 16 countries on the northern and southern shores of the Mediterranean (Albania, Bosnia and-Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Italy, Lebanon, Malta, Montenegro, Morocco, Slovenia, Spain, Tunisia and Turkey) in Paris on 14 December 2009. The project allows other member states of the Union of the Mediterranean (UfM) to join later.

### Greek national action plan on asylum and migration

The Greek minister will inform the Council on the state of implementation of the Greek national action plan on asylum reform and migration management. Greece recently adopted this national action plan in response to significant increases in the number of illegal immigrants and asylum seekers.

### European disaster response

The Commission is expected to present to the Council its recent proposals to reinforce the EU's disaster response capacity, i.e. to act on civil protection and humanitarian assistance, both within and outside of its borders. The strategy published in late October 2010 aims to develop scenarios for the main disaster risks and to identify the assets needed if these risks materialise. In addition, a map would be drawn of member states' assets that are currently available for EU response, and national authorities would be requested to voluntarily put core equipment on standby, available for rapid European assistance if needed.

### Legal migration

The Belgian Presidency will inform the Council of the outcome of a conference on legal migration which took place on 26 November 2010 in Brussels.

## **Mixed Committee**

In the margin of the Council session on Thursday, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will discuss the following subjects:

### **SIS II**

The committee will discuss the state-of-play of the implementation of the Schengen Information System II (SIS II). The global schedule presented by the Commission at the October Council meeting provides for entry into operation of the SIS II by the first quarter of 2013.

### **Illegal migration**

The Commission will present its report on the implementation of the Council Conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration.

The Council adopted these conclusions in February 2010 ([6975/10](#)).

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