



Brussels, 5 October 2010

**BACKGROUND<sup>1</sup>**  
**JUSTICE AND HOME AFFAIRS COUNCIL**  
**Luxembourg, 7 and 8 October 2010**

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday, 7 and Friday, 8 October 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 Conference Centre - FIL, 5, rue Carlo Hemmer, Luxembourg.*

*On Thursday morning, the Council will address the following asylum and migration issues:*

- *two recent Commission proposals concerning **conditions of entry and residence of third-country nationals**: one in the framework of an **intra-corporate transfer** (regarding managerial and qualified employees for branches and subsidiaries of multinational companies) ([12211/10](#)) and one for the purposes of **seasonal employment** ([12208/10](#)).*
- *the state-of-play of the **Common European Asylum System (CEAS)**;*

*On Thursday afternoon, interior ministers will discuss three **Commission communications** on:*

- *the **collection and processing of PNR data** ([13954/10](#));*
- *the **EU Counter-Terrorism Policy**: main achievements and future challenges ([12653/10](#)).*
- ***information management** in the area of freedom, security and justice ([12579/10](#)); and*

*Besides that, and under any other business, the Commission wants to inform ministers about its **recent trip to Libya** where mainly migration and asylum issues were discussed.*

*In the margins of the Council session on Thursday (starting at +/- 15.00), 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 the **Visa Information System (VIS)**. Delegations will also look at the state-of-play concerning the **visa requirement imposed by Canada on Czech nationals**.*

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

*On Friday, justice ministers will focus their debates on the following four dossiers:*

- *a directive on the **right to information in criminal proceedings** ([12564/10](#));*
- *a directive on **combating the sexual exploitation of children** ([8155/10](#)),*
- *a directive on a **European Protection Order (EPO)** ([9288/10](#)); and*
- *a regulation implementing **enhanced cooperation in the area of the law applicable to divorce and legal separation** ([11809/3/10](#)).*

***Important A-items** to be adopted by the Council without discussion include:*

- *a directive on the right of interpretation and translation in criminal proceedings;*
- *a decision on the conclusion of a readmission agreement with Pakistan; and*
- *two agreements with Brazil concerning visa free-travel for stays of up to three months (holders of ordinary passports and holders of diplomatic passports).*

***Lunch discussions** will address the U.S. Electronic System for Travel Authorization (**ESTA**) fees and the cooperation and partnership with third countries in the **fight against terrorism** (Thursday) as well as recommendations from the Counter-Terrorism Coordinator on the **judicial dimension of the fight against terrorism** (Friday).*

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*The presidency intends to organise three **press conferences**: two on 7 October (around 13.00 and at the end of the proceedings), one on 8 October (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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## **Common European Asylum System (CEAS)**

Ministers will discuss the state-of-play regarding the establishment of a Common European Asylum System (CEAS). The CEAS includes a package of six legislative proposals which EU member states have committed to adopt by 2012.

At the informal meeting of the Justice and Home Affairs Ministers on 15 and 16 July in Brussels, the Belgian Presidency presented a strategy which gives priority to those four proposals where substantial progress in the negotiations seems possible in the short term. These are the Dublin and Eurodac Regulations as well as the Long Term Residence and Qualification Directives. Council positions on these proposals are currently being established with a view to engaging in a dialogue with European Parliament soon. At the same time, the strategy underlines that coherence with the two other asylum proposals must be ensured, namely the Reception Conditions and Procedures Directives. Although those two files prove to be more complex and the same progress in the short term might not be possible, the Presidency will continue discussions also on these proposals, in view of the finalisation of CEAS by 2012.

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.

## **Intra-corporate transfer and seasonal employment**

Ministers will hear presentations by the Commission on proposals for two directives regarding conditions of entry and residence of third-country nationals:

- in the framework of an intra-corporate transfer (regarding managerial and qualified employees for branches and subsidiaries of multinational companies) ([12211/10](#)), and
- for the purpose of seasonal employment ([12208/10](#)).

Both proposals were tabled on 15 July 2010.

### **Seasonal employment**

As for the file on seasonal employment, the Commission proposal determines the conditions of entry and residence of third-country nationals and defines the rights of seasonal workers. According to the proposal an application should be admitted when the applicant can present:

- a valid work contract or a binding job offer,
- a valid travel document,
- evidence of having or having applied for sickness insurance and
- evidence of having accommodation.

The proposal also specifies the grounds for refusal, withdrawal and non-renewal and sets out the procedures that must be followed when receiving an application.

An accepted application should give access to a seasonal worker permit. This permit should be valid only for the host member state and for a maximum of six months in any calendar year. At the same time, the proposal allows to issue up to three seasonal worker permits covering up to three subsequent seasons within one administrative act ('multi-seasonal worker permit').

The applicant should, so the proposal, receive a decision within 30 days. Any rejection should be open to legal challenge. The proposal also includes equal treatment with nationals of the host member state in a number of areas including workers' representation, payment of statutory pensions and access to goods and services available to the public.

The proposal does not create a right of admission. It leaves it up to EU member states to decide on the number of seasonal workers they want to admit on their territory.

### Intra-corporate transfers

As for the file on intra-corporate transfers, the Commission proposal determines the conditions of entry and residence of third-country nationals - also in member states other than the initial host member state. The proposal aims at an accelerated procedure for highly qualified people suggesting that a decision must be taken within 30 days. The document handed out to these persons should be a combined work and residence permit valid for a maximum of period of time (one to three years).

The proposal does not create a right of admission. It leaves it up to EU member states to decide on the number of intra-corporate transfers they want to admit on their territory.

EU-wide criteria for the admission of applications include that the applicant can present:

- a work contract with his employer of at least 12 months and that he or she will be able to transfer back to an entity belonging to that undertaking established in a third country at the end of the assignment;
- an assignment letter from the employer specifying, among other things, the duration and location of the transfer, evidence that he or she is taking a position as a manager, specialist or graduate trainee as well as the remuneration;
- a valid travel document as well as evidence of a having or having applied for sickness insurance.

The proposal also specifies the grounds for refusal, withdrawal and non-renewal and sets out the procedures that must be followed when receiving an application. Simplified procedures are possible under certain conditions for groups of undertakings that have been recognised for that purpose by member states.

An accepted application should give access to a intra-corporate transferee permit valid for at least one year or the duration of the transfer to the territory of the member state concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for graduate trainees.

The applicant should, so the proposal, receive a decision within 30 days with a possible extension of 60 days in exceptional cases. Any rejection should be open to legal challenge. The proposal also includes equal treatment with nationals of the host member state in a number of areas including workers' representation, payment of statutory pensions and access to goods and services available to the public. It also provides for recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.

Further provision of the proposal concern the treatment of family members of the intra-corporate transferees as well as the mobility between member states.

### **EU strategy on PNR data and PNR agreements with third countries**

Ministers will hold an orientation debate on an EU strategy concerning the transfer of Passenger Name Record (PNR) data to third countries, as presented in a communication by the European Commission on 22 September 2010 ([13954/10](#)). At the same time the Commission also submitted proposals for mandates for renegotiating PNR agreements with Australia and the United States of America and a mandate for negotiations with Canada.

The Commission communication provides an overview of the current trends in the use of PNR data in the EU and the world. It also proposes a series of general principles that any EU PNR agreement with a third country should observe. These principles concern the protection of personal data, modalities of transfer, monitoring standards and reciprocity. The communication responds to a call made by the European Parliament in May 2010. In a resolution the Parliament demanded a "coherent approach on the use of PNR data for law enforcement and security purposes".

In the same resolution, Parliament decided to postpone its vote on the request for consent on the 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. 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.

### **Information management instruments**

Ministers will have the opportunity to comment on a Commission communication which gives an overview of the existing EU instruments regulating the collection, storage or exchange of personal data for the purpose of law enforcement or migration management ([12579/10](#)). In total, the Commission identified 18 such instruments.

The communication clarifies the main purposes of these instruments, their structure, the types of personal data they cover, the list of authorities that have access to such data and the provisions governing data protection and retention.

At the same time, the communication sets out the main principles that should underpin the evaluation of information management instruments in the area of freedom, security and justice and that should also guide the possible future development of such instruments. These principles cover issues such as fundamental rights, necessity, proportionality and accurate risk management as well as clear allocation of responsibilities, cost effectiveness and reviewing clauses.

Information management is at the heart of the functioning of the Schengen area where member states share a single external border. Appropriate instruments are needed to allow a common visa and asylum policy to develop, and to prevent terrorist attacks and other forms of serious crime.

### **Counter Terrorism Policy**

The Commission will present to the Council its communication entitled "EU Counter-Terrorism Policy: main achievements and future challenges" ([12653/10](#)). The communication is a descriptive overview of the actions taken under the [EU Counter-terrorism Strategy and Action Plan](#) adopted in December 2005 and also outlines some challenges for the future.

The EU Counter-terrorism Coordinator Gilles de Kerchove regularly reports to the Council on the implementation of the strategy and action plan.

### **Mixed Committee: SIS II, VIS, visa liberalisation and visa reciprocity**

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 Visa Information System (VIS). The committee will also discuss the visa requirement imposed by Canada on Czech nationals.

#### **SIS II**

On SIS II, the committee will discuss a report by the Commission on a final global schedule as well as on a comprehensive budgetary estimate for the development of the system, as requested by the Council in June 2010. At that time, the Commission presented a preliminary schedule providing for entry into operation of the SIS II by the first quarter of 2013.

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 which are responsible, inter alia, for border controls and other customs and police checks.

## VIS

Regarding VIS, ministers will discuss the Commission's final time table for the deployment of the system.

Once operational, VIS will support the implementation of the common visa policy and facilitate effective border control by enabling Schengen member states to enter, update and consult visa data, including biometric data, electronically.

The deployment of the VIS will take place gradually. The first so-called "roll-out region" in which EU member states' embassies must be able to use the system includes the following countries: Algeria, Egypt, Libya, Mauritania, Morocco and Tunisia.

### Visa requirement imposed by Canada on Czech nationals

At the request of the Czech Republic, the Council will discuss the state of play regarding the reintroduction by Canada of a visa requirement for Czech nationals. The Commission is expected to present a new written report concerning visa reciprocity - which will also cover the Canada-Czech issue - in the second half of October 2010.

On 14 July 2009, Canada unilaterally introduced the visa requirement for Czech nationals. 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.

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.

### **Right to information in criminal proceedings**

The Commission will present its proposal for EU-wide minimum standards as regards the right to information in criminal proceedings ([12564/10](#)). This proposal has already been the object of preliminary examination by the Council technical bodies.

According to the proposal, the right would apply from the moment that a person is made aware that he or she is suspected or accused of having committed a criminal offence until the conclusion of the proceedings (including any appeal). The proposal also determines that the suspected or accused should be given information about the charge and that he or she has free-of-charge access to the case file.

Concerning case-file access, the proposal makes a differentiation: At the time of the arrest, only limited access is foreseen, i.e. access only to those documents which are relevant for the determination of the lawfulness of the arrest. Full access must be granted to the case-file once the investigation of the criminal offence is concluded. Other provisions concern verification and remedy processes and training for relevant officials in police and judicial authorities.

The proposal is a second step in a wider package of legislative and non-legislative initiatives that aim at strengthening 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,
- information on rights and information about charges,
- 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.

On the first measure, the right of translation and interpretation, agreement has already been reached between the Council and the European Parliament. It will be adopted by the same Council without discussion.

### **Sexual exploitation of children**

The Council wants to reach a general agreement on about half of the provisions concerning the proposal for a directive on combating the sexual abuse, sexual exploitation of children and child pornography ([8155/10](#)).

The articles up for a general agreement (Art. 1-13 with the exception of Art. 10) include the scope of offences and the level of penalties in the following areas:

- sexual abuse, sexual exploitation of children and child pornography;
- solicitation of children for sexual purposes by means of information and communication technology ('grooming');
- instigation, aiding and abetting, attempt.

They also concern provisions on aggravating circumstances, liability of and sanctions on legal persons as well as the possibility not to prosecute or impose penalties on the child victims.

Once adopted, the directive will not only establish minimum rules concerning criminal offences and sanctions. It will also strengthen the prevention of the crime and the protection of its victims.



## **European Protection Order**

The Belgian presidency will inform ministers about the state-of-play concerning the European protection order ([\*PE-CONS 2/10\*](#)). 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.

Council and Parliament have to agree on a final text of the directive under the ordinary legislative procedure. Each member state will then need to transpose the new rules into national law.

The two European Parliament committees concerned (Civil Liberties and Women's Rights) supported in general the draft text of the proposal in an orientation vote on 29 September 2010.

The proposal for a European protection order is based on a joint initiative of twelve EU member states<sup>1</sup>, presented in January 2010. The focus of the initiative is on crimes which may endanger the victims' life, physical, psychological and sexual integrity or their personal liberty. The ultimate goal is to avoid new acts of crime and to mitigate the consequences of previous acts of crime.

Once adopted, the directive will allow a competent authority in one member state to issue a European protection order on the basis of which a competent authority in another member state takes measures with a view to continuing the protection of that person. These measures would include obligations or prohibitions imposed on the person causing danger, such as:

- an obligation not to enter certain places or defined areas where the protected person resides or which he/she visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- a prohibition or regulation on approaching the protected person closer than a prescribed distance.

In the event of a breach of one or more of the measures taken by the member state executing the European protection order, the competent authority of that state would have the powers to impose criminal sanctions and take any other criminal or non-criminal measures.

The text as it stands considers that it is necessary to allow 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, irrespective 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.

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<sup>1</sup> Belgium, Bulgaria, Spain, Estonia, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden.

## **Divorce and legal separation**

The Council will be informed about the state-of-play regarding a regulation on the law applicable to divorce and legal separation (Rome III) ([9898/2/10](#)). The file constitutes the first enhanced cooperation<sup>1</sup> in the history of the EU.

On 4 June 2010, justice ministers reached a comfortable qualified majority agreement to authorise this first enhanced cooperation. Two weeks later the European Parliament also gave its consent. On 12 July 2010, the decision authorising enhanced cooperation was adopted by the Council. It has entered into force on the same day (JO L 189, 22.07.2010, p.12)

On the content of the legislation, ministers already agreed on a general approach on key elements ([10153/10](#)) and requested further examination of outstanding issues.

14 member states are participating in the enhanced cooperation, so far. Once they reach unanimous agreement, the regulation will set clear rules on how international couples can seek divorce or legal separation in these 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.

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.