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Justice and Home Affairs

Luxembourg, 26 and 27 April 2012

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Minister for Justice of Denmark

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Main results of the Council

*Home affairs ministers agreed on a general approach regarding the establishment of a **EU PNR system**, a directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. They also adopted without discussion (A item) a decision on the conclusion of a new **EU-US PNR agreement**.*

*Other terrorism related issues included a debate on a proposal for a regulation on the marketing and use of **explosives precursors** which aims to limit the access to these chemicals by members of the general public as well as the adoption of conclusions on **de-radicalisation and disengagement** from terrorist activities.*

*On migration, the Council approved an action paper intended to ensure a **coherent EU response to continued migratory pressures**. Ministers also discussed conclusions on the **Global Approach to migration and mobility** which are to be adopted by the General Affairs Council in May. A policy debate took place on **readmission agreements**.*

*Regarding the establishment of a **Common European Asylum System**, the Council looked at the state of play of negotiations on the four outstanding legislative proposals.*

*Justice ministers reached a partial general approach on a directive on criminal sanctions for **insider dealing and market manipulation**. They also held a debate on a proposed regulation on mutual recognition of **protection measures taken in civil matters**.*

*The Council heard a presentation by the Commission of a proposal for a directive on the **freezing and confiscation of the proceeds from crime** and held an exchange of views on the state-of-play concerning the **EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**. Ministers then took note of the state of play as regards the implementation of the **European Criminal Records Information System (ECRIS)**.*

*In the margins of the Council, the **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland) discussed the above mentioned action paper on a coherent EU response to continued migratory pressures as well as the state of play on the implementation of the second generation of the **Schengen Information System (SIS II)**.*

CONTENTS¹

PARTICIPANTS	5
ITEMS DEBATED	
EU PNR system	8
Explosives precursors	9
De-radicalisation and disengagement from terrorist activities	10
EU action on migratory pressure - A strategic response	10
Global Approach on Migration and Mobility (GAMM)	10
Common European Asylum System (CEAS)	11
Readmission agreements	13
Freezing and confiscation of proceeds of crime	13
Criminal sanctions for insider dealing and market manipulation	14
Mutual recognition of protection measures taken in civil matters	15
EU accession to the European Convention on Human Rights (ECHR)	16
ECRIS	16
AOB	17
MIXED COMMITTEE	18
EU action on migratory pressure - A strategic response	18
SIS II	19
AOB	19

¹ Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks. Documents for which references are given in the text are available on the Council's Internet site (<http://www.consilium.europa.eu>). Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's Internet site or may be obtained from the Press Office.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

– Civil Protection Mechanism	20
– Drug trafficking originating in West Africa.....	20
– Security in sports events with an international dimension.....	20
– President of Eurojust.....	21
– Automated data exchange (VRD) with Poland.....	21
– Passenger Name Records.....	21

ECONOMIC AND FINANCIAL AFFAIRS

– Economic and Financial Committee - Revision of statutes	22
---	----

FOREIGN AFFAIRS

– Burma/Myanmar - restrictive measures	22
– EU accession to the Treaty of Amity and Cooperation in Southeast Asia	23

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Minister for Justice
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Ms Theresa MAY

Mr Kenneth CLARKE

Secretary of State for the Home Department and Minister
for Women and Equalities
Lord Chancellor, Secretary of State for Justice

.....

Commission:

Ms Viviane REDING

Ms Cecilia MALMSTRÖM

Vice President

Member

.....

The government of the acceding state was represented as follows:

Croatia:

Mr Ranko OSTOJIĆ

Mr Orsat MILJENIĆ

Minister for the Interior

Minister for Justice

ITEMS DEBATED

EU PNR system

The Council reached a general approach on a draft directive on the use of flight passenger data for protection against terrorist offences and serious crime ([8916/12](#)). The agreement among member states on a general approach allows the Danish presidency to start negotiations with the European Parliament under the ordinary legislative procedure.

The discussion in the Council touched, among other things, on two main issues: One is whether the proposed new rules should be limited to the collection of the so-called Passenger Name Record (PNR) data for flights from and to third countries or whether flights within the EU should also be covered. The proposed compromise would allow, but not oblige, member states to collect PNR data also with regard to selected intra-EU flights.

A second key question that was discussed is the retention period. The initial Commission proposal, presented in February 2010 ([6007/11](#)), provides for a total retention period of five years. After 30 days, however, the PNR data would have to be masked out, i.e. that the person-related elements of the PNR are no longer visible to the "front-desk" law enforcement officer, but can be seen only after a specific authorisation. A number of member states considers that this initial storage period of 30 days is too short from an operational point of view as it may often be necessary to check very quickly - within a time span of a few hours - the travel history of a person who is automatically selected for further review. The Council position agreed upon now is to maintain the overall retention period of five years but to prolong the first period during which the data are fully accessible to two years.

The overall purpose of the proposed directive is to set up a coherent EU-wide system on flight passenger data, by creating a single EU model for all member states participating in the new rules and ensuring cooperation between the relevant authorities within the Union. As a consequence, all air carriers flying on routes covered by the new rules would need to provide PNR data to member states' law enforcement authorities. These authorities will, however, only be allowed to use the data - which is already today collected by air carriers - for the prevention, detection, investigation and prosecution of terrorist offences and serious (transnational) crime.

Explosives precursors

The Council held an orientation debate on a proposal for a regulation on the marketing and use of explosives precursors on the basis of a discussion paper presented by the Danish presidency ([8922/12](#)). The initial proposal was presented by the Commission in September 2010 ([14376/10](#)) and aims to limit the access by members of the general public to explosives precursors.

The debate concentrated on a possible compromise presented in the Danish discussion paper, and a large majority of member states supported the text. The Council asked its preparatory bodies to continue work on the file so as to agree on a final text with the European Parliament as soon as possible.

The Danish compromise proposal supported by the Council maintains the core elements of the initial Commission proposal, i.e. a general prohibition for members of the general public to acquire, possess or use the relevant chemical substances. Member states may, however, derogate from this general rule:

- by introducing a licensing system through which members of the general public will be required to obtain and present a licence in order to acquire, possess or use the chemical substances listed in an annex to the regulation in concentrations higher than those laid down in that annex;
- by setting up a system for registration of purchases by members of the general public to get access to three of the substances in annex, namely hydrogen peroxide, nitric acid and nitromethane under certain concentration limits. These are the substances and concentrations of which there is the highest use and which thus create the biggest administrative burden when establishing a licensing system;
- by allowing member states that already have a registration system for access to one or more of the substances listed in the annex to continue to apply that system to some or all substances in accordance with the registration regime laid down in the regulation.

The Commission would review the regulation after three years so as to decide whether the system should be further strengthened and harmonised.

De-radicalisation and disengagement from terrorist activities

The Council adopted conclusions on de-radicalisation and disengagement from terrorist activities ([8624/12](#)).

The aim of these conclusions is to draw the attention of state, regional and local authorities to the importance of dealing with the phenomena and to encourage closer cooperation. The conclusions also make reference to the recently created Radicalisation Awareness Network which aims to strengthen in particular the exchange of knowledge and best practices among member states.

EU action on migratory pressure - A strategic response

The Council approved an action paper entitled "EU Action on migratory pressure - A strategic response". For more information see the relevant chapter under Mixed Committee.

Global Approach on Migration and Mobility (GAMM)

The Council discussed draft conclusions on the Global Approach to Migration and Mobility which are expected to be adopted by the General Affairs Council in May. Ministers also held an exchange of views on the implementation of the renewed Global Approach.

In December 2011, the Council took note of the Commission communication on a "Global approach to migration and mobility" ([17254/11 + ADD 1](#)). In this communication, the Commission proposes to centre EU action in the area around four operational priorities: organising and facilitating legal migration and mobility; preventing and reducing irregular migration and trafficking in human beings; promoting international protection and enhancing the external dimension of asylum policy; and maximising the development impact of migration and mobility.

The communication also suggests to reinforce the Global approach, in particular by: a stronger integration with the EU foreign policy and development cooperation; better aligning it with EU's internal policy objectives, notably the Europe 2020 Strategy but also employment and education policies; placing a stronger focus on mobility and visa policy, as well as on international protection and the external dimension of asylum policy; and continuing to prioritise EU Neighbourhood, EU-Africa Partnership and countries in the East.

The communication followed a previous Commission communication on migration of 4 May 2011 ([9731/11](#)).

Common European Asylum System (CEAS)

The Council took note, on the basis of a presidency paper ([8595/12](#)), of the state-of-play of negotiations on the various outstanding legislative proposals concerning the Common European Asylum System (CEAS). In keeping with the commitment to strengthen the CEAS by the end of 2012, the Council instructs its preparatory bodies to continue work on the different proposals.

The situation on the four outstanding files can be described as follows:

- On the reception conditions directives, negotiations between the Council and the European Parliament are expected to start soon. A revised proposal was tabled by the Commission on 1 June 2011 ([11214/11](#)).
- On the asylum procedures directives, progress has been made, in particular regarding access to the procedure, applicants with special procedural needs and the applicability of accelerated procedures. Discussions in the Council preparatory bodies continue on other key elements such as guarantees for unaccompanied minors, subsequent applications and the right to an effective remedy. A revised proposal of the directive was tabled by the Commission on 1 June 2011 ([11207/11](#)).
- On the Dublin regulation which establishes the procedures for determining the member state responsible for examining an application for international protection, negotiations between the Council and the European Parliament are expected to start soon. The Council, in particular, introduced a mechanism for early warning, preparedness and crisis management. This mechanism aims at evaluating the practical functioning of national asylum systems, assisting member states in need and preventing asylum crisis. Such a mechanism would concentrate on adopting measures to prevent asylum crises from developing rather than addressing the consequences of such crises once they have occurred.

In addition to that, the Council adopted in March 2012 [conclusions](#) on a common framework for genuine and practical solidarity towards member states facing particular pressures on their asylum systems, including through mixed migration flows. These conclusions are intended to constitute a toolbox for EU-wide solidarity towards those member states most affected by such pressures and/or encountering problems in their asylum systems. They aim to complement and help the implementation of the envisioned mechanism for early warning, preparedness and crisis management in the amended Dublin regulation.

- On the Eurodac regulation, discussions are on hold pending a revised Commission proposal. Member states have requested additional provisions which would allow law enforcement authorities to access this central EU-wide fingerprint database under strict conditions on data protection for the purposes of fighting terrorism and organised crime.

Four other agreements and decisions related to the CEAS have already been achieved and taken so far. They concern:

- The [qualification directive](#) providing for better, clearer and more harmonised standards for identifying persons in need of international protection which was adopted in November 2011 and entered into force in January 2012.
- The [long term residence directive](#) adopted in April 2011.
- The creation of the [European Asylum Support Office \(EASO\)](#) which started operations in spring 2011.
- The decision taken in March 2012 establishing [common EU resettlement priorities for 2013](#) as well as new rules on EU funding for resettlement activities carried out by member states.

For the overall context, it is to be remembered that the European Council confirmed in its conclusions in June 2011 that negotiations on the various elements of the CEAS should be concluded by 2012 ([EUCO 23/11](#)).

Readmission agreements

The Council discussed the state of play of readmission agreements between the EU and third countries with a particular focus on Turkey. It is the intention of the Danish presidency to adopt Council conclusions on the matter at a later stage.

Since 2000, the Council has adopted 19 negotiating directives on the conclusion of readmission agreements with third countries, out of which 13 readmission agreements have already entered into force.¹ Negotiations with one country have been completed² and are ongoing with two other countries.³

In June 2011, the Council adopted [conclusions](#) defining the EU strategy on readmission.

Freezing and confiscation of proceeds of crime

The Council welcomed the proposal of the Commission for a directive on the freezing and confiscation of proceeds of crime in the EU, presented in March 2012 ([7641/12](#)).

The Commission proposal aims to make it easier for national authorities to confiscate and recover the profits that criminals make from cross border and organised crime. The draft directive lays down minimum rules for Member States with respect to freezing and confiscation of criminal assets through direct confiscation, value confiscation, extended confiscation, non-conviction based confiscation (in limited circumstances), and third-party confiscation. The adoption of such proposal will facilitate mutual trust and effective cross-border cooperation.

The Danish presidency wants to push forward negotiations and will start in May detailed discussions in the preparatory bodies. Some member states emphasised the need to go further on the provisions on non-conviction based confiscation while others stressed the need to make the instrument compatible with national instruments.

¹ Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia (FYROM), Georgia, the Republic of Moldova, Montenegro, Russia, Serbia, Ukraine, Pakistan, Hong-Kong, Macao and Sri Lanka.

² Turkey. See also related Council [conclusions](#) from February 2011.

³ Cape Verde and Morocco.

Criminal sanctions for insider dealing and market manipulation

The Council reached a partial general approach on a directive on criminal sanctions for insider dealing and market manipulation ("market abuse directive", hereinafter "MAD"). The draft directive ([16000/11](#)) establishes minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation. This would create an obligation for Member States to ensure that these conducts are punishable as criminal offences.

The partial general approach comprises articles 5 to 12 and the corresponding recitals and serves as a base for future discussion on the draft directive. This articles include, among others, provisions on "inciting, aiding and abetting, and attempt" (Art. 5), "criminal sanctions" (Art. 6), "liability of legal persons" (Art. 7), "sanctions for legal persons" (Art. 8) and the report on the application of the directive (Art. 9).

During the discussions, some delegations expressed the necessity that the directive should also approximate the types and levels of penalties, while some other delegations opposed to this view. The proposed compromise establishes that by four years after the entry into force of the directive, the European Commission shall report on the application of the directive and, if necessary, on the need to review it, including with regard to the appropriateness of introducing common minimum rules on types and levels of criminal sanctions.

Since many elements in the draft directive depend directly or indirectly from the content of other instruments (in particular the regulation on insider dealing and market manipulation - "MAR"), the Council will await the result of the discussions in the preparatory bodies to properly address the remaining parts (Articles 1 to 4). It has to be noted that the partial general approach does not prejudice further discussions on such remaining parts and may in the future need further elaboration if necessary, before enter into negotiations with the European Parliament, co-legislator in this matter.

Mutual recognition of protection measures taken in civil matters

The Council held a debate on a proposed regulation on mutual recognition of protection measures taken in civil matters upon request of the person at risk ([10613/11](#)).

The objective of this proposal is to establish a legal framework to ensure that all protection measures taken in a member state benefit from an efficient mechanism of recognition to ensure their free circulation throughout the EU. It also aims at complementing the so called European Protection Order ("EPO Directive"), which covers protection orders in criminal matters ([14517/11](#)). The combined scope of the two instruments should offer victims the widest possible protection.

Ministers endorsed guidelines on certain key issues of the proposal to provide guidance for the future work. Those guidelines ([8913/12](#)) concern three main issues:

- the need to work rapidly towards the adoption of the proposed regulation. The Council stressed that the work on the regulation should be continued as a matter of priority.
- the necessity to provide for a simplified system for the recognition and enforcement of protection measures. The Council noted that there should be automatic recognition and no need for a declaration of enforceability. It also underlined that in light of the diverse nature of authorities involved, the procedure must be kept simple.
- the importance to create a certificate enabling victims to invoke protection measures in another member state in order to facilitate recognition and reducing the need of translation.

This proposal is part of a legislative package which aims at strengthening the protection of victims in the EU. This legislative package also includes a directive on minimum standards on the rights, support and protection of victims of crime.

The United Kingdom and Ireland have decided to take part in this instrument. Denmark will not participate.

EU accession to the European Convention on Human Rights (ECHR)

The Council held an exchange of views on outstanding issues concerning the EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

In June 2010 the Council adopted a negotiating mandate and several negotiating sessions have taken place since then.

The Lisbon Treaty provides the legal basis for the accession of the EU to the ECHR. Art. 6 (2) of the TEU stipulates: "The EU shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms". According to the Stockholm program this is "of key importance". The program also called for a "rapid" accession to the ECHR.

The Council took note of the outcome of discussions on the draft accession agreement. The Presidency concluded that negotiations should resume on this basis without delay. In parallel, discussions should continue within the EU on the rules which will regulate internal procedures in relation to the accession.

ECRIS

The Council took note of the state of play as regards the implementation of the European Criminal Records Information System (ECRIS).

The ECRIS Project aims at setting up an electronic system of the exchange of information extracted from criminal records. The system is based on the [Council Decision 2009/316/JHA](#) which was adopted by the Council in April 2009. By today, the implementation process should be completed; all the necessary implementing legislation has been passed and technical means put in place.

AOB

Under other business, the presidency informed delegations on the state of play regarding a number of current legislative proposals, including:

- two draft directives related to legal migration, namely on intra-cooperate transferees and on seasonal workers; as well as
- a draft regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession. The European Parliament had adopted its position in March 2012 ([7443/12](#)) and the Council is expected to adopt this compromise text in June 2012.

The Hungarian minister invited his colleagues to attend a ceremony in Budapest on 23 August 2012, the Day of remembrance of victims of totalitarian regimes. During the Hungarian presidency, the Council adopted conclusions on the matter ([9317/11](#)).

MIXED COMMITTEE

In the margin of the Council session, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) discussed the following items:

EU action on migratory pressure - A strategic response

The committee welcomed and agreed on an action paper entitled "EU Action on migratory pressure - A strategic response" (8714/1/12). The goal of the paper is to set out a list of actions in strategic priority areas where efforts need to be stepped up and monitored in order to prevent and control existing pressures that derive from illegal immigration as well as abuse of legal migration routes. The action list will be updated by future EU presidencies and member states are encouraged to volunteer to monitor particular challenges so as to ensure that one party has an overview of the development in the described activities, thus helping the future EU presidencies in their task.

The draft paper addresses the following strategic priority areas: strengthening cooperation with third countries of transit and origin on migration management; enhanced border management at the external borders; preventing illegal immigration via the Greek-Turkish border; better tackling of abuse of legal migration channels; safeguarding and protecting free movement by prevention of abuse of free movement rights by third country nationals; enhancing migration management, including cooperation on return practices.

The strategic action paper is a follow up to a number of Council discussions in 2011 on the subject, namely the one in December 2011 where member states welcomed a report by the Polish presidency regarding the EU's response to increased migration pressures ([18302/11](#)).

SIS II

The committee looked at the state-of-play on the implementation of the Schengen Information System II (SIS II) which is planned to come into operation by the first quarter of 2013.

The Schengen Information System (SIS) is a database shared by participating countries' border and migration authorities, and law enforcement authorities and contains information on persons and on lost and stolen objects. Specific stringent data protection rules apply to the SIS. It is a compensatory measure for the opening of the internal borders under the Schengen agreement, but it is also seen as a vital security factor in the EU. The European Commission is currently developing a second generation of the SIS, commonly called the SIS II.

AOB

Under other business, the committee was informed on the state of play of discussions on the Schengen Governance proposals, i.e. the proposal concerning the evaluation and monitoring mechanism, and the proposal for amending the Schengen Borders Code regarding the reintroduction of border control at internal borders.

The Greek minister informed the Council about progress in the implementation of the Greek national action plan on asylum and migration, in particular the establishment of three new asylum services (the initial reception service, the asylum service and the appeals authority).

The committee took finally note of concerns expressed by several delegations regarding the possible introduction of visa requirements for civilian air crew members from the side of the Russian Federation. Delegations agreed that these concerns will be taken into account during further proceedings regarding the draft agreement amending the Visa Facilitation Agreement between Russia and the EU.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Civil Protection Mechanism

The Council adopted conclusions on improving civil protection through lessons learnt ([8149/12](#)).

Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism¹ entrusted the Commission with the task of "setting up a programme of lessons learnt from the interventions conducted within the framework of the mechanism and disseminating these lessons through the information system".

The programme aims at ensuring a more effective, efficient and coherent European disaster management through the integration of past experience of the EU civil protection cooperation inside or outside the European Union.

Drug trafficking originating in West Africa

The Council took note of the report on cooperation in combating organised crime, especially drug trafficking, originating in West Africa ([8610/12](#)).

The report presents the state of play regarding the implementation in 2011 of the recommendations and measures identified on the basis of the European Pact to combat international drug trafficking ([8821/10](#)), the Action Oriented Paper ([5069/3/10](#)) and the Council Conclusions on the strengthening of the fight against drug trafficking in West Africa ([15248/1/09](#)).

Security in sports events with an international dimension

The Council approved the Action Plan for 2012, which implements the 2011-2013 EU Work Programme on further measures designed to maximise safety and security in connection with sports events, in particular football matches, with an international dimension ([16421/10](#)).

¹ OJ L 314, 1.12.2007.

President of Eurojust

The Council approved the election of Ms. Michele CONINSX, national member for Belgium, as President of Eurojust with effect from 1 May 2012.

On 17 April the national members of the College of Eurojust elected Ms. Michele CONINSX as President of Eurojust. The election ends the mandate of Mr. Aled WILLIAMS, national member for the United Kingdom on 30 April 2012. In accordance with Article 28 (2) of the Eurojust Council Decision, the result of the election shall be submitted to the Council for its approval.

Automated data exchange (VRD) with Poland

The Council adopted a decision on the launch of automated data exchange concerning Vehicle Registration Data (VRD) in Poland ([8475/12](#)). The evaluation procedure required by decision 2008/616/JHA ([OJ L 210, 6.8.2008](#)) concluded that the general provisions on data protection are fully implemented by Poland and this country is therefore entitled to receive and supply personal data as from the date of the entry into force of this decision.

Passenger Name Records

The Council adopted today a decision on the conclusion of a new EU-US PNR agreement ([17434/11](#)) which will replace the existing one, provisionally applied since 2007. On 19 April 2012, the European Parliament gave its consent. The agreement will most likely enter into force on 1 June 2012.

For more information please see [9168/12](#).

ECONOMIC AND FINANCIAL AFFAIRS

Economic and Financial Committee - Revision of statutes

The Council adopted a decision revising the statutes of the Economic and Financial Committee, making its president eligible to also hold the post of full-time president of the Euro Working Group ([6898/12](#)).

This follows a decision by heads of state and government of the eurozone last October whereby the EWG should henceforth be chaired by a full-time president. As a consequence, the person nominated to this post has ceased to be an official in a national administration and is now employed by the EU institutions.

The EFC, established under article 134 of the Treaty on the Functioning of the European Union, reviews the economic and financial situation of the member states and contributes to the preparation of Economic and Financial Affairs Council meetings, amongst other things.

The EFC meets either with members selected from member state administrations, national central banks, the Commission and the European Central Bank (full composition) or with members from administrations, the Commission and the ECB. It elects its president by a majority of its members for renewable two-year terms.

The current president of the EWG and the EFC is Thomas Wieser.

FOREIGN AFFAIRS

Burma/Myanmar - restrictive measures

The Council adopted a decision suspending certain EU restrictive measures against Burma/Myanmar for one year, following the agreement reached at the Foreign Affairs Council on 23 April (*see* [9008/12](#)). The corresponding Council regulation is currently being prepared.

EU accession to the Treaty of Amity and Cooperation in Southeast Asia

The Council approved the EU's accession to the Treaty of Amity and Cooperation in Southeast Asia, which was concluded in 1976 by the ASEAN nations and aims to promote peace, stability and cooperation in the region ([7434/12](#)).
