



Brussels, 20 April 2012

**DRAFT**  
**BACKGROUND<sup>1</sup>**  
**JUSTICE AND HOME AFFAIRS COUNCIL**  
**Luxembourg, 26-27 April 2012**

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday 26 and Friday 27 April 2012, under the chair of **Mr Morten BØDSKOV**, Minister for Justice, in Luxembourg.*

*On Thursday, the Council will look at the state of play of negotiations regarding the establishment of a **Common European Asylum System** based on a package of legislative proposals aiming at greater harmonisation of national asylum systems and higher levels of protection.*

*On terrorism related issues, home affairs ministers are expected to agree 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. Ministers will then hold 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. The Council is also expected to adopt conclusions on **de-radicalisation and disengagement** from terrorist activities.*

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

*On Friday, the Council will try to reach a partial general approach on a directive on criminal sanctions for **insider dealing and market manipulation**. Justice ministers will also hold a debate on a proposed regulation on mutual recognition of **protection measures taken in civil matters**.*

*The Council will then hear a presentation by the Commission of a proposal for a directive on the **freezing and confiscation of the proceeds from crime** and will hold 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 will also take 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) will discuss the above mentioned action paper on a coherent EU response to continued migratory pressures. The committee will also review the state of play on the implementation of the second generation of the **Schengen Information System (SIS II)**.*

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

**Important items to be adopted without discussion** (A items) include a decision on the conclusion of the EU-US PNR agreement.

**This meeting will be held in the Kirchberg Conference Centre on place de l'Europe. The press entrance is situated on 2 rue Fort Thüngen. For practical details, please see the [media guide](#) on the new facilities.**

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## **Common European Asylum System (CEAS)**

The Council will look, on the basis of a presidency paper ([8595/12](#)), at the state-of-play of negotiations on the various outstanding legislative proposals concerning the Common European Asylum System (CEAS).

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 crises. 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](#)).

### **EU PNR system**

Ministers are expected to reach a general approach on a draft directive on the use of flight passenger data for protection against terrorist offences and serious crime which the Commission presented in February 2010 ([6007/11](#)). This would allow to start negotiations with the European Parliament under the ordinary legislative procedure.

One of the outstanding issues 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. A possible compromise could be to allow, but not oblige, all member states to collect PNR data also with regard to selected intra-EU flights.

A second key question is the retention period. The Commission proposed an initial storage period of 30 days, followed by a further retention period of five years during which the PNR data are 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, however, 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. A solution could be that the overall retention period of five years is subdivided into two periods: a first period of two years in which the data are fully accessible and a second period during which the data are masked out and access to the full data will be much restricted.

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 will hold an orientation debate on a proposal for a regulation on the marketing and use of explosives precursors which was presented by the Commission in September 2010 ([14376/10](#)). The proposed regulation limits the access by members of the general public to explosives precursors.

The core element of the proposed regulation is a general prohibition for members of the general public 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. As an exemption to this rule, the proposal provides that members of the general public may acquire these substances if they obtain a licence valid for one or more of the substances and presents this license to the economic operator that makes the substance available. Informal negotiations on the dossier between the legislative institutions have revealed disagreement on the issue of whether members of the general public could instead as another general exemption be granted access to the substances listed in the annex in concentrations higher than those specified through registration systems, whereby the economic operator would be obliged to register purchases of the chemical substances listed in an annex to the regulation

The debate will be concentrating on a possible compromise presented by the Danish presidency (8922/12) that maintains the core elements of the Commission proposal; a general prohibition for members of the general public to acquire, possess or use the relevant chemical substances with the possibility for Member States to introduce a licensing system as the main exception therefrom, but combined with a limited possibility for Member States to make use of registration systems. As an additional element of the proposal the Commission would review the regulation three years after the date of application thereof.

### **De-radicalisation and disengagement from terrorist activities**

The Council is expected to adopt conclusions on de-radicalisation and disengagement from terrorist activities. 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.

## **EU action on migratory pressure - A strategic response**

The Council is expected to approve an action paper entitled "EU Action on migratory pressure - A strategic response" as described in the chapter on discussions in the Mixed Committee.

## **Global Approach on Migration and Mobility (GAMM)**

The Council will discuss the draft conclusions on the Global Approach to Migration and Mobility which are to be adopted by the General Affairs Council in May. Ministers will also hold 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](#)).

## **Readmission agreements**

The Council is expected to discuss the state of play of readmission agreements between the EU and third countries with a particular focus on Turkey and to continue work on Council conclusions on the matter that could be adopted 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.<sup>2</sup> Negotiations with one country have been completed<sup>3</sup> and are ongoing with two other countries.<sup>4</sup>

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<sup>2</sup> 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.

<sup>3</sup> Turkey. See also related Council [conclusions](#) from February 2011.

<sup>4</sup> Cape Verde and Morocco.

## **Freezing and confiscation of proceeds of crime**

The Council is expected to take note of a presentation by the Commission of its proposal for a directive on the freezing and confiscation of proceeds of crime in the EU, presented in March 2012 ([7641/12](#)).

The 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 Stockholm Programme ([5731/10](#)) called the Commission and the Member States to make the confiscation of criminal assets more efficient and to strengthen the cooperation between Asset Recovery Offices. The Council adopted in June 2010 a set of conclusions ([7769/3/10](#)) on Confiscation and Asset Recovery calling to achieve a more effective and widespread confiscation of criminal assets.

## **Insider dealing and market manipulation**

The Council will try to reach 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.

This proposal presented by the Commission in October 2011 is part of a broader "package" of measures, including a directive on markets in financial instruments - "MiFID" ([15939/11](#)); a regulation on markets in financial instruments and OTC - "MiFIR" ([15938/11](#)), and a regulation on insider dealing and market manipulation - "MAR" ([16010/11](#)), which sets up a common regulatory framework on market abuse.

Ministers will try to reach a general approach on Articles 5 to 12 and the corresponding recitals, where a provisional agreement is already possible. These Articles include, among others, provisions on "inciting, aiding and abetting, and attempt" (Art. 5), "criminal sanctions" (Art. 6), "liability of legal persons" (Art. 7) and "sanctions for legal persons" (Art. 8). Since many elements in the draft directive depend directly or indirectly from the content of the other instruments, the Council will await the result of the discussions in the preparatory bodies to properly address the remaining parts of MAD.

Ireland has decided to take part in the adoption of the regulation. The United Kingdom and Denmark will not participate.

## **Mutual recognition of protection measures taken in civil matters**

Justice ministers will hold 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 national legal traditions in the area of protection measures are highly diverse. In some national laws protection measures are regulated by civil law, in others by criminal law and some regulate them under administrative law. The objective of this proposal is to establish a broad 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.

The proposed Regulation aims at complementing [Directive 2011/99/EU](#) on the European Protection Order ("EPO Directive"), which covers protection orders in criminal matters ([14517/11](#)). The combined scope of the two instruments should cover the highest possible number of protection measures for victims.

Ministers are expected to provide guidelines on certain key issues of the proposal with a view to framing the future work. The key issues are: the need to rapidly ensure an approach for the recognition of protection measures; the need to provide for a simplified system for the recognition of protection measures, and; the need of a certificate enabling victims to invoke protection measures in another Member State.

This proposal is part of a legislative package which aims at strengthening the protection of victims in the EU and 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 will hold 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).

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.

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

In accordance with Art. 218 of the TFEU the Council shall act unanimously, after obtaining the consent of the European Parliament. Furthermore, the decision concluding the agreement would only enter into force after ratification by all Member States. It will also need ratification by all Parliaments of the 47 Member States of the Council of Europe.



## **ECRIS**

The Council will be informed about the state of play regarding 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.

## **Mixed Committee**

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

### **EU action on migratory pressure - A strategic response**

The committee is expected to agree on an action paper entitled "EU Action on migratory pressure - A strategic response". 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 should 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 will look 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 presidency will inform delegations on a number of current legislative proposals. The Greek minister is expected to inform the Council about progress in the implementation of the Greek national action plan on asylum and migration, and the Hungarian minister will invite 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](#)).

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