



Brussels, 3 December 2012

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Brussels, 6-7 December 2012

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday 6 and Friday 7 December 2012, under the chair of **Ms Eleni Mavrou**, Cyprus Minister for the Interior, and **Mr Loukas Louka**, Cyprus Minister for Justice and Public Order, in Brussels.*

*On Thursday, home affairs ministers will be briefed by the presidency about the state of play regarding the establishment of a **common European asylum system (CEAS)**, in particular with reference to the directive on asylum procedures ([11207/11](#)), the regulation on "Eurodac" (a fingerprint database) ([10638/12](#)) and the so-called Dublin regulation.*

*The EU Counter-terrorism coordinator will present his annual implementation report on the **EU Counter-terrorism strategy** and the Council is due to adopt conclusions on **aviation security** against terrorist threats.*

*After lunch, home affairs and justice ministers will discuss the **mid-term review of the Stockholm programme**, which establishes the strategic guidelines for the period 2010-2014 in the area of freedom, security and justice ([17024/09](#)).*

*The **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland), meeting in the margins of the Council, will be briefed on developments in relation to the **Schengen Information System (SIS II)**. It will also consider the **functioning of the Schengen area** on the basis of the second bi-annual report on this issue, to be presented by the Commission. The Presidency will report on the implementation measures undertaken to simplify the **exchange of information between national law enforcement authorities**.*

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

On Friday, justice ministers are expected to agree a general approach on three legislative proposals:

- a directive establishing minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation ("**market abuse directive**") ([16000/11](#));
- a directive on the **freezing and confiscation of proceeds of crime** in the EU ([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;
- a regulation on mutual recognition of **protection measures in civil matters** upon request of the person at risk ([10613/11](#)), aimed at strengthening the rights of victims.

Furthermore, the Council will discuss two proposed regulations on the jurisdiction, applicable law and the recognition and enforcement of decisions as regards **matrimonial property regimes**, on the one hand ([8160/11](#)), and the **property consequences of registered partnerships**, on the other ([8163/11](#)). The aim is to agree political guidelines on certain issues relating to those proposals.

Ministers will also hold a debate on the proposal to create a **European account preservation order** to facilitate cross-border debt recovery in civil and commercial matters ([13260/11](#)). Here too, the Council will aim to establish a number of guidelines for the continuation of work.

The Council will take note of the state of play on a proposed directive on the **protection of the EU's financial interests** by criminal law ([12683/12](#)). The goal is to deter fraudsters, improve the prosecution and sanctioning of crimes against the EU budget, and facilitate the recovery of misused EU funds.

Ministers will also hold a debate on the proposed revision of the 1995 regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (**General Data Protection regulation**) ([5853/12](#)). In addition, they will take stock of progress made on the linked proposal for a **directive on the protection of individuals when authorities process personal data in dealing with criminal offences** ([5833/12](#)).

Moreover, the Council is due to adopt the new **EU drugs strategy** for the years 2013-2020.

Finally, the Council will take note of the state of play on the **accession of the EU to the European Human Rights Convention** and review the work achieved during the second semester of 2012 in the area of **e-justice**.

Important items to be adopted without discussion (A items) include the adoption of the proposal for a regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) (Brussels I).

Presidency press conferences will be held before lunch on Thursday (+/- 13.00) and at the end of the meeting on Friday.

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HOME AFFAIRS

Common European Asylum System (CEAS)

The Council will be informed in a public session about the state-of-play of negotiations on the various outstanding legislative proposals concerning the Common European Asylum System (CEAS), on the basis of a presidency paper.

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

- A political agreement has been reached on the **reception conditions directive** which was confirmed by the Council at its meeting on 25-26 October ([14112/1/12](#)). This political agreement fully reflects the result of negotiations with the European Parliament. Once formally adopted, member states will need to transpose the new provisions into national law within two years. Denmark, Ireland and the United Kingdom are not bound by the directive.

For more information see [14556/12](#).

- Negotiations between the Council and the European Parliament on the **Dublin regulation** have also been finalized. At its meeting on 6/7 December, the Justice and Home Affairs Council is expected to confirm the political agreement on the regulation. This agreement will be adopted without discussion (as an A-point).

The Dublin regulation establishes the procedures for determining the member state responsible for examining an application for international protection. The new rules will introduce a mechanism for early warning, preparedness and crisis management. This mechanism is aimed at evaluating the practical functioning of national asylum systems, assisting member states in need and preventing asylum crises. The mechanism would concentrate on adopting measures to prevent asylum crises from developing rather than addressing the consequences of such crises once they had occurred.

- As a complement to the mechanism for early warning, preparedness and crisis management in the amended Dublin regulation, 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.
- In June, the Commission tabled its new proposal for a revised **Eurodac regulation** ([10638/12](#)) which allows law enforcement authorities to access this central EU-wide fingerprint database, subject to strict conditions on data protection, for the purposes of fighting terrorism and organised crime. In October the Council adopted its position in view of the negotiations with the European Parliament; trilogues are expected to start in the coming days, as soon as the Parliament adopts its position on this legislative text.
- On the asylum **procedures directive**, further progress has been made in negotiations with the European Parliament with a view to reaching agreement before the end of the year. These negotiations have taken place on the basis of a revised proposal of the directive which was tabled by the Commission on 1 June 2011 ([11207/11](#)). On 27 November the Committee of Permanent Representatives (Coreper) adopted a revised compromise package in order to take stock of progress already achieved in the negotiations.

Four other agreements and decisions related to the CEAS have already been adopted. 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.

As regards the overall context, it should 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](#)).

Fight against terrorism

Annual report on the implementation of the EU Counter-terrorism strategy

The EU Counter-terrorism coordinator will present his annual implementation report on the EU Counter-terrorism strategy. The annual report gives an overview of the latest results in the four strands of the strategy (prevent, protect, pursue and prepare) and lists those areas where measures are due to be taken.

The EU Counter-Terrorism Strategy was adopted in December 2005 and provides the framework for EU activity in this field ([14469/4/05](#)).

Aviation security against terrorist threats

The Council is due to adopt conclusions on aviation security against terrorist threats. The conclusions have been prepared by the Presidency on the basis of the conclusions of the Conference on Aviation Security against Terrorist Threats held in Nicosia on 31 October 2012.

JUSTICE AND HOME AFFAIRS

Stockholm Programme

The Council will discuss the mid-term review of the Stockholm programme on the basis of a document prepared by the Presidency (15921/12).

The Stockholm Programme ([5731/10](#)) is the multi-annual strategic work programme in the area of freedom, security and justice. The programme sets out the priorities for EU action in this area for the period 2010-2014. It was adopted by the Council on 30 November 2009 and endorsed by the European Council on 10-11 December 2009 ([EUCO 6/09](#)). It puts the citizen at the heart of EU action and deals, among other things, with questions of citizenship, justice and security as well as asylum, migration and the external dimension of justice and home affairs.

In its conclusions, the European Council asked that a mid-term review of its implementation be made in the course of 2012.

Data Protection Package

The Council will take stock of the progress achieved under the Cyprus Presidency on the Data protection package. Ministers will also hold an orientation debate on the proposal for a regulation setting out a general EU framework for data protection on the basis of three questions set out in a progress report prepared by the Presidency ([16525/12](#)). These questions correspond to the three horizontal themes which were raised during the Informal Ministerial meeting in Nicosia in July and which have been subsequently debated in the Council preparatory bodies: delegated and implementing acts, the administrative burden and the need for special treatment for the public sector.

In the light of rapid technological developments and globalisation, the European Commission presented in January 2012 a legislative package to update and modernise the principles enshrined in the 1995 Data Protection Directive (Directive 95/46/EC)² to guarantee data protection rights in the future. The package includes a policy Communication setting out the Commission's objectives (5852/12) and two legislative proposals: a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (5853/12) and a directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities (5833/12).

These proposals are aimed at building a stronger and more coherent data protection framework in the EU, backed by strong enforcement that will allow the digital economy to develop across the internal market, put individuals in control of their own data and reinforce legal and practical certainty for economic operators and public authorities.

The centrepiece of existing EU legislation on personal data protection, Directive 95/46/EC, was adopted with two objectives in mind: to protect the fundamental right to data protection and to guarantee the free flow of personal data between member states. It was complemented by Framework Decision 2008/977/JHA³ as a general instrument at Union level for the protection of personal data in the areas of police co-operation and judicial co-operation in criminal matters.

JUSTICE

Freezing and confiscation of proceeds of crime

The Council is expected to agree a general approach on the draft directive on the freezing and confiscation of proceeds of crime in the EU, which aims to make it easier for national authorities to confiscate and recover the profits that criminals make from cross border and organised crime. This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the directive.

The Commission presented its proposal in March 2012 (7641/12). 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 aimed at achieving a more effective and widespread confiscation of criminal assets.

² Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23.11.1995](#))

³ [OJ L 350, 30.12.2008](#)

Insider dealing and market manipulation

The Council is expected to agree a general approach on the proposal for a directive on criminal sanctions for insider dealing and market manipulation ("market abuse directive") ([16000/11](#)). This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the directive.

The draft directive 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.

On 25-26 April 2012 the Council reached a partial general approach on Articles 5 to 12 and the corresponding recitals but kept open the possibility to revert to those provisions in the light of further developments in the negotiations concerning the remaining parts of the Directive. Furthermore, on 27 July 2012 the Commission submitted an amended proposal ([13037/12](#)), integrating in the scope of MAD questions concerning the manipulation of benchmarks for interbanking lending rates; a similar proposal was submitted concerning MAR.

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

Protection of the EU's financial interest

The Council will take note of the state of play on a proposed directive on the fight against fraud to the Union's financial interests by means of criminal law. The goal of the proposal ([12683/12](#)) is to deter fraudsters, improve the prosecution and sanctioning of crimes against the EU budget, and facilitate the recovery of misused EU funds thereby increasing the protection of EU taxpayers' money.

The proposed directive provides common definitions of a number of offences against the EU budget and common prescription periods, within which the case must be investigated and prosecuted, as well as minimum sanctions, including imprisonment for the most serious cases to strengthen the deterrent effect. These common rules should, according to the Commission's proposal, help to ensure a level playing field and improved investigation and prosecution across the EU.

The proposal aims to define offences such as fraud, and other fraud related crimes such as active and passive corruption, the misappropriation of funds, money laundering and obstruction of public procurement procedures to the detriment of the EU budget. It suggests member states to impose a minimum sanction of six months' imprisonment for serious cases (Article 8), and a maximum penalty of at least 10 years of imprisonment where the offence was committed within a criminal organisation. In order to help the recovery of funds, it provides for confiscation of the proceeds of these crimes (Article 10). Furthermore, it suggests longer prescription periods for the offences defined (Article 12), due to the fact that adequate time to investigate is of utmost importance in complex cross-border cases.

At the last Council meeting in October, most member states supported the basic thrust and the objectives of the draft directive. Several member states and the Council legal service argued that the legal basis of the proposal should be Article 83(2) instead of Article 325(4) as proposed by the Commission. In addition, several delegations also expressed concerns about, in particular, the introduction of a minimum penalty, the level of penalties as well as the common prescription periods. The Presidency instructed the Council's preparatory bodies to start working on all these issues.

Matrimonial property regimes and property consequences of registered partnerships

The Council will discuss two proposed regulations on the jurisdiction, applicable law and the recognition and enforcement of decisions as regards matrimonial property regimes, on the one hand ([8160/11](#)), and the property consequences of registered partnerships, on the other ([8163/11](#)). On the basis of a document prepared by the Presidency ([16878/12](#)), Ministers will discuss political guidelines in order to further advance the work at the expert level.

The objective of both proposals is to establish a framework in the EU determining jurisdiction and the law applicable to matrimonial property regimes and the property consequences of registered partnerships and to facilitating the recognition and enforcement of decisions and authentic instruments among the member states.

The two proposals will complement the instruments already adopted at EU-level concerning family-related issues, such as the Brussels II a Regulation regarding matrimonial matters and parental responsibility, the Regulation on maintenance obligations, and the Rome III Regulation on the law applicable to divorce and legal separation. Once these two new regulations are adopted, the citizens of the EU will benefit from a complete set of legal instruments covering international private law issues in the field of family matters.

Both regulations are subject to a special legislative procedure based on Article 81(3) since they refer to measures concerning family law with cross-border implications. The Council shall act unanimously after consulting the European Parliament.

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

Protection measures in civil matters

The Council is expected to agree on a general approach 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 legal framework to ensure that all protection measures taken in civil matters 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.

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 ([Directive 2012/29/EU](#)), which has been adopted recently.

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

European Account Preservation Order

The Council will hold a public debate on the proposal for a regulation creating a European Account Preservation Order the objective of which is to establish a number of guidelines for the continuation of the work ([16350/12](#)).

The aim of the proposed regulation ([13260/11](#)) is to facilitate cross-border debt recovery by creating a uniform European procedure leading to the issue of a European Account Preservation order ("Preservation Order"). This European procedure will be available to citizens and businesses as an alternative to national procedures, but will not replace national procedures. It will apply only to cross-border cases.

By way of this new European procedure a creditor would be able to obtain a protective order which would block funds held by the debtor in a bank account in a member state and thereby prevent the debtor from dissipating such funds with the aim of frustrating the creditor's efforts to recover his debt.

The Preservation Order would be available to the creditor in two situations: (1) before he obtains an enforceable title (that is, both before he initiates proceedings on the substance and during such proceedings) and (2) after he has obtained an enforceable title on the substance of the matter.

Under the Commission proposal it would also be possible for a creditor to obtain information on the account(s) of his debtor, either by way of a disclosure obligation for the bank or by way of access to information contained in public registers.

The Commission presented its proposal on 25 July 2011. The discussions in the Council's preparatory bodies are still ongoing.

EU drugs strategy (2013-2020)

The Council is due to adopt the EU drugs strategy for the years 2013-2020 ([16693/12](#)), as the current EU Drugs Strategy (2005-2012) will expire by the end of this year ([15074/04](#)).

The EU Drugs Strategy provides the overarching political framework and priorities for EU drugs policy identified by member states and EU institutions. The new Strategy is structured around two policy areas; drug demand reduction and drug supply reduction, and three cross-cutting themes; (a) coordination, (b) international cooperation and (c) research, information, monitoring and evaluation. Its two consecutive Action Plans, drafted by corresponding Presidencies in 2013 and 2017, will provide a list of specific actions with a timetable, responsible parties, indicators and assessment tools.

Accession of the EU to the ECHR

The Council will take note of the state of play on the accession of the EU to the European Human Rights Convention ([15673/12](#)).

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.

e-Justice

The Council is expected to take note of the report of the Working Party on e-Law (e-Justice) on the work achieved during this semester in the area of European e-Justice (16575/12). In addition, the Council will also take note of the state of play of the revised roadmap adopted in June 2011 ([16580/12](#)). This document sets out the current situation as regards different areas of work in the field of e-Justice and will constitute a useful planning tool for future work in the coming year.

In November 2008 the Council adopted the European e-Justice action plan ([15315/08](#)). This action plan sets forth a multiannual working programme in the field of European e-Justice and puts in place a structure to coordinate e-Justice efforts at EU level.

AOB

Under other business, the Council will be informed about the state of play of a number of legislative proposal, including:

- two proposals on legal migration, namely the intra-corporate transferees (ICTs) and seasonal workers;
- the "Justice" financial instruments 2014-2020 in the framework of the Financial Framework (MFF)

- the Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia, and the Kingdom of Sweden regarding the European Investigation Order;
- the draft directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest

The Commission is expected to make a presentation on the prospects for the future on the relation between CEPOL and EUROPOL.

The Presidency will also inform the Council on recent developments in Syria and refer to a letter from the UN High-Commissioner for Refugees

The Irish ministers will inform the Council about the priorities in the area of justice and home affairs for the forthcoming Irish EU Presidency.

Mixed Committee

In the margins of the Council meeting, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will discuss the following items:

SIS II

The committee will look at the latest developments 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 known as SIS II.

Schengen Governance

The committee will discuss the Commission's second biannual report on the functioning of the Schengen area (1 May - 31 October 2012) ([16423/12](#)).

The European Council in June 2011 stated that political guidance and cooperation in the Schengen area need to be further strengthened, enhancing mutual trust between member states. On 8 March 2012, the Council adopted conclusions ([7417/12](#)) regarding guidelines for the strengthening of political governance in the Schengen cooperation. In the conclusions the Council agreed to have discussions at ministerial level on that matter once during each presidency, and welcomed the intention of the Commission to present regular reports on the issue in that regard.

The Commission transmitted its first biannual report in May 2012, covering the period of 1 November 2011 to 30 April 2012. This report was discussed in the June Council on the basis of a discussion note of the Presidency ([10472/12](#)) focussing on the issues of secondary movements within the EU and visa policy and readmission.

A second bi-annual report has been now adopted by the Commission on 23 November 2012 covering the period 1 May-31 October 2012. The report indicates that situation in the Schengen area has not been subject to any significant changes. It basically provides an update of developments regarding the external borders, migrants, border checks, video-surveillance in internal border zones, local border traffic agreements, Schengen evaluations or the extension of the Visa Information System (VIS).

Obstacles related to effective information exchange

The committee will be briefed by the Presidency about the implementation measures undertaken to simplify the exchange of information between law enforcement authorities

AOB

Under other business, the Committee will be informed about the state of play of a number of legislative proposal, including:

- the regulation for the establishment of a European Border Surveillance System (EUROSUR);
 - the Schengen related legislative proposals that are currently under discussion, namely the Schengen evaluation mechanism and the Schengen Borders Code. The Council reached a general approach on both items at the June Council (see [10760/12](#), p. 9-12);
 - the amending regulation 562/2006 and the CISA – technical amendments;
 - the draft Regulation amending Regulation 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
 - the JHA Financial Instruments 2014-2020 (MFF - Home Affairs)
-