



**COUNCIL OF  
THE EUROPEAN UNION**



10760/12

**PROVISIONAL VERSION**

PRESSE 241

PR CO 34

## **PRESS RELEASE**

3172nd Council meeting

### **Justice and Home Affairs**

Brussels, 7 and 8 June 2012

President

**Morten Bødskov**  
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# **P R E S S**

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## **Main results of the Council**

*Home affairs ministers adopted a general approach on two legislative proposals related to the **Schengen governance**, namely:*

- amendments to the **Schengen Borders Code**, the common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances;
- amendments to the the **Schengen Evaluation Mechanism**, the common rules to verify the application of the Schengen acquis. On the latter, the Council also decided to change the legal basis from Article 77 to Article 70 TFEU.

*In this context, ministers held a political discussion on the implementation of a common framework for **genuine and practical solidarity** towards member states facing particular pressures due to mixed migration flows. They focused in particular on the support to Greece in the areas of border, asylum and migration management.*

*Ministers also took note of the state of play on the development of the **Common European**.*

***Asylum System.** In particular, the Commission was able to present its most recent proposal to amend the **Eurodac regulation** allowing law enforcement authorities to access this central EU-wide fingerprint database.*

*Furthermore, ministers took note of the state of play of **readmission agreements** between the EU and third countries, with a particular focus on Turkey, Pakistan and Morocco, before adopting Council conclusions on the establishment of a **global alliance against child sexual abuse online** and on the better use of the **Europol Information System (EIS)** to fight cross-border crime. The EU Counter-Terrorism Coordinator presented his most recent **discussion paper on the EU Counter Terrorism Strategy**.*

*In the margins of the Council, the **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland) held a political debate on the Schengen governance package. It also reviewed the state of play on the implementation of the Schengen Information System (SIS II).*

**Important items adopted without discussion** (A items) include the regulation on jurisdiction, applicable law, recognition and enforcement of authentic instruments in matters of **succession** and on the creation of a European Certificate of Succession as well as the directive on waste electrical and electronic equipment (WEEE), which aims to improve collection, re-use and recycling of used electronic devices. The Council also adopted conclusions on the establishment of a **European Cybercrime Centre**.

Justice ministers reached a general approach on **a directive on the right of access to a lawyer in criminal proceedings** and on the right to communicate upon request and on the recast of **a regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matter** (the so-called "Brussels I" regulation).

Furthermore, Ministers reached a partial general approach on two proposals for regulations establishing the **financing programmes in the area of justice and fundamental rights** within the framework of the Multiannual Financial Framework for the period 2014-2020 (**the Justice programme and the Rights, Equality and Citizenship programme**).

The Council endorsed also the text of the proposal for a Council decision establishing the **Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017** and decided to transmit the text to the European Parliament for its consent.

Finally, Ministers held an orientation debate on the way forward for a proposal for regulation on a **Common European Sales Law**.

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The Government of the Acceding State was represented as follows:

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Permanent Representative



**ITEMS DEBATED**

**Schengen governance - legislative proposals**

The Council reached a general approach on both Schengen related legislative proposals that are currently under discussion:

(a) Schengen evaluation mechanism

Regarding the revision of the Schengen evaluation mechanism tabled in September 2011 by the Commission, the Council unanimously decided to change the legal basis of the proposal from Article 77(2)(e) to Article 70 TFEU (10319/2/12). The Council also decided to consult the European Parliament on a voluntary basis to ensure that the opinion of the Parliament will, to the fullest extent possible, be taken into consideration by the Council in all its aspects before the adoption by the Council of the final text.

Concerning the substance of the text on the table ([5754/6/12](#)), the following main provisions should be mentioned:

- Purpose and scope: As under the current system, the rules do not only apply to verify the correct application of the Schengen acquis by those countries already part of the Schengen area, but also to verify that countries that want to join the Schengen area meet all the conditions to start applying the Schengen acquis.
- Responsibilities: In contrast to the current system which relies on an inter-governmental system of peer review where the Commission participates only as an observer as well as in contrast to the original Commission proposal of a Union-led approach with on-site visits carried out by Commission led teams, the compromise text states that the member states and the Commission shall be jointly responsible for the implementation of the evaluation and monitoring mechanism. Each evaluation team will have two leading experts, one from a member states and one from the Commission.
- Evaluations: The evaluations cover all aspects of the Schengen acquis, including the absence of border controls at internal borders which is currently not covered. The new text also adds that the functioning of the authorities that apply the relevant parts of the Schengen acquis should be taken into account.

- Multiannual and annual programmes: The Commission will be responsible for establishing a multiannual and annual evaluation programmes which will include announced and unannounced on-site visits. The annual evaluation programmes will take into account recommendations made in annual risk analysis written by the European border management agency (Frontex). Announced on-sites visits to a member states will be preceded by a questionnaire.
- Evaluation reports: Evaluation teams will seek a compromise on the final reports which will, as is currently the case, include deficiencies and recommendations for remedial action. The Council will adopt the evaluation reports as submitted by the Commission.
- Follow-up: The member state concerned will be required to submit an action plan to remedy any deficiencies. The Commission will continuously monitor and report on the action plan to the Council until the action plan is fully implemented. This monitoring and reporting may include announced or unannounced revisits.
- Serious deficiencies: If an on-site visit reveals a serious deficiency deemed to constitute a serious threat to public policy or internal security within the area without internal border controls, the Commission, on its own initiative or at the request of a member state, shall inform the Council and the European Parliament as soon as possible.
- Yearly summary report: The Commission will present a yearly summary report to the Council and the European Parliament on the evaluations carried out.

(b) Schengen Borders Code

The Schengen Borders Code established by Regulation (EC) No 562/2006 lays down, on the one hand, the rules on border control at the external borders and, on the other hand, provides for the abolition of border control at internal borders and the possibility for its reintroduction in limited cases. The amendments tabled by the Commission in September 2011 change this last part of the Schengen Borders Code, i.e. the provisions on the reintroduction of controls at internal borders.

The Council agreed on a compromise text ([6161/4/12](#)) which will now be the basis for negotiations with the European Parliament.

The text provides for the possibility to reintroduce controls at internal borders in three cases - two under the heading "Serious threat to public policy or internal security", one linked to the Schengen evaluation mechanism under the heading "Specific measures in case of serious deficiencies related to the external border controls":

i) Serious threat to public policy or internal security:

- As under the current rules, a member state will be able to unilaterally decide to temporarily re-introduce border controls at internal borders in exceptional circumstances, namely where 'there is a serious threat to public policy or internal security'.

First case: Foreseeable events

- If the threats motivating the re-introduction are foreseeable (e.g. major sporting events, political demonstrations, or high-profile political meetings), the reintroduction of border controls will be limited to 30 days with the possibility to prolong the period for renewable periods of 30 days not exceeding six months in total. The member state in question must notify the other member states and the Commission at the latest four weeks before the planned reintroduction. Shorter periods are possible in specific circumstances.
- The member state will need to provide all relevant information about the scope and duration of the re-introduction, and the reasons for doing so. The Commission can issue an opinion on the notification, which can result in consultations between member states and the Commission.

Second case: Urgent cases

- In urgent cases (e.g. terrorist attack), the re-introduction may be effected immediately. In these cases, the reintroduction of border controls will be limited to 10 days with the possibility to prolong the period for renewable periods of 20 days not exceeding two months in total.

ii) Specific measures in case of serious deficiencies related to the external border controls

Third case: Persisting serious deficiencies at external borders

- Where an evaluation report under the Schengen evaluation mechanism (see a) identifies serious deficiencies in a member state in carrying out external border controls, the Commission may recommend to the member state concerned the deployment of European Border Guard teams in accordance with the Frontex regulation and/or the submission of its strategic plans to remedy the situation.

- Where an evaluation report under the Schengen evaluation mechanism (see a) concludes that a member state was seriously neglecting its obligations putting the overall functioning of the area without internal border controls at risk, and where the Commission finds that after three months this situation persists, the Council may on the basis of a Commission proposal recommend for one or more specific member states to reintroduce border controls at all or specific parts of the internal borders. As under the first and the second cases described above, the serious deficiency related to external border controls have to constitute a serious threat to public policy or internal security. The reintroduction of border controls in this case will be limited to six months with the possibility to prolong the period for renewable periods of six months not exceeding two years in total.
- Such a recommendation can only be adopted as a last resort, and the Council has to take into consideration a number of things, including: whether the reintroduction of border controls is likely to adequately remedy the threat to public policy or internal security; whether the measure is proportionate; whether there are additional technical or financial support measures, including through Frontex, EASO, Europol etc., that could remedy the situation.

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

The Council took note of 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 ([10431/12](#)). The Commission presented its new proposal on the revised Eurodac regulation ([10638/12](#)), tabled one week ago.

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 ongoing. It is the goal of the presidency to find a political agreement by the end of June. A revised proposal was tabled by the Commission on 1 June 2011 ([11214/11](#)).
- Negotiations between the Council and the European Parliament are also expected to be finalised by the end of June on the Dublin regulation, which establishes the procedures for determining the member state responsible for examining an application for international protection. The Council has introduced 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.
- On the asylum procedures directives, the presidency has received the mandate to start negotiations with the European Parliament as soon as possible. A revised proposal of the directive was tabled by the Commission on 1 June 2011 ([11207/11](#)).
- Regarding the Eurodac regulation, the Commission tabled last week 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. After examination in the Council preparatory bodies, negotiations with the European Parliament should start as soon as possible.

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](#)).

### **Common framework for genuine and practical solidarity**

On the basis of a presidency note ([10465/12](#)), the Council held a political discussions on the implementation of the common framework for genuine and practical solidarity towards member states facing particular pressures due to mixed migration flows, as established by the respective Council [conclusions](#) in March 2012.

After a presentation by the European Asylum Support Office (EASO) on asylum application trends in the EU, particular attention was given to the ongoing support to and the situation in Greece in the areas of borders, asylum and migration management. The Commission and Greece reported on main developments regarding the implementation of the Greek national action plan on asylum and migration.

The above mentioned presidency note takes stock of the actions taken since March 2012. It does not contain an exhaustive list of all EU solidarity measures nor does it cover bilateral activities carried out by member states.

The March 2012 Council conclusions 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 address, among other things, the issues of solidarity through responsibility and mutual trust, solidarity through preventive cooperation, solidarity in emergency situations, solidarity through strengthened cooperation between EASO and FRONTEX, financial solidarity, solidarity through relocation and solidarity through strengthened cooperation with key countries of transit, origin and first countries of asylum. The conclusions also aimed to complement and help the implementation of the envisioned mechanism for early warning, preparedness and crisis management in the amended Dublin regulation (see separate item on Common European Asylum System (CEAS)).

### **Readmission agreements**

The Council took note of the state of play of readmission agreements between the EU and third countries, with a particular focus on Turkey, Pakistan and Morocco.

On Turkey, the Danish presidency intends to adopt in June Council conclusions on developing cooperation with Turkey in the area of justice and home affairs. It is expected that these conclusions will create favourable conditions to initial and sign the text of the EU-Turkey readmission agreement which both sides agreed upon in February 2011. The Council also adopted [conclusions](#) on the matter after the agreement was reached.

The negotiations on an EU-Morocco readmission agreement came to a halt in May 2010. In June 2011, the Commission launched a dialogue with the Moroccan authorities on migration, mobility and security which also gave new impetus to the negotiations on a readmission agreement.

The [EU-Pakistan readmission](#) agreement entered into force in December 2010.

Since 2000, the Council has adopted 19 negotiating directives on the conclusion of readmission agreements with third countries, 13 of which have already entered into force.<sup>1</sup> Negotiations have been completed with one country<sup>2</sup> and are ongoing with two others.<sup>3</sup>

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

### **EU Counter-terrorism strategy - discussion paper**

The EU Counter-terrorism coordinator presented his most recent discussion paper to the Council (9990/12).

The paper focuses on the practical measures that could be taken to address the currently most worrying terrorism phenomena: “lone actor” terrorists and the emergence of “safe havens” outside the EU. The EU Counter-terrorism coordinator makes a number of recommendations on the role of EU agencies, on preventing and countering radicalisation, on counter-terrorism and human rights, on link between security and development and on the work to be done specifically in Africa.

### **Europol Information System (EIS) - Council conclusions**

The Council adopted [conclusions](#) on an increased and more effective use of the Europol Information System (EIS) in the fight against cross-border crime.

These conclusions are a follow up to the discussion of the JHA Council meeting of December 2011 about the fight against itinerant crime and the role of Europol and the Europol Information System.

In December 2010, the Council adopted [conclusions](#) on the fight against crimes committed by mobile (itinerant) criminal groups.

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<sup>1</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>2</sup> Turkey.

<sup>3</sup> Cape Verde and Morocco.

**Global alliance against child sexual abuse online - Council conclusions**

The Council adopted [conclusions](#) on a Global Alliance against Child Sexual Abuse Online as proposed by the Commission.

The aim of the proposed Global Alliance is to seek commitments from countries around the world to take active part in the fight against child sexual abuse online. The commitments should be linked to a set of global, overarching political targets to be achieved by means of specifically described actions. As a next step, the Global Alliance is expected to be endorsed at the EU-US Ministerial Meeting on 20-21 June 2012.

**Right of access to a lawyer**

The Council reached a general approach (10908/12) on a proposal for a directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. Although some member states still have concerns regarding some points of the text, it was generally agreed that the time has arrived to start negotiations with the European Parliament in order to agree the final text of the directive.

The general approach comes precisely one year after the Commission submitted its proposal on 8 June 2011. This relatively long period of deliberations can be explained because of the sensitive subject matter of the file: the directive aims to approximate the laws of the member states in a field where substantial differences between the national systems exist and where the member states are not in agreement on the interpretation of the case-law of the European Court on Human Rights.

When the Commission presented its proposal, it met with criticism from the side of the member states. To address the concerns, the text of the proposal has been considerably redrafted. The current text tries to strike a balance between the positions of all member states. The most innovative element of the text is contained in Article 3(4), where a distinction is made as regards the efforts that have to be deployed by a member state in respect of the right of access to a lawyer. In all cases where the suspect or accused person is deprived of liberty, member states should make the necessary arrangements to ensure that a suspect or accused person is in a position to effectively exercise his right of access to a lawyer; in cases when a suspect or accused person is at large (not deprived of liberty), member states should not prevent a suspect or accused person from exercising his right of access to a lawyer.

The proposed directive is part of a Roadmap on criminal procedural rights, agreed by the Council in November 2009<sup>1</sup>, which sets out a series of proposals aiming to establish common minimum standards on the rights of suspects and accused persons in criminal proceedings.

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<sup>1</sup> OJ C 295, 4.12.2009



The draft directive, in the version submitted to the Council, deals amongst other things with the following ([11497/11](#)):

- the right of access to a lawyer for suspects and accused persons (when, under which conditions);
- the principle of confidentiality of communications between the lawyer and the suspect or accused person;
- the right for a suspect or accused person who is deprived of liberty to communicate with his country's consular or diplomatic authorities;
- the possibility of making temporary derogations to certain rights in exceptional circumstances and for compelling reasons only;
- the right for requested persons subject to a European Arrest Warrant to have access to a lawyer in the executing state.

### **Judgments in civil and commercial matters**

The Council endorsed a general approach ([10609/12](#) + [ADD 1](#)) on the recast of a regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (the so-called "Brussels I" regulation<sup>1</sup>). The purpose of the proposal is to make the circulation of judgments in civil and commercial matters easier and faster within the Union, in line with the principle of mutual recognition and the Stockholm Programme guidelines.

The recast regulation will substantially simplify the system put in place by "Brussels I" as it will abolish *exequatur*, i.e. the procedure for the declaration of enforceability of a judgment in another member state. The recast regulation will provide that no national rules may be applied any longer by member states in relation to consumers and employees domiciled outside the EU. Such uniform rules of jurisdiction will also apply in relation to parties domiciled outside the EU in situations where the courts of the member states have exclusive jurisdiction under the future regulation or where such courts have had jurisdiction conferred on them by an agreement between the parties. Another important change will be a rule on international *lis pendens* which will allow the courts of a member state, on a discretionary basis, to stay the proceedings and eventually to discontinue proceedings in situations where a court of a third state has already been seized either of proceedings between the same parties or of a related action at the time the EU court is seized.

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<sup>1</sup> Regulation 44/2001 (*OJ L 012, 16.1.2001*)

The UK and Ireland are taking part in the adoption of the recast regulation. Denmark is not taking part in the adoption of the proposed regulation and will not be bound by it or subject to its application. However, the recast regulation, once adopted, will also be applicable to Denmark in the context of the 2005 agreement between the EU and Denmark in this area.

**Multiannual Framework for the EU Agency for Fundamental Rights for 2013-2017**

The Council endorsed the text of the proposal for a Council decision establishing the Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017 and decided to transmit the text to the European Parliament for its consent.

According to the regulation establishing the Agency<sup>1</sup>, the thematic areas of its activity shall be determined by a five-year Multiannual Framework. The Agency shall carry out the above-mentioned tasks within these thematic areas and its Management Board will adopt each year the Agency's work programmes according to it. The current Multiannual Framework (2007-2012) expires at the end of 2012.

The text as it stands now includes the following thematic areas ([10615/12](#)):

- access to justice;
- victims of crime, including compensation to crime victims;
- information society and, in particular, respect for private life and protection of personal data;
- Roma integration;
- judicial cooperation, except in criminal matters;
- rights of the child;
- discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;

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<sup>1</sup> Art. 5 Regulation (EC) No 168/2007

- immigration and integration of migrants, visa and border control and asylum;
- racism, xenophobia and related intolerance.

The Council endorsed the text of a possible declaration concerning the review of the Multiannual Framework to be made at the time of adoption. In the declaration, the Council agrees to examine any proposals for amendments to the regulation establishing the Agency and to consider in that context the amendment of this decision as regards the inclusion of police cooperation and judicial cooperation in criminal matters in the list of thematic areas.

This proposal is based on Article 352 of the Treaty on the Functioning of the European Union and requires unanimity in the Council and the consent of the European Parliament. The final adoption will take place after the European Parliament has given its consent.

### **Multiannual Framework 2014-2020 (Justice Affairs)**

The Council reached a partial general approach on two proposals for regulations establishing the financing programmes in the area of justice and fundamental rights within the framework of the Multiannual Financial Framework for the period 2014-2020. Those texts will be now the basis for the negotiations with the European Parliament with a view to reaching agreement. In both proposals, the provisions regarding the financial envelope are excluded from the scope of the partial general approach since they will be negotiated at horizontal level.

The first proposal concerns the Justice programme (10645/12), a funding programme aimed to support actions with European added value in the area of judicial cooperation in civil and criminal matters and judicial training.

The second proposal concerns the Rights, Equality and Citizenship programme (10642/12) which is the successor of three existing programmes: Fundamental Rights and Citizenship, Daphne III and the sections "Antidiscrimination and Diversity" and "Gender Equality" of the Programme for Employment and Social Solidarity (PROGRESS). The new programme aims to contribute to the creation of an area where the rights of persons, as enshrined in the Treaty of the Functioning of the European Union and in the Charter of Fundamental Rights of the EU, are respected, promoted and protected. Accordingly the programme will support actions in the areas of Union citizenship, non-discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, xenophobia and other forms of intolerance; prevention and combating violence against children, young people and women, protection of victims and groups at risk; data protection; rights of the child and consumer and business rights in the internal market.

At horizontal level the two programmes aim to streamline and simplify access to funding in these fields and accordingly the proposals set out specific indicators to assess and measure the achievement of the objectives.

The two proposals were presented by the Commission on 21 November 2011 and are subject to the ordinary legislative procedure.

### **European Sales Law**

The Council held an orientation debate on how to handle the further negotiations on the proposal for a regulation on a Common European Sales Law ([15429/11](#)). The Council was invited to address questions related to the legal basis of and the need for the proposed Common European Sales Law, its scope and whether to start work on model contracts.

The debate showed that the views of member states on the proposal varied, but that despite the diverging views a number of concrete conclusions on the organisation of the further work on this file could be drawn:

Even though approaches to the issue are different, there was overall agreement that work should start on the examination of the substance of the Annex of the proposal.

Even though a final position on the legal basis can only be taken once the final structure and scope of the proposal are clear, the diverging views on the question of the legal basis should not be an obstacle to starting work on examination of the Annex.

Particular emphasise was made to the importance, that during the actual examination of the Annex, sufficient time is allowed for the proposal to be examined thoroughly, in which the views and concerns of all the member states are taken into consideration.

Moreover, it needed to be ensured during the examination of the Annex to focus on the question of the extent to which the individual parts of the proposal would work towards removing the actual practical obstacles to the internal market.

**AOB**

Under other business, the ministers of Cyprus informed the Council about the priorities in the area of justice and home affairs for the forthcoming Cyprus EU Presidency.

In the area of home affairs, these priorities include: the completion of the development of the Common European Asylum System (CEAS) by the end of 2012; improving response capacities to effectively and rapidly face disasters and crises; continuing the intense negotiations on the JHA financial instruments; the legal migration package and in particular the seasonal workers and the ICTs directives; the strategic approach to EU action on migratory pressures; the modernisation of the EU's border regime; and the implementation of the renewed Global Approach to Migration and Mobility.

In the area of justice affairs, these priorities include: promoting the new legal framework on data protection; progress on the proposal regarding the freezing and confiscation of the proceeds of criminal offences; preventing market abuse through effective criminal sanctions; and continuing negotiations on European Protection Order (EPO) regulation, which can be an important tool for the protection of creditors.

The Council was also informed about the state of play of a number of legislative proposal:

- two are related to legal migration, namely the draft directives on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer and for the purposes of seasonal employment. Regarding the proposed rules for intra-corporate transfers, general agreement has been reached among member states. As a consequence, negotiations with the European Parliament can start. The main issue is that the Council wants to give intra-corporate transferees the same workers' rights as those enjoyed by posted workers and the European Parliament wants to give them the same workers rights as enjoyed by nationals in EU member states.  
Regarding the proposed rules for seasonal workers, good progress has been made. However, there are still a number of issues that require more work in Council, namely the question whether stays shorter than three months should be covered or not;
- the other three are related to criminal justice dossiers, namely the draft directive establishing minimum standards on the rights, support and protection of victims of crime, the draft directive on attacks against information systems and the draft directive on the European Investigation Order in criminal matters (EIO).

Ireland informed about certain issues related to the confiscation of the proceeds of crime, Slovenia about the Brdo Process ministerial conference which was held on 18 May 2012, and the Czech Republic about the Salzburg Forum ministerial conference which was held on 24-25 May 2012.

**Mixed Committee**

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

**Schengen governance - the situation in the Schengen area**

The committee held a political debate on the situation in the Schengen area on the basis of a presidency note ([10472/12](#)) and the first bi-annual Commission report on the functioning of the Schengen area ([10223/12](#)).

The discussion focused on two issues:

- secondary movements within the Schengen area of three groups of 3rd country nationals: a) migrants who have entered illegally; b) migrants who have entered legally but are no longer entitled to stay in the Schengen area legally (overstayers); and c) asylum seekers. The presidency suggested to look at the reasons for these movements, including for example an insufficient handling of situations at hot spots both within the EU and in neighbouring countries (see also points 2.1 and 2.2 of the Commission report).
- visa policy and readmission: lessons to be learned from experience gained so far, e.g. in relation to visa liberalisation for the Western Balkan countries and the approach to follow in the future both when monitoring the situation post-visa liberalisation and when considering the possibility of visa liberalisation in relation to relevant third countries (see also point 4.3 of the Commission report).

On the first issue, member states agreed that on migration flows from third countries, but also on secondary movements within the EU, there should be better and quicker statistical information available. Some member states also highlighted the importance of creating an EU entry-exit system to better monitor legal and illegal migration. This would also be a valuable tool in the fight against illegal trafficking of arms or drugs, trafficking in human beings and other cross-border crime.

On the second issue, many member states highlighted the importance of the planned suspension mechanism, as a last resort, in the regulation on visa liberalisation with third countries (Reg. 539/2001) as well as the importance to continue monitoring post-visa liberalisation effects, including possible increases in unfounded asylum applications. The effective application of existing readmission agreements was also underlined.

The JHA Council on 8 March 2012 adopted [conclusions](#) 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.

### **Schengen governance - legislative proposals**

The committee looked at the two legislative proposals regarding a regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis ([14358/11](#)) and an amendment to the Schengen Borders Code as regards the rules for the temporary reintroduction of border controls at internal borders in exceptional circumstances ([14359/11](#)). The Commission tabled these legislative proposals in September 2011 in response to the European Council conclusions of 23-24 June 2011 ([EUCO 23/11](#)).

After the discussion in the mixed committee, the Council adopted a general approach on both dossiers. See also separate item above.

### **SIS II**

The committee looked at the latest developments on the implementation of the Schengen Information System II (SIS II). The Commission reported that the milestone II tests were successfully carried out. A full report will be made available to member states in the coming days. Member states' experts will then discuss the report in view of an endorsement by the Council. Successful milestone II tests are a prerequisite for the SIS II coming into operation which is planned for 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.

**AOB**

The presidency informed about the state of play regarding three current legislative proposals:

- 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 Danish presidency aims to reach a political agreement with the European Parliament by the end of June;
- the Schengen Borders Code (see separate item); and
- the home affairs parts of the Multiannual Framework 2014-2020.

The Commission invited member states to ensure follow-up regarding point 10 of the Foreign Affairs Council (FAC) [conclusions on Belarus](#) of 23 March 2012. This point refers in particular to the use of the flexibilities in the Visa Code with a view to waiving and reducing visa fees for certain categories of Belarusian citizens or in individual cases.

The Maltese delegation informed the committee about the current situation at its external borders with regard to increasing illegal migration flows.

Norway informed the committee about its local border traffic agreement with Russia.



**OTHER ITEMS APPROVED**

**JUSTICE AND HOME AFFAIRS**

**Succession \***

The Council adopted a 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 ([14/12](#) + [10569/12 REV 1 ADD 1](#)).

For more details see the press release [10865/12](#).

**Eurojust annual report**

The Council adopted conclusions on the 2011 report by Eurojust, the EU agency for cooperation in judicial matters, as set out in [10360/12](#).

The Council noted with appreciation that most of the objectives to be achieved in 2011 and as set out in the Annual Report for 2010 have been successfully attained or are in progress to be accomplished.

**Vice-President of Eurojust**

The Council approved the election of Mr. Carlos ZEYEN, National member for Luxembourg as Vice-President of Eurojust.

On 29 May the National Members of the College of Eurojust elected Mr. Carlos ZEYEN as Vice-President of Eurojust. The elections were due to end the mandate of Ms Michèle CONINSX, National Member for Belgium, as Vice-President after having been elected President of Eurojust with effect from 1 May 2012 as approved by the Council on 26 April 2012. Mr Raivo SEPP, National Member for Estonia, continues as Vice-President of Eurojust.

According to Article 28 of the Council Decision setting up Eurojust<sup>1</sup>, the College of Eurojust shall elect a President from among the national members and may elect at most two Vice-Presidents. The result of the election shall be submitted to the Council for approval.

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<sup>1</sup> OJ L 63, 6.3.2002.

## **e-Justice**

The Council took note of the report of the Working Party on e-Law (e-Justice) (10120/12) on progress made this semester in the area of European e-Justice. The work was carried out on the basis of the revised roadmap endorsed by the JHA Council in June 2011 ([10331/11](#)) and in accordance with the European e-Justice action plan<sup>1</sup>.

The Council also endorsed the amendment of the Guide on Videoconferencing in cross-border proceedings (10097/12) and the revised note on translation/transliteration of names of places/persons (10096/12).

## **EU drugs strategy**

The Council adopted conclusions on the new EU drugs strategy ([10231/12](#)), which is the political framework in the field of drugs for 2013-2020 setting out the longer-term strategic development of the EU drugs policy.

The new strategy shall establish clearly defined objectives and focus on five thematic areas: coordination; demand reduction; supply reduction; international co-operation and research, information and evaluation.

## **European Cybercrime Centre**

The Council adopted conclusions on the establishment of a European Cybercrime Centre ([10603/12](#)), in response to the Commission's communication "Tackling Crime in our Digital Age: Establishing a European Cybercrime Centre" ([8543/12](#)).

The Council endorsed the setting up of such a centre, which will be the focal point in the fight against cybercrime in the Union, contributing to faster reactions in the event of cyber attacks. It will support member states and European Union's institutions in building operational and analytical capacity for investigations and cooperation with international partners.

The European Cybercrime Centre will be part of the existing Europol structure to facilitate cross-working with other crime areas.

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<sup>1</sup> OJ C 75 31.3.2009.

### **Mutual assistance in criminal matters**

The Council adopted a decision on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the member states of the EU and the 2001 Protocol thereto ([5306/10](#))

The United Kingdom and Ireland took part in the adoption of this decision. Denmark did not take part and is not bound by it or subject to its application.

### **Exchange of law enforcement information**

The Council adopted conclusions on further enhancing efficient cross-border exchange of law enforcement information. The conclusions call for the full implementation of all existing legal instruments for the exchange of law enforcement information, in particular the Swedish Framework Decision<sup>1</sup> and the "Prüm Decisions"<sup>2</sup>. In particular, they also invite member states to further enhance the use of EUROPOL as channel for exchanging information and to make better use of the capabilities of EUROJUST.

### **Automated data exchange with Estonia**

The Council adopted a decision on the launch of automated data exchange with regard to DNA data in Estonia (9135/12). The evaluation procedure required by Council Decision 2008/616/JHA<sup>3</sup> concluded that the general provisions on data protection are fully implemented by Estonia and this country is therefore entitled to start receiving and supplying personal data for the purpose of prevention and investigation of criminal offences, as from the day of the entry into force of this decision,

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<sup>1</sup> Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States.

<sup>2</sup> Decision 2008/615/JHA.

<sup>3</sup> OJ L 210, 6.8.2008.

**DEVELOPMENT COOPERATION**

**Accession of South Sudan to the Cotonou Agreement**

The Council adopted the EU position for the next ACP-EU Council of Ministers: The EU is to accept South Sudan's requests for accession to the ACP-EU Partnership Agreement and for observer status under that agreement until 20 November ([10389/12](#)).

**EU-ACP Council of ministers**

The Council confirmed the provisional agenda for the 37th session of the ACP-EU Council of ministers, which will take place in Port Vila, Vanuatu on 14 and 15 June 2012. It also approved guidance for the EU statements at that session.

**Food aid convention**

The Council approved the EU position within the Food Aid Committee on the extension of the Food Aid Convention. It authorised the Commission to oppose an extension of the Food Aid Convention, given that the new Food Assistance Convention will enter into force on 1 January 2013 ([10118/12](#)).

**TRANSPORT**

**Double-hull requirements for oil tankers**

The Council adopted, on the basis of a text agreed with the European Parliament in first reading, a recast of the 2002 regulation on the phasing-in of double-hull requirements for single-hull oil tankers ([18/12](#)). Besides merging the past amendments to the regulation into one text, the recast modifies the procedure for updating references in the regulation to the relevant rules adopted within the International Maritime Organisation (IMO).

The regulation prohibits the transporting to or from EU ports of heavy grades of oil in single-hull oil tankers and lays down an accelerated phasing-in scheme for the application of the double-hull or equivalent design requirements of the International Convention for the Prevention of Pollution from Ships to single-hull oil tankers, with 2015 as the final deadline. That regulation was adopted in 2002 as a response to shipping accidents involving oil tankers and to the ensuing pollution of the Union's waters and coastlines. Its main objective is to enhance safety and to prevent pollution in maritime transport by making oil tankers safer.

**EMPLOYMENT**

**Mobilisation of the European Globalisation Adjustment Fund for Spain**

The Council adopted a decision mobilising EUR1.63 million under the European Globalisation Adjustment Fund (EGF), providing support for workers made redundant in the Spanish footwear industry. The redundancies are a consequence of the delocalisation of production processes to lower-cost non-EU countries.

**EUROPEAN ECONOMIC AREA**

**Amendment to annex XXI (statistics) to the EEA agreement**

The Council adopted a decision on the position to be taken by the EU within the EEA joint committee concerning an amendment to annex XXI (statistics) to the EEA agreement.

This decision aims to incorporate new EU *acquis* concerning European statistics on tourism into the EEA agreement ([9390/12](#)).

**Amendment to Protocol 31 to the EEA agreement**

The Council adopted a decision on the position to be taken by the EU within the EEA joint committee concerning an amendment to Protocol 31 to the EEA agreement, on cooperation in specific fields outside the four freedoms.

The decision aims at extending the cooperation of the contracting parties to include cooperation in the framework of the European year for active ageing and solidarity between generations (2012) to the EEA agreement.

**Amendments to Protocols 31 and 37 to the EEA agreement**

The Council adopted a decision on the position to be taken by the EU within the EEA joint committee concerning amendment to Protocols 31 (on cooperation in specific fields outside the four freedoms) and 37 (containing the list provided for in article 101) to the EEA agreement,.

This decision aims to take into account changes to the governance and the setup of the European Global Navigation Satellite System into the EEA agreement.

**ENVIRONMENT**

**Waste electrical and electronic equipment \***

The Council adopted a directive on waste electrical and electronic equipment (WEEE) ([PE-CONS 2/12](#)), which aims to improve collection, re-use and recycling of used electronic devices so as to contribute to the reduction of waste and to the efficient use of resources.

For more information see press release 10910/12.

**APPOINTMENTS**

**Economic and Social Committee**

The Council appointed Dr Ferdinand MAIER (Austria), as member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2015 ([10196/12](#)).

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