



Brussels, 6 June 2012

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Luxembourg, 7-8 June 2012

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday 7 and Friday 8 June 2012, under the chair of **Mr Morten BØDSKOV**, Minister for Justice, in Luxembourg.*

*On Thursday, home affairs ministers are expected to adopt 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 **Schengen Evaluation Mechanism**, the common rules to verify the application of the Schengen acquis.*

*In this context, ministers will have 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, with a particular focus on the support to Greece in the areas of border, asylum and migration management.*

*Ministers will also take note of the state of play on the development of the **Common European Asylum System**, which is based on a number of legislative proposals aiming at greater harmonisation of national asylum systems and higher levels of protection. In particular, the Commission will be 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 will take 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 will present his most recent **discussion paper on the EU Counter Terrorism Strategy**.*

*On Friday, ministers will try to reach 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). The Council is then expected to endorse the text of the proposal for a Council decision establishing the **Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017**.*

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

Justice ministers are expected to adopt 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 will then hold an orientation debate on the way forward for a proposal for regulation on a **Common European Sales Law**.

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

Important items to be adopted without discussion (A items) include the adoption of the proposal for a 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.

Presidency press conferences will be held at the end of the Council Thursday (+/- 18.00) and before lunch (+/- 13.00) Friday.

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.

* * *

Press conferences and public deliberations can be followed by video streaming:

<http://video.consilium.europa.eu/>

Video coverage of the event will be available for preview and download in broadcast quality (MPEG4) on <http://tvnewsroom.consilium.europa.eu>

Photos of the event can be found in our photographic library on www.consilium.europa.eu/photo where they can be downloaded in high resolution.

* * *

Schengen governance - legislative proposals

The Council will try to reach 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 is expected to change the legal basis of the proposal from Article 77(2)(e) to Article 70 TFEU. As a consequence, the proposed regulation would need to be adopted by a Council decision requiring a qualified majority of member states. It would not follow the ordinary legislative procedure giving co-decision power to the European Parliament. The Council is, however, expected to also agree to consult the Parliament on a voluntary basis to ensure that the position of the Parliament is reflected to the furthest extent possible.

Concerning the substance of the compromise 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 is now expected to agree on a compromise text ([6161/4/12](#)) which should 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, and insofar as these circumstances constitute a serious threat to public policy or internal security, 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. This reintroduction of border controls 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 will be informed 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 ([10431/12](#)). The Commission will also have the opportunity to present its new proposal on the revised Eurodac regulation ([10638/12](#)).

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, further 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 on other key elements such as guarantees for unaccompanied minors, subsequent applications and the right to an effective remedy are due to be finalised in the coming days. It is the aim of the presidency to start negotiations with the European Parliament before the end of June. A revised proposal of the directive was tabled by the Commission on 1 June 2011 ([11207/11](#)).
- 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 will hold 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.

Particular attention will be given to the ongoing support to Greece in the areas of borders, asylum and migration management.

The 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 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 will be informed about 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 negotiations on an EU-Morocco readmission agreement came to a halt in 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.

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.² Negotiations have been completed with one country³ and are ongoing with two others.⁴

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

EU Counter-terrorism strategy - discussion paper

The EU Counter-terrorism coordinator will present 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.

² 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.

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

⁴ Cape Verde and Morocco.

Europol Information System (EIS)

The Council is expected to adopt 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.

Global alliance against child sexual abuse online

The Council is expected to adopt 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 will seek a general approach ([10467/12](#)) 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. The Commission adopted this draft directive in June 2011 ([11497/11](#)).

The draft directive, in the version submitted to the Council, deals amongst other things with the following:

- 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.

If the JHA Council reaches a general approach at its session on 8 June, that will be precisely one year after the Commission submitted its proposal. 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. Several member states indicated having difficulties with the fact that the proposal did not address the issue of legal aid, which was however an element explicitly included in the Roadmap. Five member states submitted a paper at ministerial level in which they complained that the Commission proposal on several points went beyond the requirements of the European Convention on Human Rights, as interpreted in the case-law of the European Court of Human Rights, in particular the *Salduz* judgment (*14495/11*), and the United Kingdom and Ireland decided not to opt-in from the outset, although they may opt-in at a later stage. Also other member states voiced concerns on particular points of the Commission proposal.

In order to address the concerns of the member states, 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 2009⁵, which sets out a series of proposals aiming to establish common minimum standards on the rights of suspects and accused persons in criminal proceedings.

The Council and the European Parliament already agreed measures on the right to interpretation and translation⁶ (measure A), and on the right to information and a letter of rights⁷ (measure B). This measure C, on the right of access to a lawyer, is the core of the five measures of the Roadmap, which may be supplemented by other rights. The Council's general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the directive.

⁵ OJ C 295, 4.12.2009

⁶ OJ L 280, 26.10.2010

⁷ PE-CONS 78/3/11 REV 3, to be published soon in the OJ

Judgments in civil and commercial matters

The Council is expected to approve a general approach (10609/12 + ADD1) 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" regulation⁸).

The Commission presented its recast proposal in December 2010 ([18101/10](#) + [ADD 1](#) + [ADD 2](#)). The purpose 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.

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 will try to endorse the text of the proposal for a Council decision establishing the Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017([18645/11](#)) in order to transmit the proposal to the European Parliament for its consent.

According to the regulation establishing the Agency⁹, 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.

⁸ Regulation 44/2001 (*OJ L 012, 16.1.2001*)

⁹ Art. 5 Regulation (EC) No 168/2007

The compromise text submitted by the Presidency 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;
- immigration and integration of migrants, visa and border control and asylum;
- racism, xenophobia and related intolerance.

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 of the decision will take place after the European Parliament has given its consent.

The Fundamental Rights Agency¹⁰ is based in Vienna (Austria) and started its activity in March 2007. The objective of the Agency is to provide the relevant institutions, bodies, offices and agencies of the Union and its member states, when implementing Union law, with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights. The tasks entrusted to the Agency relate to the collection and analysis of information and data; to the provision of advice through reports and opinions; and to cooperation with civil society and raising awareness of fundamental rights.

Multiannual Framework 2014-2020 (Justice Affairs)

The Council will try to reach 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 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.

¹⁰ <http://fra.europa.eu>

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 the 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.

In both cases, 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 two proposals were presented by the Commission on 21 November 2011 and are subject to the ordinary legislative procedure.

European Sales Law

The Council will hold a debate on the orientation and the method to handle the further negotiations on the proposal for regulation on a Common European Sales Law, presented by the Commission on October 2011 ([15429/11](#)).

The proposed regulation aims at overcoming internal market barriers stemming from differences in national contract laws. It is proposed to be an optional, alternative contract law regime, which contracting parties could freely choose to apply to their contract of sale. It is designed to be a parallel law to the national law of each member states ("2nd regime").

The goal of the proposal is to enhance growth and trade in the internal market on the basis of freedom of contract and a high level of consumer protection assuming that this alternative set of rules would stimulate more cross-border business.

This "2nd regime" would cover contracts on the sales of goods and supply of digital content, as well as directly related services. It would be open to business-to-consumer contracts as well as those business-to-business contracts where at least one party is a small or medium sized enterprise (SME). It is important to underline that both parties to a cross-border contract would need to agree to use these alternative, European rules.

In order to ensure effective and uniform application, the proposal envisages as future supporting measures the development of “European model contract terms” and the creation of a publicly accessible database of relevant judicial decisions.

The first discussions on the proposal have made it clear that this file entails divergences among member states. Several member states had therefore requested that a political debate at the level of the Council takes place before proceeding further with technical discussions.

To this end, the Presidency submits a discussion paper to the Council ([10611/12](#)) proposing that ministers address questions related to the legal basis and the need for the proposal, its scope (focus on sales contracts concluded on-line) and whether to start work on model contract terms and conditions.

AOB

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

The Council will also be 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. Regarding the proposed rules for seasonal workers, good progress has been made. However, there are still a number of issues that require more work, including 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 will inform 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) will discuss the following items:

Schengen governance - the situation in the Schengen area

The committee will hold 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](#)).

As set out in the note, the presidency would like to focus discussions 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 suggests 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).

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 will look 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 is expected to adopt a general approach on both dossiers. See also separate item above.

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.

AOB

The presidency will inform 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 Schengen Borders Code (see separate item); and
- the home affairs parts of the Multiannual Framework 2014-2020.

The Commission is expected to invite 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 will inform the committee about the current situation at its external borders with regard to increasing illegal migration flows.

Norway is expected to inform the committee about its local border traffic agreement with Russia.
