



Brussels, 4 June 2013

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Luxembourg, 6 and 7 June 2013

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday 6 and Friday 7 June 2013, under the chair of **Mr. Alan Shatter**, Minister for Justice, Equality and Defence of Ireland.*

*On **Thursday**, justice ministers will have an in-depth discussion on certain key issues regarding the proposal for 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**)*

*The Council is expected to agree a general approach on the draft directive on the **fight against fraud to the Union's financial interests** by means of criminal law.*

*Furthermore, ministers will hold a public debate on the proposal for a regulation creating a **European Account Preservation Order** and on the proposal for a regulation on **insolvency proceedings** the objective of which is to establish a number of guidelines for the continuation of the work.*

*Ministers will hear a presentation by the Commission on its proposal for a regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain **public documents** in the EU.*

*The Council is expected to **adopt conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the EU** and will be briefed by the Presidency on the state of play on the **EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**.*

*Finally, the Council is due to adopt the new **EU Action Plan on Drugs (2013-2016)**, followed by a presentation by the Director of the European Monitoring Centre for Drugs and Drug Addiction of the **2013 European Drug Report**.*

*On **Friday**, home affairs ministers will have an in-depth discussion on the issue of **foreign fighters and returnees** from a counter-terrorism perspective, in particular with regard to Syria, on the basis of a document prepared by the EU Counter Terrorism Coordinator (CTC).*

*Moreover, ministers will be briefed by the Presidency on the final steps for the completion of the **Common European Asylum System (CEAS)** and on the state of play of the **Schengen Governance** legislative package.*

*Ministers will hold a public debate on the proposal for a regulation on **the European Agency for Law Enforcement Cooperation and Training (Europol)** and will discuss on the latest developments for the **protection of refugees from the Syria conflict** after being briefed by EASO.*

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

*At lunch, Ministers will hold a discussion on the issues related to **the free movement of persons** raised in a letter sent to the Presidency by the Minister of interior from Austria, Germany, Netherlands and United Kingdom.*

*The **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland), meeting in the margins of the Council, will be briefed on the latest state of play in relation to **the Schengen governance**. In addition, the Greek delegation will report to the Council on the implementation of its **national action plan on asylum reform and migration management**.*

***Presidency press conferences** will be held Thursday before lunch (+/- 13.30) and at the end of the Council (+/- 17.30) and after lunch on Friday (+/- 15.00).*

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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>

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JUSTICE

Data protection

The Council will discuss key issues on the proposal for a regulation setting out a general EU framework for data protection on the basis of a document prepared by the Presidency ([10227/13](#) + [ADD1](#)). On the understanding that no part of the draft regulation can be agreed until the whole text of the regulation is agreed, the Presidency will ask the Council to generally support some conclusions related to the material and territorial scope, the concept of consent, the data protection principles, the relationship between the regulation and the freedom of expression and the right of access to official documents.

The Council will also be asked to express its general support for the principle of enhanced transparency standards for data subjects, the introduction of the risk-based approach regarding the obligations of companies as well as the development and application of approved codes of conduct and certification mechanisms

In January 2012, in the light of rapid technological developments and globalisation, the European Commission presented 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.

Protection of the EU's financial interest

The Council is expected to agree a general approach ([10232/13](#)) on the draft directive on the fight against fraud to the Union's financial interests by means of criminal law. This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the directive.

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.

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](#))

The proposed directive provides common definitions of a number of offences against the EU budget, such as fraud, and other fraud related crimes such as active and passive corruption, the misappropriation of funds, money laundering and minimum rules on prescription periods, within which the case must be investigated and prosecuted, as well as minimum rules on 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.

A clear majority of delegations have indicated that the legal basis of the proposal should be Article 83(2) instead of Article 325(4) as proposed by the Commission. The text, as it stands now, is based on the presumption that Article 83(2) will be confirmed as the legal basis.

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 the debate is to examine the key principles relating to the balance between the creditor's and the debtor's interests as set out in the document prepared by the Presidency and to endorse them as a package for the continuation of the work ([10047/13](#)).

The package of key principles addresses the following issues:

- the conditions for issuing a Preservation Order,
- the *ex parte* nature of the proceedings,
- the provision of security by the creditor,
- the liability of the creditor,
- the amounts exempt from preservation to protect the debtor, and
- the remedies to be made available to the parties, in particular to the debtor.

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 preservation 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.

The Council held an orientation debate on the proposed regulation at its meeting on 6 and 7 December 2012 and approved some general guidelines for the future work ([16350/12](#)). To strike the appropriate balance between the interests of the creditor and the interests of the debtor was one of the core issues in the abovementioned guidelines.

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

Insolvency proceedings

The Council will hold a public debate on the proposal for a regulation amending Council Regulation (EC) No 1346/2000 on insolvency proceedings the objective of which is to establish a number of guidelines for the continuation of the work ([10050/13](#)).

The proposed regulation aims at making cross-border insolvency proceedings more efficient and effective with a view to ensuring a smooth functioning of the internal market and its resilience in economic crises. This objective is in line with the European Union's current political priorities to promote economic recovery and sustainable growth, a higher investment rate and the preservation of employment, as set out under the Europe 2020 strategy, and to ensure smooth development and the survival of businesses, as stated in the Small Business Act.

The proposed regulation will also bring the current Insolvency Regulation in line with developments in national insolvency laws introduced since its entry into force in 2002.

The proposal was submitted by the Commission in December 2012 and was discussed by the Ministers for Justice at the informal Council in Dublin on 18 January 2013. On this occasion, Ministers welcomed the proposed regulation while acknowledging that the details would need further discussions at technical level.

Mutual recognition of public documents

The Council will hear a presentation by the Commission on its proposal for a regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012 ([9037/13](#)).

The proposal aims at simplifying the procedures for cross-border use and acceptance of public documents between the Member States as well as harmonising the related rules, thereby contributing towards the creation of a citizens' Europe and a well-functioning Single Market for EU businesses.

Concretely, the proposal aims at reducing practical difficulties caused by the administrative formalities, in particular cutting costs and delays; reducing translation costs related to the free circulation of public documents within the EU; simplifying the fragmented legal framework regulating the circulation of public documents between the member states; ensuring a more effective level of detection of fraud and forgery of public documents; eliminating risks of discrimination among Union citizens and businesses.

The proposed Regulation is one of the key initiatives in the European Year of Citizens 2013. It is a follow-up to the 2010 Commission Green Paper concerning administrative formalities which serve the purpose of authentication of public documents between the member states. It focuses on establishing the authenticity of public documents, drawing inspiration from the existing EU law and relevant international instruments.

In practice, the scope of this proposal covers public documents issued by authorities of the Member States and having formal evidentiary value relating to birth, death, name, marriage, registered partnership, parenthood, adoption, residence, citizenship, nationality, real estate, legal status and representation of a company or other undertaking, intellectual property rights and absence of a criminal record. Under this proposed regulation, such documents will be exempted from all forms of legalisation and similar formalities. The proposal also establishes Union multilingual standard forms concerning birth, death, marriage, registered partnership and legal status and representation of a company or other undertaking.

Fundamental rights and the rule of law - Council conclusions

The Council is expected to adopt conclusions ([10168/13](#)) on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the EU.

The Commission's third annual report was submitted to the Council in May 2013 ([9297/13](#)). On that basis, the Presidency has prepared this set of conclusions. Besides the report, the conclusions also concern general fundamental rights and rule of law issues.

The conclusions set out some elements that could be considered in taking forward the debate on the possible need for and shape of a future initiative to better safeguard fundamental values of the Union in particular the rule of law and the fundamental rights of the persons in the Union.

In this context the conclusions call on the Commission to take that debate forward still in 2013 with all member states, EU institutions and all stakeholders.

On the basis of the Commission's reflections the Council will give further consideration to the need for and possible shape of methods or initiatives to better safeguard fundamental values, in particular the rule of law and fundamental rights of persons in the Union and to counter extreme forms of intolerance, such as racism, anti-Semitism, xenophobia and homophobia

Accession to the ECHR

The Council will be briefed by the Presidency on the state of play on the EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

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

In June 2010 the Council adopted a negotiating mandate and negotiations have been ongoing since then.

At the last negotiating session (3-5 April 2013) an agreement at negotiators level was reached³. Once the Court of Justice of the European Union has had the opportunity to give an opinion on the agreement, the Commission will come forward with a proposal for a Council decision authorising the signature and possibly including the internal rules and the adaptations to the EU law that need to be agreed on before the accession.

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.

Drugs

The Council is due to adopt the new EU Action Plan on Drugs (2013-2016) ([9963/13](#)) that foresees 54 concrete and evidence-based actions in the areas of drug demand reduction, drug supply reduction, coordination, international cooperation, information, research, monitoring and evaluation. Each action is defined by a timetable, responsible parties and data collection/assessment mechanisms. 15 overarching indicators and a number of additional indicators have been listed to assess the implementation of this action plan.

This action plan is the first Action Plan implementing the recently adopted EU Drugs Strategy for 2013-2020 (17547/12), which aims to contribute to a reduction in drug demand and drug supply within the EU. It also aims to reduce the health and social risks and harms caused by drugs through a strategic approach that supports and complements national policies, that provides a framework for coordinated and joint actions and that forms the basis and political framework for EU external cooperation in this field.

Moreover, the Director of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) will present the 2013 European Drug Report ([10215/13](#)), and ministers will be invited to exchange views on it.

The EMCDDA was established in 1993 and inaugurated in Lisbon in 1995. The centre provides the EU and its Member States with a factual overview of European drug problems and a solid evidence base to support the drugs debate. It offers to policymakers the data they need for drawing up informed drug laws and strategies

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HOME AFFAIRS

Fight against terrorism

The Council will have an in-depth discussion on the issue of foreign fighters and returnees from a counter-terrorism perspective, in particular with regard to Syria, on the basis of a document prepared by the EU Counter Terrorism Coordinator (CTC).

The issue of foreign fighters was one of the five major topics identified by the EU Counter CTC in order to steer the debate at the Council in March on the security implications of the situation in the Sahel/Maghreb. As a follow-up, the CTC has prepared the above-mentioned document with concrete proposals for action.

Europol

The Council will hold a public debate on the proposal for a regulation on the European Agency for Law Enforcement Cooperation and Training (Europol) ([8229/13](#)).

On the basis of a document prepared by the Presidency ([10213/13](#)), Ministers are expected to establish a number of guidelines for the continuation of the work regarding the following main questions that arise from the Commission proposal: the proposed merger of CEPOL ([European Police College](#)) into Europol and the supply of information from Member States to Europol.

The Commission submitted in April 2013 a proposal for a regulation on the European Agency for Law Enforcement Cooperation and Training (Europol), thereby repealing the existing Decisions on Europol⁴ and CEPOL⁵.

One of the aims of the proposal is that Europol will take over and build on the tasks currently carried out by CEPOL, creating a single European law enforcement agency.

Information sharing and analysis is critical to the success of the member states' cooperation in the concerted fight against serious organised crime. To this end, the proposed regulation aims also to make Europol a hub for information exchange on serious crime to the benefit of the law enforcement services across the EU. It seeks to increase the flow of information on crime to Europol, to allow Europol to produce more timely and targeted high-quality analysis to support cross-border cooperation and investigations.

Common European Asylum System

The Council will be briefed by the Presidency on the final steps for the completion of the Common European Asylum System (CEAS).

The European Council committed itself to establish by 2012 a Common European Asylum System based on further harmonisation of national asylum systems and higher levels of protection.

⁴ Decision 2009/371/JHA. OJ L 121, 15.05.2009, p. 37

⁵ Decision 2005/681/JHA. OJ L 256, 1.10.2005, p. 63.

The Council is expected to adopt at this session without discussion its positions at first reading on the recast of three important legal instruments: the reception conditions directive, the Dublin regulation and the asylum procedures directive.

Given the agreement reached in the trilogue meetings between both co-legislators, the European Parliament is expected to approve at the June plenary session the three Council's positions at first reading without amendments ("early second reading agreement"). The three legal acts will be then formally adopted.

The Dublin regulation (recast), the amended asylum procedures directive and the reception conditions directive are three of the five legislative instruments for establishing the Common European Asylum System.

The Council and the European Parliament have already adopted the qualification directive⁶ which entered into force in January 2012. An agreement has also been reached on the Eurodac regulation and the Council will formally adopt it on 20 June.

Furthermore, three other important asylum related dossiers have been adopted over the past two years:

- The extension of the scope of the [long term residence directive](#) to beneficiaries of international protection 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 to establish common EU resettlement priorities for 2013 as well as new rules on EU funding for resettlement activities carried out by member states.

Schengen Governance

The Council will be informed about the state of play of the Schengen Governance legislative package, namely a regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis 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.

On 30 May the Permanent Representatives Committee⁷ (Coreper) endorsed the agreement reached with the European Parliament on this legislative package. The European Parliament will approve the agreement in July and the Council is expected to adopt the package in Autumn.

⁶ Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted ([OJ L 337, 20.12.2011, p. 9](#))

⁷ The Permanent Representatives Committee is composed of the ambassadors of the 27 EU member states. Its role is to prepare decisions of the Council.

The European Council in June 2011 called for the introduction of a mechanism to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons. To this end, and to improve Schengen governance, the Commission submitted this legislative package to the Council and the European Parliament in September 2011.

For more information see press release [10239/13](#)

Syria: Protection of refugees, latest developments

The Council will have discussion on Syria with particular reference to the protection of refugees, on the basis of the latest development.

Representatives from the EEAS, EASO and FRONTEX will update Ministers on the latest developments. The Commission will also brief ministers on the progress achieved towards the establishment of a Regional Protection Programme.

The situation in Syria clearly remains a matter of deep concern for the Union. The deteriorating humanitarian situation within Syria itself and the increasing burden being placed on neighbouring countries hosting those fleeing Syria is a matter of particular concern for the EU.

Huge numbers of Syrians have been internally displaced and the numbers seeking refuge in the neighbouring countries are likewise increasing. According to the most recent information provided by the Office of the United Nations High Commission for Refugees (UNHCR) (update May 2013) there are over 1.5 million Syrians registered or awaiting registration as refugees in neighbouring countries and North Africa.

The EU and its member states have provided, and will need to continue to provide, a strong response in terms of humanitarian assistance to the persons in need of protection and to the local communities in Syria and in the neighbouring countries.

Issues related to the free movement of persons

During lunch, Ministers will hold a discussion on the issues related to the free movement of persons raised in a letter sent to the Presidency by the Minister of interior from Austria, Germany, Netherlands and United Kingdom.

Any other business

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

- the directive on the right to access to a lawyer;
- the European Investigation Order;
- the directive on confiscation of the proceeds of crime;

- the matrimonial property regimes and registered partnerships;
- the MFF on the Rights, Equality and Citizenship Programme as well as on Justice Programme (2014-2020);
- the legal migration package;
- the MFF Home Affairs (Asylum and Migration Fund and Internal Security Fund - Police).

Furthermore, the Commission will present its Communication "Maximising the Development Impact of Migration: The EU contribution for the UN High-level Dialogue and next steps towards broadening the development-migration nexus".

The Swedish delegation will present its plans and priorities as Chair of the Global Forum on Migration and Development for the period 2013-2014.

The Hungarian delegation will update ministers on the recent developments in the Budapest process and in particular on the Ministerial Conference 'A Silk Routes Partnership for Migration'.

The Commission will provide an update on the negotiations with Russia on the Justice and Home Affairs related issues and in particular on the outcome of the EU-Russia Summit which took place on 3-4 June 2013.

Finally, the Lithuanian ministers will inform the Council about the priorities in the area of justice and home affairs for the forthcoming Lithuanian 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:

Schengen Governance

The Council will be informed about the state of play of the Schengen Governance legislative package, namely a regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis 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.

For more information see item above.

Greece's National Action Plan on Asylum Reform and Migration Management

The Greek minister will inform the Council about progress in the implementation of the Greek national action plan on asylum and migration.

Any other business

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

- the changes to Regulation 539/2001 (visa requirements - suspension and reciprocity mechanisms);
- the regulation for the establishment of a European Border Surveillance System (EUROSUR);
- the technical amendments to the Schengen Borders Code (Regulation 562/2006 and the Schengen Convention)
- the MFF Home Affairs
- the Data protection directive

Moreover, the Commission will present its third Biannual Report to the European Parliament and the Council on the functioning of the Schengen area (1 November 2012 - 30 April 2013), followed by an exchange of views.
