



EUROPEAN COMMISSION

MEMO

Brussels, 5 June 2013

Justice and Home Affairs Council 6-7 June 2013 in Luxembourg

European Union Justice and Home Affairs ministers will meet in Luxembourg on 6 and 7 June 2013. The European Commission will be represented by Vice-President Viviane Reding, EU Commissioner for Justice and Cecilia Malmström, EU Commissioner for Home Affairs.

Main agenda items for Justice Ministers (6 June):

- Reform of EU data protection rules
- Ensuring fair trial rights in the EU – Access to a lawyer
- Fighting fraud against the EU budget
- Recovering cross-border debts
- Cross-border insolvency law
- Simplifying acceptance of certain public documents

Main agenda items for Home Affairs Ministers (7 June):

- Common European Asylum System
- Schengen governance package
- EU-Morocco Mobility Partnership
- Discussion on the issue of foreign fighters
- Lunch discussion: Free Movement of Persons

Justice Issues (Vice-President Reding, EU Justice Commissioner)

1. EU Data Protection Reform

The European Commission proposed a reform of the EU's data protection rules on 25 January 2012 to make them fit for the 21st century (see [IP/12/46](#) and [IP/13/57](#)). The package contains a Regulation setting out a general EU framework for data protection and a Directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities.

What is expected at this Council? The EU data protection reform has been a priority for the Irish Presidency of the EU, which set ambitious goals for its six-month stewardship of the Council. The Presidency will present a consolidated version of Chapters I-IV of the Draft Data Protection Regulation (dealing with the core principles such as the rights of individuals and the obligations of companies and administrations). It will also report on the overall progress achieved over the past five months, and present conclusions on key issues such as scope, principles, consent as well as on processes such as the inclusion of a risk-based approach (meaning that obligations have to be tailored to the data processing risk) or codes of conduct.

Commission position: The Commission welcomes the speed and high level of ambition with which the Irish Presidency of the EU undertook the negotiations on the EU data protection reform. The Commission will continue to work for a high level of protection for Europe's 500 million citizens as well as a simpler set of rules for Europe's businesses. The Commission will lend its full support to the incoming Lithuanian EU Presidency in keeping up the momentum of the work and achieving swift progress on the reform. Viviane Reding, the EU Justice Commissioner, said ahead of the Council: *"I will fight for a reform of the EU's data protection rules that will strengthen the rights of EU citizens and stimulate growth in the evolving digital single market. With this reform, Europe should become a standard setter for modern data protection rules across the globe. I count on the European Parliament and on the incoming Lithuanian Presidency to resist, alongside the Commission, all attempts by those who are still trying to weaken data protection standards in Europe."*

Background: The current patchwork of 27 different and often contradictory data protection rules stands in the way of European businesses wanting to operate cross-border. The Commission's proposal for modernised and uniform data protection rules will remove barriers to market entry and lead to savings of about €2.3 billion per year.

Since the start of 2013, the Irish Presidency has carried out three detailed rounds of comprehensive discussions on the first four chapters of the General Data Protection Regulation and also completed the first reading of the Data Protection Directive on Police and Criminal Justice authorities.

The European Parliament has also made some progress in its work on the two draft proposals. On 10 January, the Parliament rapporteurs presented their draft reports ([MEMO/13/4](#)). The IMCO, ITRE ([MEMO/13/124](#)), EMPL and JURI ([MEMO/13/233](#)) Committees have adopted their opinions. The LIBE Committee is now expected to vote on its own report before the summer.

2. Ensuring fair trial rights in the EU – Access to a lawyer

On 8 June 2011, the Commission adopted a proposal to guarantee suspects' right to speak with a lawyer from the moment a citizen is held by police until the conclusion of proceedings ([IP/11/689](#)). Under the proposal, suspects will also be able to talk to a family member or an employer and inform them of their arrest. If suspects are outside of their country, they will have the right to contact their country's consulate.

What is expected at this Council? The Presidency will present the agreement reached on the Directive in trilogue negotiations between the Commission and the EU's two co-legislators (the European Parliament and the Council) ([MEMO/13/468](#)) so that the Council can endorse the Directive.

Commission position: The right to access to a lawyer is essential for building confidence in the EU's single area of justice, especially when suspects are arrested under a European Arrest Warrant. The Commission welcomes the swift conclusion of negotiations on this file, this being the third in a series of measures to guarantee minimum rights to a fair trial anywhere in the EU.

Background: The Commission has been committed to establishing common EU standards in relation to criminal proceedings since the beginning of the Barroso II Commission and has proposed a series of measures to strengthen fair trial rights in the EU. The first such measure – the right to translation and interpretation – was approved in record time in 2010 (see [IP/10/1305](#)). The second measure – the right to information in criminal proceedings was approved on 27 April 2012 (see [IP/12/430](#)) and entered into force on 1 June 2012.

3. Fighting fraud against the EU budget

Misuse of EU funds for criminal purposes puts the EU's objectives of generating jobs and growth and improving living conditions at stake. With public finances under pressure throughout the EU, every euro counts. The European Commission therefore proposed new rules on 11 July 2012 ([IP/12/767](#)) to fight fraud against the EU budget by means of criminal law to better safeguard taxpayers' money.

What is expected at this Council? The Council is expected to agree on a general approach following presentations of the proposal to the ECOFIN Council of 9 October and Justice Council of 26 October as well as an orientation debate at the Justice Council of 7 December.

Commission position: The proposal aims to better equip the EU to fight against fraud. The Commission welcomes progress on this important proposal on substantive criminal law and sees the general approach as the basis for discussion with the European Parliament, which has started work on the file. The Commission would nevertheless like to see a higher level of ambition concerning the definition of fraud and minimum sanctions as provided for in its proposal.

Background: The proposed Directive creates a more harmonised framework for prosecuting and punishing crimes involving the EU budget so that criminals can no longer exploit differences between national legal systems. The Directive provides for common definitions of offences against the EU budget and for minimum sanctions, including imprisonment in serious cases, and for a common level playing field for periods within which it is possible to investigate and prosecute offences (known as statutes of limitation). This will help to deter fraudsters, provide for more effective legal action at national level and make it easier to recover lost funds.

4. Recovering cross-border debts

At the moment, it is up to national law to require a bank to pay the money from a client's bank account to a creditor. The current situation in the 27 Member States is legally complicated, time consuming and expensive. Around 1 million small businesses face problems with cross-border debts and up to €600 million a year in debt is unnecessarily written off because businesses find it too daunting to pursue expensive, confusing lawsuits in foreign countries. On 25 July 2011, the Commission proposed a new Europe-wide preservation order to ease the recovery of cross-border debts for both citizens and businesses ([IP/11/923](#)).

What is expected at this Council? The Council will hold an orientation debate and is expected to examine and endorse principles on the key issue of the balance between the debtor's and creditor's interests.

Commission position: The Commission supports the approach of the Presidency and looks forward to the Council taking firm conclusions to pave the way for further progress. The proposal aims to ease cross-border claims and provide more certainty to creditors in order to recover their debt while strengthening the EU's single market and economic recovery.

Background: Small and medium-sized enterprises (SMEs) are the backbone of European economies – making up 99% of businesses in the EU. Around 1 million of these face problems with cross-border debts. Procedures for recovering debts from another country's jurisdiction are complex, multiplying the costs for businesses that wish to trade across EU borders. Typical problems range from differences in national law to the costs of hiring an additional lawyer and translating documents. Individuals face similar difficulties when seeking to get their money back from a rogue trader or maintenance defaulter in another EU country. On 30 May, the European Parliament's Legal Affairs Committee (JURI) voted to back the Commission's proposal ([MEMO/13/481](#)).

5. Cross-border insolvency law

Businesses are essential to creating prosperity and jobs, but setting one up – and keeping it going – is tough, especially in today's economic climate. The Commission, on 12 December 2012, therefore proposed to modernise the current EU rules on cross border insolvency (see [IP/12/1354](#) and [SPEECH/12/945](#)). Benefiting from ten years of experience, the new rules will shift focus away from liquidation and develop a new approach to helping businesses overcome financial difficulties, all the while protecting creditors' right to get their money back.

What is expected at this Council? The Irish Presidency of the EU considers cross-border insolvency law to be a key area in justice policy which can contribute to supporting economic recovery and stimulating growth. The Council will hold an orientation debate, with the aim of achieving support for political guidelines for future work on some elements of the proposal (scope, jurisdiction, groups of companies, insolvency registers and timing of adoption).

Commission position: The Commission considers the proposal to be especially relevant in the current economic climate and fully supports the suggested guidelines, which should contribute to swift adoption of the proposed regulation.

Background: Insolvencies are a fact of life in a dynamic, modern economy. Around half of enterprises survive less than five years, and around 200 000 firms go bankrupt in the EU each year. This means that some 600 companies in Europe go bust every day. A quarter of these bankruptcies have a cross-border element. But evidence suggests that failed entrepreneurs learn from their mistakes and are generally more successful the second time around. Up to 18% of all entrepreneurs who go on to be successful have failed in their first venture. It is therefore essential to have modern laws and efficient procedures in place to help businesses, which have sufficient economic substance, overcome financial difficulties and to get a "second chance".

6. Simplifying acceptance of certain public documents

Currently, citizens who move to another Member State have to spend a lot of time and money in order to demonstrate that their public documents (such as birth or marriage certificates) issued by their Member State of origin are authentic. This involves the so-called 'Apostille' certificate which is used by public authorities in other states as proof that public documents, or the signatures of national officials on documents, are genuine. Businesses are also affected. On 24 April 2013, the Commission proposed to simplify these administrative requirements for certifying public documents for people living and working in other Member States ([IP/13/355](#)).

What is expected at this Council? The Commission will present its recent proposal for a regulation.

Commission position: The Commission considers the proposal to be a good example both of better regulation, saving time and money for citizens and businesses by cutting red tape in the Member States.

Background: Under the Commission's proposals, citizens and businesses would no longer have to provide costly 'legalised' versions or 'certified' translations of official documents when, for example, registering a house or company, getting married, or requesting a residence card. Twelve categories of public documents would automatically be exempted from formalities such as 'Apostille' and 'legalisation' – which are currently required for around 1.4 million documents within the EU each year. Abolishing these requirements will save citizens and businesses in the EU up to 330 million euro, not counting the saved time and inconvenience that is avoided. The Commission is also proposing a further simplification tool: optional multilingual standardised forms in all EU official languages that citizens and businesses could request instead of and under the same conditions as national public documents concerning birth, death, marriage, registered partnership and legal status and representation of a company or other undertaking.

Home Affairs Issues (Cecilia Malmström, Commissioner for Home Affairs)

1. A common area of solidarity and protection for the most vulnerable

What is expected at this Council? The Council will adopt three of the four remaining instruments establishing a Common European Asylum System (CEAS): the Asylum Procedures Directive, the Reception Conditions Directive and the Dublin Regulation. Those instruments will then be adopted by the European Parliament in the Plenary the following week (10-13 June). EURODAC, which is in first reading, will be voted by the June Plenary followed by adoption by one of the Councils at the end of June.

Commission's position: The Commission welcomes the formal adoption of the remaining instruments by the Council. The EU is now close to completing the CEAS and the Commission will pay particular attention to the proper implementation of the asylum package.

Background: The Common European Asylum System (CEAS) sets out an area of protection and solidarity for those fleeing persecution or serious harm. Five legislative proposals have been tabled by the Commission and negotiated over the last few years:

- The Qualification Directive (already adopted on 13 December 2011).
- The Asylum Procedures Directive,
- The Reception Conditions Directive,
- The Dublin II Regulation
- The EURODAC Regulation

Those instruments will provide better access to the asylum procedure for those who request protection; lead to fairer, quicker and better quality asylum decisions; ensure that people in fear of persecution will not be returned to danger; and provide dignified and decent conditions for both those who apply for asylum and those who are granted international protection within the EU.

2. Strengthening Schengen to better protect citizens' free movement

What is expected at this Council? The Irish Presidency will inform Ministers about the agreement on the Schengen proposals reached at trilogue and Coreper level. Formal adoption will take place at a later stage

Commission's position: The Commission welcomed the agreement, which paves the way to sound Schengen governance based on clear and transparent rules that will make the system more efficient - thanks to the central role given to the European Commission that will have the tools and the competence to prevent and avoid unjustified obstacles to free movement.

Background: Each year millions of European citizens freely cross our internal borders without a border control. The Schengen area of free movement is a unique achievement that the new system will further promote and reinforce.

In 2011, the Commission put forward two legislative proposals on the Schengen governance ([IP/11/1036](#) and [MEMO/11/606](#)): a proposal strengthening the Schengen evaluation and monitoring mechanism; and a proposal amending the Schengen Border Code.

An agreement has been reached at trilogue and Coreper level on these legislative proposals ([MEMO/13/475](#)). It provides for: (i) a stronger, EU-based evaluation and monitoring system to verify and ensure the application of the Schengen rules; and (ii) a more structured European decision-making mechanism that could allow, in truly exceptional situations, for the temporary reintroduction of internal border controls in case of serious threats to public policy or internal security.

3. EU-Morocco: a new partnership to better manage mobility and migration

What is expected at this Council? In the margins of the Council meeting, the EU and Morocco will agree on a new partnership on migration and mobility. The EU-Morocco Mobility Partnership will be signed by Commissioner Malmström, the Moroccan Minister of Foreign Affairs and Cooperation, Mr. Saad El Din Otmani, and the Ministers responsible for migration of the nine EU Member States participating in the partnership (Belgium, Germany, Spain, France USA, Italy, Netherlands, Portugal, Sweden and the United Kingdom).

Commission's position: The launch of a Mobility Partnership with Morocco marks an important moment in strengthening the relations between the EU and Morocco. It underlines the EU's commitment to continue actively cooperating with its Southern partners on the issue of well-managed and secure mobility.

Background: Mobility partnerships are flexible and non-legally binding frameworks for well-managed movements of people between the EU and a third country. Their goal is to ensure, through dialogue and practical cooperation, that there is a responsible and joint management of migratory flows that protect the interests of the Union, of its partners and of the migrants themselves.

They are part of the process of implementing the global approach to migration developed by the EU over the last few years ([IP/11/1369](#) and [MEMO/11/800](#)).

The Mobility Partnership with Morocco is the fifth of its kind. It adds up to those concluded with the Republic of Moldova and Cape Verde in 2008, Georgia in 2009 and Armenia in 2011.

4. Foreign fighters and returnees from a counter-terrorism perspective, in particular with regard to Syria

What is expected at this Council? Following a first exchange at the March JHA Council, Ministers will discuss counter terrorism matters in general, and the question of 'foreign fighters', in particular.

Commission's position: The issue of foreign fighters, i.e. Europeans moving abroad (in particular to Syria) to join jihadists, is a worrying trend of the terrorist threat in Europe today. Addressing the challenge of individuals indoctrinated by violent extremism ideologies, requires a broad societal approach in terms of prevention. The European Radicalisation Awareness Network and the future EU programme on Countering Violent Extremism represent concrete measures to prevent and counter that threat.

Background: The terrorist threat has in part shifted away from organised groups to individuals, including so-called foreign fighters, who are harder to detect, and whose actions are harder to predict. These individuals have the potential to utilise their training, combat experience, knowledge and contacts for terrorist activities inside the EU.

Fighting terrorism and violent extremism is not only a question of security measures. It requires a comprehensive approach and to work with a broad range of partners, including front line professionals. To this end the Commission set up and supports the [Radicalisation Awareness Network](#) (for instance [IP/13/59](#) and [MEMO/13/40](#)).

Lunch discussion: Free Movement of persons

Free movement is one of the most important and most cherished EU principles laid down in the Treaties and in the [EU's 2004 Free Movement Directive](#). There is also a strong economic case for free movement: The recent experience of the 2004 and 2007 enlargements has shown that intra-EU mobility has positive effects on European economies and labour markets. For instance, the GDP of EU-15 countries is estimated to have increased by almost 1% in the long term as a result of post-enlargement mobility (in 2004-09). For the EU as a whole the GDP effect of recent intra-EU mobility flows is equivalent to a collective income gain of around 24 billion EUR for EU citizens

What is expected at this Council? The Council will discuss the free movement of persons as lunch item, responding to a specific request from four Member States (Austria, Germany, the Netherlands and the UK).

Commission position: The Commission considers that the right to free movement is one of the central achievements of European integration and that there is a strong economic case for free movement. The Commission will invite Member States to provide the necessary facts and figures in order to have a well-informed discussion in the Council clarifying the scope of any problems referred to.

Background: The Commission has consistently stood up to guarantee the right to free movement by pursuing a vigorous infringement policy against Member States which did not comply with the EU Free Movement Directive (see [MEMO/13/409](#) and [IP/11/981](#)). In addition the Commission is assisting Member States in the implementation of the free movement rules particularly by issuing (in 2009) [specific Guidelines on the Free Movement Directive](#) which provide for example definition of 'abuse and fraud' and an illustration of what kind of measures Member States are allowed to take under EU law. The Commission is also working to remove barriers to the exercise of the free movement – most recently with the adoption of a second [Citizenship Report](#) announcing 12 new actions to help Europeans make better use of the EU rights, such as the right to free movement.