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Justice and Home Affairs

Brussels, 2-3 December 2010

Presidents **Mr Melchior Wathelet**
State Secretary in charge of Migration and Asylum Policy
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Main results of the Council

*Home affairs ministers adopted negotiation directives for **PNR agreements with Australia, Canada and the United States of America**. This allows the Commission to start negotiating with these three countries. Further discussions on the fight against terrorism focused on:*

- the **EU counter-terrorism coordinator's latest report and discussion paper**,*
- the question of **sharing information on terrorist threat levels** between the member states, and*
- the recommendations of the ad hoc High Level Group on **cargo security/civil aviation**.*

*Other home affairs items included a discussion on the Commission's communication on concrete actions regarding the EU's **Internal Security Strategy**. Home affairs ministers also adopted conclusions on preventing and combating **identity-related crimes** and on the fight against **crimes committed by mobile (itinerant) criminal groups** as well as an action plan to combat **illegal trafficking in so called "heavy" firearms**.*

*During the **asylum and migration** part of the Council, ministers focused on the progress made in this area in the past six months as well as on the way forward during the next four EU presidencies. Ministers also discussed the state of implementation of the **Greek national action plan on asylum reform and migration management**.*

*Justice ministers adopted, among other things, harmonised rules on the law applicable to **divorce and legal separation**. It is the **first enhanced cooperation** in the history of the EU in which currently 14 member states are taking part.*

*On data protection, the Council adopted a negotiation mandate for a **EU-US agreement on protection of personal data** and the Commission presented its **communication on data protection** with a view to a legislative proposal to overhaul the existing EU legislation in this area dating from 1995.*

*Ministers then confirmed the agreement reached on EU wide minimum rules concerning the **fight against trafficking in human beings**. If everything goes as planned, the rules should be adopted by the Council and the Parliament in first reading in the coming weeks.*

Among the other justice items, the Council reached a general approach, thus opening the way for negotiations with the European Parliament, on two directives regarding:

- the **fight against sexual exploitation of children**, and*
- the **right to information in criminal proceedings** ("Letter of rights").*

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PARTICIPANTS

The governments of the Member States and the European Commission were represented as follows:

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Mr Stefaan DE CLERCK
Mr Melchior WATHELET

Minister for Home Affairs
Minister for Justice
Secretary of State for Immigration and Asylum

Bulgaria:

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Mr Tsvetan TSVETANOV

Minister for Justice
Minister for the Interior

Czech Republic:

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Ms Milena VICENOVÁ

Minister for Justice
Permanent Representative

Denmark:

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Mr Lars BARFOED

Minister for Refugees, Immigration and Integration
Minister for Justice

Germany:

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Ms Sabine LEUTHEUSSER-SCHNARRENBARGER

Minister for the Interior
Federal Minister for Justice

Estonia:

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Mr Rein LANG

Minister for the Interior
Minister for Justice

Ireland:

Mr Rory MONTGOMERY

Permanent Representative

Greece:

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Mr Marinos SKANDAMIS

Minister for Social Protection
Special Secretary

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Mr Carlos CAMPO MORENO

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State Secretary for Justice

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Minister for Justice

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Deputy State Secretary for the Interior

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Minister for Justice

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Mr François BILTGEN

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Minister for Justice

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Mr Károly KONTRÁT

Minister of Public Administration and Justice
State Secretary for the Interior

Malta:

Mr Carmelo MIFSUD BONNICI

Minister for Justice and Home Affairs

Netherlands:

Mr Ivo OPSTELTEN
Mr Gerd LEERS
Mr Fred TEEVEN

Minister for Security and Justice
Minister for immigration and Asylum
State Secretary for Security and Justice

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Ms Maria Theresia FEKTER

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Federal Minister for the Interior

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Minister for the Interior
Deputy State Secretary for Justice

Portugal:

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Mr José MAGALHÃES

Minister for the Interior
State Secretary for Justice

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Mr Marian Cătălin PREDOIU
Mr Traian IGAS

Minister for Justice
Minister for the Interior

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Minister for Justice

Slovakia:

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Ms Maria KOLIKOVA

Minister for the Interior
State Secretary Ministry of Justice

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Ms Anne HOLMLUND

Minister for Justice
Minister for the Interior

Sweden:

Ms Beatrice ASK
Mr Tobias BILLSTRÖM

Minister for Justice
Minister for Migration and Asylum Policy

United Kingdom:

Ms Theresa MAY
Mr Kenneth CLARKE
Ms Elish ANGIOLINI

Home Secretary
Lord Chancellor, Secretary of State for Justice
Lord Advocate

Commission:

Ms Viviane REDING
Ms Cecilia MALMSTRÖM

Vice-President
Member

ITEMS DEBATED

PNR agreements with third countries

The Council adopted negotiating directives for agreements on the transfer and use of passenger name records (PNR) with Australia, Canada and the United States of America. This allows the Commission to start negotiating with these three countries.

The goal of the agreements is to prevent and combat terrorism and other forms of serious cross border crime. At the same time, the EU is also committed to ensuring that any transmission of PNR data to third countries is done in a secure manner, in line with existing EU legal requirements, and that passengers are able to enforce their rights in relation to the processing of their data.

In this context, several ministers underlined the importance of setting up a European PNR system as soon as possible. At the October Council, the Commission undertook to present a proposal for such a EU PNR system in January 2011.

PNR is the information voluntarily provided by passengers and collected by air carriers during the reservation and check-in procedures. It includes dates of travel and travel itinerary, address and phone numbers, credit card number, travel agent, seat number and baggage information.

In May 2010, the European Parliament decided to postpone its vote on the request for consent on existing PNR agreements with the US and Australia. These two agreements have therefore not been concluded yet and have been applied on a provisional basis since 2007 and 2008, respectively. In a resolution, Parliament demanded that new agreements should be negotiated with the US and Australia as well as with Canada, with which a PNR agreement has been in force since 2006.

As a result, the European Commission submitted in September 2010 proposals for negotiating mandates which were discussed at the Council on 7 October 2010 and subsequently amended in Council preparatory bodies. The Commission also issued a communication on the global approach to transfers of PNR data to third countries ([13954/10](#)).

Fight against terrorism

The Council addressed a number of issues concerning the fight against terrorism.

Strengthening air cargo security

The Council - first the transport ministers, then the home affairs ministers - welcomed the report on strengthening air cargo security submitted by the ad hoc High Level Group on cargo security/civil aviation. This group was set up by the Justice and Home Affairs Council at its meeting on 8/9 November in response to recent discoveries of parcel bombs in air cargo.

The Presidency asked the Commission and member states to speedily implement the measures in the action plan attached to the report. It invited the Commission to report back to the Council on progress made within six months.

The aim of the measures suggested is to close security gaps and to develop a coordinated approach at EU and international level for additional security measures. The plan provides for actions designed to strengthen and harmonise EU rules, improve coordination and information exchange within the EU, and enhance global standards. At EU level, this includes measures such as upgrading detection methods and cargo security controls, establishing common criteria for assessing risks posed by cargo from non-EU countries, reviewing procedures for the designation of "trusted" consignors and carriers, and improving security training for operators and inspectors. At international level, global regulatory standards should be promoted, especially through the International Civil Aviation Organisation (ICAO), and further initiatives should be taken to help certain countries outside the EU to enhance their security capacities.

Sharing information on terrorist threat levels

The Council addressed the question of sharing information on terrorist threat levels between the member states and adopted the following [conclusions](#) (17303/1/10).

Among other things, member states are requested:

- to inform each other of any change in their national threat level as soon as possible and at the latest in parallel to the official announcement;

- to inform the EU Joint Situation Centre (SITCEN) of the change;
- to provide SITCEN with an already existing contact point operating on a 24/7 basis (a) to receive such information and (b) to respond in due time to possible further inquiries.

The conclusions also request SITCEN to:

- immediately inform the respective contact points in all the other member states after receiving information about a change in a member states' national threat level;
- to pass this information to the President of the European Council, to the President of the Commission, to the High Representative of the Union for Foreign Affairs and Security Policy, to the Commissioner for Home Affairs, to the Heads of delegation to the Standing Committee on operational cooperation on internal security (COSI), to the EU Counter-Terrorism Coordinator and to Europol.

EU counter-terrorism coordinator

The EU counter-terrorism coordinator presented his most recent discussion paper on the EU Counter-terrorism strategy (15894/1/10) as well as his yearly report on the implementation of the EU Action Plan for combating terrorism ([15893/10](#)).

The report on the Action Plan gives an overview of the latest results and lists those areas where measures are due to be taken in the four strands of the strategy: prevent, protect, pursue and prepare. The EU Counter-Terrorism Strategy was adopted in December 2005 and provides the framework for EU activity in this field ([14469/4/05](#)).

In his discussion paper, the EU counter-terrorism coordinator focuses on five key challenges to be addressed as a matter of priority and makes a number of recommendations. These include:

- transport security:
 - to assist the Commission to set up as soon as possible a body on land transport security which will complement the existing committees on aviation security (AVSEC) and maritime security (MARSEC);

- to further analyse gaps in the protection of major components of land transport infrastructure;
- terrorist travel:
 - in the light of Europeans travelling to conflict areas or attending terrorist training camps in countries such as Yemen, Somalia, Afghanistan or Pakistan and then returning home, to develop a counter narrative showing that the "armed struggle" is not as exciting as possible recruits might think;
 - to improve document checks and document security and to develop closer cooperation with the relevant authorities of the third states constituting target or transit countries as well as with partner countries such as the United States with a view to disrupting terrorist travel;
 - to initiate a discussion on whether the Framework decision on terrorism¹ should be amended so as to make it a crime to attend a terrorist training camps in the EU and abroad;
- cyber security:
 - to support the Commission's initiative to explore the set-up of an EU Computer Emergency Response Team (CERT);
 - to achieve a minimum level of cyber security preparedness throughout the Union, e.g. by some kind of peer evaluation;
 - to start a debate on whether we need international common guidelines or a code of conduct for the Internet;
 - to initiate a discussion on the industrial policy aspect of cyber security considering that in some sectors the EU has already lost its capacity to produce its own network components;

¹ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism - OJ L 164, 22.6.2002, p. 3 and 2008/919/JHA of 28 November 2008 - OJ L 330, 9.12.2008, p. 21.

- external dimension:
 - to ensure that the EU has adequate resources to support its external Counter-Terrorism efforts;
- fighting discrimination and social marginalisation of Muslims.

Two more issues are mentioned in the paper: security related research and the implementation of the Solidarity Clause provided for in Art. 222 TFEU.

EU Internal Security Strategy

The Council welcomed the Commission communication on concrete actions regarding the Internal Security Strategy for the European Union ([16797/10](#)). The communication proposes to focus on five areas: organised crime, terrorism, cybercrime, border management, and crisis management. Within these five areas, the communication outlines 41 actions to be implemented within the next four years.

The Commission communication follows the adoption of the Internal Security Strategy for the European Union in February 2010 ([7120/10](#) or [PDF-brochure](#)) which was endorsed by the European Council in March 2010.

Identity fraud and identity management - Conclusions

The Council discussed and adopted [conclusions](#) on preventing and combating identity-related crimes and on identity management, including the establishment and development of permanent structured cooperation between EU member states (15877/2/10).

Among other things, the conclusions call on the European Commission:

- to support cooperation between member states by setting up a platform for the exchange of good practices in the area of managing the personal identity chain as a whole and, in due course, a European experts' network,
- to support the establishment of effective complaint mechanisms in the member states that could provide adequate help to victims, and analyse how to ensure optimal cross-border cooperation between those mechanisms.

Member states are invited, among other things:

- to coordinate their activities, within the appropriate Council structures, by the exchange of information and good practices,
- to ensure regular information flow between their competent law enforcement authorities and Interpol, particularly the Interpol database for Stolen Travel Documents.

Fight against crimes committed by mobile criminal groups - Conclusions

The Council adopted [conclusions](#) on the fight against crimes committed by mobile (itinerant) criminal groups (15875/10).

The goal of the conclusions is to raise awareness about and combat the activities of criminal groups who systematically acquire wealth through theft of property or fraud¹, have a wide ranging area of operations and are internationally active.

Among other things, the conclusions:

- invite the member states to develop an administrative approach in order to tackle this type of crime (closing premises serving as meeting and fencing places, imposing the registration of certain transactions such as the recycling of used metals, encouraging the registration and marking of precious objects), as a complement to prevention, police and judicial work, for example;
- invite the member states to improve bilateral or multilateral cooperation with third states and the private sector;
- invite the member states, Eurojust and Europol to draw up a security picture/image, when appropriate, of the phenomenon of mobile (itinerant) criminal groups, on the basis of which further operational action should be considered;
- invite the member states and the Commission to stimulate and facilitate an informal network of contact points, competent in the field of administrative measures to tackle the phenomenon of mobile (itinerant) groups and where necessary also other relevant crime areas.

¹ E.g. theft, residential and non-residential burglaries, organised shoplifting, pick-pocketing, cargo thefts, metal thefts, thefts from construction sites and ATM fraud (skimming).

Combating illegal trafficking in so called “heavy” firearms - Action Plan

The Council adopted an action plan to combat illegal trafficking in so called “heavy” firearms¹ which could be used or are used in criminal activities ([16427/10](#)).

The action plan lists a number of concrete actions that should be taken to:

- improve the existing crime image, i.e. improving the knowledge of the current situation as regards the different aspects of illegal trafficking in so called “heavy” firearms, the types of offenders, the types of weapons available on the criminal market and the different sources of illegal trafficking;
- strengthen cooperation between the member states’ law enforcement agencies and EU agencies, and between the different EU agencies, in order to dismantle criminal gangs active in this area;
- strengthen police or administrative control of the different potential sources of illegal trafficking in so called “heavy” firearms and set up a policy to prevent thefts of such firearms.

The Action Plan was drawn up in the light of the significant and rising threat that the possession and use of so called “heavy” firearms by organised crime groups, as well as lower-level street gangs, pose to the general public and to law enforcement personnel. At present, many of those groups and gangs based in the EU have routine access to firearms or are able to rely on various channels to acquire them on demand.

These channels include, in particular, suppliers in South East Europe that are able to meet rising demand due to the vast number of stockpiles and weapons in circulation in that region. In addition to criminals and organised crime groups operating across the EU, these stockpiles also serve as a supply for conflict zones outside Europe and for local organised crime groups based in South East Europe.

¹ E.g. assault rifles, sub-machine guns and rockets launchers.

Belgian Presidency programme on asylum and migration

The Council took note of the report by the Belgian presidency on achievements in the area of asylum and migration policy over the past six months (see this [background note](#)).

At the same time, the Council welcomed the common statement by the current and the next four EU presidencies on immigration and asylum ([17223/10](#)). This document sets out the way forward regarding:

- the establishment of a Common European Asylum System (CEAS) by 2012;
- border management and the fight against irregular migration; and
- legal migration.

In their discussion, ministers touched upon all legislative and non-legislative initiatives in these three areas.

Divorce and legal separation

A Hungarian couple living in Rome or a French-German couple living in Madrid - international couples will soon be able to follow clear rules on how to seek divorce or legal separation in 14 EU member states¹. That is the result of a regulation on which the Council agreed today ([17045/10](#)). The new rules will apply to all participating member states as of mid-2012. Other EU member states which are not yet ready but wish to join this pioneer group at a later stage will be able to do so.

The agreement also constitutes the implementation of the first enhanced cooperation in the history of the EU². For its adoption two more procedural steps are necessary: The European Parliament is expected to adopt an opinion on the file in its December plenary session. The Council will then adopt the new rules without discussion, most likely at the Environment Council on 20 December 2010.

The new rules provide for a comprehensive legal framework in matrimonial matters ensuring legal certainty and predictability. If the spouses agree, they can choose to a certain extent the law applicable to their divorce or legal separation. The proposal, however, does not cover the consequences of a divorce or legal separation such as property issues, maintenance obligations, parental responsibility or the name of the spouses. Also excluded are preliminary questions within the context of divorce such as the validity of a marriage.

Many citizens affected

There are approximately 122 million marriages in the EU, about 16 million (13%) are assumed to be international. For many of them, the regulation will bring a number of advantages:

- it allows international couples in the participating member states to know in advance which law will apply to their divorce;

¹ Spain, Italy, Hungary, Luxembourg, Austria, Romania, Slovenia, Bulgaria, France, Germany, Belgium, Latvia, Malta and Portugal.

² EU rules governing enhanced cooperation are provided for in [Title IV, Article 20 TEU](#) as well as in [Title III, Articles 326-334 TFEU](#).

- it improves legal certainty, predictability and flexibility for citizens;
- it protects weaker partners during divorce disputes and prevents the so-called "rush to court", i.e. situations where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests; and
- it lessens the burden on children in international divorce disputes.

Four options if spouses agree

If the spouses agree, they can choose one of the following laws applicable to their divorce or legal separation:

- (a) the law of the State where the spouses are habitually resident at the time the agreement is concluded, or
- (b) the law of the State where the spouses were last habitually resident, insofar as one of them still resides there at the time the agreement is concluded, or
- (c) the law of the State of nationality of either spouse at the time the agreement is concluded, or
- (d) the law of the forum, i.e. the law of the state where the court is seized.

'Cascade system' if spouses disagree

If the spouses do not agree on one of these four options, the following 'cascade system' will designate the law of the state applicable to their divorce or legal separation:

- (a) where the spouses are habitually resident at the time the court is seized; or, failing that,

- (b) where the spouses were last habitually resident, provided that the period of residence did not end more than one year before the court was seized, in so far as one of the spouses still resides in that state at the time the court is seized; or, failing that,
- (c) of which both spouses are nationals at the time the court is seized; or, failing that,
- (d) where the court is seized.

Special provisions for exceptional cases

The new rules respect the family law traditions of the participating member states. For example where the law of a member state does not provide for divorce (e.g. Malta) or does not recognise the marriage in question (e.g. in the case of same sex marriages), the court of that member state is not obliged to pronounce a divorce or a legal separation.

Trafficking in human beings

The Council took a major step in the fight against trafficking in human beings and paved the way for EU wide minimum rules concerning the definition of criminal offences and the level of sanctions in this area. Once adopted, the new rules will also strengthen the prevention of the crime and the protection of victims of trafficking in human beings.

It will also constitute the first agreement between the Council and the European Parliament in the area of substantive criminal law after the entry into force of the Lisbon Treaty. Before the Lisbon Treaty, EU legislation in criminal law was not decided by both institutions on an equal footing, but by a unanimous decision in the Council after mere consultation of the European Parliament.

Final procedural steps

The text unanimously agreed upon today at member state level was previously negotiated with the European Parliament. If the Parliament confirms its agreement on the text as it now stands at its December plenary session, the Council will swiftly give its green light to the text, resulting in a first reading agreement. Member states will then have to comply with the new rules within two years.

The new Directive will replace Framework Decision 2002/629/JHA and will apply to all member states but Denmark and the United Kingdom. The latter might still use an opt-in to participate in the new rules at a later stage.

Common definitions and levels of penalties

The agreed text widens the definition of the offences which are to be considered trafficking in human beings compared to existing international rules. Instigating, aiding, abetting or the sheer attempt to commit such an offence will also be punishable.

The new rules also set EU wide maximum penalties of at least five years of imprisonment or, in particular aggravating circumstances, ten years of imprisonment. These aggravating circumstances include situations where:

- the offence was committed against a victim who was particularly vulnerable, e.g. a child;
- the offence was committed in the framework of a criminal organisation;
- the offence has deliberately or by gross negligence endangered the life of the victim;
- the offence was committed by use of serious violence or has caused particularly serious harm to the victim.

Where legal persons are involved in the offence sanctions should include criminal or non-criminal fines and can include other sanctions, such as the exclusion from entitlement to public benefits or aid, the temporary or permanent disqualification from the practice of commercial activities, the placing under judicial supervision or the temporary or permanent closure of establishments.

Jurisdiction

Each member states will have to investigate and prosecute offences committed in whole or in part within its territory or committed by one of its national, even outside of its territory. Member states can chose to go beyond that basic rule by establishing further jurisdiction over an offence committed outside of its territory, e.g. where the victim of the offence is one of their nationals or has his or her habitual residence in the territory of that member state. Equally, where the offender has his or her habitual residence in the territory of that member state.

Non-prosecution of victims

The text also includes a provision which will allow national authorities not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit.

Assistance, support, protection and compensation for victims

Member states shall ensure that assistance and support are provided to victims before, during and for an appropriate time after criminal proceedings in order to enable them to exercise their rights on the standing of victims in criminal proceedings. Additional provisions are set out for child victims, such as physical and psycho-social assistance and the possibility to appoint a guardian or a representative for the child victim where necessary.

Protection measures include access to legal without delay to legal counselling and legal representation as well as possible access to witness protection programmes. Child victims should benefit from a number of additional measures including specific conditions for the interviews of the child during the proceedings. The child should, e.g., be interviewed in premises designed or adapted for this purpose, by or through trained professionals and, if possible, by the same persons for all interviews necessary.

Member States will also have to ensure that victims of trafficking in human beings have access to existing schemes on compensation to victims of violent intentional crimes.

Prevention and EU coordination

Prevention measures to be taken by member states include:

- information and awareness raising campaigns to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings;
- intensifying research on the subject;
- promoting regular training for officials likely to come into contact with victims and potential victims of trafficking in human beings.

A future Anti-Trafficking Coordinator (ATC) is also mentioned in the text. This person is supposed to contribute to Commission reports on the progress made in the fight against trafficking in human beings. These reports should be presented to the Council and the European Parliament every two years.

Sexual exploitation of children

The Council reached a general agreement on new EU-wide rules which will allow to more effectively combat sexual abuse, sexual exploitation of children and child pornography. Now, negotiations with the European Parliament can start, and it is the goal to reach a first reading agreement as soon as possible.

After its adoption, the Directive will not only establish minimum rules concerning criminal offences and sanctions. It will also strengthen the prevention of these crimes and the protection of their victims by taking measures *inter alia*:

- against advertising and organising children sex tourism;
- against websites containing or disseminating child pornography including the removal or, where not possible, blocking of webpages containing or disseminating child pornography; and
- against solicitation of children for sexual purposes by means of information and communication technologies (grooming).

During the Council meeting, ministers focused their debate on the following issues:

- disqualifications arising from convictions which aims to ensure that a person convicted may be temporarily or permanently prevented from exercising at least professional activities involving regular contacts with children; and
- measures against websites containing or disseminating child pornography, including the removal or, where not possible, blocking of webpages containing or disseminating child pornography.

Right to information in criminal proceeding

The Council reached a general approach on EU-wide minimum standards as regards the right to information in criminal proceedings. Now, negotiations with the European Parliament can start.

The directive was proposed by the Commission in July 2010 ([12564/10](#)). Its goal is to ensure that any person who is suspected or accused of having committed a criminal offence is provided with information concerning some fundamental procedural rights, as well as information on the accusation against him, free of charge and in a language he or she understands.

The text on which the Council reached a general approach stipulates that any person arrested has the right to receive upon arrest a so-called "Letter of Rights" in a language that he or she understands. It should be drafted in a simple and accessible language so as to be easily understood by a lay person without any knowledge of criminal procedural law.

This "Letter of Rights" must contain information on a number of procedural rights:

- the right to know how long you can be deprived of liberty in the country concerned before being brought before a judicial authority after arrest;
- the right of access to a lawyer;
- any entitlement to legal advice free of charge and the conditions for obtaining it;
- the right to interpretation and translation;
- the right to remain silent.

The Commission proposal also provides for an indicative model of such "Letter of Rights", in order to facilitate the elaboration by the member states of a similar document adapted to their national law; the status and content of this indicative model will be discussed by Council at a later date.

Other information rights provided for in the current text of the directive include the right to access to the materials of the case. For this right, access to certain materials may be refused if it may lead to serious risk for the fundamental rights of another person. Access can also be refused if necessary to safeguard an important public interest, e.g. in cases where it risks jeopardizing an ongoing investigation, or where it may seriously harm the national security of the member state in which the proceedings take place.

The proposal is a second step in a wider package of legislative and non-legislative initiatives that aim to strengthen the procedural rights of suspected or accused persons in criminal proceedings.

The Council unanimously agreed on this wider package, or roadmap, in October 2009 ([14552/1/09](#)). It comprises six main areas:

- translation and interpretation; this file has already been adopted ([Directive 2010/64/EU of 20 October 2010, OJ L 26.10.2010 n. 280, p.1](#));
- information on rights and information about charges (as presented here);
- legal advice and legal aid;
- communication with relatives, employers and consular authorities;
- special safeguards for suspected or accused persons who are vulnerable; and
- a green paper on pre-trial detention.

European Investigation Order

Mutual recognition as the basis to allow one EU member state to carry out investigative measures at the request of another EU members state - with this goal in mind ministers continued work on the creation of a European Investigation Order (EIO) in criminal matters.

On the basis of a working document ([16868/10](#)), ministers discussed mainly five issues:

- the scope of the proposal;
- the competent authorities in the issuing and executing state;
- the grounds for non recognition or non execution based on categories of measures;
- the question of proportionality; and
- the issue of costs.

The EIO is an initiative which was presented in May 2010 by seven member states ([9288/10](#)).¹ The United Kingdom decided to participate in the EIO by using the opt-in option provided for in Protocol 21 of the Lisbon Treaty. Ireland and Denmark are not taking part.

The main goal of the initiative is to allow one EU member state ("the issuing state") to issue an European Investigation Order and forward it to another member state ("the executing state") in order to have one or several specific investigative measure(s) carried out with a view to gathering evidence. The investigative measures would, for example, include the hearing of witnesses, searches and seizures as well as, with additional safeguards, interceptions of telecommunications, observation, infiltration and monitoring of bank accounts.

¹ Austria, Belgium, Bulgaria, Estonia, Slovenia, Spain and Sweden.

EU-US data protection agreement

The Council discussed and adopted a negotiation mandate for a EU-US agreement on protection of personal data. Now, negotiations with the United States can start.

Once adopted, the EU-US agreement will cover personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters.

The goal of the negotiations is to create an 'umbrella' EU-US agreement for data protection, which would establish a number of common data protection principles in the context of transatlantic police and judicial co-operation in criminal matters. Areas in which principles would be set include, among others: non-discriminatory protection of personal data; data quality and updates; purpose limitation; data minimisation, secure processing; logging or documentation; the right to access, rectification, erasure and redress as well as the right to compensation.

The agreement would not create an additional legal basis for the transfer of data, which would continue to be governed by separate treaties (and domestic law). It would however create a general legal framework to enhance transatlantic data exchange, not only by stipulating a number of common data protection principles, but also by establishing an effective supervision mechanism.

Data protection communication

The Council held a policy debate on the Commission communication on data protection which was presented on 4 November 2010 ([15949/10](#)). The Commission is planning to table an overhaul of the existing EU data protection directive - dating from 1995 - in the course of 2011.

The Communication highlights five key objectives:

- Strengthening individuals' rights;
- Enhancing the internal market dimension of data protection;
- Revising the data protection rules in the area of police and judicial cooperation in criminal matters;
- Addressing the global dimension of data protection;
- Providing a stronger institutional arrangement for better enforcement of data protection rules.

e-Justice

The Council took note of the progress made in the area of European e-Justice on the basis of a presidency report (16166/10).

Concerning the European e-Justice portal, the report underlines:

- the first release of the portal on 16 July 2010 and the preparations for the second release in January 2011;
- the subsequent activities and measures taken at EU and national level to promote the portal;
- the outcome of reflections on the role of the European e-Justice in the wider EU justice policy.

The report also addresses the progress made on a number of other e-Justice projects, such as:

- the e-Justice Communication via **Online Data Exchange (e-CODEX)** that aims to develop horizontal technical solutions in the field of justice that could be used in several e-Justice projects, where pre-requisites include e-Identification, authentication, authorisation etc.;
- dynamic online forms for European payment procedures or European small claims procedures;
- interconnection of Member States' insolvency registers;
- cooperation with legal practitioners;
- a voluntary system of a common identifier for case-law (ECLI).

For more information on European e-Justice and the European e-Justice portal, see this [press release \(12179/10\)](#).

International family mediation in cases of international child abduction

The Council took note of the conclusions adopted at a seminar on 14 October 2010 concerning international family mediation in cases of international child abduction ([16121/10](#)).

The participants in the seminar consider that international family mediation may represent an efficient way to resolve cases of international child abduction by parents as mediation often leads to lasting and balanced solutions in the best interest of the child.

They therefore recommend that the member states and the Commission consider the possibility of setting up a specific working party within the European Judicial Network in civil and commercial matters which would be tasked with exploring the most appropriate and efficient means to promote and improve the use of international family mediation in cases of international child abduction.

They invite the EU member states and the Commission to take into account their conclusions and recommendations in all future work in this area.

External relations regarding "Freedom, security and justice"

The Council was briefed on recent meetings with third countries where issues regarding the area of freedom, security and justice were addressed.

Two such meetings took place in November:

- The ministerial meeting of the EU-Russia Permanent Partnership Council (18 and 19 November 2010) resulted in a [joint statement](#).
- At the EU-Western Balkans Ministerial Forum (23 and 24 November 2010) the main issues discussed included cooperation between the Western Balkans countries and the EU agencies Europol, Eurojust and Frontex; the question of data protection standards; cooperation in criminal matters; the issue of visa liberalisation.

AOB

Greece's national action plan on asylum and migration

The Greek minister and the Commission informed the Council of the state of implementation of the Greek national action plan on asylum reform and migration management. Greece recently adopted this national action plan in response to significant increases in the number of illegal immigrants and asylum seekers.

Actions taken so far include the setting up of an independent asylum service, the establishment of a new detention center and the use of an emergency fund of € 10 million made available by the European Commission for short-term measures.

Ministers welcomed the actions taken so far, reiterated their support and looked forward to Greece stepping up its efforts to swiftly implement the action plan. Greece confirmed its intention to regularly update the Council on the issue.

Legal migration

The Belgian Presidency informed the Council of the outcome of a conference on legal migration which took place on 26 November 2010 in Brussels.

European disaster response

The Commission presented to the Council its recent communication on reinforcing the EU's disaster response capacity ([15614/10](#)), i.e. acting on civil protection and humanitarian assistance, both within and outside its borders. The strategy published in late October 2010 aims to develop scenarios for the main disaster risks and to identify the assets needed if these risks materialise. In addition, a map would be drawn of member states' assets that are currently available for EU response, and national authorities would be requested to voluntarily put core equipment on standby, available for rapid European assistance if needed.

The Council welcomed the communication. Points raised by delegations include:

- the national equipment should be put on standby, as suggested, on a voluntary basis;
- there is a need for synergies between disaster response and humanitarian aid mechanisms;
- there should be no duplication of existing structures e.g. those already in place within the UN framework.

On 14 December 2010, the General Affairs Council is expected to adopt conclusions on the issue.

2010 EU citizenship report

The Council took note of the Commission's 2010 EU citizenship report: Dismantling the obstacles to EU citizens' rights ([15936/10](#)). The report analysis the areas where citizens are facing obstacles in the exercise of their rights and proposes 25 initiatives for tackling these obstacles.

Mixed Committee

In the margin of the Council session on Thursday, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) discussed the following subjects:

SIS II

The committee examined the state-of-play of the implementation of the Schengen Information System II (SIS II). The global schedule presented by the Commission at the October Council meeting provides for the entry into operation of SIS II by the first quarter of 2013.

Illegal migration

The Council welcomed the Commission report on the implementation of the Council Conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration ([17164/10](#)).

The report outlines progress made since the adoption of the conclusions by the Council in February 2010 ([6975/10](#)). It also sets out the areas where the Commission feels that progress most urgently needs to be made.

Switzerland: Referendum on removal of foreigners who committed serious crime

The Swiss minister informed her colleagues about the outcome of a recent referendum on the removal of foreigners who have committed serious crime. As a consequence, Switzerland will amend its law in that respect. The Swiss minister also emphasised that her country will find a solution that will enable Switzerland to continue to abide by its international obligations.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Control measures applicable to mephedrone

The Council adopted a decision on submitting mephedrone (4-methylmethcathinone) to control measures across the Union ([16523/10](#)). Mephedrone is a synthetic drug deemed to have similar physical effects to other stimulant drugs, in particular ecstasy (MDMA) and is primarily used in combination with substances such as alcohol and other stimulants.

Since mephedrone is already a controlled drug in eleven Member States, the current decision will facilitate cross-border law enforcement and judicial cooperation.

Making security pictograms easier to recognise – *Conclusions*

The Council adopted the following [conclusions](#).

Creation of a European network of airport law enforcement services (AIRPOL) – *Resolution*

The Council adopted the following [resolution](#).

Role of the police and civil society in combating violent radicalisation and recruitment of terrorists – *Conclusions*

The Council adopted the following [conclusions](#).

Improving the detection of stolen vehicles in the Member States to tackle illegal cross-border vehicle trafficking – *Conclusions*

The Council adopted the following [conclusions](#).

Schengen evaluation of Luxembourg – *Conclusions*

Schengen evaluation of France – *Conclusions*

Host Nation Support – *Conclusions*

The Council adopted the following [conclusions](#).

2011-2013 EU Work Programme on minimising safety, security and public order risks in connection with sports events, in particular football matches, with an international dimension – *Conclusions*

The Council adopted the following [conclusions](#).

COMMON SECURITY AND DEFENCE POLICY

Illicit trade in small arms and light weapons by air - EU action

The Council adopted a decision on EU action to counter the illicit trade in small arms and light weapons (SALW) by air (8679/10).

The objectives of this EU action are the following:

- to improve the tools and techniques available to the relevant crisis management missions, international and third countries' national authorities and EU Member States, to effectively screen and target suspect air cargo aircrafts likely to be involved in illicit trade in SALW via air within, from or to third States;
- to increase awareness and technical expertise on the part of relevant international and national personnel, of "best practices" in the areas of monitoring, detection and risk management analysis concerning air cargo carriers suspected of SALW trafficking via air within, from or to third States.

The decision provides for a financial reference amount of EUR 900 000.

In December 2005, the European Council approved an EU strategy to combat the illicit accumulation and trafficking of small arms and light weapons and ammunition (EU SALW strategy). The EU SALW promotes the development of a policy for actively combating illicit network trafficking in SALW using the Union's air, sea and land space, by devising alert and cooperation mechanisms.

EXTERNAL RELATIONS

EU police mission for the Palestinian Territories

The Council adopted a decision amending the Joint Action and Council decision on the EU police mission for the Palestinian Territories as regards the increased financial reference amount intended to cover the mission's operational needs from 1 January to 31 December 2010 (*15415/10*).

SOCIAL POLICY

UN Convention on the rights of persons with disabilities

The Council adopted a code of conduct applicable to the Council, the member states and the Commission. It sets out internal arrangements for the implementation by and representation of the European Union relating to the UN Convention on the rights of persons with disabilities.

APPOINTMENTS

Economic and Social Committee

The Council appointed Mr Leon MEIJER (Netherlands) as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2015 (*15343/10*).
