



**COUNCIL OF
THE EUROPEAN UNION**



16042/11

PROVISIONAL VERSION

PRESSE 397
PR CO 65

PRESS RELEASE

3121st Council meeting

Justice and Home Affairs

Luxembourg, 27 and 28 October 2011

President **Mr Jerzy MILLER**
Minister for the Interior of Poland
Mr Krzysztof KWIATKOWSKI
Minister for Justice of Poland

P R E S S

Rue de la Loi 175 B – 1048 BRUSSELS Tel.: +32 (0)2 281 8847 / 6319 Fax: +32 (0)2 281 8026
press.office@consilium.europa.eu <http://www.consilium.europa.eu/Newsroom>

16042/11

1
EN

Main results

*The Council adopted a **European pact against synthetic drugs**. In this context, it also exchanged views on **the annual report 2011 on the state of the drug problems in Europe** by the European monitoring centre for drugs and drug addiction (EMCDDA) and the **Commission communication "Towards a stronger European response to drugs"**.*

*Ministers agreed on a general approach on a proposal amending EU rules on local border traffic (LBT) which aims at **facilitating border crossings in the Kaliningrad area**.*

*The Council took note of the state of play of work on the **Common European Asylum System**. In this context, the presidency informed that due to a final agreement with the European Parliament two directives will most likely be adopted by the end of the year: one regarding a **single permit** for third country nationals to reside and work in the EU and a common set of rights for third country workers legally residing in a member state, the other regarding the **qualification and status** of third country nationals as beneficiaries of international protection.*

*The Council then examined the progress made in the implementation of **Greece's national action plan on asylum reform and migration management**. Illegal migration, visa liberalisation and human trafficking were the main subject over lunch.*

*The Commission informed about the state of play of two sets of negotiations with the USA: one concerning an **EU-US agreement on data protection**, the other concerning an **EU-US PNR agreement**.*

*Ministers also held orientation debates on a number of **Commission communications** concerning:*

- available options concerning a **European terrorist finance tracking system**;*
- a **European agenda for integration** of third country nationals; and*
- cooperation in the area of Justice and Home Affairs within the **Eastern Partnership**.*

*In the justice part of the Council, the presidency informed that due to a final agreement with the European Parliament the directive on the **fight against sexual exploitation of children and child pornography** will most likely be adopted by the end of the year.*

*Ministers held a first exchange of views on the Commission's most recent proposals for a regulation on a **Common European Sales Law** and took note of a draft directive on **criminal sanctions for insider dealing and market manipulation**. In the area of procedural rights, the Council took note of the state of play of the **right of access to a lawyer and on the right to communicate upon arrest**. The Council also held an orientation debate on a proposed directive establishing **minimum standards on***

the rights, support and protection of victims of crime.

*In the margins of the Council, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) welcomed the most recent launch of the **Visa Information System (VIS)** and looked at the state of play of the **Schengen Information System (SIS II)**. It also looked at the above mentioned proposal to **facilitate border crossings in the Kaliningrad area** and exchanged views on a **Commission communication on smart borders**.*

*Also in the margins of the Council, a declaration on a **mobility partnership** was signed between the **EU and Armenia**.*

CONTENTS¹

PARTICIPANTS	7
ITEMS DEBATED	
EU DRUGS POLICY	9
European pact against synthetic drugs	9
Commission communication / Annual report 2011 by EU drugs agency	10
LOCAL BORDER TRAFFIC IN THE KALININGRAD AREA	11
COMMON EUROPEAN ASYLUM SYSTEM (CEAS).....	12
SINGLE PERMIT FOR THIRD COUNTRY NATIONALS TO RESIDE AND WORK IN THE EU	13
QUALIFICATION DIRECTIVE.....	14
GREEK NATIONAL ACTION PLAN ON ASYLUM AND MIGRATION	15
EU-US DATA PROTECTION AGREEMENT.....	16
EU-US PNR AGREEMENT.....	17
EUROPEAN TERRORIST FINANCE TRACKING SYSTEM (EU TFTS).....	18
INTEGRATION OF THIRD COUNTRY NATIONALS	19
COOPERATION IN THE AREA OF JHA WITHIN THE EASTERN PARTNERSHIP	20
VICTIMS OF CRIME.....	21
SEXUAL EXPLOITATION OF CHILDREN.....	22
COMMON EUROPEAN SALES LAW	23
RIGHT OF ACCESS TO A LAWYER	24
INSIDER DEALING AND MARKET MANIPULATION	25

¹ Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
Documents for which references are given in the text are available on the Council's Internet site (<http://www.consilium.europa.eu>).
Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's Internet site or may be obtained from the Press Office.

MIXED COMMITTEE	26
VIS.....	26
SIS II.....	26
Local border traffic in the Kaliningrad area	26
Smart borders	27
AOB.....	28

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

– "Swedish framework decision" - <i>Conclusions</i>	29
– Automated data exchange - Latvia.....	29
– Mobility Partnership EU-Armenia - <i>Declaration</i>	30
– 60th Anniversary of the Refugee Convention - <i>Declaration</i>	30
– Eurojust report	30
– Network for legislative cooperation.....	30
– European judicial training - <i>Conclusions</i>	31

ECONOMIC AND FINANCIAL AFFAIRS

– Cross-border transport of euro cash*	31
--	----

BUDGETS

– Conciliation on EU budget for 2012.....	31
– European Data Protection Supervisor	32

FOREIGN AFFAIRS

– Restrictive measures - Burma/Myanmar.....	32
– Restrictive measures - Republic of Guinea.....	32
– International Criminal Tribunal for the former Yugoslavia.....	32
– Relations with Uzbekistan	32

GENERAL AFFAIRS

– Management of the European Anti-fraud Office	33
--	----

COMMON SECURITY AND DEFENCE POLICY

- EU crisis management exercise 201133

TRADE POLICY

- Control of dual-use items: new EU general export authorisations*33
- Adjustments to trade agreements with Australia, New Zealand and Argentina.....34
- Free trade agreement - EU and South Korea34

ENVIRONMENT

- Shipments of waste34

PARTICIPANTS

Belgium:

Mr Stefaan DE CLERCK
Mr Melchior WATHELET

Minister for Justice
State Secretary for Policy on Migration and Asylum

Bulgaria:

Ms Margarita POPOVA
Mr Boyko KOTZEV

Minister for Justice
Permanent Representative

Czech Republic:

Mr Jan KUBICE
Mr Jaroslav HRUŠKA
Mr Marek ŽENÍŠEK

Minister for the Interior
Deputy Interior Minister
Deputy Minister for Justice

Denmark:

Mr Morten BØDSKOV

Minister for Justice

Germany:

Mr Ole SCHRÖDER

Parliamentary State Secretary, Federal Ministry of the Interior

Mr Max STADLER

Parliamentary State Secretary to the Federal Minister for Justice

Estonia:

Mr Kristen MICHAL
Mr Ken-Marti VAHER

Minister for Justice
Minister for the Interior

Ireland:

Mr Alan SHATTER
Mr Rory MONTGOMERY

Minister for Justice and Equality
Permanent Representative

Greece:

Mr Christos PAPOUTSIS
Mr Ioannis IOANNIDIS

Minister for the Protection of the Citizen
General Secretary for Transparency and Human Rights,
Ministry of Justice, Transparency and Human Rights

Spain:

Ms Anna TERRÓN I CUSÍ
Mr Justo Tomás ZAMBRANA PINEDA
Mr Luis PLANAS PUCHADES

State Secretary for Immigration and Emigration
State Secretary for Security
Permanent Representative

France:

Mr Claude GUEANT

Minister for the Interior, Overseas Territories, Local and Regional Authorities and Immigration
Keeper of the Seals, Minister for Justice and Freedoms

Mr Michel MERCIER

Italy:

Ms Sonia VIALE
Mr Giacomo CALIENDO

State Secretary for the Interior
State Secretary for Justice

Cyprus:

Mr Neoklis SYLIKIOTIS
Mr Loukas LOUKA

Minister for the Interior
Minister for Justice and Public Order

Latvia:

Ms Ilze JUHANSONE

Permanent Representative

Lithuania:

Mr Remigijus ŠIMAŠIUS
Mr Raimundas PALAITIS

Minister for Justice
Minister for the Interior

Luxembourg:

Mr François BILTGEN
Mr Nicolas SCHMIT
Mr Jean-Marie HALSDORF

Minister for Justice
Minister for Labour, Employment and Immigration
Minister for the Interior and the Grande Région, Minister for Defence

Hungary:

Mr Tibor NAVRACSICS
Mr Károly KONTRÁT

Minister for Public Administration and Justice
Parliamentary State Secretary, Ministry of the Interior

Malta:

Mr Carmelo MIFSUD BONNICI

Minister for Justice and Home Affairs

Netherlands:

Mr Fred TEEVEN

State Secretary for Security and Justice

Austria:

Ms Johanna MIKL-LEITNER

Federal Minister for the Interior

Ms Beatrix KARL

Federal Minister of Justice

Poland:

Mr Jerzy MILLER

Minister for the Interior and Administration

Mr Krzysztof KWIATKOWSKI

Minister for Justice

Mr Igor DZIALUK

Deputy State Secretary, Ministry of Justice

Portugal:

Ms Paula TEIXEIRA DA CRUZ

Minister for Justice

Mr Juvenal SILVA PENEDA

State Secretary attached to the Minister for the Interior

Romania:

Mr Traian IGAS

Minister for Administration and Internal Affairs

Mr Catalin PREDOI

Minister for Justice

Mr Marian-Grigore TUTILESCU

State Secretary, Head of the Schengen Department,
Ministry of Administration and Internal Affairs

Slovenia:

Mr Aleš ZALAR

Minister for Justice

Ms Nina GREGORI

Director-General of Migration and Integration Directorate,
Ministry of the Interior

Slovakia:

Mr Daniel LIPŠIC

Minister for the Interior

Ms Mária KOLÍKOVÁ

State Secretary at the Ministry of Justice

Finland:

Ms Päivi RÄSÄNEN

Minister for the Interior

Ms Anna-Maja HENRIKSSON

Minister for Justice

Sweden:

Ms Beatrice ASK

Minister for Justice

Mr Tobias BILLSTRÖM

Minister for Migration

United Kingdom:

Mr Damian GREEN

Minister of State for the Home Department (Minister for
Immigration)

Mr Kenneth CLARKE

Lord Chancellor, Secretary of State for Justice

Mr Frank MULHOLLAND

Lord Advocate for Scotland

Commission:

Ms Viviane REDEING

Vice-President

Ms Cecilia MALMSTRÖM

Member

ITEMS DEBATED

EU DRUGS POLICY

European pact against synthetic drugs

The Council adopted a European pact against synthetic drugs ([15544/11](#)) which complements the European Pact to combat international drug trafficking - Disrupting cocaine and heroin routes adopted in 2010 ([8821/10](#)).

The context in which this pact was adopted is that almost every week a new synthetic drug is coming on the European market. Many of them are produced inside the EU and the substances used for their production ('precursors') are legally available, creating so-called 'legal highs'.

The European pact against synthetic drugs addresses four major areas:

- countering the production of synthetic drugs;
- countering the trafficking in synthetic drugs and precursors;
- tackling new psychoactive substances;
- training for law enforcement in detecting, examining and dismantling clandestine laboratories.

The pact stresses the need to streamline the information exchange mechanisms, especially with regard to new trends in the production of synthetic drugs ('legal highs'), intensify operational and investigative cooperation with the participation of Europol and harmonize specialized training in detecting illegal drug laboratories.

The pact is also fully in line with the EU's priorities for the fight against organised crime between 2011 and 2013, as identified by the Council ([11050/11](#)) which refer to "reducing the production and distribution in the EU of synthetic drugs, including new psychoactive substances".

The implementation of the pact will be done through the EU policy cycle for organised and serious international crime.

Commission communication / Annual report 2011 by EU drugs agency

The Council exchanged views on the Commission communication "Towards a stronger European response on drugs" which was adopted on 25 October 2011 ([15983/11](#)) and on a presentation from European Monitoring Center for Drugs and Drug Addiction (EMCDDA) regarding its annual report 2011 on the state of the drug problems in Europe. This report will be made public by the drugs agency on 15 November 2011.

Using the tools offered by the Lisbon Treaty the Commission intends to update existing and to draft new EU legal instruments in anti-drugs policy, with an aim to provide a faster response to the new psychoactive substances and tackle their sale over the internet, to improve the definition of drug trafficking offences and sanctions, to deprive drug traffickers of their financial gains more efficiently (e.g. through possible confiscation and asset recovery) and to control the chemicals used to produce drugs more strictly.

International cooperation to fight against the drug problem should also be strengthened and minimum quality standards to improve the effectiveness of drug prevention, treatment and harm reduction should be further developed.

The Council took note of the presentation from European Monitoring Center for Drugs and Drug Addiction (EMCDDA) regarding its annual report 2011 on the state of the drug problems in Europe.

The report will be made public by the drugs agency on 15 November 2011.

LOCAL BORDER TRAFFIC IN THE KALININGRAD AREA

The Council adopted a general approach on a proposal to amend the EU rules on local border traffic (LBT) ([13344/11](#)). This will allow the start of contacts with the European Parliament.

The Council also adopted a joint declaration of the Council and the Commission which underlines that the solution proposed for the Kaliningrad area does not constitute a precedent for any other regions in relation to the EU local border traffic rules. Finally, the Council took note of a declaration of Poland outlining the measures Poland is taking to provide for a high level of security and transparency.

The proposed amendments aim at facilitating border crossings in the Kaliningrad area through the inclusion of the Kaliningrad area and specified and limited Polish administrative districts in the eligible border area.

The Kaliningrad region of the Russian Federation with a population of almost one million inhabitants became the only enclave within the EU as a consequence of the 2004 EU enlargement.

The original regulation was adopted in 2006 to ensure that the borders between EU member states and their non-EU neighbours do not create unnecessary barriers to trade, social and cultural interchange or regional cooperation. It allows derogating, for persons living in a border area, from the general rules on border checks set out in the Schengen Borders Code. The regulation authorises member states to conclude bilateral agreements with neighbouring non-EU countries, provided these agreements fully comply with the parameters set by the regulation.

COMMON EUROPEAN ASYLUM SYSTEM (CEAS)

The Council looked at the state-of-play of the asylum package on the basis of a presidency paper ([15843/11](#)).

The existing legislative framework in the field of asylum lays down minimum standards. The Commission, in keeping with the commitment to establish the CEAS by 2012, has submitted a series of proposals aimed at greater harmonisation of national asylum systems and higher levels of protection. These are at different stages in the legislative process:

- Qualification directive: The Council welcomed the fact that the European Parliament endorsed this week the compromise text agreed in July. This will allow final adoption by the Council in the coming weeks.
- Dublin II system establishing procedures for determining the member state responsible for examining an application for international protection: In September 2011, the Council supported the idea to include in the proposal the concept of an early warning and preparedness process for evaluating the practical functioning of national asylum systems, in the form of an 'asylum evaluation mechanism'. On the so-called 'emergency' or 'suspension mechanism' so far included in the Commission proposal a majority of member states maintained their rejection.
- Eurodac regulation: discussion on amendments to the rules regulating this fingerprint database are on hold awaiting a proposal which would permit law enforcement access.
- Asylum procedures and reception conditions directives: Revised proposals were tabled by the Commission on 1 June 2011 ([11207/11](#) and [11214/11](#), respectively). Work is ongoing.

Two agreements related to the CEAS have been reached so far. They concern the [long term residence directive](#) and the creation of the [European Asylum Support Office \(EASO\)](#) which started operations earlier this year.

SINGLE PERMIT FOR THIRD COUNTRY NATIONALS TO RESIDE AND WORK IN THE EU

The presidency informed the Council that final agreement was reached last week between the Council and the European Parliament on the directive on the creation of a single permit for third-country nationals to reside and work in the EU. For the new rules to enter into force, both institutions will need to formally give their green light. This is expected to happen before the end of the year.

The single permit directive aims to simplify the procedures for the admission of third-country nationals to reside and work in the EU and to facilitate the control of their status. It also lays down a common set of rights for third-country nationals legally residing in a member states, based on equal treatment with nationals of that member state.

Once adopted, the directive needs to be transposed into national law within two years after its entry into force. It will be the first instrument in the field of legal immigration adopted under the rules of the Lisbon Treaty, i.e. through co-decision.

QUALIFICATION DIRECTIVE

The presidency informed the Council about the state-of-play of the directive on the qualification as beneficiary of international protection and the content of entitlements connected to such qualification. After the European Parliament adopted the new rules this week, the only outstanding step is formal adoption by the Council. This is expected to happen before the end of the year.

The qualification directive aims to guarantee that, wherever a person applies for international protection in the EU, the protection needs are assessed according to common criteria thereby granting a minimum level of benefits. Beneficiaries of international protection can be refugees - persons who, if returned, would be subject to persecution on the grounds included in the Geneva Convention - and beneficiaries of subsidiary protection - persons who do not qualify as a refugee but who would face a real risk of suffering serious harm.

The new rules will simplify decision-making during asylum procedures and lead to more robust decisions at first instance, thus improving the efficiency of the asylum process and preventing abuse. They will also enhance effective access to rights taking into account specific integration challenges of beneficiaries of international protection and approximate rights and benefits of refugees and of beneficiaries of subsidiary protection. Finally, the amendments ensure coherence with the developing jurisprudences of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR).

Once adopted, the directive needs to be transposed into national law within two years after its entry into force. It will be the first in a package of five legal instrument to be adopted for the creation of the Common European Asylum System (CEAS) by end 2012, a date confirmed by the European Council in June 2011 (see point 30 of [EUCO 23/11](#)). The other proposals concern the Dublin Regulation, Eurodac Regulation, Reception Conditions Directive and Asylum Procedures Directive.

The main goal of the CEAS is to bring more harmonisation of national asylum systems and higher levels of protection for applicants for international protection.

GREEK NATIONAL ACTION PLAN ON ASYLUM AND MIGRATION

The Council discussed the implementation of Greece's national action plan on asylum reform and migration management on the basis of a state of play presented by the Greek minister and the Commission. This was the fifth time that the implementation of the Greek Action plan to reform the national asylum and immigration system was on the Council's agenda.

While reporting progress, Greece and the Commission also referred to a number of challenges which the continued arrival of large numbers of illegal immigrants was placing on the Greek asylum system.

In this context, the EU border agency (Frontex) gave an overview of its operations in the area directed at fighting illegal immigration and the EU asylum support office (EASO) reported on its activities in support of the Greek authorities.

For more information, see the [background note](#).

EU-US DATA PROTECTION AGREEMENT

The Council took note of a presentation by the Commission on the state of play of a EU-US agreement on protection of personal data.

In December 2010, the Council adopted a negotiating mandate which allowed the Commission, as the EU negotiator, to start discussions with the US.

Once adopted, the EU-US agreement will cover personal data 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 for enhancing transatlantic data exchange, not only by stipulating a number of common data protection principles, but also by establishing an effective supervision mechanism.

EU-US PNR AGREEMENT

After a presentation by the Commission, the Council held an exchange of views on progress made in the negotiations between the EU and the United States of America on a EU-US Passenger Name Records (PNR) agreement.

In December 2010, 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 allowed the Commission, as the EU negotiator, to start discussions with these three countries.

The goal of all three 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.

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.

Concerning the EU-Australia PNR agreement, the Council adopted a decision on the signing of the agreement in September 2011 ([10093/11](#)). The signing took place on 29 September 2011. The European Parliament gave its consent to the agreement on 27 October 2011. The only outstanding step for the agreement to enter into force is the conclusion of the agreement by the Council which will most likely take place before the end of the year. For more information, see this [press release](#).

EUROPEAN TERRORIST FINANCE TRACKING SYSTEM (EU TFTS)

The Council held an orientation debate on the Commission communication "A European terrorist finance tracking system: available options" tabled in July 2011 ([12957/11](#)).

This debate took place in the light of a presidency note ([14207/11](#)) raising three main questions:

- whether there is an operational need to establish a European TFTS and whether there is added value in the light of the already existing mechanism;
- if yes, what are the key outstanding issues the Commission should address in its further preparatory works;
- what would be the impact on and the interaction with the US TFTP under the 2010 EU-US TFTP Agreement.

After interventions by member states, the EU Counter-terrorism coordinator and Europol, the Council asked the Commission to take the comments made into account regarding further work on the file, including a possible legislative proposal on a European TFTS. Ministers also underlined the need to first conduct an impact assessment to get a comprehensive picture of the practical, financial and legal aspects of a possible future EU TFTS and its added value.

In its communication, the Commission outlines the goals of establishing an EU terrorist finance tracking system (TFTS), identifies its main functions and highlights the key principles which should be respected when designing of such a system. It then presents three different options for a possible future proposal on a EU TFTS.

The Commission highlights two main objectives of such a system: First, ensuring an effective instrument to prevent and to fight the financing of terrorism, and, second, limiting personal data flow to third countries.

The Commission communication responds to a call by the Council, at the request of the European Parliament, to study a legal and technical framework for extraction of data on EU territory. The Parliament requested such a study because it had serious qualms about the bulk transfer of personal data to a third country. The Parliament's doubts were aimed both at the transfer to a third country and the storage of personal data of innocent individuals in bulk.

INTEGRATION OF THIRD COUNTRY NATIONALS

The Council welcomed the Commission communication on a European agenda for integration of third country nationals ([13290/11](#)) and an accompanying staff working paper describing the EU initiatives in the various policy areas supporting these integration efforts ([13290/11 ADD1](#)) and held a first exchange of views.

The Council intends to adopt conclusions on the matter by the end of the year.

For more information, see the [background note](#).

COOPERATION IN THE AREA OF JHA WITHIN THE EASTERN PARTNERSHIP

The Council held an orientation debate on the Commission communication concerning cooperation in the area of justice and home affairs within the Eastern Partnership ([14864/11](#)).

The Commission communication consists of two main parts: one is covering the main principles and the existing structures for cooperation as well as the aspects coordination and financial assistance; the other is focusing on the thematic priorities: migration, mobility and asylum; integrated border management; public order and security; tackling illicit drugs; and the area of justice and fundamental rights.

VICTIMS OF CRIME

The Council held an orientation debate on certain key issues of the draft directive establishing minimum standards on the rights, support and protection of victims of crime, as proposed by the Commission in May 2011 ([10610/11](#)).

Ministers focused on two questions:

- The first question concerned the scope of certain rights: the right to information (Article 5), to interpretation and translation (Article 7), and to reimbursement of expenses (Article 13). A majority of ministers agreed to the approach suggested by the presidency that rights conferred in this directive are granted in accordance with the role of victims in the relevant justice system. In this context, a number of delegations pointed out that an excessively broad scope of rights granted to victims could possibly impede the course of proceedings and create an additional administrative burden. It was also recalled that this directive lays down minimum rules. Member states may extend the rights set out in this directive in order to provide a higher level of protection.

- The second question related to the criteria for the identification of vulnerable victims (Articles 21). The Council confirmed that children should always be presumed vulnerable. Apart from that, however, ministers agreed that there should be no indicative list of vulnerable victims in the operative part of the text as suggested by the Commission. All other victims should be treated on a case-by-case basis. They should receive, as a point of departure, a timely and individual assessment, in accordance with national procedures, to determine whether they are vulnerable (e.g. to secondary and repeat victimisation or intimidation) and what protection measures they need. It was also mentioned that the directive should not affect more far reaching provisions contained in other EU acts which address the specific needs of vulnerable victims in a more targeted manner (e.g. the directive on trafficking in human beings and the directive on combating sexual exploitation of children).

The Council preparatory bodies were instructed to continue work on the file.

SEXUAL EXPLOITATION OF CHILDREN

The presidency informed the Council about the state-of-play of the directive on combating the sexual abuse and sexual exploitation of children and child pornography. After the European Parliament adopted the compromise text this week ([11987/11](#)), the only outstanding step for the conclusion of the first reading agreement is the formal adoption by the Council. This is expected to happen before the end of the year.

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; and
- against solicitation of children for sexual purposes by means of information and communication technologies (grooming).

For more information, see the following [press release](#).

COMMON EUROPEAN SALES LAW

The Council held a first exchange of views on a Commission proposal for a Common European Sales Law ([15429/11](#)) and instructed the Council preparatory bodies to swiftly start work on the file. The main points raised in the discussion include the legal basis, the level of consumer protection and the complexity of embedding the proposal into the different national legal systems.

The regulation as proposed by the Commission would give businesses and consumers coming from different countries an alternative to doing business under the rules of one or the other country which both parties might not be familiar with. The two contracting parties could agree to chose an alternative set of EU-wide rules for their cross-border sales contracts, a so-called "28th regime" co-existing with the 27 national sales laws.

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

This "28th regime" would cover contracts on the sales of goods and supply of digital content, as well as directly related services. It would be open to business-to-consumer contracts as well as those business-to-business contracts where at least one party is a small or medium sized enterprise (SME). It is important to underline that both parties to a cross-border contract would need to agree to use these alternative, European rules.

The new rules would cover most issues of contract law that are considered of practical relevance during the life-cycle of a cross-border contract, including rights and obligations of the parties and the remedies for non-performance, pre-contractual information duties, the right of withdrawal and its consequences, interpretation and the contents and effects of a contract.

According to the Commission proposal, the new rules could also be used if only one of the parties is established in a member state, the other one coming from a country outside the EU. Furthermore, EU member states would be free to make the Common Sales Law also available for purely domestic contracts.

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

RIGHT OF ACCESS TO A LAWYER

The Council was informed on the state of play regarding work on the legislative proposal that aims to provide suspects and accused persons in criminal proceedings with the right of access to a lawyer and the right to communicate upon arrest with consular authorities and with a third person, such as a relative or an employer. The Commission presented this proposal in July 2011 ([11497/11](#)).

A presidency paper highlighted the main points for future discussion ([15812/11](#)) :

- the scope of the directive: While some member states take the view that the right of access to a lawyer should give the suspect or accused person a right which results in the actual assistance of a lawyer, others provide for a different system, whereby the right of access to a lawyer does not necessarily imply that the suspect or accused person will in every case be assisted by lawyer. In the first case, the responsibility for exercising the right of access to a lawyer lies, at least partially, with the public authorities (guarantee approach). This could entail considerable procedural and financial consequences. In the second case, the responsibility is shifted to the suspect or accused person (opportunity approach). This approach could allow for a much broader scope making the right of access to a lawyer an overarching principle also at an early stage of criminal proceedings, even if this right will not be exercised in every instance.
- the situations in which the right of access to a lawyer should be given: This question is very much related to the subject of scope. A broad agreement seems to exist that such right should at least be given in all situations where a suspect or accused person is the subject of criminal proceedings before a court, and where he has been arrested. Other situations are still under discussion, such as where a person has been invited to present himself voluntarily at a police station in order to be questioned, where a person has been stopped in the street and is asked to respond to questions by investigating authorities or "procedural or evidence-gathering acts".
- the issue of remedies: The Commission proposes that statements or evidence obtained in breach of the right of access to a lawyer may not be used at any stage of the procedure as evidence against the person concerned, while preserving a margin of discretion where the use of such evidence would not prejudice the rights of the defence. Most member states can not accept this and made it clear that no directions should be given to judges. They argue that the issue of the value to be given to such statements should be examined by a court having jurisdiction in criminal matters.

For more information, see the [background note](#).

INSIDER DEALING AND MARKET MANIPULATION

The Council took note of a Commission proposal for a directive on criminal sanctions for insider dealing and market manipulation ([16000/11](#)) which was presented on 21 October 2011 along with a regulation on insider dealing and market manipulation, jointly referred to as market abuse ([15429/11](#)).

The draft directive is intended to complement the regulation by establishing minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation. This would create an obligation for member states to ensure that these conducts are punishable as criminal offences.

The proposed rules would also make inciting, aiding and abetting as well as the attempt to commit any of the offences laid down in the directive a criminal offence throughout the EU. The draft directive, finally, proposes that not only natural persons but also legal persons can be held liable for these offences.

MIXED COMMITTEE

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

VIS

The committee was informed about the launch of the Visa Information System (VIS). The system started running on 11 October 2011 in the member states consulates of the first roll-out region (North Africa). It must be used as from no later than 20 days after that date for control purposes at the external border crossing points.

During the first ten days of operations (11 October - 20 October 2011), over 40.000 visa applications were processed by the VIS.

The start of the VIS is accompanied by an information campaign run by the Commission and the European External Action Service, in cooperation with member states.

SIS II

The committee also looked at the state of play of the implementation of the Schengen Information System II (SIS II), after a presentation by the Commission. The global schedule presented by the Commission at the Council meeting in October 2010 provides for entry into operation of the SIS II by the first quarter of 2013.

Local border traffic in the Kaliningrad area

The committee prepared the agreement on a general approach concerning the proposal to amend the EU rules on local border traffic (LBT) in the Kaliningrad area ([13344/11](#)) as described in the separate item above.

Smart borders

The committee discussed the most recent Commission communication on smart borders (16049/11). The relevant instances of the Council are asked to further examine the communication. The Commission indicated it may submit in the first half of 2012 legislative proposals on the main elements of the communication, i.e. an EU Entry/Exit-System (EES) and an EU Registered Travellers Programme (RTP) system.

Delegations discussed mainly four issues: whether the two systems should be managed centrally or decentrally; the question of data storage; whether and at what stage the systems should include biometric data in addition to alpha-numerical data; the questions of involved costs for the set-up and running of the systems.

Regarding the EES, its implementation would provide the EU with accurate data on travel flows in and out of the Schengen area at all parts of its external borders and on 'overstayers', i.e. third country nationals that stay in the Schengen area longer than their visa permits them to do. It would also become possible to undertake evidence-based evaluation of visa liberalisation measures, visa facilitation agreements, and roadmaps for future such initiatives. In conjunction with the Visa Information System (VIS), this would make the EU's efforts to address irregular migration and increase the number of successful returns more effective. This system could use the same technical platform as the Schengen Information System (SIS II) and the Visa Information System (VIS).

The RTP is a specific regime for non-EU national 'bona fide' travellers, who could be granted 'Registered Traveller' status. This status would be obtained on a voluntary basis through pre-screening procedures at a consulate or future common visa application centres, based on common vetting criteria. Bona fide travellers as well as EU nationals with e-passports could benefit from automated border checks via automated gates that would read the biometric data contained in the travel documents or stored in a database and compare them against the biometrics of the traveller. Thus, it is expected to speed up the border crossings of 4-5 million travellers per year¹. Based on the experiences of some member states, the average time for border crossings can be cut from the current 1-2 minutes to below 30 seconds.

The Council at several occasions has encouraged the establishment of such measures, e.g. in its conclusions on the management of the external borders of the member states of the EU adopted in June 2008 ([9873/08](#)), in its conclusions on the 29 measures for reinforcing the protection of the external borders and combat illegal immigration adopted in February 2010 ([6435/3/10](#)).

¹ On the assumption that at least 20% out of all persons issued a multiple-entry visa – yearly around 10 million – would apply for RT status, and an equivalent number of persons not requiring a visa would apply also.

AOB

Under other business, delegations looked at four information points:

The first one concerned mobile (itinerant) criminal groups. In December 2010, the Council adopted conclusions on the fight against crimes committed by mobile (itinerant) criminal groups ([15875/10](#)). In June 2011, the problem was again addressed in the Council conclusions on setting the EU's priorities for the fight against organised crime between 2011 and 2013 ([11050/11](#)).

The second issue was the possible introduction of a Russian requirement for aircraft crews from several EU member states to hold visas when flying to the Russian territory. This issue is now expected to be resolved in the framework of negotiations on amendments to the existing EU-Russia visa facilitation agreement.

Under the third point, the Council was informed about the outcomes of the EU-Western Balkans Ministerial Forum held in Ohrid on 3-4 October 2011 and on the EU-Russia Ministerial Permanent Partnership Council held in Warsaw on 10-11 October 2011.

Liechtenstein finally referred to the pending Council decision on the full application of the Schengen acquis to the country.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

"Swedish framework decision" - Conclusions

- *Adoption of conclusions*

The Council adopted conclusions ([15277/11](#)) regarding the implementation of Framework Decision 2006/960¹ on simplifying the exchange of information and intelligence between law enforcement authorities of the member states of the European Union (the so-called "Swedish framework decision").

The aim of this legislative act is to enhance the successful detection, prevention or investigation of crime, providing a necessary response to threats posed by criminals operating across an area without internal borders.

- *Report*

The Council endorsed the report on member states' compliance with the provisions of the "Swedish framework decision" ([15278/11](#)). The Commission was required to present this assessment to the Council before 19 December 2011.

Almost two-thirds of the member states had transposed the framework decision into their legislation by 31 December 2010, as provided for in the decision; those who have not yet met the transposition deadline indicated as the main reason that their parliamentary procedures were not yet completed.

Automated data exchange - Latvia

The Council adopted a decision on the launch of automated data exchange with regard to DNA data in Latvia ([14526/11](#)). The evaluation procedure required by Council Decision 2008/616/JHA (OJ L 210, 6.8.2008) concluded that the general provisions on data protection are fully implemented by Latvia and this country is therefore entitled to start receiving and supplying personal data as from the day of the entry into force of this decision, for the purpose of prevention and investigation of criminal offences.

¹ OJ L 386, 29.12.2006.

Mobility Partnership EU-Armenia - Declaration

The Council took note of the joint declaration on a mobility partnership between the European Union and Armenia ([14963/11 ADD I](#)). The mobility partnership aims to facilitate movement of persons between Armenia and the EU, whilst working to ensure better management of migration flows in the framework of the implementation of the Global Approach to Migration.

Mobility Partnerships have been signed with Cape-Verde, Moldova and Georgia to date.

See also: Commission Communication on Circular Migration and Mobility Partnerships ([9776/07](#))

60th Anniversary of the Refugee Convention - Declaration

The Council endorsed the declaration of the European Union ([15358/11](#)) to the ministerial-level meeting of all member states of the United Nations, which will be held on 7-8 December 2011 in Geneva. The declaration marks the 60th anniversary of the 1951 Convention relating to the Status of Refugees.

Eurojust report

The Council took note of the activity report of the Joint Supervisory Body of Eurojust for the year 2010 ([15603/11](#)) and forwarded it to the European Parliament for information, as required by the Council decision setting up Eurojust ¹.

Network for legislative cooperation

The Council adopted the report on the application of the resolution which establishes the network for legislative cooperation between the ministries of justice of the European Union ([15729/11](#), <http://legicoop.eu>). The objective of the network is to promote better understanding of the laws of other member states, thus enhancing mutual trust and promoting the application of the principle of mutual recognition

The resolution was adopted on 28 November 2008 ² and requires the Council to review its application at the latest three years after its adoption.

¹ OJ L 63, 6.3.02.

² OJ C 326, 20.12.2008.

European judicial training - Conclusions

The Council adopted conclusions on the European judicial training ([15690/11](#)), on the basis of the recent Commission communication "A new dimension to European judicial training" ([14196/11](#)).

Judicial training on cross-border and European issues is crucial, as it enhances mutual confidence between member states, practitioners and citizens. The Eu has set itself the goal to enable half of the legal practitioners in the EU to participate in European judicial training activities by 2020.

ECONOMIC AND FINANCIAL AFFAIRS**Cross-border transport of euro cash***

The Council adopted a regulation aimed at facilitating the professional cross-border transport of euro cash by road between the member states of the euro zone, following a first-reading agreement with the European Parliament ([18/11](#) + [15366/11 ADD 1](#)).

The new regulation provides for conditions designed to guarantee the security of the transaction, the safety of the cash-in-transit (CIT) security staff involved and of the public and the free movement of euro cash. This includes the obligation for companies wishing to make cross-border transport of euro cash by road to apply for a cross-border cash-in-transit (CIT) licence from the granting authority in their member states of origin.

BUDGETS**Conciliation on EU budget for 2012**

The Council confirmed that it was not able to accept all amendments by the European Parliament concerning the 2012 EU budget. This means that on 1 November a three-week conciliation period will start, aimed at bridging the gap between the divergent European Parliament and Council positions.

For details see [16017/11](#).

European Data Protection Supervisor

The Council approved the European Parliament's amendment rejecting the modification of the establishment plan of the European Data Protection Supervisor in 2011, which had been proposed by the Commission in draft amending budget 5 for 2011.¹

FOREIGN AFFAIRS

Restrictive measures - Burma/Myanmar

The Council modified regulation 2008/194 concerning restrictive measures in respect of Burma/Myanmar. The changes implement political decisions taken at the Foreign Affairs Council on 12 April 2011. For information see press release [8741/11](#).

Restrictive measures - Republic of Guinea

The Council extended the restrictive measures against the Republic of Guinea until 27 October 2012.

International Criminal Tribunal for the former Yugoslavia

The Council repealed the restrictive measures (decisions 2010/603/CFSP and 2010/145/CFSP) intended to support the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY). Since the last ICTY indictee at large, Mr Goran Hadzic, was transferred to the custody of the ICTY on 22 July 2011, the Council repealed the measures.

Relations with Uzbekistan

The Council adopted the position of the European Union for the 10th meeting of the EU-Uzbekistan Cooperation Council, to be held in Brussels on 14 November 2011.

¹ The UK delegation voted against.

GENERAL AFFAIRS

Management of the European Anti-fraud Office

The Council adopted conclusions on the Court of Auditors' special report No 2/2011 "Follow-up of special report No 1/2005 concerning the management of the European Anti-fraud Office" (OLAF), set out in [15274/11](#). The conclusions welcome the measures taken by OLAF to improve the efficiency of its operations, but regret that their average duration remained too long. This is the result of limited progress in improving the planning and the supervision of investigations. The conclusions call on OLAF to step up efforts in order to improve its planning and optimise the use of its resources and tools.

COMMON SECURITY AND DEFENCE POLICY

EU crisis management exercise 2011

The Council approved a new date for the EU crisis management exercise 2011, which is now scheduled from 18 November to 6 December 2011.

TRADE POLICY

Control of dual-use items: new EU general export authorisations*

The Council adopted a regulation establishing new general export authorisations under the EU's regime for the control of exports of dual-use items ([38/11](#) and [15364/11 ADD1](#)).

The new regulation amends and supplements regulation 428/2009 setting up an EU regime for the control of exports, transfer, brokering and transit of dual-use items, which requires dual-use items to be controlled when they are exported from or transitted through the EU¹. These controls are designed in particular to prevent the proliferation of weapons of mass destruction. They meet the objectives set by the United Nations Security Council resolution 1540(2004).

¹ Official Journal L 134, 29.5.2009, p. 1.
Dual-use items are civil items which can be used for military purposes, including software and technology.

The new rules seek to achieve uniform and consistent application of controls throughout the Union in order to ensure a level playing field for EU exporters. They harmonise the scope of general export authorisations and the conditions of their use and to ensure efficiency of security controls.

The adoption of the regulation follows a first-reading agreement with the European Parliament, which voted on 27 September 2011 ([14777/11](#)).

Adjustments to trade agreements with Australia, New Zealand and Argentina

The Council adopted three decisions concluding agreements between the EU on the one hand and Australia, New Zealand and Argentina on the other relating to the modification of trade concessions in the schedules of Bulgaria and Romania following their accession to the European Union ([6603/11](#) + [6536/11](#) + [6609/11](#)).

Free trade agreement - EU and South Korea

The Council adopted the EU position to be taken within the trade committee set up by the free trade agreement between the European Union and South Korea on the rules of procedure of this committee and the establishment of a list of 15 individuals to serve as arbitrators ([14893/11](#)).

ENVIRONMENT

Shipments of waste

The Council decided not to oppose the adoption of a Commission regulation amending Council regulation 1013/2006¹ on shipments of waste to include certain unclassified wastes in Annex IIIB thereto ([14391/11](#)).

Regulation 1013/2006 establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination.

The Commission regulation is subject to the so called regulatory procedure with scrutiny. This means that now that the Council has given its consent, the Commission may adopt the regulation, unless the European Parliament objects.

¹ OJ L 190, 12.7.2006.