

Brussels, 20 September 2011

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Brussels, 22 and 23 September 2011

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday, 22 and Friday, 23 September 2011 under the chair of **Mr Jerzy MILLER**, Minister for the Interior, and **Mr Krzysztof KWIATKOWSKI**, Minister for Justice, in the Justus Lipsius building in Brussels.*

*On Thursday, home affairs ministers will revert to the question of **Schengen accession of Bulgaria and Romania** as promised at the June Council meeting. They will then discuss the state of play regarding the **Common European Asylum System (CEAS)**.*

*The Council will also review the state of play on PNR agreements with third countries: A decision on the signature of the **EU-Australia PNR agreement** will be adopted as an A-items, i.e. without discussion. On the ongoing negotiations with the US and Canada, the Commission will report on the state of play. Still on security issues, ministers will hold a first debate on the Commission communication "**A European terrorist finance tracking system: available options**". The Council will also take note of two Commission communications concerning a EU Agenda for **Integration of 3rd Country Nationals and Cooperation in the JHA area within the Eastern Partnership**.*

*On Friday, justice ministers will work towards a final compromise on the **European protection order** in criminal matters, taking into account recent negotiations with the European Parliament.*

*Ministers will also hear a presentation by the Commission of its most recent communication on **judicial training** and take note of a proposal for a regulation creating a **European Account Preservation Order** to facilitate cross-border debt recovery in civil and commercial matters. In the area of procedural rights, the Commission will present its proposal for a directive on the **right of access to a lawyer and on the right to communicate upon arrest**. The Council is also expected adopt conclusions on improving the efficiency of future **EU financial programmes** supporting judicial cooperation. Under any other business, ministers will be informed about certain aspects of the functioning of the **European Arrest Warrant** and about the **Warsaw Declaration** signed on the European Day of Remembrance for Victims of Totalitarian Regimes.*

*In the margins of the Council, the **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will examine the state of play regarding the **Visa Information System (VIS)** and the **Schengen Information System (SIS II)**. It will hold a first exchange of views on a Commission communication on **Schengen governance** and on a proposal amending EU rules on local border traffic (LBT) which aims at **facilitating border crossings in the Kaliningrad area**. Delegations will also look at current trends in the area of **irregular migration and human trafficking**.*

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*The presidency intends to organise the following **press conferences**: on 22 September around 13.00 and at the end of the proceedings, and on 23 September around 13.00..*

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

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

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

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

Schengen enlargement: Bulgaria and Romania

The Council will revert to the question of Schengen accession of Bulgaria and Romania in line with the June Council conclusions on the completion of the process of Schengen evaluation of the state of preparedness of Bulgaria and Romania to implement all provisions of the Schengen acquis.

These conclusions underline that the Schengen evaluation process for Bulgaria and Romania has been completed and that the Council will return to the issue as soon as possible, and no later than September 2011.

The Polish presidency will present a Council decision on the framework for the full application of the provisions of the Schengen acquis in Bulgaria and Romania.

Common European Asylum System (CEAS)

Taking into account the commitment to set up the CEAS by 2012, as confirmed in the European Council conclusions of June 2011 ([EUCO 23/11](#)), ministers are expected to give guidance on further negotiations on the basis of a presidency paper describing the current state of negotiations ([13930/11](#)).

Further development of the CEAS will be based on a number of legislative proposals: directives on the Reception Conditions and the Asylum Procedures; the Qualifications directive; the Dublin regulation; and the Eurodac regulation.

In addition to those legislative texts, the European Asylum Support Office (EASO) has been set up and started operations earlier this year.

PNR agreements with third countries

The Council will take note of a Commission presentation on the ongoing negotiations with the US and Canada on agreements on the transfer and use of passenger name records (PNR).

Before that the Council will adopt a decision on the signing of the EU-Australia PNR agreement as an A-item, i.e. without discussion ([10093/11](#)). The signing is due to take place before the end of September 2011. After that, the European Parliament will be asked to give its consent to the agreement, which is necessary before the Council can adopt its decision on the conclusion of the agreement.

The EU currently has agreements on the transfer and use of passenger name records (PNR) with Australia, Canada and the United States of America. In May 2010, the European Parliament decided to postpone its vote on the request for consent on these 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.

While negotiations on the PNR agreement with Australia have now been finalised, those on revised PNR agreements with the US and Canada are still ongoing.

European terrorist finance tracking system (EU TFTS)

The Council will hold an orientation debate on the Commission communication "A European terrorist finance tracking system: available options" presented in July 2011 ([12957/11](#)). The idea is that ministers indicate the direction that the Commission is expected to take regarding a possible legislative proposal on a European TFTS.

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

As a starting point, the communication states that over the past decades, most EU Member States have experienced increasing migration. A breakdown of the population by citizenship in 2010 showed that there were 32.4 million foreigners living in the EU-27 (6.5% of the total population). Of those, 12.3 million were EU-27 nationals living in another member state (2.5% of the total population) and 20.1 million were citizens from a non-EU-27 country (4% of the total population).

The composition of the EU's population is changing, and European societies are faced with increasing diversity. This leads to new conditions for social cohesion and government response to public concerns.

The accompanying staff working paper underlines the most pressing challenges to integration, including the prevailing low employment levels of migrants, especially for migrant women; rising unemployment and high levels of 'over-qualification'; increasing risks of social exclusion; gaps in educational achievement; public concerns with the lack of integration of migrants.

Cooperation in the area of JHA within the Eastern Partnership

The Council will take note of a presentation by the Commission on its communication on cooperation in the area of justice and home affairs within the Eastern Partnership.

The communication fits in a broader dialogue with Eastern partner countries that will culminate in the Eastern Partnership Summit scheduled for 30 September in Warsaw.

European protection order

Improving the protection granted to victims of crime, or possible victims of crime, who move between EU member states through the mutual recognition of protection measures taken in criminal matters. That is the goal of the proposed European protection order which the Council will debate (13909/11).

Ministers are called to work out a policy compromise, on the basis of negotiations with the European Parliament that will begin on 20 September. The goal is to reach an agreement with Parliament ahead of the adoption of the Council's first reading position which would allow for a rapid conclusion of the legislative procedure ("early second reading").

The focus of the member state initiative is on crimes which may endanger the victims' life, physical, psychological and sexual integrity or their personal liberty. The ultimate goal is to avoid new acts of crime and to mitigate the consequences of previous acts of crime.

Once adopted, the directive will allow a competent authority in one member state to issue a European protection order on the basis of which a competent authority in another member state takes measures with a view to continuing the protection of that person. These measures would include obligations or prohibitions imposed on the person causing danger, such as:

- an obligation not to enter certain places or defined areas where the protected person resides or which he/she visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- a prohibition or regulation on approaching the protected person closer than a prescribed distance.

In the event of a breach of one or more of the measures taken by the member state executing the European protection order, the competent authority of that state would have the powers to impose criminal sanctions and take any other criminal or non-criminal measures.

Once the European protection order in criminal matters will have been adopted, it will need to be complemented by a separate legislation covering civil matters. To that end, the Commission proposed in May 2011 a regulation on mutual recognition of protection measures in civil matters ([10613/11](#)). The combination of the two instruments (the directive and the regulation) should in the end cover the broadest possible number of protection measures for victims issued in the member states, given the various national regimes in this field.

This aim is coherent with the commitment taken by the Council in its resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings ([11108/11](#)). On this, see also the [Council press release](#) from the June JHA Council (p.23).

European Account Preservation Order

The Council will take note of a presentation by the Commission of its proposal for a regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters, presented in July 2011 ([13260/11](#)).

The proposal aims at:

- enabling creditors to obtain cross-border account preservation orders on the basis of the same conditions irrespective of the country where the competent court is located;
- allowing creditors to obtain information on the whereabouts of their debtors' bank accounts; and
- reducing costs and delays for creditors seeking to obtain and enforce an account preservation order in cross-border situations.

The Stockholm Programme ([5731/10](#)) invited the Commission to bring forward appropriate proposals for improving the efficiency of enforcement of judgments in the EU regarding bank accounts and debtors' assets.

Judicial Training

The Council will take note of the Commission communication "A new dimension to European judicial training", presented in September 2011 ([14196/11](#)).

The communication underlines that the creation of a European judicial culture that fully respects subsidiarity and judicial independence is central to the efficient functioning of a European judicial area. Judicial training is a crucial element of this process as it enhances mutual confidence between member states, practitioners and citizens.

The objective of the European Commission is to enable half of the legal practitioners in the EU to participate in European judicial training activities by 2020 through the use of all available resources at local, national and European level, in line with the objectives of the Stockholm Programme ([5731/10](#)).

Member states are the primary responsible for judicial training. The Lisbon Treaty has provided the Union with a clear legal base to support the training of the judiciary and of judicial staff, and the European Council invited the European Commission in the Stockholm Programme to propose an Action Plan for raising substantially the level of European training schemes.

Right of access to a lawyer

Suspects and accused persons in criminal proceedings should have the right of access to a lawyer and the right to communicate upon arrest with a third person, such as a relative, employer or consular authority. That is the goal of a legislative proposal that the Commission adopted in July 2011 and that it will present now to the Council ([11497/11](#)).

The Commission proposal provides, among other things, for the following rights:

- access to a lawyer from the first stage of police questioning and throughout criminal proceedings;
- adequate, confidential meetings with the lawyer for the suspect to effectively exercise their defence rights;
- an active role by the lawyer during interrogations and his ability to check detention conditions;
- making sure that the suspect is able to communicate with at least one family member or employer informing them of the arrest and custody;
- allowing suspects abroad to contact their country's embassy or consulate and receive visits;
- offering people subject to a European Arrest Warrant the possibility of legal advice in both the country where the arrest is carried out and the one where it was issued.

The proposed new rules are part of a package of proposals that aim to set common minimum standards on the rights of suspects and accused persons in criminal proceedings. It comprises six main areas:

- translation and interpretation; a directive was adopted in October 2010 ([Directive 2010/64/EU](#));
- information on rights and information about charges (as presented here);
- legal advice and legal aid (as presented here);
- 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.

Mixed Committee

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

Schengen governance

The Commission will present its communication concerning Schengen governance (xxxx/11) as well as the two legislative proposals accompanying it. These legislative proposals concern:

- a) an amended proposal for a regulation on a revised Schengen evaluation mechanism (xxxx/11);
- b) an amendment to the Schengen Borders Code as regards the rules for the temporary reintroduction of border controls at internal borders in exceptional circumstances (xxxx/11).

This package is the Commission response to the European Council conclusions of 23-24 June 2011 ([EUCO 23/11](#)) which called for a mechanism to be 'introduced in order to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons.' The Commission was invited to submit a proposal to this end in September 2011.

a) Schengen evaluation mechanism

The current Schengen evaluation mechanism to verify the application of the Schengen acquis relies on an inter-governmental system of peer review where the Commission participates as observer.

The new proposal provides for a Union-led approach with on-site visits carried out by Commission-led teams (as opposed to the current member state-led teams). These teams would consist of experts from member states and Frontex with Europol, Eurojust or other relevant European bodies being invited as observers in visits concerning areas covered by their mandate. These visits can be announced or unannounced.

The proposal additionally provides for the possibility to verify the absence of controls at internal borders, in which case the team would consist of Commission representatives only.

As it is currently the case, the report following each visit would identify shortcomings with recommendations for remedial action and deadlines for their implementation. The evaluated member state should comply with these recommendations, which in turn would be checked by the Commission

In case of serious deficiencies in external border control or return procedures the proposal foresees that the Commission can urge member states to take specific measures or even (temporarily) close a specific border crossing point. In case serious deficiencies persist, the new rules under the revised Schengen Borders Code could be invoked (i.e. temporary reintroduction of border controls at internal borders in exceptional circumstances).

b) Schengen Borders Code

The Schengen Borders Code established by Regulation (EC) No 562/2006 lays down, on the one hand, the rules on border control at the external borders and, on the other hand, provides for the abolition of border control at internal borders and the possibility for its reintroduction in limited cases. The new proposal amends this last part of the Schengen Borders Code, i.e. the provisions on the reintroduction of controls at internal borders.

Under the current rules, a member state can unilaterally decide to temporarily re-introduce border controls at their internal borders in exceptional circumstances, where 'there is a serious threat to public policy or internal security'.² If the threats motivating the re-introduction are foreseeable (e.g. major sporting events, political demonstrations, or high-profile political meetings), the member state in question must notify other member states and the Commission 'as soon as possible' with all relevant information about the scope and duration of the re-introduction, and the reasons for doing so. The Commission can issue an opinion on the notification, which can result in consultations between member states and the Commission. In urgent cases, the re-introduction may be effected immediately.

² According to the Commission, this has happened 26 times since the Schengen Borders Code's entry into force in October 2006.

The Commission proposal maintains the notion of 'serious threat to public policy or internal security' as the only grounds for the reintroduction of internal border controls. It changes however the decision procedures and opens explicitly the possibility to reintroduce internal border controls for two types of situations - as a last resort and until other measures have been taken to stabilise the situation: where a section of the external border comes under unexpected and heavy pressure and where the findings under the Schengen evaluation mechanism point at a member state's persistent failure to adequately protect its section of the external border.

As a general rule, the decision would be taken at the Union level through a Commission implementing act involving the member states accordingly. The European Parliament would be informed. The decision would determine the scope and duration of the reintroduction of controls, and would be for renewable periods of up to 30 days, with a maximum duration of six months. Exceptionally, this six month limit would not apply to situations where the reintroduction of internal border controls results from an adverse finding under the Schengen evaluation mechanism on account of a member state's persistent failure to adequately protect its section of the external border.

In urgent situations (e.g. terrorist attack), however, member states could still take unilateral action to reintroduce internal border controls, but only for a limited period of no more than five days, any extension of which would need to be decided under the new EU procedure for implementing acts.

EU visa free regime: Local border traffic in the Kaliningrad area

The committee will hold a first exchange of views on a proposal to amend the EU rules on local border traffic (LBT) ([13344/11](#)). The proposal aims at facilitating border crossings in the Kaliningrad area through the inclusion of the Kaliningrad area and certain 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 are no 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.

SIS II

The committee will discuss the state-of-play of the implementation of the Schengen Information System II (SIS II). 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.

VIS

The committee will also look at the progress made regarding the preparations of the Visa Information System (VIS). For the VIS to go live, the central VIS, managed by the Commission, the national VIS of each individual member state as well as preparations at the external border crossing points and in the consulates of the first roll-out region (North Africa) must be ready. The whole system should start operating by the middle of October 2011.

Irregular migration and human trafficking

At the request of Austria and Hungary, the committee will look at current trends in the area of irregular migration and human trafficking.

AOB

Under any other business, ministers will be informed about certain aspects of the functioning of the European Arrest Warrant.

The Council will also be informed about the Warsaw Declaration signed on the occasion of the European Day of Remembrance for Victims of Totalitarian Regimes on 23 August 2011. The Council adopted in June conclusions on the subject ([11268/11](#)).
