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Justice and Home Affairs

Brussels, 22-23 September 2011

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Main results of the Council

*In the home affairs part, the Council reverted to the question of **Schengen accession of Bulgaria and Romania**, but was not able to take a decision at this stage.*

*Ministers also reviewed the state of play on **PNR agreements with third countries**, namely the US and Canada, and adopted a decision on the signature of the **EU-Australia PNR agreement** as an A-item, i.e. without discussion. The Council then discussed the state of play regarding the **Common European Asylum System (CEAS)**.*

*Over lunch, ministers discussed the issue of **right wing extremism** following the recent terrorist attack in Norway.*

*In the justice part, ministers reached political agreement on a final compromise text with the Eurooepan Parliament regarding the **European protection order** in criminal matters. This allows the directive to be adopted most likely before the end of the year.*

*Ministers heard a presentation by the Commission of its most recent communication on **judicial training** and took 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 Council held a first exchange of views on a Commission proposal for a directive on the **right of access to a lawyer and on the right to communicate upon arrest**.*

*In the margins of the Council, the **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland) examined the state of play regarding the **Visa Information System (VIS)** and the **Schengen Information System (SIS II)**. It held 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 also looked at current trends in the area of **irregular migration and human trafficking**.*

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- 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.

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Ms Viviane REDING

Member
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ITEMS DEBATED

Schengen enlargement: Bulgaria and Romania

The Polish presidency presented a draft Council decision on the framework for the full application of the provisions of the Schengen acquis in Bulgaria and Romania. This text did not, however, receive the unanimous support necessary and was therefore not put to a vote. The presidency intends to continue its efforts to find a basis for agreement.

The Council reverted to the question of the 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 underlined that the Schengen evaluation process for Bulgaria and Romania has been completed and that the Council would return to the issue as soon as possible, and no later than September 2011.

PNR agreements with third countries

The Council took 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 adopted 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, 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.

Common European Asylum System (CEAS)

The Council discussed the state of play of negotiations on the asylum package on the basis of two presidency papers ([13930/11](#) and [13930/1/11](#)) 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](#)).

Particular attention was given to possible ways to move forward in negotiations on the Dublin regulation based on the concept of an early warning and preparedness process, in the form of an 'asylum evaluation mechanism'. Such an evaluation mechanism could be used as a tool for the prevention of asylum crises and could be set up in parallel to the 'emergency mechanism' so far included in the Commission proposal and rejected by a majority of member states.

The evaluation mechanism would pursue two objectives: Firstly, to contribute to the development of mutual trust among member states with respect to asylum policy, and secondly, to function as a mechanism for early warning and preparedness for crises, thus facilitating decisions on the application of emergency measures in such situations.

The 'emergency mechanism', strongly advocated by the Commission, would allow for the temporary suspension of transfers of asylum seekers to a particular member state which would find itself in a situation of strong and disproportionate pressure on its asylum system.

The discussion showed that the new idea for an evaluation mechanism was generally welcomed. A majority of member states, continued to refuse the idea of an emergency mechanism, however, - even if accompanied by an asylum evaluation mechanism.

The development of the CEAS is based on a number of legislative proposals: the 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) is a practical instrument of EU cooperation in the asylum area. It started operations earlier this year.

European Protection Order

The Council confirmed the compromise text on the European Protection Order ([14471/11](#)) which resulted from negotiations with the European Parliament on 20 September. The Commission also endorsed the text, stating its satisfaction with the compromise achieved.

The goal of the European Protection Order is to improve the protection granted to victims of crime, or possible victims of crime, who move between EU member states.

For the text to be adopted, the European Parliament will now need to endorse the text at committee level, before the Council and subsequently the Parliament plenary will vote on the text, thus allowing for a rapid conclusion of the legislative procedure ("early second reading agreement"). The Polish presidency hopes that this process can be concluded this year. The directive which was initially proposed by twelve member states in 2009 would then need to be transposed by all member states into national law within three years.

The focus of the new rules 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.

The new rules will allow all those EU member state where these protection measures are a matter of criminal law ('issuing state') to issue a European Protection Order to any other EU member state ('executing state'), no matter whether protection measures in that country are taking under criminal, civil or administrative procedures. The executing state will then have to take measures with a view to continuing the protection of that person.

These measures will 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 executing state, the competent authority of that state would have the powers to impose criminal sanctions and take any other criminal or non-criminal measures.

Those cases where protection measures are a matter of civil law in the issuing state will be dealt with in a separate legislative act, a regulation proposed by the European Commission in May 2011 ([10613/11](#)). The two instruments (the agreed directive and the proposed regulation) will in the end complement each other and should cover the broadest possible number of protection measures for victims issued throughout the EU, given the various national regimes in this field.

Right of access to a lawyer

The Commission presented its 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 ([11497/11](#)). The Commission adopted this draft directive in July 2011.

Subsequently, ministers discussed some aspects of the proposal, notably the question of scope of the draft directive.

A number of member states - led by five countries that also issued a note ahead of the meeting ([14495/11](#)) - underlined that, in their opinion, the Commission proposal was too ambitious, and that it went unnecessarily beyond the European Convention on Human Rights (ECHR) and its Protocols, as interpreted in the case law of the European Court of Human Rights (ECtHR). According to those member states, the ambitious text could entail the risk of prejudicing criminal proceedings by complicating them and slowing them down.

The Council instructed its preparatory bodies to continue discussions on the proposal.

During the debate, the UK and Ireland also informed that they will, at this stage of the debate, not use their "opt-in" (in application of Article 3 of Protocol 21 to the Lisbon Treaty), but that they will constructively participate in the work on the draft directive with a view to being able to accept the measure once it has been adopted (in application of Article 4 of the said Protocol).

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.

European Account Preservation Order

After a presentation by the Commission, the Council welcomed the 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 welcomed 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](#)).

AOB

Under any other business, ministers discussed on the request of the Lithuanian delegation certain aspects of the functioning of the European Arrest Warrant.

The Council was also 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 conclusions on the subject in June ([11268/11](#)).

The Council finally took note of an information given by the Commission on the fact that Russia has decided to accede to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Mixed Committee

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

Schengen governance

The committee had a first exchange of views on the Schengen governance package. The Council preparatory bodies were instructed to start the technical work on the different proposals as soon as possible.

The package as presented by the Commission consists of a communication concerning Schengen governance ([14357/11](#)) as well as the two legislative proposals accompanying it, which are:

- a) an amended proposal for a regulation on a revised Schengen evaluation mechanism ([14358/11](#));
- 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 ([14359/11](#)).

The proposed 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.

For more information see the [background note](#) (p.7-9).

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

The committee held 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 presidency underlined that the proposed amendment was a specific solution responding to a unique situation which did not constitute a precedent.

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 were not barriers to trade, social and cultural interchange or regional cooperation. It enables derogations, 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 discussed the state- of- play of the implementation of the Schengen Information System II (SIS II), after a presentation given 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.

VIS

The committee also looked at the progress made regarding the preparations of the Visa Information System (VIS). The criteria for the VIS to go live appear to have been met: 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) are ready. The whole system should start operating by 11 October 2011.

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

Irregular migration and human trafficking

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

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

List of travel documents

The Council adopted a decision on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list ([PE-CONS 42/11](#)).

The purpose of the list is on the one hand to allow border control authorities to verify whether a given travel document (such as a national passport, a refugee or stateless person's travel document, a travel document issued by international organisations, or a *laissez-passer*) is recognised for the purpose of crossing the external border and on the other hand, it allows consular staff to verify whether member states recognise a given travel document for the purpose of affixing a visa sticker.

The list of travel documents will be drawn up by the Commission with the assistance of member states, on the basis of information gathered within local Schengen cooperation.

Agreement on passenger name records - EU-Australia

The Council adopted a decision on the signing of the agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data ([10093/11](#)), which will replace the one applied on a provisional basis since 2008. The European Parliament will be required to give its consent before the Council can adopt the decision on the conclusion of the agreement.

PNR is a record of each passenger's travel requirements which contains all information necessary to enable reservations to be processed and controlled by air carriers (including name, dates of travel and travel itinerary, ticket information, address and phone numbers, means of payment used, credit card number, travel agent, seat number and baggage information). The EU currently has agreements on the transfer and use of passenger name records (PNR) with Australia, Canada and the United States of America. While negotiations with Australia have now been finalised, those on revised PNR agreements with the US and Canada are still ongoing.

For further information, see this press release [14519/11](#).

Financial support for judicial cooperation

The Council adopted conclusions on improving the efficiency of future EU financial programmes supporting judicial cooperation ([13971/11](#)), on the basis of the interim evaluation of the 'Criminal Justice' ([11127/11](#)) and 'Civil Justice' ([11821/11](#)) programmes, which are part of the General Programme on Fundamental Rights and Justice (2007-2013).

These two programmes are aimed at establishing a European area of justice based on the principle of mutual recognition of court rulings and cooperation between judicial authorities in civil and criminal matters. They are also intended to facilitate access to the courts and hence to facilitate the lives of European citizens, and to involve civil society in the debate on justice.

Europol's work programme for 2012

The Council endorsed Europol's work programme for 2012 ([13516/11](#)) and will forward it to the European Parliament for information.

This report is prepared each year by Europol's Management Board, as required by the Council decision establishing the European Police Office (OJ L 121, 15.5.2009), taking into account member states' operational requirements and budgetary and staffing implications for Europol.

Report on cooperation in internal security

The Council transmitted to the European Parliament and national parliaments the report on the proceedings of the Standing Committee on operational cooperation on internal security (COSI) for the period January 2010 - June 2011, as provided for in the Council decision establishing the COSI (OJ L 52, 3.3.2010). The priority tasks of the Standing Committee are developing, monitoring and implementing the EU's internal security strategy ([7120/10](#)).

Implementation of the Strategy for the External Dimension of JHA

The Council took note of the 4th report on the implementation of the "Strategy for the External Dimension of JHA: Global Freedom, Security and Justice" (January 2010 – June 2011).

The Strategy (14366/3/05), adopted in 2005, requires that the Council Secretariat systematically monitor the progress of Justice and Home Affairs external activity and report to the JHA Council and the General Affairs Council every 18 months.

APPOINTMENTS

Committee of the Regions

The Council appointed Dr Eva QUANTE-BRANDT, Ms Margit CONRAD and Ms Barbara DUDEN (Germany) as members of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015 ([14089/11](#)).

EMPLOYMENT

EU guidelines for the G20 Labour and Employment Ministers meeting

The Council endorsed the EU guidelines on the policy objectives for the G20 Labour and Employment Ministers meeting which will take place on 26-27 September 2011 in Paris.

TRANSPARENCY

Public access to documents

The Council approved :

- the reply to confirmatory application No 20/c/02/11 ([12955/11](#));
- the reply to confirmatory application made by Mr Frank Schmidt-Hullmann (No 21/c/01/11), the Danish, Estonian, Finnish and Swedish delegations voting against ([13725/11](#));
- the reply to confirmatory application No 22/c/01/11, the Danish, Estonian, Finnish and Swedish delegations voting against ([13728/11](#) + [COR 1](#)); and
- the reply to confirmatory application No 23/c/01/11 ([13782/11](#)).

WRITTEN PROCEDURE

Restrictive mesures - Côte d'Ivoire

In view of the situation in Côte d'Ivoire, the Council lifted the asset freeze and the travel ban on 13 additional individuals by written procedure on 22 September.