



Brussels, 5 November 2010

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Brussels, 8 and 9 November 2010

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Monday, 8 and Tuesday, 9 November 2010 under the chair of **Mr Melchior WATHELET**, State Secretary in charge of Migration and Asylum Policy, **Mrs Annemie TURTELBOOM**, Minister for Home Affairs and **Mr Stefaan DE CLERCK**, Minister for Justice, in the Justus Lipsius building in Brussels.*

*In the asylum and migration part of the Council on Monday morning, the Council will take a decision on **visa liberalisation for Albania and Bosnia and Herzegovina**. It will then look at the state-of-play of the **Common European Asylum System (CEAS)**.*

*On Monday afternoon, interior ministers will discuss the progress made in the implementation of those aspects of the **Prüm decisions** which concern the **automated data exchange of DNA, fingerprints and vehicle registration data**. The Council is also expected to adopt conclusions on the creation and implementation of a **EU policy cycle for organised and serious international crime**.*

*Under any other business, ministers will address the issue of migration flows and border control at the **Eastern and South-Eastern borders** of the EU (creation of mobility partnerships). The Commission will brief the Council on its proposal for a harmonised approach to **restricting the marketing and use of explosives precursors**.*

*Preceding the Council session on Monday (starting at +/- 10.00), the **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will examine the state of play concerning a number of dossiers:*

- *the development of the **Schengen Information System II (SIS II)**,*
- *the revised rules for the external borders agency **FRONTEX**, and*
- *the revised rules for the **immigration liaison officers network**.*

Delegations will also discuss two visa related issues:

- ***visa liberalisation for Albania and Bosnia and Herzegovina, and***
- *the Commission's **sixth visa reciprocity report**.*

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

On Tuesday, justice ministers will hold debates on three directives regarding:

- the establishment of a **European Investigation Order**,*
- the **right to information in criminal proceedings** ("Letter of rights"), and*
- **measures to combat new forms of cyber crime**, in particular large-scale cyber attacks (after a presentation by the Commission).*

*An information point will concern the annual report and mid-term review of the **EU Drugs Action Plan (2009-2012)**.*

*Important **A-items** to be adopted by the Council without discussion include conclusions on **preparedness and response in the event of a CBRN attack**.*

*Over lunch on Monday, ministers will discuss common **security measures for air freight** as well as the subject of **solidarity with EU countries under particular migratory pressure**. On Tuesday, the lunch discussion will focus on **the judicial cooperation in border regions**.*

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*The presidency intends to organise three **press conferences**: two on 8 November (around 13.00 and at the end of the proceedings), one on 9 November (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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Visa liberalisation for Albania and Bosnia and Herzegovina

The Council is expected to take a decision on visa liberalisation for citizens of Albania and Bosnia and Herzegovina.

To grant the citizens of these two countries visa free travel to and throughout the Schengen area the Council and the European Parliament need to amend regulation No 539/2001. The European Commission tabled its proposal on 27 May 2010 ([10364/10](#)) and the European Parliament gave its green light to the amendments on 7 October.

It is important to highlight that the visa waiver is applied to holders of biometric passports only.

The visa liberalisation dialogue with the countries of the Western Balkans was launched in early 2008. It was agreed that the countries concerned needed to meet certain benchmarks in order to profit from visa free access to the Schengen area. The main areas where benchmarks were set are border controls, passport security, fight against organised crime and corruption as well as external relations and fundamental rights.

On 30 November 2009, the Council decided to grant visa free access to the Schengen area for citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia ([15521/09](#)). The visa waiver for citizens of these three countries is applied to holders of biometric passports since 19 December 2009.

Regulation 539/2001 establishes, among other things, two lists: one concerning third countries whose citizens are required to have a visa when travelling to the EU and Schengen associated countries (negative list) and one concerning third countries whose citizens are exempted from the visa requirement (positive list). Via amendments to the regulation, third countries from the negative list can be moved to the positive list and vice versa.

Common European Asylum System (CEAS)

Ministers will continue work on the state-of-play regarding the establishment of a Common European Asylum System (CEAS) on the basis of a discussion paper ([15561/10](#)). The CEAS includes a package of six legislative proposals which EU member states have committed to adopt by 2012.

The main focus of the debate will be the developments since the October Council, in particular as regards the four proposals that have been identified as priority instruments on the legislative side of the CEAS: the Directives on Qualification and on Long Term Residents and the Regulations on Dublin and Eurodac. Furthermore, the Presidency will address the establishment of the European Asylum Support Office (EASO), which will become an essential tool as regards practical cooperation and solidarity.

At the informal meeting of the Justice and Home Affairs Ministers on 15 and 16 July in Brussels, the Belgian Presidency presented a strategy which gives priority to the above mentioned four proposals where substantial progress in the negotiations seems possible in the short term. At the same time, the strategy underlines that coherence with the two other asylum proposals must be ensured, namely the Reception Conditions and Procedures Directives. Although those two files prove to be more complex and the same progress in the short term might not be possible, the Presidency will continue discussions also on these proposals, in view of the finalisation of CEAS by 2012.

Regarding the two other essential elements of the CEAS – practical cooperation and solidarity – the Belgian Presidency organised a ministerial conference on 13 and 14 September 2010, which focused on asylum seekers with special needs and decision making (two of the more contentious issues in the Reception and Procedures Directives) as well as intra-European solidarity and responsibility sharing. The conference brought together all relevant European stakeholders in the field of the asylum process for a constructive dialogue on the basis of a “bottom up” approach and building on existing good practices at national and EU level.

The conference also provided useful input for the future work of the European Asylum Support Office (EASO), which will soon become operational. The first Management Board meeting will take place in Malta on 25 and 26 November. It is expected that, on that occasion, the first Executive Director will be selected, regulations on the internal functioning of EASO will be discussed and a draft working programme will be presented.

Based on the discussions that took place at the ministerial Conference, the presidency concludes that priority objectives for EASO may include:

- the development of a harmonised training curriculum for asylum professionals;
- the collection of information about the asylum seekers' main countries of origin and the setting up of a dedicated web portal;
- the reinforcement of capacities of those member states that are under particular pressure including the setting up of an early warning system; and
- the contribution to the establishment of the CEAS by providing analysis on the basis of precise and comparable data.

Implementation of Prüm decisions

The Council will discuss the state of play on the implementation of the "Prüm Decisions" (Council Decisions [2008/615/JHA](#) and [2008/616/JHA](#)). The two decisions provide member states' law enforcement agencies with additional tools in fighting serious crime and terrorism, in particular by enhancing automated data exchange regarding DNA, fingerprints and vehicle registration data (VRD).

The goal of the discussion is to find solutions to a number of problems in the implementation of the decision having in mind that the deadline for compliance with the provisions on automated data exchange for the three data types is 26 August 2011. It seems that several member states will not be able to meet this deadline. The problems identified include IT and financial problems, logistic, legal and political decision making problems as well as shortage in personnel.

EU policy cycle for organised and serious international crime

The Council is expected to discuss and approve conclusions on the creation and implementation of a EU policy cycle for organised and serious international crime.

The idea is to agree on a reduced policy cycle for the years 2011 to 2013 which specifies the actions and initiatives to be carried out over this time span as well as the leading actors, other actors involved and the timing. This first policy cycle should serve as a basis for a fully fledged policy cycle for the years 2013 to 2017.

AOB

Under any other business, ministers will address the issue of migration flows and border control at the Eastern and South-Eastern borders of the EU and the possible creation of mobility partnerships.

The Commission will also brief the Council on its proposal for a harmonised approach to restricting the marketing and use of explosives precursors ([14376/10](#)). The proposed regulation addresses the problem of the misuse of certain chemicals, which are widely available to the general public on the market, as precursors to home-made explosives. Home-made explosives, in turn, are the tool most preferred by terrorists and other criminals to perpetrate attacks. The main aim of the measures proposed is to reduce this risk by preventing access to selected highly concentrated chemicals by the members of the general public. These measures are intended to constitute a tangible deliverable under the 'prevent' strand of the [EU Counter-Terrorism Strategy](#) adopted by the JHA Council on 1 December 2005.

Mixed Committee:

SIS II, FRONTEX, immigration liaison officers network, visa liberalisation and visa reciprocity

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

SIS II

On SIS II, the committee will take stock of the progress made in light of the global schedule and comprehensive budgetary estimate presented by the Commission at the October Council meeting. The global schedule provides for entry into operation of the SIS II by the first quarter of 2013.

In October, the Council also adopted [conclusions](#) on SIS II which, among other things:

- welcome the possibility for member states to use the European External Borders Fund (EBF) to support the completion of the national system developments;
- call upon the Commission to keep the Council and the European Parliament informed on a regular basis on the implementation of the global schedule; and
- recall that the contingency plan based on the further development of C.SIS 1+ needs to be retained until the successful implementation of the SIS II system has been confirmed.

SIS II was launched to replace the existing Schengen Information System (SIS). It is supposed to facilitate the exchange of information on persons and objects between national authorities which are responsible, inter alia, for border controls and other customs and police checks.

FRONTEX regulation

The committee will also discuss the state-of-play of negotiations concerning revised rules for the external borders agency FRONTEX. Some of the issues outstanding include the development of a common integrated risk analysis model, the processing of personal data and the creation of a European system of border guards.

On 24 February 2010 the Commission submitted a proposal to amend Council Regulation (EC) No 2007/2004 ([6898/10](#)). Council preparatory bodies have discussed the proposal at several meetings. Negotiations with the European Parliament have not yet started.

Immigration liaison officers network

The committee will hear a progress report on the negotiations concerning revised rules of the immigration liaison officers (ILO) network ([11966/09](#)).

Amendments to regulation (EC) No 377/2004 aim mainly at providing a legal basis for cooperation between Frontex and the ILO networks, promote the use of an internal IT tool for regular exchange of information and practical experience, highlight the possibility of using the External Borders Fund for the creation and smooth operation of ILO networks, and rationalise the reporting system related to the activities of the ILO network.

Visa liberalisation for Albania and Bosnia and Herzegovina

The committee will discuss the issue of visa liberalisation for citizens of Albania and Bosnia and Herzegovina. The Council is expected to take a decision after the mixed committee meeting. For more information see separate note above.

Visa reciprocity: 6th Commission report

After a presentation by the Commission, ministers will hold an exchange of views regarding the sixth report on certain third countries' maintenance of visa requirements in breach of the principle of reciprocity as set out in regulation 539/2001.

The fifth report was tabled by the Commission in October 2009 and discussed by the Council on 23 October 2010 (see press release [14936/09](#)).

European Investigation Order

The Council will hold a first orientation debate regarding the creation of a European Investigation Order (EIO) in criminal matters. The EIO is an initiative which was presented in May 2010 by seven member states¹ ([9288/10](#)).

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

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

Ministers will focus their debate on the following key issues which touch upon the core of mutual:

- how to limit as much as possible grounds for refusal: One possibility would be to differentiate the grounds for refusal according to the intrusiveness of an investigative measure. This would lead to different categories of investigative measure. A wide flexibility would be maintained for the most intrusive measures such as interception of telecommunications;
- how to safeguard the proportionality of a request without hampering cooperation: Should it be the issuing state or the executing state which assesses the proportionality of a request?;
- how to deal with the costs for the executing state, including the impact on its resources: One possibility is to consider the sharing of costs between the issuing and executing states in well-defined circumstances.

This orientation debate will enable the Council working party to move forward on this instrument which is one of the most complex instruments which the Council had to discuss in the field of criminal law but probably also one of the most important.

The UK is participating in this initiative. Ireland has decided not to use its opt-in option provided for in Protocol 21 of the Lisbon Treaty. Denmark is not taking part.

In the Stockholm Programme ([5731/10](#)), the European Council indicated that the existing legal instruments to obtain evidence in another member state in criminal matters constitute a fragmentary regime and that a new approach is needed, based on the principle of mutual recognition, but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including the European evidence warrant, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal.

Right to information in criminal proceedings

The Council will discuss the state of play for EU-wide minimum standards as regards the right to information in criminal proceedings.

Issues under discussion include the exact way in which the suspected is informed about his rights, the distinction among different phases of criminal proceedings which would lead to a varying extent of the rights in each of these phases, the right to access the case file and the question of costs.

The objective of the Presidency is to reach a general approach on this file at the Council in December so as to be able to start negotiations with the Parliament as soon as possible in the new year. The Presidency is confident that a solution will be found to ensure a good level of protection of defence rights and to take into account the various legal systems, especially the differences between civil law and common law countries.

Ireland and the United Kingdom will participate in the directive by using the opt-in option provided for in Protocol 21 of the Lisbon Treaty. Denmark is not taking part in this directive.

For more information on the Commission proposal presented at the October Council, see the [October background paper](#).

Combatting new forms of cyber crime

The Commission will present its recent proposal for a directive on measures to combat new forms of cyber crime, in particular large-scale cyber attacks.

EMCDDA annual report 2009 and EU Drugs Action Plan (2009-12)

The Commission and the director of the European Monitoring Center for Drugs and Drug Adiction (EMCDDA) will inform ministers about the EMCDDA annual report and Commission communication on the mid-term review of the EU Drugs Action Plan (2009-2012).

The EMCDDA annual report ([11280/10](#)) describes the operations carried out and the results achieved in relation to the objectives set in the 2009 work programme, the use made of the resources provided for that purpose in the 2009 budget and the management and internal control systems.

The Commission communication takes stock of the achievements and the progress made since the EU Drugs Action Plan (2009-2012) was adopted in November 2008 ([16116/08](#)).
