

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Brussels, 24 and 25 February 2011

*The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday, 24 and Friday, 25 February 2011 under the chair of **Mr Sándor PINTÉR**, Minister for the Interior, and **Mr Tibor NAVRACSICS**, Minister for Justice, in the Justus Lipsius building in Brussels.*

*On Thursday, home affairs ministers will discuss **the major influx of migrants from Northern Africa**, particularly from Tunisia, to Southern EU member states, especially Italy. They will also look at the state of play on three other important internal border and migration issues:*

- *the implementation of **Greece's National Action Plan on Migration Management and Asylum Reform**;*
- *the **EU-Turkey readmission agreement**. In this context, the Communication will present an evaluation and **future strategy for EU readmission agreements**;*
- *the process of **accession of Bulgaria and Romania to the Schengen area**.*

*Ministers will then have exchange of views with the **High Commissioner for Refugees (UNHCR)** as well as with the Executive Director of the recently established **European Asylum Support Office (EASO)**.*

*Concerning visa policy, the Commission will present to ministers its plans for a **post-visa liberalisation monitoring mechanism for the Western Balkan region**.*

*Besides the adoption of conclusions on the Commission's Communication on the **EU Internal Security Strategy in Action**, there are three important security and terrorism related issues:*

- *the **review of the EU-US TFTP agreement** after the first six months of implementation (after presentations by the Commission and by Europol);*
- *the recent proposal for an **EU PNR-system** (after a presentation by the Commission);*
- *the recent proposal on **attacks against information systems**.*

On Friday, justice ministers will discuss in a public session the state-of-play of two legislative initiatives concerning:

- *the **right to information in criminal proceedings**;*
- *the **recognition and enforcement of judgements in civil and commercial matters** (Brussels I).*

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

The Council is also expected to adopt **conclusions** on:

- the role of the Council in ensuring the **effective implementation of the Charter of Fundamental Rights** of the European Union;
- the Commission Communication "**A comprehensive approach on personal data protection in the EU**;
- the migration of the website of the European Judicial Network in civil and commercial matters into the **European e-Justice Portal**.

The Council is also expected to adopt an **important decisions without discussion** (A-item): It concerns the conclusion of two **EU-Brazil visa waiver agreements** (for holders of ordinary passports and for holders of diplomatic, service or official passports).

Preceding the Council session on Thursday, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will examine the state of play regarding the process of **accession of Bulgaria and Romania to the Schengen area**, the development of the **Visa Information System (VIS)** and of the **Schengen Information System II (SIS II)**. FRONTEX will present to the committee its **work programme for 2011**.

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The presidency intends to organise three **press conferences**: two on 24 February (around 13.00 and at the end of the proceedings), one on 25 February (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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Schengen accession Bulgaria and Romania

The Council will discuss the state of play of the process of accession of Bulgaria and Romania to the Schengen area.

According to the 2005 Act of Accession, countries that want to join the Schengen area need to undergo an evaluation procedure demonstrating that the necessary conditions for the application of all seven parts of the Schengen Acquis have been met (data protection, police cooperation, visas, SIS/SIRENE, land borders, air borders and sea borders). This is a precondition for the Council, after consultation of the European Parliament, to take a decision on the abolition of checks at internal borders with and between those member states.

The last evaluation missions to Bulgaria and Romania took place in December 2010. The evaluation process for Romania was concluded in January 2011 with the adoption of all relevant reports and on condition and in the understanding that Romania would join Schengen together with Bulgaria. On this basis, Romania has successfully finalised the technical preparations required for all seven chapters in the Schengen Acquis.

Bulgaria has to date successfully closed down six chapters, with a re-evaluation of the external land borders still pending. There is a strong commitment on the side of Bulgaria to close down this last chapter as soon as possible.

The accession of Romania and Bulgaria, once all requirements have been fulfilled, remains a priority of the Hungarian Presidency. In light of the concerns voiced by some member states, the Presidency will continue to work, in close cooperation with all member states, towards a solution acceptable to all parties concerned.

Migratory flows from North Africa

Over lunch, ministers will discuss the major influx of migrants from Northern Africa (particularly from Tunisia) to Southern EU member states (especially Italy) over the past days.

On 15 February, Frontex published an [overview of the migratory influx to Southern Italy](#) (migrants registered until 13 February). On the same day, [Italy sent a formal request for assistance](#) to Frontex, asking for a Joint Operation and a targeted risk analysis.

EU-Turkey readmission agreement

Ministers will discuss the current text of an EU-Turkey readmission agreement as tabled by the Commission who is negotiating on behalf of the EU. The mandate to negotiate a readmission agreement with Turkey was given to the Commission in November 2002, as a follow-up to the Seville European Council.

Before the agreement enters into force, the draft agreement needs to be initialled by the Commission and Turkey. The Council will then need to decide on the signing and the conclusion of the agreement, which will need qualified majority voting at Council. After signature and before conclusion, the European Parliament needs to give its consent.

Readmission agreements between the EU and third countries apply to persons (nationals of the contracting parties, nationals from other third-countries and stateless persons) who do not or who no longer fulfil the conditions for entry to, presence in, or residence on the territories of the third country or one of the member states of the European Union. The agreements lay down the conditions under which these persons can be sent back to the territory of the other contracting party.

So far, the EU has signed readmission agreements with 12 countries: Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia (FYROM), the Republic of Moldova, Montenegro, Russia, Serbia, Ukraine, Pakistan, Hong-Kong, Macao and Sri Lanka.

Besides with Turkey, negotiations are ongoing with Cape Verde and Morocco.

Future strategy for EU readmission agreements

The Council will hear a presentation from the Commission on its communication on the evaluation and future strategy for EU readmission agreements. The Commission will most likely adopt this communication on 23 February 2011.

Greece's National Action Plan on Migration Management and Asylum Reform

The Council will hear from the Greek minister and the Commission on progress made concerning Greece's National Action Plan on Migration Management and Asylum Reform.

The Greek authorities set this plan up as a consequence of the important migratory pressure on their external borders and the subsequent increased pressure on their asylum system.

European Asylum Support Office (EASO)

Ministers will have a first exchange of views with Mr Robert Visser, the recently appointed Executive Director of the European Asylum Support Office (EASO).

He will brief the Council on developments in relation to EASO, in particular as regards the agency's first work programme for 2011. It is expected that EASO will become fully operational on 19 June 2011 as foreseen in the regulation setting it up.

60th Anniversary of the Geneva Convention

Ministers will have an exchange of views with Mr Antonio Guterres, High Commissioner for Refugees (UNHCR), on the occasion of the 60th Anniversary of the Geneva Convention relating to the status of refugees.

Post visa liberalisation mechanism for the Western Balkans countries

The Commission will present to the Council its ideas regarding the follow-up mechanism which is to be put in place arising from the removal of the visa obligation for the Western Balkans countries.

In November 2010, the Council decided that citizens of Albania and Bosnia and Herzegovina possessing biometric passports will be able to travel to and throughout the Schengen area without a visa. The former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia joined the visa free regime already in December 2009.² It applies to stays of up to 90 days.

At the November 2010 Council, the Commission made a declaration on the establishment of a follow-up mechanism to the visa liberalisation process for the Western Balkan countries. This follow-up mechanism concerns the monitoring of the reforms which these countries need to continue to carry out. Amongst others, it also introduces emergency consultation arrangements so that the European Union and its member states can, in cooperation with the authorities of the countries concerned, react in the best possible conditions to any specific difficulties which might arise with flows of persons from the countries of the Western Balkans.

Internal Security Strategy (ISS) - Conclusions

The Council is expected to adopt conclusions on the Commission's Communication on the "EU Internal Security Strategy in Action: Five steps towards a more secure Europe" from 22 November 2010 ([16797/10](#)). This communication contributes to the implementation of the Internal Security Strategy for the European Union, which was adopted by the Council in February 2010 ([7120/10](#) or [PDF-brochure](#)) and endorsed by the European Council in March 2010.

The Commission communication focuses on five core threats and challenges to EU security: organised crime, terrorism, cybercrime, border management and crisis management. It proposes 41 actions to address these threats within the next four years. Member States and the EU's institutions, agencies and bodies are expected to work closely together in implementing actions necessary to enhance internal security within the Union.

The Council conclusions define the role of the Commission and the Standing committee on operational cooperation on internal security (COSI) in implementing the Internal Security Strategy. In this document, the Council calls for a shared agenda for action, a link between the objectives of the Internal Security Strategy and future funding and closer cooperation between the external and internal aspects of EU security.

² The amended Regulation from late 2009 also makes a reference to Kosovo under UNSCR 1244/99 with the result that persons residing in Kosovo require a visa when travelling to the EU ([15521/09](#)).

EU PNR system

Ministers will examine a Commission proposal for a directive on the use of flight passenger data for the protection against terrorist offences and serious crime ([6007/11](#)).

Under the proposed legislation, air carriers will be obliged to provide member states' authorities with the so-called "Passenger Name Record" (PNR) data for flights entering or departing from the EU. The Commission proposal does not cover flights inside the EU. Member states' law enforcement authorities will only be allowed to use it for the prevention, detection, investigation and prosecution of terrorist offences and serious (transnational) crime.

Under the proposed directive each member state will be required to set up a so-called Passenger Information Unit, which will receive the PNR data from the air carriers. The proposed rules also create an EU standard for the use of such data and include provisions on:

- the purposes for which PNR data can be processed (pre-arrival assessment of passengers against pre-determined risk criteria or in order to identify specific persons; the use in specific investigations/prosecutions; input in the development of risk assessment criteria);
- the exchange of such data between the member states and third countries;
- storage (data will initially be stored for 30 days, after which they will be rendered anonymous and stored for another period of five years, with strongly circumscribed possibilities to access the data);
- common protocols and data formats for transferring the PNR data from the air carriers to the Passenger Information Units; and
- strong safeguards as regards protection of privacy and personal data, including the role of national supervisory authorities.

PNR data are already today stored in the carriers' reservation systems. They concern the information provided by passengers to carriers when booking a flight and when checking in on flights. PNR data includes the name, travel dates, travel itinerary, ticket information, contact details, travel agent at which the flight was booked, means of payment used, seat number and baggage information.

The use of these data by member states' law enforcement bodies in specific cases is nothing new: Various member states already use PNR data for law enforcement purposes, either on the basis of specific legislation or on the basis of general legal powers. The collection and use of PNR data has been essential in fighting certain cross-border crimes, such as drug trafficking in human beings or children trafficking. However, there is as yet no common approach across the EU.

Moreover, the U.S., Canada and Australia oblige EU air carriers to make these data available for the passengers flying to or from their territory. As a consequence, PNR agreements exist between the EU and these countries. These agreements are currently being renegotiated.

The purpose of the proposed directive is to create a coherent EU-wide system, by creating a single EU model for all member states (and thus also for all air carriers flying to or from the 27 Member States) and ensuring cooperation between the relevant authorities within the Union.

EU-US TFTP agreement review

The Council will be orally debriefed by the Commission on the review of the first six months of implementation of the EU-US TFTP agreement. In addition to that, Europol will make a presentation on its role under the agreement.

Article 13 of the TFTP agreement provides for a joint EU-US review six months after the agreement entered into force. The written report on the review will not be ready in time for the Council meeting.

The agreement between the EU and the USA on the processing and transfer of financial messaging data for the purposes of the Terrorist Finance Tracking Program (TFTP) was concluded in July 2010 and entered into force on 1 August 2010. It allows the US Department of the Treasury to receive financial payment messaging data stored in the EU by a designated provider in order to allow targeted searches for counter-terrorism investigations, while ensuring an adequate level of data protection. The agreement runs for five years. It will automatically extend for subsequent periods of one year unless one of the parties notifies the other of its intention not to extend the agreement.

Under the TFTP, the US Department of the Treasury seeks to identify, track and pursue suspected terrorists and their providers of finance. It was set up shortly after the terrorist attacks of 11 September 2001. Relevant results of the US analysis have been shared with EU member states and have contributed to effective investigation and prevention of terrorist attacks, including attacks on EU citizens.

Attacks against information systems

The Council will discuss the state of play on a directive on attacks against information systems which the Commission tabled on 30 September 2010 ([14436/10](#)).

The purpose of the proposal is to update the existing rules dating from 2005 (Framework Decision 2005/222/JHA). The directive defines criminal offences in the area of attacks against information systems and aims at harmonising the penalty levels for such offences. It also aims to introduce common provisions to prevent such attacks and improve European criminal justice cooperation in this field.

The new proposal retains most of the provisions currently in place - namely the penalisation of illegal access, illegal system interference and illegal data interference as well as instigation, aiding, abetting and attempt of the those criminal offences - and includes the following new elements:

- penalisation of the use of tools (such as malicious software – e.g. 'botnets' – or unrightfully obtained computer passwords) for committing the offences;
- illegal interception of computer data will become a criminal offence;
- improvement of European criminal justice/police cooperation by strengthening the existing structure of 24/7 contact points, including an obligation to provide feed back within 8 hours to urgent request and;
- including the obligation to collect basic statistical data on cybercrimes.

Concerning the level of criminal penalties, the proposed new rules also suggest to raise the thresholds:

- in the general case to a maximum term of imprisonment of at least two years;
- under aggravating circumstances to a maximum term of imprisonment of at least five years.

Two new forms aggravating circumstances are suggested in the COM proposal in order to address new threats posed by Cybercrime, namely when the cyber attack is initiated through a "botnet"³ or when it is committed by concealing the real identity of the perpetrator whereas causing prejudice to the rightful identity owner.

Right to information in criminal proceeding

The Council is expected to discuss the state of play on EU-wide minimum standards as regards the right to information in criminal proceedings. After the Council agreed on a general approach in December 2010, negotiations with the European Parliament will start soon.

The directive was proposed by the Commission in July 2010 ([12564/10](#)). Its goal is to ensure that any person who is suspected or accused of having committed a criminal offence is provided with information concerning his or her fundamental procedural rights, as well as information on the accusation against him or her - including access to the material of the case - .

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

This "Letter of Rights" contains information on at least the following procedural rights:

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

The Commission proposal also provides for an indicative model of such "Letter of Rights", in order to facilitate the elaboration by the member states of a similar document adapted to their national law.

Another important right provided for in the current text of the directive is the right to access the materials of the case. The aim of this right is to provide the suspected or accused person with detailed information about the charge in order to allow him to prepare his or her defence. This information or access shall be provided free of charge. Access to certain materials may however be refused if it may lead to serious risk for the fundamental rights of another person or if necessary to safeguard an important public interest.

³ The term botnet indicates a network of computers that have been infected by malicious software (computer virus). Such network of compromised computers ('zombies') may be activated to perform specific actions such as attacks against information systems (cyber attacks). These 'zombies' can be controlled – often without the knowledge of the users of the compromised computers – by another computer.

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

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

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

Charter of Fundamental Rights and the role of the Council - Conclusions

The Council is expected to adopt conclusions on the role of the Council in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union.

On 20 October 2010, the Council received a Communication from the Commission on a ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’ ([15319/10](#)). This Communication presents in detail the approach and methodology taken by the Commission in order to guarantee that fundamental rights are respected throughout its internal procedures, especially in the context of legislative drafting.

Given that the bulk of Union law is adopted in the course of the ordinary legislative procedure, involving both the Council and the European Parliament, the Hungarian Presidency deemed it appropriate for the Council to present how it will ensure that the Charter of Fundamental Rights is effectively implemented in the legislative procedure.

A first debate on the subject was conducted at the informal Justice and Home Affairs Council on 21 January 2011 in Gödöllő, Hungary. More detailed discussions took place in the Council preparatory bodies.

Data protection

The Council is expected to adopt conclusions on the Commission communication on data protection, presented on 4 November 2010 ([15949/10](#)).

The Commission is planning to table an overhaul of the existing EU data protection directive - dating from 1995 - in the course of 2011.

The Commission communication highlights five key objectives:

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

Jurisdiction in civil and commercial matters ('Brussels I')

The Council will hear a presentation by the Commission on a proposal to overhaul the so-called Brussels I Regulation (Council Regulation (EC) No 44/2001).

'Brussels I' entered into force in March 2002 and established common EU wide rules on jurisdiction in civil and commercial matters. It clarifies which court is competent in a cross-border dispute and facilitates the recognition and enforcement of a judgement issued by the courts in one EU member state in another member state.

The objective of the revision of 'Brussels I' is to remove the remaining obstacles to the free movement of judicial decisions in line with the principle of mutual recognition. While the Regulation is overall considered to work successfully, the Commission identified a number of deficiencies in the current operation of the regulation, including:

- The procedure for recognition and enforcement of a judgment in another member state ("exequatur") remains an obstacle to the free circulation of judgments which entails unnecessary costs and delays for the parties involved and deters companies and citizens from making full use of the internal market.
- Access to justice in the EU is overall unsatisfactory in disputes involving defendants from outside the EU. With some exceptions, the current Regulation only applies where the defendant is domiciled inside the EU. Otherwise jurisdiction is governed by national law. The diversity of national law leads to unequal access to justice for EU companies in transactions with partners from third countries.
- The efficiency of choice of court agreements needs to be improved. Currently, the regulation enables litigants acting in bad faith to delay the resolution of the dispute in the agreed forum by first seizing a non-competent court. This possibility creates additional costs and delays and undermines the legal certainty and predictability of dispute resolution which choice of court agreements should bring about.
- The interface between arbitration and litigation needs to be improved. Currently, arbitration is excluded from the scope of the Regulation. However, by challenging an arbitration agreement before a court, a party may effectively undermine the arbitration agreement and create a situation of inefficient parallel court proceedings which may lead to irreconcilable resolutions of the dispute. This leads to additional costs and delays, undermines the predictability of dispute resolution and creates incentives for abusive litigation tactics.

Migration of the EJM-network into the European e-Justice portal

The Council is expected to adopt conclusions on the conditions for the migration of the website of the European Judicial Network in civil and commercial matters (EJM) into the European e-Justice Portal.

The activities of the European Judicial Network in civil and commercial matters (EJM) include the development and management of an Internet-based information system for the public.

The European e-Justice Portal, which was launched on 16 July 2010, is conceived as the electronic one-stop-shop for information on European justice and access to European judicial procedures. It is targeted at citizens, businesses, legal practitioners and the judiciary. To ensure consistency and avoid overlaps, the site of the EJM will be migrated to the European e-Justice portal. The conclusions set out the more detailed conditions for the migration so that the visibility and autonomy of the EJM are safeguarded.

AOB

Under any other business, the Council will:

- hear a presentation on the memory of the crimes committed by totalitarian regimes in Europe (by the Commission);
- be briefed on the outcome of a seminar entitled "Unaccompanied children: children crossing the external borders of the EU in search of protection" which took place on 9-10 December 2010 (by the Belgian minister);
- be informed about the project "Police Equal Performance (PEP) – setting-up an umbrella strategy for South Eastern Europe" (by the Austrian minister).

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:

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: Algeria, Egypt, Libya, Mauritania, Morocco and Tunisia) must be ready. The central VIS is expected to be ready by the end of June 2011. The whole system should start operating soon afterwards.

Frontex work programme 2011

The European border agency Frontex will present its work programme for 2011 and other issues relating to the agency.

Schengen accession Romania and Bulgaria

The committee will discuss the state-of-play of the process of accession of Bulgaria and Romania to the Schengen area.
