



Brussels, 24 October 2012

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Luxembourg, 25-26 October 2012

The Justice and Home Affairs Council (JHA) will hold a two-day meeting on Thursday 25 and Friday 26 October 2012, under the chair of Ms Eleni Mavrou, Cyprus Minister for the Interior, and Mr Loukas Louka, Cyprus Minister for Justice and Public Order, in Luxembourg.

*On Thursday, home affairs ministers are expected to have an orientation debate on the proposal for a decision concerning a **Union Civil Protection Mechanism**. The Council will also take note of the state of play regarding the full application of the provisions of the **Schengen acquis in Bulgaria and Romania** and the establishment of a **Common European Asylum System (CEAS)**.*

*Ministers will then discuss the possible establishment of a **Regional Protection Programme for Syria**, in response to the Syrian crisis.*

*The Council is also expected to take note of a Commission presentation on **illicit trafficking of firearms and an information point by Hungary on the Salzburg Forum on police cooperation**, and to adopt Council conclusions on the **protection of soft targets from terrorist activities**. The presidency will then give a brief overview of the state-of-play of a number of **other legislative proposals** in the area of home affairs.*

*The Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland), meeting in the margins of the Council, will examine the question of **Schengen accession of Bulgaria and Romania**, the state of play regarding the implementation of the **Schengen Information System (SIS II)** and developments and trends in relation to **illegal immigration** as they are currently affecting the EU. In this context, the Committee will be briefed on the **Greek National Action Plan on Asylum Reform and Migration Management**. The Commission will present its third report on the **post-visa liberalisation monitoring for the Western Balkan countries**.*

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

*On Friday, justice ministers are expected to take stock of the state of play and hold a debate on two proposals for directives: on **criminal sanctions for insider dealing and market manipulation** ("market abuse directive") and on the **freezing and confiscation of proceeds of crime** in the EU.*

*The Commission will present a proposal for a directive on **the fight against fraud to the Union's financial interests by means of criminal law**.*

*In addition, the Council will take note of the state of play on a revision of the 1995 directive on the protection of individuals with regard to the **processing of personal data and on the free movement of such data** (General Data Protection Regulation).*

*Ministers will then discuss the recommendations contained in the final report on the **fifth round of mutual evaluations**, dedicated to **financial crime and financial investigations***

*Finally the **European Monitoring Centre for Drugs and Drug Addiction** (EMCDDA) will present the 2012 **report on the state of the drug problem in Europe**, and ministers will be invited to exchange views on the report.*

***Important items to be adopted without discussion** (A items) include the adoption of the political agreement that was reached with the European Parliament on **the reception conditions directives** which forms part of the package of legislative dossiers regarding the Common European Asylum System (CEAS). The Council will also adopt new rules to **simplify access to EU funds**. Another important file to be adopted as an A-point, is the first biannual revision of the **EU Action on Migratory Pressures** – A Strategic Response which contains more than 90 activities that aim to fight and eliminate illegal migration.*

***Presidency press conferences** will be held at the end of the Council Thursday (+/- 18.00) and before lunch (+/- 13.00) Friday.*

This meeting will be held in the Kirchberg Conference Centre on place de l'Europe. The press entrance is situated on 2 rue Fort Thüngen. For practical details, please see the [media guide](#) on the new facilities.

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

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HOME AFFAIRS

Common European Asylum System (CEAS)

The Council will be informed in a public session about the state-of-play of negotiations on the various outstanding legislative proposals concerning the Common European Asylum System (CEAS), on the basis of a presidency paper ([14823/12](#)).

The situation on the four outstanding files can be described as follows:

- A political agreement has been reached on the **reception conditions** directives which will be adopted at the Council without discussion (as an A-point) ([14112/1/12](#)). This political agreement fully reflects the result of negotiations with the European Parliament. Once formally adopted, member states will need to transpose the new provisions into national law within two years. Denmark, Ireland and the United Kingdom are not bound by the directive.

The amended reception conditions directive will provide better and more harmonised standards of living to applicants for international protection throughout the European Union, irrespective in which member state the application has been made. Particularly important are the new rules concerning detention and the better standards for vulnerable persons including (unaccompanied) minors. Member states that wish to do so can provide for more favourable rules. The new EU rules take also better into account the different national legal systems, avoid unnecessary administrative and financial burden and enable member states to fight abuse of their asylum systems more effectively.

- Negotiations between the Council and the European Parliament on the substance of the **Dublin regulation** have also been finalized. The only outstanding issue is related to the comitology procedure, i.e. whether to use delegated or implementing acts. A first technical meeting on this issue with the European Parliament has been held and the presidency intends to reach final agreement by the end of the year.

The Dublin regulation establishes the procedures for determining the member state responsible for examining an application for international protection. The new rules will introduce a mechanism for early warning, preparedness and crisis management. This mechanism is aimed at evaluating the practical functioning of national asylum systems, assisting member states in need and preventing asylum crises. The mechanism would concentrate on adopting measures to prevent asylum crises from developing rather than addressing the consequences of such crises once they had occurred.

- As a complement to the mechanism for early warning, preparedness and crisis management in the amended Dublin regulation, the Council adopted in March 2012 [conclusions](#) on a common framework for genuine and practical solidarity towards member states facing particular pressures on their asylum systems, including through mixed migration flows. These conclusions are intended to constitute a toolbox for EU-wide solidarity towards those member states most affected by such pressures and/or encountering problems in their asylum systems.
- In June, the Commission tabled its new proposal for a revised **Eurodac regulation** ([10638/12](#)) which allows law enforcement authorities to access this central EU-wide fingerprint database, subject to strict conditions on data protection, for the purposes of fighting terrorism and organised crime. Negotiations between the Council and the European Parliament will start in the coming days.
- On the asylum **procedures directives**, further progress has been made in negotiations with the European Parliament with a view to reach agreement before the end of the year. A revised proposal of the directive was tabled by the Commission on 1 June 2011 ([11207/11](#)).

Four other agreements and decisions related to the CEAS have already been adopted. They concern:

- The [qualification directive](#) providing for better, clearer and more harmonised standards for identifying persons in need of international protection which was adopted in November 2011 and entered into force in January 2012.
- The [long term residence directive](#) adopted in April 2011.
- The creation of the [European Asylum Support Office \(EASO\)](#) which started operations in spring 2011.
- The decision taken in March 2012 establishing [common EU resettlement priorities for 2013](#) as well as new rules on EU funding for resettlement activities carried out by member states.

As regards the overall context, it should be remembered that the European Council confirmed in its conclusions in June 2011 that negotiations on the various elements of the CEAS should be concluded by 2012 ([EUCO 23/11](#)).

Union Civil Protection Mechanism

The Council will hold a public orientation debate on a proposal to establish a Union Civil Protection Mechanism on the basis of a presidency paper ([14445/12](#)). The initial proposal was tabled by the Commission in January 2012 ([18919/11](#)).

The new proposal aims to replace the current legislation in this field (OJ L 314, 1.12.2007) and to improve the effectiveness and cost-efficiency of systems preventing, preparing for and responding to natural and man-made disasters of all kinds within and outside the Union.

Schengen accession Romania / Bulgaria

The Council will be informed of the state-of-play regarding the decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania as well as of the implementation of measures identified as contributing to the successful enlargement of the Schengen area to include the two countries.

A decision on the two countries' accession has, so far, not been taken because the required unanimity was not achieved.

The current proposal suggests a two-step approach: In a first step, checks on persons would be abolished at internal sea and air borders with and between Bulgaria and Romania; at the same time, the two countries would fully join the Schengen Information System (SIS). In a second step, checks on persons at internal land borders would be lifted.

At its meeting on 1/2 March 2012, the European Council, recalling its discussions in 2011, reiterated that all legal conditions have been met for the decision on Bulgaria's and Romania's accession to the Schengen area to be taken. The European Council also acknowledged the continuous efforts undertaken by Bulgaria and Romania.

The European Council in this regard requested the Council, during the intervening period, to identify and implement measures which would contribute to the successful enlargement of the Schengen Area to include Romania and Bulgaria.

Syria: Regional Protection Programme

The Council is expected to discuss an update by the Commission on the establishment of a Regional Protection Programme in response to the Syrian crisis.

The Council will also review developments arising from the Syrian crisis more generally. This will enable ministers to report on how the crisis may be impacting in their member states in terms of migratory movements and how they are responding to those developments.

Counter-terrorism: Protection of soft targets

The Council is expected to discuss and adopt conclusions on the protection of soft targets from terrorist attacks ([14591/12](#)).

The aim of these conclusions is to underline the importance of protection of soft targets and encourage cooperation in the area.

Counter-terrorism: Link between internal and external aspects

The Council will take note of the implementation report on the Council conclusions on enhancing the links between internal and external aspects of counter-terrorism ([11075/11](#)).

The Council undertook to review on a regular basis the progress of the Counter-terrorism initiatives, the first report having been delivered in June 2011. The latest report also outlines recommendations regarding possible actions to further enhance links between internal and external aspects.

JUSTICE

Freezing and confiscation of proceeds of crime

The Council is expected to take note of the state of play on the draft directive on the freezing and confiscation of proceeds of crime in the EU, which aims to make it easier for national authorities to confiscate and recover the profits that criminals make from cross border and organised crime.

In order to further advance the work at the expert level, Ministers will also hold a debate on the basis of a document prepared by the Presidency ([14826/12](#)) to express their views on the appropriate criterion for defining the scope of application of Article 4 on extended powers of confiscation. The Cyprus Presidency intends to reach a compromise by the end of the year on a text which could form the basis for the negotiations with the European Parliament in the context of the ordinary legislative procedure.

The Commission presented its proposal in March 2012 ([7641/12](#)). The draft directive lays down minimum rules for member states with respect to freezing and confiscation of criminal assets through direct confiscation, value confiscation, extended confiscation, non-conviction based confiscation (in limited circumstances), and third-party confiscation. The adoption of such proposal will facilitate mutual trust and effective cross-border cooperation.

In general terms, the concept of extended confiscation provides for a possibility to extend confiscation powers to assets that are not direct proceeds of the crime for which a person has been convicted. It can apply for example when a person is convicted for a more serious offence and he possesses property which is disproportionate to his legal income.

The Stockholm Programme ([5731/10](#)) called the Commission and the member states to make the confiscation of criminal assets more efficient and to strengthen the cooperation between Asset Recovery Offices. The Council adopted in June 2010 a set of conclusions ([7769/3/10](#)) on Confiscation and Asset Recovery aimed at achieving a more effective and widespread confiscation of criminal assets.

Insider dealing and market manipulation

The Council will take note of the state of play on the proposal for a directive on criminal sanctions for insider dealing and market manipulation ("market abuse directive") ([16000/11](#)). On the basis of a document prepared by the Presidency ([14598/12](#)), Ministers will also hold a debate in order to provide guidance in view of future negotiations on the draft text.

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

This proposal presented by the Commission in October 2011 is part of a broader "package" of measures, including a directive on markets in financial instruments - "MiFID" ([15939/11](#)); a regulation on markets in financial instruments and OTC - "MiFIR" ([15938/11](#)), and a regulation on insider dealing and market manipulation - "MAR" ([16010/11](#)), which sets up a common regulatory framework on market abuse.

During the debate, Ministers will address one of the most relevant issues still open, and namely the principle of *ne bis in idem*. In particular, guidance is needed on the relationship with the administrative offences provided for in MAR and on how to ensure in that situation that the application of MAR and MAD does not endanger the principle of *ne bis in idem*, in the case where different types of sanction can be (or have been) applied for the same facts.

Ministers will be invited to express their views on this matter and, in particular, on the following questions: Do Ministers consider that the protection of the principle of *ne bis in idem* is relevant in relation to the MAR and MAD proposals? In case of a positive answer to the previous question, do Ministers consider that the task of protecting the principle of *ne bis in idem* should be left to each member state, when implementing this legislation and in its application?

On 25-26 April 2012 the Council reached a partial general approach on Articles 5 to 12 and the corresponding recitals but kept open the possibility to revert to those provisions in the light of further developments in the negotiations concerning the remaining parts of the Directive. Furthermore, on 27 July 2012 the Commission submitted an amended proposal ([13037/12](#)), integrating in the scope of MAD questions concerning the manipulation of benchmarks for interbanking lending rates; a similar proposal was submitted concerning MAR.

Ireland has decided to take part in the adoption of the directive. The United Kingdom and Denmark will not participate.

Protection of the EU's financial interest

The Commission will present its proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law. The goal of the proposal ([12683/12](#)) is to deter fraudsters, improve the prosecution and sanctioning of crimes against the EU budget, and facilitate the recovery of misused EU funds thereby increasing the protection of EU taxpayers' money.

The proposed directive provides common definitions of a number of offences against the EU budget and common prescription periods, within which the case must be investigated and prosecuted, as well as minimum sanctions, including imprisonment for the most serious cases to strengthen the deterrent effect. These common rules should, according to the Commission's proposal, help to ensure a level playing field and improved investigation and prosecution across the EU.

The proposal aims to define offences such as fraud, and other fraud related crimes such as active and passive corruption, the misappropriation of funds, money laundering and obstruction of public procurement procedures to the detriment of the EU budget. It suggests member states to impose a minimum sanction of six months' imprisonment for serious cases (Article 8), and a maximum penalty of at least 10 years of imprisonment where the offence was committed within a criminal organisation. In order to help the recovery of funds, it provides for confiscation of the proceeds of these crimes (Article 10). Furthermore, it suggests longer prescription periods for the offences defined (Article 12), due to the fact that adequate time to investigate is of utmost importance in complex cross-border cases.

Reform of EU Data Protection Rules

The Council will take note of the state of play on the proposal for a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) ([5853/12](#)). The proposal is subject of in-depth discussions by experts at the Working party on Data Protection, which were started under the Danish Presidency and will continue under the Irish Presidency. The Cyprus Presidency has also convened meetings under a Friends of Presidency format, which examine three horizontal themes from the proposed Regulation. This approach was agreed on by Ministers in the July informal JHA Council in Cyprus.

In the light of rapid technological developments and globalisation, the European Commission presented in January 2012 a legislative package to update and modernise the principles enshrined in the 1995 Data Protection Directive (Directive 95/46/EC)² to guarantee data protection rights in the future. The package includes a policy Communication setting out the Commission's objectives ([5852/12](#)) and two legislative proposals: a regulation setting out a general EU framework for data protection and a directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities ([5833/12](#)).

These proposals are aimed at building a stronger and more coherent data protection framework in the EU, backed by strong enforcement that will allow the digital economy to develop across the internal market, put individuals in control of their own data and reinforce legal and practical certainty for economic operators and public authorities.

The centrepiece of existing EU legislation on personal data protection, Directive 95/46/EC, was adopted with two objectives in mind: to protect the fundamental right to data protection and to guarantee the free flow of personal data between member states. It was complemented by Framework Decision 2008/977/JHA³ as a general instrument at Union level for the protection of personal data in the areas of police co-operation and judicial co-operation in criminal matters.

² Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995)

³ OJ L 350, 30.12.2008

Financial crime and financial investigations

The Council will discuss recommendations contained in the final report on the fifth round of mutual evaluations, dedicated to financial crime and financial investigations ([12657/2/12 REV2](#)).

On the basis of a presidency paper ([14597/12](#)), ministers will look at how initiatives within the criminal law area can contribute to the enhanced fight against organised crime.

Transnational organised crime is one of the major challenges jeopardising the creation of an area of freedom, security and justice. Addressing a key aspect of this, the final report on the fifth round of mutual evaluations focuses on financial crime and financial investigations.

The rounds of mutual evaluation are a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

State of the drug problem

The Director of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) will present the 2012 report on the state of the drug problem in Europe, and ministers will be invited to exchange views on it.

The EMCDDA was established in 1993 and inaugurated in Lisbon in 1995. The centre provides the EU and its Member States with a factual overview of European drug problems and a solid evidence base to support the drugs debate. It offers to policymakers the data they need for drawing up informed drug laws and strategies.

The EMCDDA annual reports provide the latest data and commentary on the drug situation across the 27 EU Member States, Norway, Croatia and Turkey. Key challenges are discussed along with some of the promising practices used to address drug problems today. The 2012 report will be released in Lisbon on 15 November 2012.

AOB

Under other business, the Council will be informed about the state of play of a number of legislative proposals, including:

- the regulation for the establishment of a European Border Surveillance System (EUROSUR);
- the Schengen related legislative proposals that are currently under discussion, namely the Schengen evaluation mechanism and the Schengen Borders Code. The Council reached a general approach on both items at the June Council (see [10760/12](#), p. 9-12);
- two proposals on legal migration, namely the intra-corporate transferees (ICTs) and seasonal workers;
- as well as the proposed regulations on the Multiannual Financial Framework (MFF) in the JHA area.
- the Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia, and the Kingdom of Sweden regarding the European Investigation Order;
- the draft directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest
- the draft regulations establishing for the period 2014 to 2020 the Justice programme and the Rights, Equality and Citizenship programme;
- the proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017;
- the draft regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) (Brussels I).

The Commission is expected to make a presentation on illicit trafficking of firearms and to inform ministers on the implementation of mutual recognition instruments.

Hungary will inform about the Salzburg Forum ministerial conference held in Budapest on 11 and 12 October 2012.

Mixed Committee

In the margin of the Council meeting, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will discuss the following items:

Post-visa liberalisation monitoring for the Western Balkan countries

The committee will discuss the Commission's third report on the post-visa liberalisation monitoring for the Western Balkan countries.

In this context, the Council and the European Parliament are currently negotiating amendments to the rules governing the EU's visa-free regime. The Commission tabled its initial proposal in May 2011. It concerns regulation 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders (Annex I to the regulation) and those whose nationals are exempt from that requirement (Annex II of the regulation) ([10834/11](#)).

The discussions between Council and Parliament started in January 2012. They focus on the introduction of a safeguard clause allowing the temporary reintroduction of the visa requirement - in specific circumstances - for nationals of a third country who can normally travel to the EU without a visa (those countries in Annex II). The new rules would also strengthen the notion of reciprocity, i.e. how to deal with situations where a country in Annex II reintroduces a visa requirement for citizens of particular EU member states or the EU as a whole.

Schengen accession Romania / Bulgaria

The Council will be informed of the state-of-play regarding the decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania as well as of the implementation of measures identified as contributing to the successful enlargement of the Schengen area to include the two countries.

A decision on the two countries' accession has, so far, not been taken because the required unanimity was not achieved.

The current proposal suggests a two-step approach: In a first step, checks on persons would be abolished at internal sea and air borders with and between Bulgaria and Romania; at the same time, the two countries would fully join the Schengen Information System (SIS). In a second step, checks on persons at internal land borders would be lifted.

At its meeting on 1/2 March 2012, the European Council, recalling its discussions in 2011, reiterated that all legal conditions have been met for the decision on Bulgaria's and Romania's accession to the Schengen area to be taken. The European Council also acknowledged the continuous efforts undertaken by Bulgaria and Romania.

The European Council in this regard requested the Council, during the intervening period, to identify and implement measures which would contribute to the successful enlargement of the Schengen Area to include Romania and Bulgaria.

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

The Greek minister, the Commission, the European border surveillance agency (Frontex) as well as the European Asylum Support Office (EASO) will inform the Council about progress in the implementation of the Greek national action plan on asylum and migration.

Illegal immigration

The Council will be briefed by Frontex and the Commission on recent developments and trends in relation to illegal immigration as they are currently affecting the EU.

SIS II

The committee will look at the latest developments on the implementation of the Schengen Information System II (SIS II) which is planned to come into operation by the first quarter of 2013.

The Schengen Information System (SIS) is a database shared by participating countries' border and migration authorities, and law enforcement authorities and contains information on persons and on lost and stolen objects. Specific stringent data protection rules apply to the SIS. It is a compensatory measure for the opening of the internal borders under the Schengen agreement, but it is also seen as a vital security factor in the EU. The European Commission is currently developing a second generation of the SIS, commonly known as SIS II.
