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Justice and Home Affairs

Brussels, 24 and 25 February 2011

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Main results of the Council

Home affairs ministers reached **political agreement on a EU-Turkey readmission agreement**.

They also discussed the **situation in Northern Africa**, and particularly the situation in Libya and the influx of migrants, above all from Tunisia to Italy.

The Council then looked at the state of play on the implementation of **Greece's National Action Plan on Migration Management and Asylum Reform**.

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

Justice ministers looked at the most recent Commission proposal on **attacks against information systems** and discussed the state of play of two other legislative initiatives concerning the **right to information in criminal proceedings** and the **recognition and enforcement of judgements in civil and commercial matters (Brussels I)**.

In addition, a number of conclusions were adopted 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**"; and
- the Commission's communication on the **EU Internal Security Strategy in Action**; and
- the migration of the website of the European Judicial Network in civil and commercial matters into the **European e-Justice Portal**.

An **important decision without discussion (A-item)** was the conclusion of **two EU-Brazil visa waiver agreements** (for holders of ordinary passports and for holders of diplomatic, service or official passports).

Prior the Council meeting, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) examined 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** presented its **work programme for 2011**. Concerning visa policy, the Commission presented its **post-visa liberalisation monitoring mechanism for the Western Balkans region** and delegations were informed about recent developments concerning the **visa requirement imposed by Canada on Czech nationals**.

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¹ 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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Vice-President
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ITEMS DEBATED

EU-Turkey readmission agreement

Ministers reached political agreement on a draft EU-Turkey readmission agreement. The Commission may now proceed to initial the draft agreement with Turkey.

After that, three more procedural steps are missing for the agreement to enter into force: the Council needs to sign the agreement with Turkey and the European Parliament needs to give its consent before the Council can adopt a decision to conclude the agreement.

Along with the political agreement on the file, the Council adopted [conclusions](#) and the Commission and several member states entered a number of declarations.

More information in the [background note](#), p. 3.

Migratory flows from North Africa

Over lunch, ministers discussed the situation in Northern Africa, and particularly the situation in Libya and the influx of migrants, above all from Tunisia to Italy. In this context, the Italian minister reported on a meeting of the interior ministers of six EU member states (Italy, France, Spain, Greece, Cyprus and Malta) the previous day in Rome.

Since the beginning of the year, some 6000 immigrants have arrived mainly to the Italian island of Lampedusa. Following a formal request for help from the Italian Ministry of Interior, received on 15 February, Frontex and Italy launched a Joint Operation in the central Mediterranean area on Sunday 20 February. Joint Operation Hermes 2011, originally planned to commence in June, was thus brought forward. Assets and experts for this operation were made available from a large number of EU member states. [More information](#) from Frontex.

In addition, the Commission is studying different funding possibilities through various EU instruments, such as the European Refugee Fund, the European Return Fund and the European Border Fund.

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

The Council was briefed by the Greek minister and the Commission on the 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 substantial migratory pressure on their external borders and the subsequent increased pressure on their asylum system.

Acknowledging the European dimension of the Greek situation, the Commission and many member state are assisting Greece in its efforts. The EU border agency Frontex launched in November 2010 a RABIT operation at parts of the Greek-Turkish border. In March 2011, the temporary RABIT operation will be succeeded by the POSEIDON operation. Furthermore, the European Asylum Support Office (EASO) will be assisting Greece in implementing the Action Plan, in particular through the deployment of asylum support teams in the coming months. Important assistance is also provided by international organisations such as the UNHCR.

Among other things, the Greek authorities adopted in November 2010 the Asylum Presidential Decree aimed at addressing the current backlog of over 50000 asylum cases. In January 2011, a law was adopted on the establishment of a new asylum service, the setting up of screening centres and the transposition of the so-called EU return directive.

The Council also had an exchange of views on the judgement of the European Court of Human Rights in the case MSS vs. Belgium and Greece.

60th anniversary of the Geneva Convention

Ministers had 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.

2011 marks the 60th anniversary of the 1951 Convention Relating to the Status of Refugees (28 July) as well as the 50th anniversary of the 1961 Convention on the Reduction of Statelessness (30 August). The UNHCR celebrated its own 60th anniversary on 14 December 2010. The 60th anniversary celebrations are intended to culminate in a UNHCR-organised ministerial-level meeting in December 2011.

European Asylum Support Office (EASO)

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

Mr Visser briefed the Council on developments in relation to the EASO, in particular as regards the steps being taken to set up the agency, the agency's first work programme for 2011 and first planned operations. The EASO is expected to become fully operational on 19 June 2011 as provided for in the Regulation setting up the office.

The main tasks of EASO are to develop practical cooperation in the field of asylum, to support member states subject to particular pressure, and to contribute to the implementation of the Common European Asylum System (CEAS).

Internal Security Strategy (ISS)

The Council adopted conclusions ([6699/11](#)) on the Commission's communication on the European Union Internal Security Strategy in Action of 22 November 2010 ([16797/10](#)).

The Commission communication proposes to focus on five areas: organised crime, terrorism, cybercrime, border management and crisis management. Within these five areas, the communication outlines 41 actions to be implemented within the next four years.

The Commission communication follows the adoption of the Internal Security Strategy for the European Union in February 2010 ([7120/10](#) or [PDF-brochure](#)), which was endorsed by the European Council in March 2010.

Attacks against information systems

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

Ministers focussed their discussion on attacks committed by misusing identity data, i.e. by concealing the real identity of the perpetrator whereas causing prejudice to the rightful identity owner. The Council asked its relevant preparatory bodies to continue work on the file.

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 those criminal offences - and includes the following new elements in order to address new threats posed by cybercrime:

- penalisation of the use of tools (such as malicious software – e.g. 'botnets'¹ – or unrightfully obtained computer passwords) for committing the offences;
- attacks committed by misusing identity data, i.e. by concealing the real identity of the perpetrator whereas causing prejudice to the rightful identity owner (such attacks would also be included under aggravating circumstances with higher penalty levels);
- 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.

¹ 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.

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.

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

The Council took note of a Commission presentation of its most recent proposal ([18101/10](#)) 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.

Right to information in criminal proceeding

The Council discussed the state of play on EU-wide minimum standards as regards the right to information in criminal proceedings. The Council agreed on a general approach in December 2010. Negotiations with the European Parliament will start most likely in March.

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 a "Letter of Rights". Member states would be free to use this model or elaborate a similar document on the basis of that model.

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.

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 (Commission proposal expected for June 2011);
- 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.

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

The Council adopt conclusions (6029/11) 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 took note of a report by the Commission on the memory of the crimes committed by totalitarian regimes in Europe (5128/11). The report was adopted on 22 December 2010. The reports presents, among other things, how the EU can use its financial instruments to keep up the memories of these crimes. It also underlines that there are different national measures and legal instruments in the EU member states in place and that, therefore, the Commission has no plans, at the moment, to introduce EU-wide legislation on the subject.

Ministers also received information on the subject of collective redress. The Commission informed that it had just launched a public consultation on the issue and that, by the end of 2011, a communication would be put on the table to specify possible future policy lines, including the question whether a legislative proposal was necessary or not.

Finally, ministers looked at the rights of EU citizens as regards the enforcement of court decisions in third countries concerning custody laws, in particular, in cases of mixed marriages and parental child abduction.

Mixed Committee

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

SIS II

The committee looked at the state of play regarding 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 discussed the progress made regarding the preparations for the Visa Information System (VIS). For the VIS to go live, the central VIS, managed by the Commission, the national VIS of each individual Member State as well as preparations at the external border crossing points and in the consulates of the first roll-out region (North Africa) must be ready. The 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 presented its work programme for 2011 ([5691/11](#)) and other issues relating to the agency.

Schengen accession Romania and Bulgaria

The committee discussed the state of play in the process of accession of Bulgaria and Romania to the Schengen area. After the mixed committee, the Council took note of presidency conclusions which can be found [here](#). More [background information](#).

Post-visa liberalisation mechanism for the Western Balkans

The committee took note of the recent establishment of a follow-up mechanism to the visa liberalisation process for the Western Balkan countries by the Commission.

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 in December 2009.¹ It applies to stays of up to 90 days.

Visa waiver reciprocity and Canada

The Czech minister and the Commission presented to the committee the latest developments regarding the issue of visa waiver reciprocity and Canada.

On 14 July 2009, Canada unilaterally introduced the visa requirement for Czech nationals. Since then and in consultation with the Czech authorities, the Commission has been examining the issue with the Canadian government with a view to restoring visa-free travel for Czech nationals. Canada also continues to maintain a visa requirement for Bulgarian and Romanian citizens.

Canada is among the third countries whose nationals are not subject to a visa requirement under regulation 539/2001. This regulation, however, as amended by regulation 851/2005, also foresees possible reciprocity measures in the case that a country enjoying visa-free travel to the EU introduces visa requirements for citizens of one or several EU member states.

Liechtenstein and Schengen accession

The minister of Liechtenstein informed the committee about the state of play concerning Liechtenstein's Schengen accession procedure, which should be finalised in the near future.

¹ 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](#)).

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

EU-Brazil visa liberalisation agreements

The Council concluded two agreements between the EU and Brazil which allow their citizens to travel to the other territory without a visa for stays of up to three months during a six-month period. One agreement concerns holders of ordinary passports ([13712/10](#)), while the other concerns holders of diplomatic, service or official passports ([13708/10](#)).

The two agreements mark the end of negotiations started in April 2008. They do not replace, but supplement existing bilateral agreements between several EU member states and Brazil. The United Kingdom and Ireland are not bound by the agreements. For citizens from these two countries, the respective bilateral agreements continue to apply.

For more information, see this [press release](#).

Charter of Fundamental Rights

The Council adopted conclusions on the role of the Council in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union ([6387/11](#)).

With the entry into force of the Lisbon Treaty, the Charter became a legally binding document with the same legal value as the Treaties. The Council, as co-legislator with the European Parliament, is committed to guaranteeing that fundamental rights are respected throughout its own internal decision-making procedures, especially in the context of legislative drafting (co-decision), but also when drafting legal acts which are not subject to a legislative procedure. Furthermore, the Council wishes to do so in an as visible and transparent way as possible, for the benefit of citizens and other parties concerned.

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](#)).

Personal data protection

The Council adopted conclusions on the Commission communication "A comprehensive approach on personal data protection in the European Union" ([15949/10](#)) which aimed at revising the legal framework for data protection. The Commission is planning to table an overhaul of the existing EU data protection directive - dating from 1995 - in the course of 2011.

Over the past two decades, the European Union has developed a considerable body of personal data protection legislation but emerging business and technological developments in the last fifteen years mean that a thorough evaluation and updating thereof is required .

Furthermore, the Treaty of Lisbon has put in place a new legal basis for the adoption of personal data protection legislation with regard to the processing of personal data and the Charter of Fundamental Rights has acknowledged the right to the protection of personal data as a fundamental right which also applies to police cooperation and judicial cooperation in criminal matters.

A new legal framework based on the comprehensive approach should guarantee that appropriate data protection standards are complied with in all areas where personal data are processed.

Drug trafficking originating in West Africa

The Council took note of the report on cooperation in combating organised crime, especially drug trafficking, originating in West Africa.

The report presents the state of play in 2010 regarding the implementation of the recommendations and measures identified on the basis of the European Pact to combat international drug trafficking (8821/10), the Action oriented Paper ([5069/3/10](#)) and the Council conclusions on the strengthening of the fight against drug trafficking in West Africa ([15248/1/09](#)).

Association Council with Algeria

The Council agreed to the adoption by the EU-Algeria Association Council of the draft Decision creating a Subcommittee on Political Dialogue, Security and Human rights.

Council Decision on the European Union position in the EU-Algeria Association Council ([6129/11](#))

ECONOMIC AND FINANCIAL AFFAIRS

Monetary agreement - France/Monaco

The Council adopted a decision to renegotiate a monetary agreement between France, on behalf of the European Community, and Monaco with a view to adjusting the ceiling for the issuance of coins, electing a jurisdiction for possible dispute settlement and adapting the format of the existing agreement to the new common model for monetary agreements.

FISHERIES

EU / São Tomé partnership agreement - Allocation of fishing opportunities

The Council adopted a decision on the signing behalf of the Union, and provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe ([5370/11](#)).

The partnership agreement in the fisheries sector between the European Community and the Democratic Republic of São Tomé and Príncipe was concluded in 2007. The protocol setting out the fishing opportunities and financial contribution provided for in the partnership agreement expired on 31 May 2010. In order to guarantee a rapid resumption of fishing activities by EU vessels the Protocol should be applied rapidly.

The Council also adopted a Regulation on the allocation of fishing opportunities under the protocol to the fisheries partnership agreement between the European Community and the Democratic Republic of São Tomé and Príncipe ([5373/11](#)).

Following the signing of the provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the Partnership Agreement in the fisheries sector between the European Community and the Democratic Republic of São Tomé and Príncipe, this decision provides for the allocation of fishing opportunities between Member States.