

## **JUSTICE and HOME AFFAIRS COUNCIL**

### **Thursday 4 and Friday 5 December in Brussels**

The meeting will be chaired by **Andrea ORLANDO**, Italian Minister for Justice and by **Angelino ALFANO**, Italian Minister for the Interior.

On Thursday, starting at 10.00, justice ministers are expected to reach political agreement on the proposal for a regulation on **insolvency proceedings**.

Ministers are also due to adopt a general approach on a directive on the strengthening of certain aspects of the **presumption of innocence** and on a regulation amending the regulations on the **small claims procedure** and the European order for payment procedures.

On the field of **data protection**, the Council is expected to reach a partial general approach on specific issues of the draft regulation and will also hold a debate on the "one-stop-shop" mechanism.

Moreover, the Council is also due to adopt a partial general approach a regulation on the European Union Agency for Criminal Justice Cooperation (**EUROJUST**)

Ministers will then be invited to have a policy debate on two proposals: a regulation on the establishment of the **European public prosecutor's office** (EPPO), and a regulation on promoting the free movement of citizens and businesses by simplifying the requirements for presenting certain **public documents** in the European Union.

Finally, the Presidency will brief ministers on the state of play of two proposals: the Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of **matrimonial property regimes** and on the **property consequences of registered partnerships**.

On Friday, starting at 10.00, the Council in the Mixed Committee format (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will have an exchange of views on the follow-up to the Council conclusions "Taking action to **better manage migratory flows**", adopted in October. It will also have a discussion on the biannual **report on the functioning of the Schengen area** and on the closure report and the Council conclusions on **Schengen evaluation**. The report and the conclusions will be formally approved by the Council.

In the framework of the fight against terrorism, home affairs ministers will have an orientation debate on the implementation of the package of measures regarding **foreign fighters and returnees**.

Moreover, the Council will also adopt guidelines implementing the revised **EU Strategy on Radicalisation and Recruitment** and will take note of two reports from the Counter Terrorism Coordinator on the implementation of the **EU Counter-Terrorism Strategy** and on the revised **Strategy on Terrorist Financing**.

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<sup>1</sup> This note has been drawn up under the responsibility of the press office.

**Press conferences:**

- Justice Council (*Thursday, at the end of the meeting +/- 18.15*)
- Home affairs Council (*Friday, at the end of the meeting +/- 16.00*)

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# JUSTICE

## Data protection regulation

- Partial general approach
- Policy debate

The Council is expected to reach a partial general approach on specific issues of the draft regulation setting out a general EU framework for data protection, on the understanding that nothing is agreed until everything is agreed.

The partial general approach includes some articles which are crucial to the question of the public sector (Article 1, Article 6, paragraphs (2) and (3), Article 21) as well as chapter IX (provisions relating to specific data processing situations) and the related recitals ([16140/14](#)).

The Council will also hold an orientation debate on the "one stop shop" mechanism on the basis of a proposal presented by the Presidency ([15656/1/14 REV 1](#)).

In October and December 2013 the Council already expressed its general support for the principle that, in important transnational cases, the regulation should establish a "one-stop-shop" mechanism in order to arrive at a single supervisory decision, which should be fast, ensure consistent application, provide legal certainty and reduce the administrative burden. This is an important factor to enhance the cost-efficiency of the data protection rules for international business, thus contributing to the growth of the digital economy.

Ministers also concluded that the experts should explore methods for enhancing the "proximity" between individuals and the decision-making supervisory authority by involving the local supervisory authorities in the decision-making process. Moreover, in December 2013 the Legal Service of the Council indicated that the model as it resulted from the technical work so far would confront data subjects with such a complicated system that it would be incompatible with the right to an effective remedy.

The current proposal tries to accommodate the concerns of the Council Legal Service and to enhance the "proximity". According to the proposal, the one stop shop mechanism should only intervene in important cross-border cases and will consist in a cooperation and joint-decision making between several data protection authorities concerned. The proposal clarifies that the jointly agreed decision will be adopted by the data protection authority best placed to deliver the most effective protection from the perspective of the data subject. In practice, that means that it will be the local authority the one adopting the decision in all cases where the complainant could be adversely affected by it, allowing him to have the decision of the data protection authority reviewed by his or her own court.

In January 2012, in the light of rapid technological developments and globalisation, the European Commission presented a legislative package to update and modernise the principles enshrined in the 1995 Data Protection Directive ([Directive 95/46/EC](#)), 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 as a legislative package: 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](#)) and a directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties and the free movement of such data for the police and criminal justices authorities ([5833/12](#)).

The data protection legislative reform aims 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. Data protection in the European Union is a fundamental right. The EU data protection reform seeks to ensure a very high level of protection of personal data.

In June 2013 the Council reached a partial general approach on the text of Article 3(2) (territorial scope), the text concerning the respective definitions of "binding corporate rules" and "international organisations" (Articles 4(17) and (21)), and the transfer of personal data to third countries or international organisations (Chapter V) of the draft regulation ([10349/14](#)). In October 2013 Ministers also reached a partial general approach on the chapter IV (controller and processor) and the related recitals ([13772/14](#)). These agreements do not mandate the Presidency to engage in informal trilogues with the European Parliament on the text.

## Presumption of innocence

### – General approach

The Council is expected to reach a general approach on the proposal for a directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings ([15837/14](#)). This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the directive.

The Commission presented its proposal on 27 November 2013 ([17621/13](#)). In a package adopted on the same date, the Commission presented also the following texts:

- a proposal for a directive on procedural safeguards for children who are suspected or accused in criminal proceedings
- a proposal for a directive on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant;
- a recommendation on procedural safeguards for vulnerable people suspected or accused in criminal proceedings;
- a recommendation on the right to legal aid for suspects or accused persons in criminal proceedings.

Since 2009, the work in the European Union on strengthening procedural rights for suspects and accused persons in criminal proceedings has been carried out on the basis of the [roadmap](#), which was adopted by the Council on 30 November 2009. The roadmap provides a step-by-step approach – one measure at a time – towards establishing a full catalogue of procedural rights for suspects and accused persons in criminal proceedings. The European Council has made the roadmap part of the Stockholm programme, in which explicit reference was made to a measure on the presumption of innocence.

Three measures have already been adopted on the basis of the roadmap: [Directive 2010/64/EU](#) on the right to interpretation and translation in criminal proceedings ([see press release](#)), [Directive 2012/13/EU](#) on the right to information in criminal proceedings ([see press release](#)), and [Directive 2013/48/EU](#) on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty ([see press release](#)).

In June 2013 the Council reached a general approach on the proposal for a directive on procedural safeguards for children ([10065/14](#)). The negotiations with the European Parliament to reach an agreement on that text will probably start at the beginning of next year.

## European Public Prosecutor's Office

- State of play/Orientation debate

The Council will be briefed by the Presidency on the state of play on the proposal regarding the setting up of a European Public Prosecutor's Office (EPPO) and will hold a policy debate on the basis of a document prepared by the Presidency ([15862/1/14 REV 1](#)).

The debate will focus on a few key questions regarding how the independence of the decision making of the Office can be best ensured.

In March 2014, the Council held a discussion on the structure of the office, and on the delimitation of its tasks and competences. Ministers generally agreed that the European Public Prosecutor's Office would be organised on the basis of a college of prosecutors originating from the member states.

In June 2014, the Council confirmed, as the basis for further discussion, the principles of a collegially structured EPPO. Ministers also confirmed the principle that the EPPO would have a priority competence to investigate and prosecute offences affecting the Union's financial interests ([9834/1/14 REV 1](#)), but that national authorities would retain a concurrent competence in principle.

The proposed regulation aims to help combat crimes against the Union's financial interests by introducing a European Public Prosecutor's Office with competence in that area. The legal basis and the rules for setting up the EPPO are laid down in article 86 of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will be adopted in accordance with a special legislative procedure: the Council will decide unanimously after obtaining the consent of the European Parliament. If unanimity cannot be reached in the Council, the treaties provide that a group of at least nine member states may enter into an enhanced cooperation.

The Commission presented its proposal on 17 July 2013 ([12558/13](#)).

## European Union Agency for Criminal Justice Cooperation (EUROJUST)

- Partial general approach

The Council is expected to reach a partial general approach on a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) ([16139/14](#)). The provisions relating to the European Public Prosecutor and the chapter IV on data protection have been excluded from the partial general approach as they are linked to other legislative proposals which have yet to be concluded.

The Commission's proposal on Eurojust introduces major changes in the structure and governance of the Agency. The main changes concern the distinction between the operational and management functions of the College; the setting up of an Executive Board; new provisions on annual and multi-annual programming; the representation of the Commission in the College acting as a Management Board and in the Executive Board; and a detailed description of the responsibilities and tasks of the Administrative Director.

This new regulation streamlines Eurojust's functioning and structure in line with the Lisbon Treaty. It also increases the democratic legitimacy of Eurojust: the European Parliament and national Parliaments will in future be more involved in the evaluation of Eurojust's activities.

The Commission presented its proposal in July 2013 ([12566/13](#)).

## Insolvency proceedings

### – Political agreement

The Council is expected to approve a political agreement reached with the European Parliament on the proposal for a regulation amending regulation 1346/2000 on insolvency proceedings ([15414/14](#) + [ADD 1](#)).

The amended regulation is aimed at making cross-border insolvency proceedings more efficient and effective with a view to ensuring the smooth functioning of the internal market and its resilience in economic crises. That objective is in line with the European Union's current political priorities of promoting economic recovery and sustainable growth, a higher investment rate and the preservation of employment, as set out under the Europe 2020 strategy, and ensuring smooth development and the survival of businesses, as stated in the Small Business Act.

The regulation will also bring the current insolvency regulation into line with developments in national insolvency laws introduced since its entry into force in 2002.

To come into effect, the agreed text still needs to be formally approved by the Council and the Parliament.

The proposal was submitted by the Commission in December 2012 ([17883/12](#)).

## European small claims procedure

### – General approach

The Council is expected to reach a general approach on the proposal for a regulation amending the European small claims regulation and the European order for payment regulation ([15841/14](#)). That general approach will constitute the basis for negotiations with the European Parliament in order to agree on the final text of the regulation.

The objective of the proposed amending regulation is to make the European Small Claims Procedure more efficient, in particular by reflecting the technological progress made in the justice systems in the member states, and to make the procedure accessible in a larger number of cases, in particular also for businesses.

To achieve these objectives, the proposed compromise text for the general approach includes the following amendments:

- the duplication of the threshold for a small claim from currently €2.000 to €4.000;
- the obligation of the member states to offer distance means of payment for the payment of court fees;
- an increase of the use of modern technologies for oral hearings and taking of evidence, for communications between the court and the parties, and the set up of a general framework that allows, under certain conditions, for the use of electronic service of documents;
- the minimisation of the translation requirement (and related costs) as regards the certificate necessary for the enforcement of a judgment given in the European Small Claims Procedure;
- the creation of "a bridge" between the European Small Claims Procedure and the European Order for Payment Procedure by allowing the claimant to use the European Small Claims Procedure when a statement of opposition has been lodged against a European order for payment.

The European Small Claims Procedure is an important instrument for citizens and businesses improving access to justice by simplifying cross-border small claims litigation in civil and commercial matters and reducing costs. It was established by regulation 861/2007 and is applied since 1 January 2009.

The judgments delivered under this procedure are recognised and enforceable in the other member states without the need for a declaration of enforceability. The procedure is optional, offered as an alternative to the possibilities existing under the national laws of the member states. Under the current rules, "small claims" are cases concerning sums up to €2 000.

## Mutual recognition of public documents

### – Policy debate

The Council will have a discussion on the draft regulation on promoting the free movement of citizens and businesses by simplifying the requirements for presenting certain public documents in the European Union.

The discussion will be focused on four issues: the scope, translations, the multilingual standard forms and the relations between the future regulation and other instruments. Ministers are expected to adopt guidelines on these issues for the continuation of the work at technical level (15843/14).

The proposed regulation aims at simplifying the procedures for cross-border use and acceptance of public documents between the member states, thereby contributing towards the creation of a citizens' Europe and a well-functioning Single Market for EU businesses.

The original scope of this proposal covers public documents issued by authorities of the member states and having formal evidentiary value relating to birth, death, name, marriage, registered partnership, parenthood, adoption, residence, citizenship, nationality, real estate, legal status and representation of a company or other undertaking, intellectual property rights and absence of a criminal record. Under this proposed regulation, such documents would be exempted from all forms of legalisation and similar formalities. Documents drawn up by private persons and documents issued by authorities of third states are excluded from its scope.

The proposal also establishes EU multilingual standard forms concerning birth, death, marriage, registered partnership and legal status and representation of a company or other undertaking.

The Commission presented its proposal on 24 April 2013 ([9037/13](#)).

## Other items

The Council will be briefed by the Presidency on a number of legislative proposals, including:

- the directive on the protection of individuals with regards to the processing of personal data by competent authorities for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data ([15730/14](#))
- the directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings ([15490/14](#))
- the directive on the fight against fraud to the Union's financial interests by means of criminal law
- the Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and the Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships ([16171/14](#)).

## HOME AFFAIRS

### Fight against terrorism

#### Foreign fighters

The Council will have an in-depth discussion on the issue of foreign fighters on the basis of a discussion paper prepared by the EU Counter-Terrorism Coordinator. A progress report on the implementation of measures decided by the Council on 9-10 October has also been prepared by the Counter-Terrorism Coordinator in consultation with the Commission services and the EEAS.

Ministers will be invited to provide political guidance in two specific areas: the judicial response to the phenomenon of foreign fighters and further improvements in information exchange on foreign fighters. Furthermore, they will be invited to take stock of the progress made on the implementation of the measures approved in October 2014 and express its support for the continuation of the work.

Early 2013, the European Union started already to work on the foreign fighters phenomenon by raising awareness and encouraging the member states to work closely together and exchange information to the maximum extent.

In June 2013 the Justice and Home Affairs Council upon suggestion of the EU Counter Terrorism Coordinator, in close consultation with the services of the Commission and the EEAS, adopted a package of 22 measures on many aspects, on how to prevent the flow of foreign fighters, improve the detection of suspicious travel, provide the adequate criminal justice response and engage more closely with third countries.

In addition to the work at EU level, a group of member states most affected by this phenomenon regularly met in 2013 and 2014, under the leadership of Belgium, to exchange information on the threat, compare notes on policy measures and discuss areas where intensified cooperation is needed.

At the last meeting in July 2014, the Ministers approved a set of measures aimed at improving the use of the second generation Schengen Information System (SIS II), targeted border controls, transmission of information to Europol for joint analysis, sharing of information about foreign fighters among national authorities as well as practical cooperation and exchange of information, for example on the use of passenger data (PNR and API). While all these measures are to be implemented by the competent national authorities, they are also promoted at EU level.

The European Council recognised in August 2014 that the rise of the Islamic State of Iraq and the Levant (ISIL) is a major threat to European security and that determined action to stem the flow of foreign fighters from Europe who join ISIS in Iraq and Syria is needed. It called for an accelerated implementation of the package of 22 measures and requested the Council to propose additional action, as required. The European Council will review this issue at its meeting in December 2014.

On 24 September 2014, the UN Security Council adopted [Resolution 2178 \(2014\)](#) which calls on members of the UN to reinforce their engagement against terrorism, by, inter alia, making it a criminal offense to travel abroad for terrorist purposes.

In October 2014 Ministers gave political guidance on two topics where further progress must be achieved: the finalisation of the work on the EU PNR directive and the controls at external borders of the Schengen Area.

Regarding the EU PNR, ministers agreed on the urgency of making progress on this file and called on the European Parliament to adopt its position as soon as possible in order to start negotiations with the Council. On the checks at external borders, the Council agreed to improve such checks under the existing legal framework without further delay.

The Council also agreed on a number of specific actions that will help to speed up the implementation of the already approved measures. Those actions do not only relate to the work done at EU level so far; they also include the conclusions of the work of the Ministers of Interior of the member states most affected by the foreign fighters phenomenon, which are now being taken forward at EU level.

## Managing migratory flows

- Follow up / Information from the Commission and the EEAS

Ministers will be briefed by the Commission and the European External Action Service (EEAS) on the implementation of the operational actions identified by the Task Force Mediterranean (TFM) and on the follow up to the Council Conclusions of 10 October 2014 on "Taking action to better manage migratory flows".

The Task Force Mediterranean was set up following the JHA Council of 7-8 October 2013 in order to identify the tools which the EU has at its disposal and which could be used in a more effective way to avoid the tragic events that had occurred off the coast of Lampedusa.

On 4 December 2013 the Council discussed the communication of the Commission on the work of the Task Force Mediterranean ([17398/13](#)) and welcomed the set of actions contained in the document.

The task force identified five main areas of action which will be pursued actively during the coming months:

- Actions in cooperation with third countries.
- Regional protection, resettlement and reinforced legal avenues to Europe.
- Fight against trafficking, smuggling and organised crime.
- Reinforced border surveillance contributing to enhancing the maritime situational picture and to the protection and saving of lives of migrants in the Mediterranean.
- Assistance and solidarity with member states dealing with high migration pressure.

The Presidency reported to the European Council on 20 December on this matter. In its [conclusions](#), the European Council welcomed the Commission communication and called for the mobilisation of all efforts in order to implement actions proposed in the communication with a clear timeframe to be indicated by the Commission.

It was considered that increased engagement with third countries in order to avoid that migrants embark on hazardous journeys towards the EU should be a priority. Information campaigns, regional protection programmes, mobility partnerships and an effective return policy were also considered important components of this comprehensive approach.

The European Council reiterated the importance it attaches to resettlement for persons in need of protection and to contributing to global efforts in this field. It also called for the reinforcement of Frontex border surveillance operations and actions to fight smuggling and human trafficking, as well as to ensure that appropriate solidarity is shown to all member states under high migration pressure.

The European Council invited also the Council to regularly monitor the implementation of the actions.

Since the presentation by the Commission of its Communication on the work of the TFM in December 2013 the European Commission (supported by the EEAS and the competent EU agencies) has regularly reported to the Council on the state of play of the implementation of the 37 operational actions.

In June 2013 the Council took note of the report ([10067/14](#)) from the Commission on the implementation of these actions and welcomed the progress achieved in the five key areas listed in the Commission communication, showing the active involvement of all stakeholders in this process.

The Council acknowledged that the situation in the Mediterranean is of great concern to all member states, as there are indications that the current trend will continue and the situation even risks deteriorating further. The timely implementation of the initiatives identified by the Task Force, with the active contribution of all the stakeholders involved, is key to assisting member states situated on the southern and eastern borders in addressing the challenges they are currently facing.

In July 2014 the Italian Presidency triggered a debate on all above issues and presented a paper containing a series of proposals for a possible way forward defining a sustainable approach, based on three pillars, to respond to migratory pressure in a structured manner and go beyond the immediate emergency measures. Such approach could be used as a blueprint to address possible future challenges and could be adapted to the specific needs of any emerging situation.

In October 2014 the Council decided to adopt the paper as Council conclusions ([14141/14](#)), stressing that the guiding principles for achieving a strategic and operational approach to better managing migration flows are:

- Action in cooperation with third countries
- Reinforced management of external borders and Frontex
- Action at member state level – reception and fingerprinting.

Those priorities should be implemented without delay through operational actions by all players involved, under the coordination of the Commission and in close cooperation with the EEAS and the Council.

The Commission and the EEAS were invited to report to the Council in December on the implementation of the above-mentioned principles.

The main new development since the October Council meeting is the launch of the EU-funded Triton operation, managed by Frontex, which started on 1 November 2014.

The operation covers the maritime area south of Sicily and the Pelagic islands as well as the coastal areas around Calabria, southern Italy. This operation does not replace the Italian funded Mare Nostrum operation launched in October 2013 and developed as a military operation with humanitarian purposes. Triton is intended to reinforce border surveillance in the waters close to the Italian shores but it can, if necessary, pursue search and rescue activities. Its costs are estimated to €2,9 millions per month and in terms of resources it has 7 ships, two planes and a helicopter.

## **MIXED COMMITTEE**

### **Task Force Mediterranean**

- Follow up / Information from the Commission and the EEAS.

The committee will be briefed by the Commission and the European External Action Service (EEAS) on the implementation of the operational actions identified by the Task Force Mediterranean (TFM) and on the follow up to the Council Conclusions of 10 October 2014 on "Taking action to better manage migratory flows".

See item above

## **The functioning of the Schengen area**

### **Schengen evaluations**

- Closure report and Council conclusions

The committee will have an exchange of views on the closure report and Council conclusions of 15 years of Schengen evaluations within the Council.

The report presents an overview of "Schengen" developments and accomplishments in the last 15 years within the Council and outlines the future role of the Council resulting from the implementation of the new Schengen governance system.

After the exchange of views, the Council will approve the conclusions.

### **Sixth biannual report on the functioning of the Schengen area**

- Presentation and exchange of views

The committee will discuss the Commission's sixth biannual report on the functioning of the Schengen area (1 May 2014 - 31 October 2014) ([15783/14](#))

The European Council in June 2011 stated that political guidance and cooperation in the Schengen area need to be further strengthened, enhancing mutual trust between member states. On 8 March 2012, the Council adopted conclusions ([7417/12](#)) regarding guidelines for the strengthening of political governance in the Schengen cooperation. In the conclusions the Council agreed to have discussions at ministerial level on that matter once during each presidency, and welcomed the intention of the Commission to present regular reports on the issue in that regard.

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