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THE EUROPEAN UNION**



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3228th Council meeting

Justice and Home Affairs

Brussels, 7-8 March 2013

President

Mr Alan Shatter

Minister for Justice, Equality and Defence of Ireland

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Main results of the Council

*Home affairs ministers adopted two decisions concerning the establishment, operation and use of the second generation **Schengen Information System (SIS II)**. These decisions fix the date of application of decision 2007/533/JHA and regulation 1987/2006 as 9 April 2013.*

*The Council had a state-of-play discussion on the **full application of the provisions of the Schengen acquis** in the Republic of **Bulgaria** and in **Romania**.*

*Ministers heard a presentation by the Commission on its "**Smart Borders Package**", tabled on the 28 February 2013. This package aims at using new technology to speed-up, facilitate and reinforce border check procedures for foreigners travelling to the EU.*

*Furthermore, the Council was briefed by the Counter-Terrorism Coordinator, the Commission and the European External Action Service on the **security situation in the Sahel/Maghreb and its implications for EU internal security**.*

*The **Mixed Committee** (the EU plus Norway, Iceland, Liechtenstein and Switzerland), meeting in the margins of the Council, looked at two decisions concerning the establishment, operation and use of the second generation **Schengen Information System (SIS II)** and had a state-of-play discussion on the **full application of the provisions of the Schengen acquis** in the Republic of **Bulgaria** and **Romania**. Furthermore, the Committee heard the Commission presentation on its "**Smart Borders Package**".*

*Justice ministers held an orientation debate on the proposal for a regulation setting out a **general EU framework for data protection**. The discussion focused on the implementation of a risk-based approach in the regulation and on the flexibility requirement for the public sector.*

*Moreover, ministers had a first exchange of views on the recent proposal for a directive on the **protection of the euro and other currencies against counterfeiting by criminal law**, following its presentation by the Commission.*

*Finally, ministers confirmed the compromise text of the agreement reached with the European Parliament on the regulation **on mutual recognition of protection measures in civil matters** upon request of the person at risk, aimed at strengthening the rights of victims.*

***Important items adopted without discussion** (A items) include a regulation providing that as a general rule only the **Official Journal of the EU** published in electronic form is authentic and produces legal effects.*

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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>).
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Ms Annemie TURTELBOOM
Ms Maggie DE BLOCK

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State Secretary for Asylum, Immigration and Social
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Parliamentary State Secretary to the Federal Minister for
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Parliamentary State Secretary to the Federal Minister for
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Estonia:

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Ireland:

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Minister for Justice and Equality, Minister of Defence

Greece:

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Minister for Justice

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Mr Philippe ETIENNE

Keeper of the Seals, Minister for Justice
Permanent Representative

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Minister for the Interior
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Latvia:

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Mr Jānis BORDĀNS

Minister for Interior
Minister for Justice

Lithuania:

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Mr Juozas BERNATONIS

Minister for the Interior
Minister for Justice

Luxembourg:

Mr François BILTGEN

Minister for Justice, Minister for the Civil Service and Administrative Reform, Minister for Higher Education and Research, Minister for Communications and the Media, Minister for Religious Affairs
Permanent Representative

Mr Christian BRAUN

Hungary:

Mr Tibor NAVRACSICS

Deputy Prime Minister and Minister for Public Administration and Justice
Parliamentary State Secretary, Ministry of the Interior

Mr Károly KONTRÁT

Malta:

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Permanent Representative

Netherlands:

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Mr Fred TEEVEN

Austria:

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Federal Minister for the Interior
Federal Minister for Justice

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State Secretary, Ministry of the Interior and Administration
Deputy State Secretary, Ministry of Justice

Mr Michał KRÓLIKOWSKI

Portugal:

Mr Miguel MACEDO

Minister for the Interior
State Secretary for Administration of the Property and Premises of the Ministry of Justice

Mr Fernando SANTO

Romania:

Mr Radu STROE

Minister for the Interior
Minister for Justice

Ms Mona Maria PIVNICERU

Slovenia:

Ms Mojca KUCLER DOLINAR

State Secretary
State Secretary

Mr Robert MAROLT

Slovakia:

Mr Robert KALIŇÁK

Deputy Prime Minister and Minister for the Interior
State Secretary at the Ministry of Justice

Ms Monika JANKOVSKÁ

Finland:

Ms Päivi RÄSÄNEN

Minister for Interior
Minister for Justice

Ms Anna-Maja HENRIKSSON

Sweden:

Ms Beatrice ASK

Minister for Justice
State Secretary

Mr Martin VALFRIDSSON

United Kingdom:

Mr Chris GRAYLING

Lord Chancellor, Secretary of State for Justice
Secretary of State for the Home Department

Ms Theresa MAY

Commission:

Ms Viviane REDING
Ms Cecilia MALMSTRÖM

Vice President
Member

.....

The Government of the Acceding State was represented as follows:

Croatia:

Mr Orsat MILJENIĆ
Mr Vladimir DROBNJAK

Minister for Justice
Permanent Representative

ITEMS DEBATED**Smart Borders Package**

The Council heard a presentation by the Commission on its "Smart Borders Package", tabled on 28 February 2013. This package aims at using new technology to speed-up, facilitate and reinforce border check procedures for foreigners travelling to the EU. It includes three proposals for regulations:

- A regulation establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the member states of the EU; which will record the time and place of entry and exit of third country nationals travelling to the EU. The system will calculate the length of the authorised short stay by electronic means, replacing the current manual system.
- A regulation establishing a Registered Travellers Program (RTP), which will allow certain groups of frequent travellers from third countries (such as business travellers, workers on short term contracts, researchers and students) to enter the EU using simplified border checks.
- A regulation amending the Schengen Borders Code as regards the use of the EES and RTP.

The aim of the "Smart Borders Package" is to simplify life for frequent third country travellers at the EU's external borders, enhance EU security and contribute to better monitoring of border-crossings.

The Council asked its preparatory bodies to start working on these proposals.

SIS II

The Council adopted two decisions concerning the establishment, operation and use of the second generation Schengen Information System (SIS II). These decisions fix the date of application of decision 2007/533/JHA¹ ([6840/1/13 REV 1](#)) and regulation 1987/2006² ([6841/1/13 REV 1](#)) as 9 April 2013.

The Schengen Information System (SIS) is a database shared by participating countries' border and migration authorities, and law enforcement authorities. It 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 mechanism in the EU.

SIS II is a more advanced version of the system and will have enhanced functionalities, such as the capability to use biometrics, new types of alerts, the capability to link different alerts (such as an alert on a person and a vehicle) and a facility for direct queries. It will also ensure stronger data protection. SIS II will start operation on 9 April 2013, becoming one of the world's largest IT systems in the field. It will consist of three components: a central system, EU states' national systems and a communication infrastructure (network) between the central and the national systems.

Schengen enlargement: Bulgaria and Romania

The Council had a state of play discussion on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and in Romania. The Presidency concluded the debate as follows:

The Council reverted to the issue of the Schengen accession of Romania and Bulgaria, as requested by the European Council in December 2012.

It recalled the outcome of the European Council meeting in December 2012 as well as all relevant conclusions of previous European Councils and of the JHA Council.

The Council decided to address this issue again by the end of 2013 with a view to considering the way forward on the basis of a two step approach.

¹ [OJ L 205, 7.8.2007](#)

² [OJ L 381, 28.12.2006](#)

Security situation in the Sahel/Maghreb

The Council discussed the security implications of the situation in the Sahel/Maghreb following a joint presentation by the Counter-Terrorism Coordinator, the Commission and the European External Action Service.

The discussion focused on five main topics: foreign fighters, protection of critical infrastructure, Sahel-related aviation security, prevention of radicalization and the kidnapping for ransoms.

The Council tasked the relevant EU actors with expediting work on the proposals presented by the Counter Terrorism Coordinator and asked him to present a report on their implementation to the Council in October. The Council also stressed the need to maximise synergies between the CFSP and JHA tools.

Data protection

The Council held an orientation debate on the proposal for a regulation establishing a general EU framework for data protection on the basis of a progress report prepared by the Presidency ([6607/1/13](#)). The document is a follow-up to the instructions by the December Justice and Home Affairs Council regarding two questions, namely the possibility of injecting a more risk-based approach into the regulation and checking whether and how the regulation can provide sufficient flexibility for the public sector.

The Presidency concluded that, at the technical level, the work should continue along the following lines:

- controllers should have an obligation to engage in prior consultation with the supervisory authority where their risk assessment indicates that the processing operations envisaged are likely to present a high degree of specific risk. Further work needs to be done on the definition of the applicable criteria;
- the designation of a data protection officer should be optional;
- the controller's obligations can be lightened in cases where a data protection officer is designated on a voluntary basis;

- the application of approved codes of conduct and the use of approved data protection certification mechanisms should be incentivised by establishing linkages with the risk assessment process; work on the risk-based approach should be continued by further developing criteria for enabling the controller and processor to distinguish risk levels and by further exploring the use of pseudonymous;
- work on finding flexibility for the public sector related to Article 6(3) as well as to other parts of the draft regulation should be continued, on the understanding that it is only after this work that the assessment as to whether the regulation is capable of accommodating the required level of flexibility for member states' public sector can be made.

Protection of the euro against counterfeiting

The Council had an exchange of views on the recent proposal for a directive on the protection of the euro and other currencies against counterfeiting under criminal law on the basis of a presidency paper ([6713/13](#)), following its presentation by the Commission.

Most delegations welcomed the proposal, given that the scale of counterfeiting since the introduction of the Euro requires a strengthening of the existing EU criminal law framework. However, several delegations expressed concerns about the introduction of minimum penalties, as established in article 5(4)(a) in the proposal. The Council instructed its preparatory bodies to start discussions on this proposal.

The proposed directive was tabled by the Commission on 5 February 2013 ([6152/13](#)) and will replace Framework Decision 2000/383/JHA. It aims at establishing minimum rules concerning the definition of criminal offences and penalties in the area of counterfeiting of the euro and other currencies. It also introduces common provisions to strengthen the fight against those offences and to improve investigation of them.

Protection measures in civil matters

The Council confirmed the compromise text of the agreement reached with the European Parliament on the regulation on mutual recognition of protection measures in civil matters upon request of the person at risk ([10613/11](#)).

This regulation is aimed at strengthening the rights of victims by establishing a legal framework to ensure that all protection measures taken in a member state benefit from an efficient mechanism of recognition which will allow their free circulation throughout the EU.

For more information see press release [7285/13](#).

AOB

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

- the two legislative proposals outstanding in relation to the Common European Asylum System (CEAS), namely the asylum procedures directive and the Eurodac regulation. Both files have entered into the final phase of negotiations with the European Parliament. Issues that remain to be resolved in the negotiations relate: special procedures for unaccompanied minors and victims of torture on the asylum procedures directive; and, in the case of the Eurodac regulation the modalities of access to Eurodac data by law enforcement authorities;
- the Intra-corporate Transferees and the Seasonal Workers directive. The Presidency is aiming to achieve first-reading agreements on both files on the basis of the mandates established by the Council in 2012;
- the MFF Home Affairs (Asylum and Migration Fund and Internal Security Fund - Police)
- the directive on the right to access to a lawyer;
- the European Investigation Order.
- the directive on confiscation of the proceeds of crime;
- the MFF on the Rights, Equality and Citizenship Programme and the Justice Programme (2014-2020);

Furthermore, the Commission briefed the Ministers on the outcome of the High Level Conference "Empowering local actors to counter violent extremism", held in Brussels on 29 January 2013 and on the negotiations for the establishment of an EU-Morocco Mobility Partnership.

The Spanish delegation presented a proposal to establish a platform in Bogota for the exchange of information on transatlantic cocaine trafficking from the Andean region to Europe.

Mixed Committee

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

SIS II

The Committee looked at two decisions concerning the establishment, operation and use of the second generation Schengen Information System (SIS II). These decisions fix the date of application of decision 2007/533/JHA¹ and regulation 1987/2006² as 9 April 2013.

After the discussion in the Mixed Committee, the Council adopted both decisions. See also separate item above.

Schengen accession Romania / Bulgaria

The Committee had a state-of-play discussion on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and in Romania. See item above.

Smart Borders Package

The Committee heard a presentation by the Commission on its "Smart Borders Package", tabled on 28 February 2013. This package aims at using new technology to speed-up, facilitate and reinforce border check procedures for foreigners travelling to the EU. See separate item above.

¹ [OJ L 205, 7.8.2007](#)

² [OJ L 381, 28.12.2006](#)

AOB

Under other business, the Committee was informed about the state of play of a number of legislative proposals, including:

- the Schengen related legislative proposals that are currently under discussion, namely the Schengen evaluation mechanism and the Schengen Borders Code;
- the changes to Regulation 539/2001 (visa requirements - suspension and reciprocity mechanisms);
- the regulation for the establishment of a European Border Surveillance System (EUROSUR);
- the technical amendments to the Schengen Borders Code (Regulation 562/2006 and the Schengen Convention);
- the MFF Home Affairs (horizontal regulation and the Internal Security Fund - Borders).

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Control of psychoactive substances

The Council adopted a decision on subjecting the new psychoactive substance 4-methylamphetamine to control measures and criminal penalties across the Union ([6430/13](#)).

GENERAL AFFAIRS

Electronic publication of Official Journal of the EU

The Council adopted a regulation providing that as a general rule only the Official Journal of the EU published in electronic form is authentic and produces legal effects ([10222/5/11](#)). This is to ensure better access to law.

Cohesion policy 2014-2020

The Council agreed a fourth partial general approach¹ on certain elements of the EU cohesion policy for the 2014-2020 period ([5609/1/13 REV 1](#) + [5609/13 ADD 5 REV 1](#)).² It also agreed a general approach concerning European Groupings of Territorial Cooperation ([5609/13 ADD 4 REV 1](#)).

The purpose of cohesion policy is to reduce disparities between the levels of development of the EU's various regions.

The partial general approach covers the following three elements:

- Recitals, as set out in [5609/13 ADD 1 REV 1 + COR 1](#). This part of the partial general approach is about ensuring coherence between the recitals and the amendments on the articles agreed upon in former partial general approaches.

¹ A general approach is a political agreement of the Council pending the adoption of a first-reading position by the European Parliament. The general approach on the cohesion policy legislative package is partial since some elements are excluded, in particular the sums to be devoted to cohesion policy and the eligibility of different regions.

² The decision was taken at a meeting of the Justice and Home Affairs Council.

- Delegations of power, implementing, transitional and final provisions, as set out in [5609/13 ADD 2 REV 1](#). This is about making sure that the wording in the five cohesion policy regulations (on the Common Provisions, the European Regional Development Fund, the European Social Fund, the European territorial cooperation and the Cohesion Fund) is aligned.
- Other pending articles, as set out in [5609/13 ADD 3 REV 1](#). This part notably covers certain definitions.

European Groupings of Territorial Cooperation (EGTC) are aimed at facilitating and promoting cross-border, transnational and interregional cooperation. Unlike the cohesion policy for the 2007-2013 period, it is proposed that the geographic scope of EGTC be expanded to overseas countries and territories and third countries; currently, EGTC can be established only within the EU.

The partial general approach and the general approach complement the three partial general approaches agreed on 24 April ([8925/12](#))¹, 26 June ([11221/12](#))² and 16 October 2012 ([14911/12](#))³.

All four partial general approaches and the general approach were agreed on the principle that nothing is agreed until everything is agreed; this means that they do not prejudice the outcome of negotiations with the European Parliament on other negotiation blocs or the multiannual financial framework for 2014-2020. It also means that they may be subject to change as a result of these other negotiations.

TRADE POLICY

Anti-dumping - Stainless steel fasteners - Philippines - Malaysia and Thailand

The Council adopted a regulation extending the anti-dumping duty imposed by regulation 2/2012 on imports of certain stainless steel fasteners and parts thereof originating in China to imports consigned from the Philippines, and terminating the investigation concerning possible circumvention of anti-dumping measures imposed by that regulation by imports of these products consigned from Malaysia and Thailand ([6411/13](#)).

¹ This partial general approach covered the following six items: programming; ex ante conditionality; management and control; monitoring and evaluation; eligibility; major projects.

² This partial general approach covered the following four items: thematic concentration; financial instruments; net revenue generating operations and private public partnerships; performance framework.

³ This partial general approach covered the following seven items: information and communication, technical assistance; European territorial cooperation; territorial development; financial issues not covered in the negotiations on the multiannual financial framework (MFF) for 2014-2020; country-specific recommendations; management and control; indicators.

INDUSTRY**Technical prescriptions for wheeled vehicles**

The Council adopted a decision supporting certain amendments to the agreement of the United Nations economic commission for Europe (UNECE) concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts used on wheeled vehicles ([6616/13](#)).

UNECE develops harmonised requirements intended to remove technical barriers to the trade in motor vehicles between the contracting parties to the agreement. The EU is a contracting party to this agreement and votes on behalf of the member states.

DECISIONS TAKEN BY THE REPRESENTATIVES OF THE MEMBER STATES**Appointment of five judges to the General Court of the European Union**

On 6 March, the representatives of the governments of the member states reappointed the following persons as judges to the General Court of the European Union (the former Court of First Instance) for further six years from 1 September 2013:

- Ms Mariyana KANCHEVA (Bulgaria)
- Ms Ingrīda LABUCKA (Latvia)
- Mr Alfred DITTRICH (Germany)
- Mr Nicolas James FORWOOD (United Kingdom).

The representatives of member states' governments also nominated Mr Carl WETTER (Sweden) as judge to the General Court of the EU in replacement of Mr Nils WAHL (Sweden) for his remaining term of office ending on 31 August 2013.

The General Court is made up of at least one judge from each member state. Judges are appointed for a term of office of six years, which is renewable. They appoint their president from among their number for a period of three years.