



Brussels, 2 June 2008

BACKGROUND¹
JUSTICE and HOME AFFAIRS COUNCIL
Luxembourg, 5 and 6 June 2008

The Justice and Home Affairs (JHA) Council will meet for a two-day meeting on Thursday and Friday, 5 and 6 June 2008, in Luxembourg. In the margins of the Council on Thursday, the Mixed Committee (EU + Norway, Iceland, Liechtenstein and Switzerland) will meet at 10.00 with a view to examining the state of play and timetable for setting up the second generation of the Schengen Information System (SIS II) and a proposal on procedures for returning illegally staying non-EU nationals.

Afterwards, the EU Ministers for Interior Affairs will start its work with the examination of a proposal to extend the long-term residence status to beneficiaries of international protection, a decision on the implementation of the Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ("the Prüm Decision), a report by the EU Counter-terrorism coordinator on the progress made on the implementation of the counter-terrorism strategy and action plan, and a draft agreement with Australia on the processing and transfer of EU-sourced passenger name record data by air carrier.

On Friday, the EU Ministers of Justice will aim to agree on a Framework Decision on enhancing procedural rights in trials "in absentia" and on certain aspects of a draft decision strengthening Eurojust. Moreover, EU Ministers of Justice are expected to agree on some guidelines for further work on two draft Regulations relating to maintenance obligations and to the jurisdiction on applicable law in matrimonial matters (Rome III). They will also be informed about the 1st reading agreement on a proposal for a Directive on the protection of the environment through criminal law; in addition, the Presidency will present the state of play regarding a proposal for a Directive on ship-source pollution and on the introduction of penalties for infringements.

Press conferences at the end of each of the working sessions of the Council (Thursday at +/- 16.00 and Friday at +/- 15.30)

On the margins of the Council on Thursday (12.30), signing of the joint declarations on Mobility Partnership between the EU and Cape Verde and between the EU and Republic of Moldova will take place.

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

Return of illegally staying third-country nationals

The Presidency will inform the Council/Mixed Committee of the state of negotiations regarding a proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (the "Return Directive").

The draft Directive deals with key issues in the policy of return such as the voluntary departure of returnees, the execution of a return decision through a removal procedure, the postponement of removal, the imposition of entry bans as accompanying measure to a return decision, the form of the return decision, the remedies against a return decision and the safeguards for a returnee pending return, the possibility of an accelerated procedure for return in certain cases and the detention of returnees and its conditions.

This proposal was submitted by the Commission in 2005 and has been examined at length, under successive presidencies. It is to be adopted in co-decision with the European Parliament.

On 22 May 2008, the Permanent Representatives Committee (COREPER) gave its support for a draft overall compromise on this proposal and the Presidency is hoping that an agreement in first reading with the European Parliament would be possible on that basis.

The main elements of the text agreed by Coreper can be found in document 9665/08.

Schengen developments

The Mixed Committee will take note of the state of play of SIS II (second generation Schengen Information System) and examine a detailed schedule for its implementation. According to the draft schedule, the date for migration from SIS 1 + to SIS II is kept to 30 September 2009.

Extension of long-term resident status to beneficiaries of international protection

The Council will explore the possibilities for an agreement on this proposal.

Council Directive 2003/109/EC determines the status of third-country nationals who are long-term residents (residing more than 5 years in a member state). At the time of the adoption of this Directive, the Council welcomed the Commission commitment to follow it up with a proposal for the extension of long-term resident status to refugees and persons benefiting from subsidiary protection. The new Commission proposal, presented in June 2007, responds to this commitment.

At its meeting on 18 April 2008, the JHA Council noted that a majority of delegations could support the inclusion of both refugees and beneficiaries of subsidiary protection in the scope of the Directive, without any difference of treatment between the categories. Since then, the Presidency has held bilateral contacts with several delegations and prepared a compromise text which will be presented to the Council.

It contains the following main elements:

- extension of the Directive to persons granted international protection, i.e. refugees and beneficiaries of subsidiary protection status, but not to persons benefiting from other forms of protection;
- equal treatment for persons granted international protection;
- half of the period between the date on which the application for international protection was lodged and the date on which the relevant residence permit was granted to count for the purpose of calculating the five years period of legal residence;
- application of the Directive starting in 2011.

Resettlement of the refugees from Iraq

The Council will have a debate on this issue, on the basis of a non-paper which will be presented by the German delegation. It should be noted that at the JHA Council meeting in April, the German minister informed his colleagues about the current situation and the need for urgent action.

Stepping up cooperation for purposes of prevention and investigation of criminal offences

The Council is expected to reach an agreement on a Decision laying down the necessary administrative and technical provisions for the implementation of a Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the "Prüm Decision").

The "Prüm Decision", agreed by the council on June 2007, is designed to improve the exchange of information between authorities responsible for the prevention and investigation of criminal offences.

To this end, the Decision contains rules in the following areas:

- on the conditions and procedure for the automated transfer of DNA profiles, dactyloscopic data and certain national vehicle registration data,
- on the conditions for the supply of data in connection with major events with a cross-border dimension,
- on the conditions for the supply of information in order to prevent terrorist offences, and
- on the conditions and procedure for stepping up cross-border police cooperation through various measures.

The implementing Decision will establish those common normative provisions which are indispensable for administrative and technical implementation of the forms of cooperation set out in the Prüm Decision, especially for automated exchange of DNA data, dactyloscopic data and vehicle registration data.

Terrorism - Report by the EU Counter-Terrorism Coordinator

The EU Counter-Terrorism Coordinator, Gilles de Kerchove, will present to the Council his report on the implementation of the strategy and action plan to combat terrorism (doc. 9416/1/06).

This report, which is a response to the European Council's request for a report every six months, summarises progress since December 2007 and the state of play regarding ratification of the conventions and implementation of the legislative acts regarded as having priority.

Mr de Kerchove will also present his priorities for further action in the field of EU counter-terrorism (doc. 9417/08), in particular on information sharing, the issue of radicalisation, and on technical assistance to non-EU countries.

In December 2005 the European Council adopted the European Counter-Terrorism Strategy, which has provided the framework for EU activity in this field.² The strategic commitment of the Union is to combat terrorism globally while respecting human rights, and to make Europe safer, allowing its citizens to live in an area of freedom, security and justice. The Strategy groups all actions under four headings - PREVENT, PROTECT, PURSUE, RESPOND. The Revised Action Plan follows this pattern, with the objective of setting out clearly what the EU is trying to achieve and the means by which it intends to do so.

Agreement with Australia on transfer of passenger name record

The Council will approve the signing of the Agreement between the European Union and Australia on the processing and transfer of EU-sourced passenger name record (PNR) data to the Australian Customs Service.

On 28 February 2008 the Council decided to authorise the Presidency, assisted by the Commission, to open negotiations for this Agreement. Those negotiations have been successful and a draft Agreement has been drawn up.

The Agreement contains detailed assurances for the protection of PNR data transferred from the EU concerning passenger flights to or from Australia.

Australia and the EU will periodically review the implementation of the Agreement, so as to allow them, in the light of such a review, to take any action deemed necessary.

Protection of the environment through criminal law

The Presidency will inform the Council of a first reading agreement reached on 21 May 2008 with the European Parliament on a proposal for a directive on the protection of the environment through criminal law.

Once formally adopted by both Institutions, the Directive will establish a minimum set of conducts that should be considered criminal offences throughout the EU when unlawful and committed intentionally or with at least serious negligence. Inciting, aiding and abetting of such conducts will equally be considered a criminal offence.

² 14469/4/05 REV 4

Those conducts are:

- the discharge, emission or introduction of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the environment (quality of air, quality of soil, quality of water, animals or plants);
- the collection, transport, recovery and disposal of waste, which causes or is likely to cause death or serious injury to any person or substantial damage to the environment;
- the shipment of waste, whether executed in a single shipment or in several shipments which appear to be linked;
- the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant causes or is likely to cause death or serious injury to any person or substantial damage to the environment;
- the production, processing, handling, use, holding, storage, transport, import, export and disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the environment;
- the killing, destruction, possession, taking and trading of specimens of protected wild fauna or flora species, except for cases when the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
- any conduct which causes the significant deterioration of a habitat within a protected site;
- production, importation, exportation, placing on the market or use of ozone-depleting substances.

Each Member State shall take the necessary measures to ensure that these offences are punishable by effective, proportionate and dissuasive criminal penalties.

Ship-source pollution

The Council will take note of the state of play regarding a proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements.

In the aftermath of major accidental oil spills and the increasing uncontrolled operational discharges of polluting substances from ships at sea, the Commission proposed in 2003 a Directive providing that ship-source pollution should be considered as criminal offence and consequently should be subject to criminal penalties. The Commission also proposed a Framework decision providing for the approximation of criminal penalties' levels for the ship-source pollution criminal offences.

These two instruments were adopted by the Council in 2005. But the Court of Justice annulled the above-mentioned Framework Decision in 2007 considering that it was adopted by the Council on a wrong legal basis.

The Commission therefore proposed in March 2008 a new Directive with a view to filling the legal vacuum created by the annulment by the Court. The examination of the proposed Directive started under Slovenian Presidency and will continue under successive Presidencies.

Enforcement of decisions rendered *in absentia*

The Council will aim to reach a general approach on a draft Framework Decision on enhancing the procedural rights of persons and fostering of the application of the principle of mutual recognition in respect of decisions rendered in the absence of the person (trials *in absentia*).

The aim of the proposal is to determine clear and common grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear. Therefore it will allow the executing authority to execute a decision despite the absence of the person at the trial, while fully respecting the persons' right of defence. Such changes will require amendment of the existing instruments on mutual recognition (Framework Decisions on the European arrest warrant, on the financial penalties, on the confiscation orders, on the imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement, and on the supervision of probation measures and alternative sanctions). The new provisions should also serve as a basis for future instruments in this field.

Once adopted, the Framework Decision will overcome legal uncertainty over the mutual recognition of judgments rendered in the absence of the person concerned (*in absentia*). In addition to new information obligations, the text will establish that member states should recognise judgments rendered in the absence of the person concerned where he or she has been given a right to a retrial.

Eurojust

The Council will discuss certain articles of a draft Decision on the strengthening of Eurojust. In particular, it will examine articles related to the 24/7 on-call coordination, the exercise of powers of national members, Eurojust national coordination system, and the exchange of information between the member states and national members.

During its meeting of 18 April 2008, the JHA Council already reached a general approach on some articles related to Eurojust's composition, tasks, status of its national members and staff.

This proposal for reinforcing Eurojust was submitted on January 2008 by Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal.

Maintenance obligations

The Council will discuss a set of political guidelines of a proposal on maintenance obligations. The guidelines contain a compromise solution on six components of this draft Regulation and thus set out the framework for further discussions on this file. The Council will try to agree on the principal goal of the Regulation - complete abolition of exequatur on the basis of harmonised applicable law rules.

The ambition of the proposal is to eliminate all obstacles which still today prevent the recovery of maintenance within the European Union, in particular the requirement of exequatur procedure. By abolishing this procedure all decisions on maintenance obligations would be allowed to circulate freely between the Member States without any form of control in the Member State of enforcement and this would significantly speed up the recovery of maintenance owed. It would enable the creation of a legal environment adapted to the legitimate expectations of the maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order capable of circulation without obstacles in the European area of justice and enabling regular payment of the amounts due.

The six elements of the compromise refer to the scope, jurisdiction, applicable law, recognition and enforceability, enforcement and a review clause.

Jurisdiction and applicable law in matrimonial matters (Rome III)

The Council will have a debate on a proposal for a Council Regulation on rules concerning applicable law in matrimonial matters (Rome III).

The purpose of this Regulation is to provide a clear and comprehensive legal framework (covering both jurisdiction as well as applicable law rules in matrimonial matters) and allowing the parties a certain degree of autonomy in choosing the competent court and applicable law in case of divorce.

Spouses would be allowed to choose a competent court or the law applicable to divorce. In the absence of a choice of law by the spouses, the text would introduce conflict-of-law rules. According to the proposal, there is a cascade of connecting factors: the divorce is governed by the law of the country of habitual residence of both spouses, failing that, by that of the last habitual residence of the spouses if one of them still resides there; failing that, of the common nationality of the spouses or, failing that, by the law of the forum. The conflict-of-law rules of the proposal aim at ensuring that, wherever the spouses lodge their request for divorce, the courts of any Member State would normally apply the same substantive law (avoiding of "forum shopping").

It should be noted that the instrument will be of universal application. This means that the Regulation would also apply if the law applicable is that of a third State. Therefore, according to the proposal, courts have to apply either their own substantive law, that of another Member State or that of a third State (e.g. Switzerland, a US State or Turkey).

It should be noted that the Regulation needs unanimity of the Member States to be adopted and that so far the attempts made by the Presidency failed because of the concerns of some Member States. The goal of the Presidency is to establish at the Council that all possibilities for a compromise have been exhausted, that a large majority of delegations supports the objectives of this proposal and to discuss the possibility of enhanced cooperation between some Member States on this file.

E-justice

The Council will take note of a report on progress made during the Slovenian Presidency on e-justice.

In particular, the report describes the work done on a prototype for a European e-justice portal, its content, videoconferencing, getting access to electronic registers, etc.

It also describes priorities for further work, such as:

- introducing additional sets of content to the e-Justice portal in particular relating to legal aid, mediation and translation;
- continuing the creation of conditions for the networking of insolvency registers and to the extent possible discussing the possibilities to create the conditions for the networking of commercial and business registers and land registers;
- giving all the necessary technical assistance to facilitate the networking of criminal records;
- finalising technical preparations for the use of IT for the European payment order procedure, in full compliance with Regulation (EC) No 1896/2006 by the end of November 2008;
- facilitating the use of video-conferencing technology for communication in cross-border proceedings, in particular for the taking of evidence and interpretation;
- completing technical work by the end of December 2008 on the concept of authentication and securisation in the context of the portal and continuing technical work on interoperability and standardisation.

External dimension of Justice and Home Affairs (JHA)

The Council will take note of the progress made regarding the implementation of the strategy for the external dimension of JHA.

This strategy, adopted by the Council in December 2005, can be seen as one of the practical expressions of the wider European Security Strategy adopted by the European Council in 2003. It aims at both setting thematic priorities, clarifying underlying principles, reviewing mechanisms and tools and presenting EU structures and processes which are involved in the field of JHA-RELEX policies.

The Strategy holds that "The Commission and Council Secretariat will systematically monitor the progress of JHA external activity and report to the JHA Council and GAERC every 18 months". An early Progress report was issued in November 2006, which provided a valuable assessment of the Strategy's implementation. In the perspective of the Strategy's new reporting due in June 2008, time has come to carry out a second evaluation.

The second progress reports focus on implementation efforts in 2007 and the first half of 2008 as regards thematic and geographical priorities and call the attention of the Council to areas, where more work might be done, in particular: taking forward civil law cooperation, coping with data protection requirements, improving existing cooperation, establishing new partnerships and designing more effective instruments.
