



Brussels, 16 April 2008

BACKGROUND¹
JUSTICE and HOME AFFAIRS COUNCIL
Luxembourg, 18 April 2008

The Justice and Home Affairs (JHA) Council will meet for a one-day meeting on Friday, 18 April 2008, in Luxembourg. In the margins of the Council, the Mixed Committee (EU, Norway, Iceland and Switzerland) will meet at 9.30 with a view to examining the state of play and timetable of the Schengen Information System (SIS II) and a proposal on procedures for returning illegally staying non-EU national.

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, the adoption of a mandate to the Commission to open discussions with the US regarding certain conditions for the access to the US Visa Waiver Programme, the problem of illegal immigration in Greece, the agreement on an EU action plan for enhancing the security of explosives and the expected decision on the establishment of Europol.

In the afternoon, the EU Ministers of Justice are expected to agree on a Framework Decision amending Framework Decision on combating terrorism and on a Framework Decision on enhancing procedural rights in trials "in absentia". Moreover, the EU Ministers of Justice will discuss the strengthening of Eurojust and are expected to agree on a Common Frame of Reference for European contract law.

Press conference at the end of the Council (+/- 15.30).

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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 Council will take account of the state of play of a proposal for a directive on common standards and procedures in member states for returning illegally staying third-country nationals.

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.

The most contentious provisions in the draft directive concern its scope, voluntary departure, entry ban, detention of illegal nationals and their condition of detention.

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.

The Council committed itself to pursuing work in close contact with the European Parliament with a view to reaching agreement on the draft directive. The Slovenian Presidency has therefore prioritised work on the proposal at Council level and maintained close contact with Parliament. A trialogue at political level took place on 9 April to discuss the most contentious provisions. Another meeting at political level will take place on 23 April as some issues were not discussed due to lack of time.

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

The Council will hold a debate on this proposal on the basis of a questionnaire put forward by the Presidency.

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.

The Presidency will request Ministers to address the following questions:

- (a) Do delegations wish to include beneficiaries of international protection, i.e. recognised refugee status and beneficiaries of subsidiary protection status according to the Directive 83/2004/EC, in the scope of the LTR Directive?

- (b) Do delegations agree that other forms of protection granted by Member States on humanitarian grounds are also included in the scope of the LTR Directive?
- (c) Do delegations wish to treat recognised refugees and beneficiaries of subsidiary protection equally for the purpose of the duration of residence?

Illegal migration in Greece

The Greek delegation will brief the Council about the difficulties that this country is facing given the increase of unfounded asylum claims in the past months in Greece.

EUROPOL

The Council is expected to reach a political agreement on a decision establishing European Police Office, shortly Europol. With the decision Europol will become a Community agency - the change of status will importantly improve the operational and administrative functioning of Europol.

The proposal extends the mandate of Europol to criminality which is not strictly related to organized crime. This will ease support provided by Europol to Member States in relation to cross-border criminal investigations where involvement of organized crime is not demonstrated from the start.

A significant change is that Europol will be financed from the Community budget (from 1 January 2010 onwards). This will simplify the procedures for managing the budget and staff of Europol. The role of the European Parliament in the control of Europol will also increase, thus the democratic oversight over Europol at European level will be enhanced.

Europol shall make every effort to ensure that its data processing systems are interoperable with the data processing systems in the Member States and with the data processing systems in use by the European Union related bodies with which Europol may establish relations.

There will be a smooth transition process from the current situation to the situation envisaged by the new text. A significant number of transitional provisions have been included to ensure that the process will not interfere with Europol's operational work and that existing rights of staff are not prejudiced.

The European Police Office (Europol) was created in 1995, on the basis of a Convention between Member States. The Europol Convention establishes the organisation, determines its competence, tasks and management, and includes provisions with respect to its organs, its staff and budget.

Along the years, it appeared that the effectiveness of the organisation should be changed as regards of the need of adaptation of Europol mandate and tasks as regards to the evolution of international organised crime and of the justice and home affairs area, and the need of improvement of Europol functioning and financing. This is what the new decision will do.

EU Action Plan on Enhancing the Security of Explosives

The Council will agree on an Action Plan on Enhancing the Security of Explosives (doc [8109/08](#)).

This Action Plan is one of the measures in the Commission's package of counter-terrorism measures, proposed in November 2007. Prepared by the Explosives Security Experts Task Force, the Action Plan reflects a comprehensive approach to countering threats linked to explosives and precursors to explosives. The work concentrated on four separate issues: precursors, supply chain, detection and public security.

The strategic objective of the Action Plan is to combat the use of explosive devices by terrorists within the EU. The primary focus of the Action Plan is on security issues. In addition, some of the activities put forward in the Action Plan have positive implications for safety.

It should be noted that prevention, detection and response form the pillars of the EU's approach to the security of explosives. At the same time, a horizontal set of measures concerning public security complement and consolidate all of the pillars. The horizontal priorities in the field of explosives security are:

- improving the exchange of timely information and disseminating best practices;
- establishing coordination mechanisms and taking joint action on particular issues;
- stepping up explosives related research.

As mentioned, the draft Action Plan was prepared by Explosives Security Experts Task Force, composed of representatives of the relevant stakeholders, including industry and public authorities. In June 2007 the Task Force submitted a report identifying 50 recommendations for measures designed to improve the security of explosives in the EU.

Framework decision amending Framework Decision 2002/475/JHA on combating terrorism

The Council will aim for a general approach on the proposal.

Its aim is to update the current framework decision with a view to aligning it with the Council of Europe Convention on prevention of terrorism by including three new crimes:

- public provocation to commit terrorist offences,
- recruitment for terrorism and
- training for terrorism.

For the Council it is important to include these offences in the Framework Decision because:

- it has the advantages of more integrated institutional framework of the EU;
- the legal regime of the Framework decision in respect of the type and level of criminal penalties and compulsory rules on jurisdiction will be applicable to the offences;
- EU cooperation mechanisms (see for instance the Decision of 2005 on sending terrorist-related information to Europol and Eurojust) are triggered since they have as their scope of application the Framework Decision.

The presidency considers that the proposal of the Commission is very important. It is however also very sensitive, since it touches upon the fundamental rights and freedoms, such as freedom of expression, assembly or of association. It is therefore essential that the right balance is struck in the instrument.

The presidency will submit to the Council a compromise text which will try to solve the main outstanding issues of this proposal:

- the question of the proportionality,
- the respect of the freedom of expression,
- the scope of the "attempt" to commit new offences, and
- the need to ensure that competent authorities will be able to prosecute persons in cases where the offence has been committed outside the EU ("extraterritorial" jurisdiction).

EU-US Visa Waiver Program discussions: mandate to the Commission

The Council is expected to adopt a negotiating mandate to the Commission in relation to the discussions with the US on certain conditions for the access to the US Visa Waiver Programme.

The aim of the Community, with regard to the US Visa Waiver Programme (VWP), is to have all EU member states participating as quickly as possible in order to ensure full reciprocal visa free travel and equal treatment for all our citizens.

The EU and its member states adopted a common approach for the purpose of discussion with the US on 5 March 2008 (see press release [7338/08](#)) which will be followed by the MS in their bilateral commitments and arrangements with the USA, while Community law will be strictly respected.

At the EU-US Ministerial Troika which was held in Slovenia on 13 March, a "twin track" approach was agreed between the EU and the US to discuss this issue. The heart of the twin track approach is that the Commission will discuss community competences with the US, while EU member states will discuss those issues under their responsibility.

When adopted by the Council, the mandate to the Commission will identify the topics that will define the EU track and would enable the Commission to start exploratory talks on elements that can not be defined at that stage.

The manner in which the VWP legislation is implemented should therefore be properly regarded as a matter of common interest for Member States, particularly to the extent that they are participating in the relevant aspects of the EU acquis.

Enhancing procedural rights in trials "in absentia"

The Council will discuss a proposal for a Framework Decision on enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition in respect of decisions rendered in the absence of the person (enhancing procedural rights in trials "in absentia").

The aim of the decision is to determine clear and common grounds for non-recognition of decisions rendered following a trial at which person concerned did not appear and thus amending 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 main outstanding issue relates to the manner of informing the person concerned about the trial and consequent continuation of proceedings without his/her presence.

The Slovenian Presidency will suggest as a compromise that the person concerned should either have been summoned in person, or should by other means have actually received official information relating to the scheduled date and place of the trial, so that it is unequivocally established that he/she was aware of the trial.

Another outstanding issue regards the relationship between the person concerned and his/her legal counsellor. In some member states, persons subject to criminal proceedings are given mandatory defence, which means without the person having asked for it and without there having been a proper relationship between the person concerned and the legal counsellor. It appears that there is no common understanding among member states that decisions rendered following a trial at which the person did not appear in person, but was defended on a mandatory basis by a legal counsellor, should be recognisable and executable in other member states on the basis of such a defence.

The Presidency therefore thinks that it is better to maintain the current strong text, which stands in line with the European Court of Human Rights (ECHR) requirements: "The exception where the person concerned had deliberately chosen not to appear in court, but was represented by a duly instructed legal counsellor, appears to be compatible with ECHR requirements as long as legal assistance is practical and effective and not merely theoretical and illusory".

Once adopted, the Framework Decision will overcome legal uncertainty over mutual recognition of judgments rendered in the absence of the person concerned ("in absentia"). In addition to new information obligations, the text establishes 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.

Strengthening of Eurojust

The Council will debate certain aspects of a draft decision strengthening Eurojust. In particular, EU Minister of Justice will discuss the composition of Eurojust, its tasks, the status of its national members and provisions on Eurojust's staff.

Discussion will only relate to these provisions in the light of further work on the proposal.

This proposal was presented on January 2008 by the following member states: Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal.

European contract law

The Council will endorse a report on the setting up of a Common Frame of Reference for European contract law.

In the light of these discussions this report will define the Council's position on four fundamental aspects of the Common Frame of Reference:

- (a) Purpose of the Common Frame of Reference: a tool for better lawmaking targeted at Community lawmakers
- (b) Content of the Common Frame of Reference: a set of definitions, general principles and model rules in the area of contract law to be derived from a variety of sources
- (c) Scope of the Common Frame of Reference: general contract law including consumer contract law
- (d) Legal effect of the Common Frame of Reference: a set of non-binding guidelines to be used by the lawmakers at Community level on a voluntary basis as a common source of inspiration or reference in the lawmaking process.

Once endorsed, the report will be communicated to the Commission in order that it takes due account in its future work on the Common Frame of Reference.

It should be noted, that the Commission launched in 2001 a process of consultation and discussion on how to tackle at Community level the problems resulting from divergent national contract laws. The Commission's Action Plan from 2003 presented the conclusions from the first round of consultations and suggested measures to increase the quality and the coherence of the Community acquis in the area of contract law. In the wake of this Action Plan, a network of researchers was created to work out a common frame of reference for European contract law.

Following the presentation of the Commission's Action Plan, the Council adopted a resolution on "A more coherent European Contract Law"². In this resolution, the Council considered it useful, in order to achieve greater transparency, coherence and simplification of contract law, to further improve, consolidate and codify the existing EC legislation in the area of contract law.

² OJ C 246, 14.10.2003, p. 1.

The Hague Programme³ specified that in matters of contract law, the quality of existing and future Community law should be improved by measures of consolidation, codification and rationalisation of legal instruments in force and by developing a common frame of reference. A framework should be set up to explore the possibilities to develop EU-wide standard terms and conditions of contract law which could be used by companies and trade associations in the Union. Measures should be taken to enable the Council to effect a more systematic scrutiny of the quality and coherence of all Community law instruments relating to cooperation on civil law matters.

Other business

– *Information by the NL delegation on resettlement of refugees*

The Dutch delegation will inform the Council about her recent visit to Thailand (together with Belgian and Luxembourg representatives), where they addressed the question of the possible resettlement of refugees currently in Thailand.

In this context, back in January, the Netherlands, together with Denmark, Ireland, Finland, Sweden and the UK, addressed a letter to the rest of their EU colleagues on the opportunities to bring solutions through resettlement for the most vulnerable refugees throughout the world.

- *Italian candidate for the office of Director General of the IOM*

The Italian delegation will present to the Council the candidature of prof. Luca Riccardi as Director General of the International Migration Organization.



³ OJ C 53, 3.3.2005, p. 1.