



Brussels, 20 October 2004

BACKGROUND ¹
JUSTICE AND HOME AFFAIRS COUNCIL
Luxembourg, 25-26 October 2004

The JHA Council will start its work at 10.00. The main item on the agenda is the Multi-Annual Programme for Justice and Home Affairs ("The Hague Programme") which will be examined by the Council and then forwarded to the European Council for endorsement.

The Council will hear an interim report by the Presidency on "peer evaluation" of Member States arrangements to fight against terrorism and will be briefed by the Commissioner VITORINO on some recently adopted Commission Communications on terrorism.

Other items on the agenda are a proposal to strengthen the criminal law against ship source pollution and the European Judicial Record. The Council will hold a debate on immigrant integration policy.

The Mixed Committee (UE + Norway, Iceland and Switzerland) will discuss on 26 October at 15h30 the draft Council Regulation on standards for security features and biometrics in passports and travel document, and will take note of an evaluation of the application of the Schengen acquis in Austria.

In the margins of the Council: JHA Troika meeting with the Russian Federation and signature of several agreements with Switzerland

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A press conference will be held at the end of each working session of the Council.

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

MULTI-ANNUAL PROGRAMME JUSTICE AND HOME AFFAIRS

The Council is expected to reach political agreement on a multi-annual programme for the area of freedom, security and justice, called "The Hague Programme; strengthening freedom, security and justice in the European Union". The Programme will be then forwarded to the European Council of 5 November for endorsement.

The draft programme is based on in-depth discussions at the meeting of JHA Ministers within the Council on 19 July 2004, at the informal meeting of JHA Ministers on 30 September and 1 October 2004, and in Coreper.

In doing so, the European Council will reaffirm the priority it attaches to the development of an area of freedom, security and justice.

Over the past years the European Union has increased its role in securing police, customs and judicial cooperation and in developing a coordinated policy with regard to asylum, immigration and external border controls. This development will continue with the firmer establishment of a common area of freedom, security and justice by the Treaty establishing a Constitution for Europe, to be signed in Rome on 29 October 2004. This Treaty and the preceding Treaties of Maastricht, Amsterdam and Nice have progressively established a common legal framework in the field of justice and home affairs, and the integration of this policy area with other policy areas of the Union.

Since the Tampere European Council in 1999, the Union's policy in the area of justice and home affairs has been developed in the framework of a general programme ("The Tampere Programme"). Even if not all the original aims were achieved, comprehensive and coordinated progress has been made: the foundations for a common asylum and immigration policy have been laid, the harmonisation of border controls has been prepared, police cooperation has been improved, and the groundwork for judicial cooperation on the basis of the principle of mutual recognition of judicial decisions and judgments has been well advanced.

The security of the European Union and its Member States has acquired a new urgency, especially in the light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004. The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as terrorism, organised crime, irregular migratory flows and smuggling of human beings as well as the prevention thereof. Notably in the field of security, the coordination and coherence between the internal and the external dimension has been growing in importance and needs to continue to be vigorously pursued.

Five years after the European Council's meeting in Tampere, it is time for a new agenda to enable the Union to build on the achievements and to effectively meet the new challenges it will face. To this end, the Hague Programme reflects the ambitions as expressed in the Treaty establishing a Constitution for Europe and contributes to the preparation of the Union for the entering into force.

The objective of the Hague programme is the improvement of the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and the access to justice, to regulate migration flows and to control the external borders of the Union, to fight organised cross-border crime and repress the threat of terrorism, to realise the potential of Europol and Eurojust, to further realise the mutual recognition of judicial decisions and certificates both in civil and in criminal matters, and to eliminate legal and judicial obstacles in litigation in civil and family matters with cross-border implications. This is an objective that has to be achieved

in the interests of our citizens by improving access to the courts, practical police and judicial cooperation, the approximation of law and the development of common policies.

A key element in the near future will be the prevention and repression of terrorism. A common approach in this area should be based on the principle that preserving national security is only possible in the framework of the Union as a whole.

The European Council will endorse in December 2004 the new European Strategy on Drugs 2005-2012 that will be added to this programme.

TERRORISM

The Council, in the presence of the EU Counterterrorism Coordinator, Mr Gijs DE VRIES, will be briefed by the Presidency on the general state of affairs regarding the Action Plan and on the process of peer evaluation of national arrangements in the fight against terrorism.

Commissioner VITORINO will also present a package of four Communications for the fight against terrorism, to enhance prevention, preparedness and response to terrorist attacks. The Communications respond to requests made by the European Council in March and June and aim to contribute to the preparation, together with the High Representative and the Council, of the European Council meeting of 17 December 2004. The different documents put forward suggestions on what would enhance European prevention, preparedness and response to terrorist attacks, respectively on terrorist financing, on prevention and consequence management and finally on critical infrastructure protection.

It should be noted that in the wake of the terrorist outrage which struck Madrid and the European Union as a whole on 11 March, the European Council agreed a set of strategic objectives which, since then, have directed the Union's fight against terrorism. The prevention, preparedness and response to terrorist attacks is at the core of these strategic objectives, which specifically include: the reduction of access by terrorists to financial and other economic resources; maximising the capacity within EU bodies and Member States to detect investigate and prosecute terrorists and prevent terrorist attacks; and enhancing the capability of Member States to deal with the consequences of a terrorist attack. At its meeting of 18 June 2004 the European Council endorsed the revised *EU Plan of Action on Combating Terrorism*. The effective prevention, preparedness and response of the Union to terrorist attacks are overarching objectives reflected in many of the wide ranging measures and actions identified in the Plan of Action.

The first of the four Communications is entitled *Prevention, Preparedness and Response to terrorist attacks*. The other three concern the fight against terrorism financing, the preparedness and the consequence management in the fight against terrorism and protection of critical infrastructures.

These communications have been adopted today (20 October) by the Commission and will lead to further action by the Council in the next months.

CRIMINAL LAW AGAINST SHIP-SOURCE POLLUTION

The Council will aim at reaching a political agreement on the draft Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution.

The issues still pending are the following: the relation between the Framework Decision and the MARPOL (Convention for the prevention of pollution from ships) and UNCLOS (UN Convention on the Law of the Sea), the possibility of introducing a ceiling for the maximum fines to be imposed to legal persons, and the question of jurisdiction for offences committed outside the territory of a Member State.

It should be noted that the fight against intentional or negligent ship-source pollution is among the European Union's priorities. The conclusions of the Copenhagen European Council of 12 and 13 December 2002 (points 32 to 34) and the statement of the JHA Council of 19 December 2002 following the shipwreck of the tanker Prestige, in particular, express the Union's determination to adopt all the measures needed to avoid recurrences of such damage.

To this end, the Council reached a common position in June on a Directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences with the aim of approximating national legislation with regard to the definition of the relevant offences and commission, participation and incitement, on the one hand, and the nature, possibly criminal, of the penalties that can be imposed. It also contains technical and operational supporting measures.

With a view to supplement these provisions, there should be an approximation of, among other things, the level of penalties corresponding to the seriousness of offences in relation to the natural or legal persons who commit them or are liable for them.

The purpose of the Framework Decision that will be discussed by the JHA Council is therefore to supplement the Directive agreed by the Council in June with detailed rules in criminal matters.

In doing so, provisions will be laid down to facilitate criminal investigations. Member States will be able to set up joint investigation teams with which Europol could be associated.

Furthermore, rules on cooperation will be laid down to ensure that the offences will be effectively prosecuted. To this end, the European Union will supplement the results obtained in regional or international organisations. The United Nations Convention on the Law of the Sea of 1982, signed by all the Member States of the Union and with the European Community as a party, is particularly important in this context

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

The criminal penalties may be accompanied by other penalties or measures, in particular fines, or the disqualification for a natural person from engaging in an activity requiring official authorisation or approval, or founding, managing or directing a company or a foundation, where the facts having led to his or her conviction show an obvious risk that the same kind of criminal activity may be pursued again.

As regards sanctions against legal persons, each Member State shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive sanctions as criminal or non-criminal fines, or exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from engaging in commercial activities; placing under judicial supervision; a judicial winding-up order; or the obligation to adopt specific measures in order to eliminate the consequences of the offence which led to the liability of the legal person.

INTEGRATION POLICY

The Council will held an orientation debate on Integration policy, in particular on the three following issues:

1. The premises to define the third country national target groups for which common basic principles can be used when developing and implementing national integration policies.
2. The relation between integration conditions and admission policy.
3. The accepted right to obtain knowledge of the host society's language, history, culture, and values while respecting the immigrants own language and culture, as guaranteed in European and international law.

Furthermore, the Council is expected to adopt, without discussion ("A" item), conclusions on a common basic principles for immigrant integration policy in the European Union.

It should be noted that, in the document "Main elements of the Dutch Presidency programme on asylum, immigration, integration and frontiers", the Presidency declared its intention to initiate a concrete follow up of the June 2003 Thessaloniki European Council request to establish the definition of common basic principles, which form the basis of a common European framework on immigrant integration.

MIXED COMMITTEE

Biometric Identifiers

The Mixed Committee is expected to agree on the inclusion of a second mandatory identifier, fingerprints, in passports and other formal documents issued by Member States.

It should be noted that at the meeting of the Mixed Committee at Ministerial level on 8 June 2004, there was broad agreement that facial image should be the first mandatory biometric identifier and that fingerprints should be the second and optional one. The Mixed Committee at technical level (Ambassadors) agreed on 14 October to also include fingerprints as a mandatory identifier. Ministers will be asked to confirm the agreement already reached at technical level.

The appropriate date of application of these measures will also be discussed by Ministers. At technical level, there is broad agreement that for facial image identifier, 18 months are required after the date of adoption of the Regulation, while at least 24 months are requested for fingerprints.

The harmonisation of security features and the integration of biometric identifiers is an important step towards the use of new elements in the perspective of future developments at European level, which render the travel document more secure and establish a more reliable link between the holder and the passport and the travel document as an important contribution to ensuring that it is protected against fraudulent use.

The Regulation does not apply to identity cards issued by Member States to their nationals.

The biometric features in passports and travel documents shall be used for verifying

- a) the authenticity of the document
- b) the identity of the holder by means of directly available comparable features when the passport or other travel documents are required to be produced by law.