



Brussels, 17 February 2006

DRAFT
BACKGROUND ¹

JUSTICE AND HOME AFFAIRS COUNCIL

Brussels, 21 February 2006

The Council will start its work at 10h00. It will discuss the following main items: a proposal for a Regulation on law applicable to non-contractual obligations (Rome II), a Framework Decision on the European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters and a list of safe countries of origin for asylum purposes.

The Council is expected to reach agreement, without discussion, on a Regulation concerning a European order for payment procedures and on conclusions regarding the visa reciprocity mechanism.

The Mixed Committee (EU+Norway, Iceland and Switzerland) will meet at 15h00 in view of discussing the Schengen Information System (SIS II) project and Visa fees.

The Presidency will hold press conferences before lunch and at the end of the Council meeting (± 17h00).

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

LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS (ROME II)

(This item will be subject to a public deliberation)

The Council will have an exchange of views on certain Articles of this draft Regulation, in particular those relating to:

- damage caused by a defective product (Article 4),
- damage arising out of an act of unfair competition (Article 5), and
- violation of privacy and rights relating to the personality, particularly in the event of defamation by the mass media (Art. 6).

The purpose of this proposal is to set out a coherent set of rules of conflict of laws regarding non-contractual obligations. It would allow parties to determine the rule applicable to a legal relationship in advance.

The proposed Regulation has three main objectives:

- guaranteeing legal certainty and predictability to citizens and economic operators who are victims of violations of their rights,
- facilitating the settlement of claims in courts, and
- promoting the reciprocal recognition of legal decisions made in other Member States.

To reach these objectives, the proposal contains a general rule: the law in force in the country where the violation took place will prevail. This rule is complemented by some specific exceptions, notably regarding violations of the environment.

The most controversial provision in the proposal is Article 6. At this stage the Presidency suggests that there should be a specific Article on violation of privacy and rights relating to the personality, and restricted to mass media. The question is how to reconcile two important principles: the interests of the victims (right to privacy) and the interests of the media (freedom of press and freedom of expression).

The Presidency suggests that any rule in this area should combine the following two elements:

- a) the law of the country where the person sustaining damage has his habitual residence if the publication was distributed or the program broadcasted in that Member State, and
- b) failing that, the law of the country where the publisher or broadcaster is established.

This would mean that if the publication was not distributed or the program broadcasted in the Member State of the victim, then the law of the country of origin would apply.

DATA RETENTION

(This item will be subject to a public deliberation)

Following the political agreement by the Council and the European Parliament (EP) last December 2005 and after revision of the text by the legal linguistic service, the Council will adopt in co-decision with the EP the Directive on data retention amending directive 2002/58/EC (*PE-CONS 3677/05*).

FOLLOW-UP TO THE COURT'S JUDGEMENT OF 13 SEPTEMBER 2005 (CASE C-176/03 COMMISSION V COUNCIL)

The Council is expected to take note of the agreement which was reached in Coreper on a procedure to be followed within the Council when a Commission proposal involves measures relating to the criminal law of the Member States.

By judgment of 13 September 2005, the European Court of Justice annulled Framework Decision 2003/80/JHA on the protection of the environment through criminal law: Measures intended to protect the environment fall within the competence of the Community (Art 175 TEC) even when they involve measures relating to the criminal law of the Member States. Therefore the Framework Decision encroached on competences attributed to the Community, and therefore failed to respect Article 47 TEU.

The European Commission submitted a Communication to the Council and the Parliament on the consequences of the Court's judgment (*15444/05*).

At their informal meeting in Vienna in January 2006, the Justice and Home Affairs Ministers held an exchange of views on the Commission Communication, on the basis of a paper prepared by the Presidency. There was consensus that the following three principles should be the basis when considering if the Court's arguments could be extended to other Community policies:

1. As a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence (see para. 47 of the judgment).
2. The Community legislator is entitled to take the legislative measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down are fully effective (see para. 48).
3. The Community legislator must leave to the Member States the choice of the criminal penalties to apply, as long as they are effective, proportionate and dissuasive (see para. 49).

Ministers agreed that a cautious approach needed to be taken as regards Framework Decisions adopted in the past on other subjects and that questions relating to the introduction of provisions on criminal law in future Community Acts needed to be examined on a case-by-case basis. All Ministers and the Commission considered that the responsibility of JHA Ministers in the adoption of criminal law provisions at the level of the Union should not be affected.

EUROPEAN EVIDENCE WARRANT

The Council will discuss the following outstanding questions:

- 1) definition of offences,
- 2) privileges and immunity,
- 3) measures available for execution.

The aim of the proposal is to establish a mechanism to facilitate the obtaining of evidence in cross-border cases based on mutual recognition principles. The underlying idea is that the European Warrant is an order that would be issued by a judicial authority in one Member State and which would be directly recognised and enforced by a judicial authority in another Member State. As compared to the existing mutual assistance procedures that it would replace, the European Evidence Warrant would bring benefits including faster procedures and clear safeguards for the issuing of a warrant and for its execution.

This proposal adopts the same approach to mutual recognition as the European arrest warrant. The European Evidence Warrant would thus be a single document translated by the issuing authority into an official language of the executing State. No further translation would be necessary. This means that the European Evidence Warrant could be executed immediately in the same way as a domestic procedural measure. It would lay down the objective to be achieved, while leaving it to the executing State to decide the most appropriate manner to obtain the evidence in accordance with its domestic law.

STRUCTURES INVOLVING ASYLUM SERVICES OF THE MEMBER STATES FOR PROMOTING COOPERATION

The Council will be briefed by Commissioner Frattini on this Communication, which was approved by the Commission this morning (17 February 2006).

With the adoption of the Directive on Asylum Procedures², the Council completed the first phase of work directed to the establishment of a Common Asylum System in the establishment of "minimum standards" concerning asylum in the area of reception, qualification and procedures.

Prior to this, in the Hague programme of November 2004, the European Council already reiterated that the next phase would consist of the establishment of a common asylum procedure and a uniform status for persons who are granted refugee or subsidiary protection status. The European Council also called for the establishment of appropriate structures involving the asylum services of the Member States with a view to facilitating cooperation towards three main objectives:

- achieving an EU-wide Single Asylum Procedure
- achieving the joint compilation, assessment and application of country of origin information, and
- enabling Member States working together to address particular pressures on asylum systems or reception capacities resulting, inter alia, from their geographical location.

The Commission Communication aims at setting out how this practical cooperation can support the goals set by the Hague Programme. With regard to those goals the Communication proposes:

² Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

- (a) achieving an EU-wide Single Asylum Procedure.
Single Procedure activities should be aimed at:
- identifying where changes need to be made in Member States' administrative practice in order to implement the 1st stage instruments,
 - assessing how quality and efficiency of asylum systems can be improved through including all possible grounds for protection in one decision,
 - identifying best practice in managing resources in a Single Procedure, including through costing comparisons and twinning exercises.

The results of these activities will inform the preparation of legislative action, notably to ensure that, at a minimum, the guarantees agreed as applicable to claims for refugee status in the Asylum Procedures Directive extend to applications for subsidiary protection.

- (b) achieving the joint compilation, assessment and application of country of origin information (COI).
Cooperation on COI should have three main objectives in the short to medium term:
- the establishment of common guidelines on the production of COI,
 - the establishment of a 'common portal' to Member States COI databases as well as other relevant information,
 - a pragmatic solution to the translation difficulties facing Member States in dealing with COI from different sources.

The result of these activities should lead in the longer term to the future development of an EU COI database

- (c) enabling Member States working together to address particular pressures on asylum systems or reception capacities resulting, inter alia, from their geographical location.
Actions to address particular pressures:
- amendment of European Refugee Fund so that Member States can access funds quickly and with a minimum of bureaucratic process for emergency actions,
 - streamlining of the procedure for accessing more rapidly the funding for urgent actions contained in the ARGO programme,
 - Setting up of expert teams to address reception and processing issues for sudden arrivals of large numbers at the external border of the EU.

Longer term options include a comprehensive assessment of particular pressures which have occurred in the past and the setting up of a network of Member State information officers in selected third countries.

LIST OF SAFE COUNTRIES OF ORIGIN

Commissioner Frattini will brief the Council on the methodology to be followed on this issue, in response to the discussion held at the Informal Council held in Vienna on January 2006.

On 1 December 2005, the Council adopted Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status³. Article 29(1) of the said Directive establishes that the Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin.

Recital 20 of the Directive reads "It results from the status of Bulgaria and Romania as candidate countries for accession to the European Union and the progress made by these countries towards membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union".

On the same occasion, the Council entered a statement to its minutes which read: "The Council invites the Commission to submit, as soon as this Directive has entered into force, a proposal allowing the Council to adopt a minimum common list of third countries that shall be regarded by Member States as safe countries of origin."

Under Article 30 of the said Directive, Member States may retain or introduce legislation that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum.

Prior to the adoption of the Asylum Procedures Directive, Council bodies tried, unsuccessfully, to reach agreement by unanimity on such a minimum list. The compromise eventually agreed was to postpone the adoption of the list until the entry into force of the Directive as now provided for in Article 29.

GREEN PAPER ON EUROPEAN MIGRATION NETWORK

The Council will have an exchange of views on developments relating to the Commission Communication "Green Paper on European Migration Network" which was issued in December 2005.

The European Migration Network was established by the Commission in 2002 as a pilot project. Its main objective has been to provide the Community and its Member States with objective, reliable and comparable information in this field by systematically collecting and storing existing data and information from Member States and carrying out national and European analysis. To this purpose, a series of national contact points was designated in the Member States who participate to the Network, along with a scientific coordinator, both supported and monitored by the European Commission.

Since this preparatory action will end in 2006, the Commission has issued in December 2005 a Green Paper, with the main objectives of monitoring the progress made and of considering possible improvements to its functioning, in the perspective of examining if the Network should pursue its activities in the future on a more permanent basis. To this effect, the Commission has invited all the stakeholders to express their views by the end of January 2006. The outcome of this consultation

³ O.J. L 326, 13.12.2005, p. 13.

process will help the Commission in deciding whether or not to submit to the Council in 2007 a proposal for the establishment of a permanent European Migration Network.

MIXED COMMITTEE (15H00)

SIS II

The Council will hear an update by the Presidency on the status of the Schengen Information System II (SIS II) project.

SIS II is one of the top-priorities for the Austrian Presidency. The implementation of SIS II in March 2007 is indeed an essential precondition for lifting the borders with the new Member States.

The following topics will be taken explicitly into account during the Austrian Presidency and will be the basis for a discussion at the Council:

1. Legal aspects
2. Technical implementation on central level
3. Implementation in the Member States
4. Finalisation of open questions, e.g. management and financing.

FEES TO BE CHARGED TO VISA

The Council is expected to agree on some elements of a draft Decision amending the fees corresponding to the administrative costs of processing the visa applications in particular the amount to be charged and the timing for adopting such a Decision.

Council Decision 2003/454/EC of 13 June 2003 fixed the amount to be charged corresponding to administrative costs of processing the visa application at € 35. This amount no longer covers current visa application processing costs. Moreover, the consequences of the introduction of the European Visa Information System (VIS) and the biometrics required to introduce the VIS in the visa application examining process should be taken into account.

Therefore the Council is expected to readjust the current amount of € 35 to € 60.

The amount of national long-stay visa would continue to be fixed by the Member States, who may decide to issue these visas free of charge.