



Brussels, 3 December 2007

**BACKGROUND <sup>1</sup>**  
***JUSTICE and HOME AFFAIRS COUNCIL***  
**Brussels, 6-7 December 2007**

*On Thursday 6 December 2007 at 10.00, the Justice and Home Affairs Ministers will meet Employment Ministers for a policy debate on migration, employment and the Lisbon Strategy.*

*At 15.00, the Mixed Committee (EU + Norway, Island and Switzerland) will discuss the enlargement of the Schengen area to nine Member States, a proposal for a Directive for returning illegally staying non-EU nationals, and a proposal for a Directive on the control and the acquisition and possession of weapons.*

*The Council will then examine the state of the implementation of the EU Counter-Terrorism Strategy in particular recent progress on the security of explosives and weapons, on cooperation between special intervention units, on the protection of critical infrastructure, on the development of the Union's crisis coordination arrangement and on the prevention of Radicalisation. It will adopt Strategic Orientations and set priorities for the security enhancement of explosives and launch work on addressing Chemical, Biological, Radiological and Nuclear Risks and, specifically, on Bio-preparedness. The Council will also adopt conclusions on mobility partnerships and circular migration.*

*On Friday 7 December 2007 at 10.00, the Council will focus its debate on the "justice" issues. It will have an exchange of views on "e-justice" and the Presidency will inform about the agreement reached with the European Parliament on a Regulation on the law applicable to contractual obligations (Rome I). In addition, it will take note of the state of play concerning a proposal for a European supervision order in pre-trial procedures and finally will adopt conclusions on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism.*

*Press conferences will be held at the end of the working sessions.*

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<sup>1</sup> This note has been drawn up under the sole responsibility of the Press Service.

**Meeting of Justice and Home Ministers with Employment and Social Policy Ministers, Thursday 6 December 2007 at 10.00**

**Migration, Employment and Lisbon Strategy**

Justice and Home Affairs Ministers will meet Employment Ministers for a policy debate on migration, employment and the Lisbon Strategy.

The debate will focus on two main subjects:

- Labour migration, integration into the labour market and the link to the Lisbon Strategy for Growth and Jobs, and
- Undeclared work as a pull factor for illegal immigration.

For each of the two subjects delegations will be invited to provide their position.

**Background**

Since the 1990s, positive net migration has become the largest component of population change in most Member States, reaching – over the last 5 years – a total of close to 2 million net migrants per annum across the EU.

Immigration flows towards Europe are not likely to diminish in the foreseeable future. The overall socio-economic context of the EU is increasingly characterised by skill and labour shortages (already noticeable in a number of sectors), competition for the highly skilled in an ever-more-globalising economy and accelerating demographic ageing of the European population, resulting in just a few years in the shrinking of the EU workforce.

As a follow-up to the 2005 Policy Plan on Legal Migration, the Commission submitted two legislative proposals on 23 October 2007: a Directive on the conditions of admission to the EU for highly-skilled workers and a Directive on the rights of legal immigrants in employment. These proposals are aimed respectively at making the EU attractive for an increasingly-needed category of workers and at ensuring that all third-country workers enjoy a comparable level of rights throughout the EU. The latter proposal also provides for a single application procedure with a view to obtaining a single permit encompassing both a residence and work permit. Three further proposals will be submitted in autumn 2008 and will cover the admission of seasonal workers, intra-corporate transferees and paid trainees.

The Commission also submitted a proposal for a Directive providing for sanctions against employers of illegally resident third-country nationals in May 2007. The aim is to ensure that all Member States introduce similar penalties for employers of such third-country nationals and enforce them effectively. It is proposed to require employers to undertake checks before recruiting a third-country national and to require Member States to conduct a minimum number of inspections of companies established in each Member State.

## **MIXED COMMITTEE (Thursday 6 December 2007 at 15.00)**

### **Enlargement of the Schengen area to nine Member States**

The Council is expected to adopt a decision on the full application of the provisions of the Schengen acquis in the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

The process of evaluation of these countries regarding the lifting of controls at internal borders has been accomplished and the European Parliament delivered its opinion on 15 November 2007.

It should be noted that, pending the opinion of the European Parliament, the Council already concluded on 8 November 2007 that the Member States concerned had fulfilled all the necessary conditions for the application of the Schengen acquis (data protection, air, land and sea borders, police cooperation, the Schengen Information System and visas-issuance). The entry into force of the decision will allow for the lifting of checks on persons at the internal borders on 21 December 2007 at land and sea borders and on 30 March 2008 at air borders.

*More information on the Enlargement of the Schengen area at:*  
[www.consilium.europa.eu/showPage.asp](http://www.consilium.europa.eu/showPage.asp)

### **Returning of illegally staying third-country nationals**

The Presidency will update the Council on the latest developments concerning a Proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals, and in particular on the outcome of the recent discussion with the European Parliament.

This Proposal was submitted by the Commission in 2005 and has been examined at length under successive Presidencies. It sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.

The draft Directive deals with key issues in the policy of return such as the voluntary departure of the 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 accelerated procedure of return in certain cases and the detention of returnees and its conditions.

The Council committed itself to pursuing work in close contact with the European Parliament with a view to reaching agreement for the draft Directive. The Portuguese Presidency has therefore prioritised work on the proposal at the level of the Council and maintain close contact with the Parliament with a view to achieving agreement on the proposal and the release of the money allocated to the European Return Fund.

## **Control of the acquisition and possession of weapons**

The Presidency will inform the Council about a first reading agreement reached with the European Parliament concerning a Proposal for a Directive on control of the acquisition and possession of weapons.

On March 2006 the Commission presented the above mentioned Proposal, which seeks to adapt an existing from 1991 Directive on the matter to the provisions of the UN Protocol on the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition to the UN Convention against Transnational Organised Crime of May 2001.

The Parliament voted on a text on 29 November 2007. The Council will now proceed to the final adoption of this agreed text with the EP.

The new Directive will tackle the criminal use of firearms without inconveniencing legal users of weapons.

The legislation would introduce rules enhancing safety with respect to gun ownership, while not inconveniencing hunters, target shooters and other legitimate owners. The text includes control of the sale of guns over the internet, reinforcement of the marking system, computerisation and extension of the period of the record keeping and an increased exchange of information between Member States.

The new directive will cover the possession and the acquisition of firearms but also of their parts and ammunition, including these imported from third countries. The Directive will as well apply to illicit manufacturing and trafficking of weapons and their essential components. Additionally, convertible weapons are brought within the new definition of 'firearm'. Such weapons have been identified by the police in many Member States as a growing source of firearms for criminals. The rules on acquisition and possession of weapons by individual collectors or officially recognised bodies concerned with the historical and cultural aspects of firearms remain unchanged. The text also says that the directive should cover "selling by means of distance communications" (e.g. via the internet), which should be "strictly controlled" by those Member States who allow it at all.

In order to make weapons traceability more efficient, the text requires the use of alphanumeric symbols. The marking, affixed to an "essential component of the firearm", must include the name of manufacturer, the place and the year of fabrication and the serial number.

Member States, according with the subsidiarity principle, can go further than the directive and keep their stricter classification systems in the national gun law. In addition, the text also calls Member States to simplify administrative procedure of authorisation to acquire and possess firearms.

The directive is expected to come into force by January 2008, with a transposition deadline by 2010.

## **JUSTICE and HOME AFFAIRS COUNCIL**

### **Implementation of the EU Counter-Terrorism Strategy**

Two years after the adoption of the EU Counter-Terrorism Strategy the Council will proceed to a broad stocktaking on its state of implementation. It will adopt Strategic Orientations and Priority Actions on the security of Explosives and give a new impetus to several strands of relevant work such as on Critical Infrastructure Protection and the Prevention of Radicalization. It will also set guidelines for future work in new areas such as on addressing CBRN Risks and, specifically on Bio-Preparedness.

This meeting is intended to reaffirm the importance attached by the EU to the fight against terrorism and to give a renewed political impetus to its effective pursuit.

The Council will draw on its discussion on suggestions made by the new EU Counter-Terrorism Coordinator, Mr. Gilles de Kerchove, who will present his first set of reports on the implementation of the EU Counter-Terrorism strategy. He will draw the Council's attention to five subjects:

- information sharing and special investigative methods;
- radicalisation and recruitment;
- financing of technical assistance to third countries;
- organisation of work within the Council; and
- implementation of EU instruments.

### **Background**

The EU Counter-Terrorism Strategy, adopted in December 2005, groups all EU actions in the field of counter-terrorism, under four headings - PREVENT, PROTECT, PURSUE, RESPOND, with the objective of setting out clearly what the EU is trying to achieve and the means by which it intends to do so.

The first objective of the Counter-terrorism Strategy is to prevent people from turning to terrorism by tackling the factors or root causes which can lead to radicalisation and recruitment, in Europe and internationally. To attain this objective, in December 2005 the Council adopted a Strategy and an Action Plan to counter radicalisation and recruitment (see implementation report in Document 15443/07).

The second objective of the Counter-terrorism Strategy is to protect citizens and infrastructure and reduce vulnerability to attacks, inter alia through improved security of borders, transport and critical infrastructure.

The third objective of the European strategy against terrorism is to pursue and investigate terrorists across EU borders as well as globally; to impede planning, travel and communications; to disrupt support networks; to cut off funding and access to attack materials and to bring terrorists to justice. The Counter-terrorism Coordinator reported separately on the implementation of the strategy against terrorist financing in October 2007 (Document 11948/2/07).

The fourth priority of the EU's Counter-terrorism strategy is to prepare the EU, in a spirit of solidarity, to manage and minimize the consequences of a terrorist attack, by improving capabilities to deal with the aftermath, the coordination of the response, and the needs of victims.

## **Mobility Partnerships and Circular Migration**

The Council is expected to endorse conclusions on Mobility Partnerships and Circular Migration in the framework of the Global Approach to Migration.

### Background

In its conclusions of 14-15 December 2006, the European Council agreed on strengthening and deepening international cooperation and dialogue with third countries of origin and transit in a comprehensive and balanced manner. In particular, it stated that while respecting the competences of Member States in this area, consideration had to be given to how legal migration opportunities can be incorporated into the Union's external policies, in order to develop a balanced partnership with third countries adapted to specific EU Member States' labour market needs. In this context, ways and means to facilitate circular and temporary migration had to be explored.

The European Council, in the light of the Commission Communication of 16 May 2007 "On Circular Migration and Mobility Partnerships between the European Union and third countries" underlined on 21-22 June 2007 the importance of closer cooperation with third countries in managing migration flows.

It stated that specific partnerships on migration with countries could contribute to a coherent migration policy which combines measures aimed at facilitating well-managed legal migration opportunities and their benefits - while respecting Member States' competences and the specific needs of their labour markets - with those fighting illegal migration, protecting refugees and tackling the root causes of migration while at the same time impacting positively on development in countries of origin.

In this context, the European Council endorsed the Council conclusions of 18 June 2007 in which the Council stated that the concept of mobility partnerships between the European Union, Member States and third countries could be tested by way of a limited number of pilot partnerships. The Council therefore invited the Commission to consult Member States on the further development of this concept, including, in particular, on the terms of reference, and with a view to exploratory talks with interested third countries on pilot partnerships in close cooperation with the Presidency and interested Member States. The Commission was invited to report back to the Council on the outcome of these consultations in order to enable the Council to decide by the end of 2007 whether to invite the Commission to launch pilot partnerships.

The Council also agreed that legal migration opportunities, including well-managed circular migration can potentially benefit all partners involved. All possibilities for a well-managed circular migration should therefore be explored in close cooperation with all relevant stakeholders with a view to the adoption of Council Conclusions not later than the end of 2007.

The Council underlines that mobility partnerships should be broad, tailor-made and balanced and should include elements of mutual interest, for example, legal migration, the fight against illegal migration, migration and development including circular migration.

## **Europol**

The Council is expected to reach an agreement on Chapters VI ("Organisation"), VII ("Confidentiality Issues") and IX ("Miscellaneous Provisions") of a draft Council Decision establishing the European Police Office in order to reach a general approach on these issues.

On 22 December 2006 the Commission submitted a proposal to the Council for a Council Decision establishing the European Police Office (EUROPOL). This Council Decision will replace the Europol Convention and will constitute a real improvement of the operational and administrative functioning of Europol. The Council Decision is expected to be finalised at the latest by June 2008.

The Council already reached an agreement on Chapter I ("Establishment and Tasks") at its meeting in June 2007, as well as a general approach on Chapter II ("Information Progressing Systems") and Chapter III ("Common Provisions on Information Processing") at its meeting in November 2007.

## **Framework Decision on combating terrorism**

The Council will have a first exchange of views concerning a proposal amending the Framework Decision on combating terrorism.

The objective of this proposal is to update the existing Framework Decision with a view to including public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism, e.g. through the intentional distribution of information on the manufacture of explosives and other terrorist weapons.

It is important to include these offences, already addressed e.g. in the Council of Europe Convention on the Prevention of Terrorism, in the Framework Decision because it entails the advantages of the more integrated institutional framework of the EU but also because 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 these offences.

## **E-Justice**

The Council will have an exchange of views regarding "e-Justice".

The Council agreed in June 2007 that work should be carried out in the field of e-justice with a view to creating a decentralised EU e-justice system giving access to the existing or future electronic systems at national or Community level. The Council defined at that time certain priorities for such work.

The Council stated in its conclusions in June 2007 that work should be carried on in the area of e-justice with a view to creating at European level a technical platform giving access, in the sphere of justice, to existing or future electronic systems at national, Community and, where appropriate, international level in some areas.

The e-justice portal should provide a single point of access to European Union and national law. By integrating Member States' and EU's internet resources, the portal should offer access to legal information, judicial and administrative authorities, registers, databases, and other available services with the aim of facilitating the daily tasks of citizens and legal professionals in the context of the European judicial area.

## **Contractual Obligations (Rome I)**

The Presidency will inform the Council about a first reading agreement reached with the European Parliament on a Proposal for a Regulation of the law applicable to contractual obligations.

The purpose of this proposal is to replace the Rome Convention on the law applicable to contractual obligations with a Regulation and at the same time to modernise, where appropriate, its rules.

Numerous informal meetings have been held with the European Parliament with a view to reaching a first reading agreement in the framework of the co-decision procedure. The European Parliament adopted its report on 29 November 2007.

## **Eurojust and the European Judicial Network role in the fight against organised crime and terrorism**

The Council is expected to adopt conclusions on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism in the EU.

Following a request made by the Council, the Commission presented a communication on this subject in October 2007.

This communication emphasizes that the development of Eurojust needs to be accompanied by a clarification and reinforcement of the powers of the national members and by greater authority for the College. In addition Eurojust's relations with its partners, such as the European Judicial Network and the liaison magistrates, Europol, OLAF, Frontex and the non-EU countries, should be clarified and simplified in order to permit progress in the fight against cross-border crime and the establishment of an area of justice, freedom and security in Europe.

## **European supervision order in pre-trial procedures between Member States**

The Council will take note of the state of play concerning a proposal for a decision on the European supervision order in pre-trial procedures between Member States of the EU.

The European supervision order will allow the suspect to benefit from a non-custodial pre-trial supervision measure in her / his Member State of residence.

## **Recognition of Suspended Sentences, Alternative Sanctions and Conditional Sentences**

The Council is expected to reach a general approach on a draft Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences.

This German and French initiative aims at setting rules under which a Member State, other than the Member State in which the person concerned has been sentenced, supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes - unless otherwise provided - all other decisions relating to that judgment.

Based on the principle of mutual recognition, the draft Framework Decision aims at facilitating the social re-integration of sentenced persons, improving the protection of victims and of the general public, and to facilitate the application of suitable probation measures and alternative sanctions in case of offenders, who do not live in the State of conviction.



The Portuguese Presidency has deployed considerable efforts in order to reach an agreement on the text. The only outstanding issues relate to the question of dual criminality (the possibility of excluding completely all cases where the judgment relates to acts which do not constitute an offense under the law of the executing state), and the possibility for refusal relating to territoriality reasons.

In June 2007, the Council already reached a common understanding on the aim of the Framework Decision, the scope of its application, the types of suspensory measures and alternative sanctions, and the division of competences between the issuing State and the executing State.

In November, the Council reached an agreement on the issues of the competent authorities to act, the division of competences between the executing State and the issuing State, and the question of languages, subject to technical refinement in the Council preparatory bodies.

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