



Brussels, 26 February 2008

BACKGROUND¹
JUSTICE and HOME AFFAIRS COUNCIL
Brussels, 28 February 2008

The Justice and Home Affairs (JHA) Council will start its work on 28 February 2008 at 10h00 with the examination of a proposal for a council decision establishing the European Police Office and with a discussion about the state of play of the ratification of EU-US agreements of 25 June 2003 on extradition and mutual legal assistance. It will also discuss a draft framework decision on combating terrorism. Finally, the Commission will brief the Council about a proposal on criminal law measures related to ship-source pollution.

In the margins of the Council, the Mixed Committee (UE, Norway, Iceland and Switzerland) will meet at 11.30 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.

Over lunch, Ministers of Justice will be briefed about the creation of a forum for discussing justice issues and the financing of e-justice projects. They will also examine a list of several legal instruments that are pending of adoption due to parliamentary reservations entered by some member states. The Presidency would also like to discuss the Motion for resolution of the European Parliament concerning the annual debate on the progress achieved in 2007 in the Area of Freedom Security and Justice.

This motion for EP resolution will also be discussed at the working lunch of the Ministers of Interior. Their discussion will also be devoted to SIS II, the US visa waiver program legislation and the state of play of a EU-US high level contact group on data protection.

At 13.00 there will be the signature of protocols on the accession of Liechtenstein to Schengen and to the Dublin/Eurodac acquis, as well as on the special position of Denmark.

*Press conferences: - on interior affairs after lunch (+/- 15.00)
- on justice affairs at the end of the Council (+/- 18.00)*

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

Europol

The Council will examine the following three outstanding issues regarding a proposal for a Council Decision establishing the European Police Office (EUROPOL): the budget neutrality of the proposal, the rotation and the immunity of Europol staff. In accordance with the Council conclusions of 12-13 June 2007 Europol would be funded from the Community budget as from 1 January 2010 provided that satisfactory solutions are found on these three outstanding issues.

It should be noted that the Commission submitted a proposal on December 2006. Since then, the Council has proceeded to its examination chapter by chapter, with a view to reaching an agreement under the Slovenian Presidency.

Once adopted, this decision will replace the Europol Convention. Europol will then become a Community agency, financed by the Community budget. The JHA Council considers that this change of status will constitute a clear improvement of the operational and administrative functioning of Europol.

Ratification of EU-US Agreements on extradition and mutual legal assistance

The Council will take note of the state of play regarding the ratification by the member states of these agreements.

The two EU-US agreements were signed by the EU Presidency and the US Attorney-General on 25 June 2003 in Washington DC.

But before their entry into force, two further requirements have to be met:

1° All member states need to exchange "written instruments" with the United States in order to acknowledge the way in which the provisions of the EU-US agreements are implemented at the bilateral level. All these bilateral instruments have been signed, but eight Member States still need to have these ratified by their national parliaments.

2° Both the US and the EU have to go through the ratification process:

- a) for the US this implies: to have the two EU-US agreements plus 2 bilateral instruments per member state (ie. 56 in total) ratified by US Senate.
- b) for the EU this implies that those member states that have made a constitutional declaration have to follow their respective constitutional procedures.

Only after that has been done, the Council can authorise the Presidency to conclude (=ratify) the EU-US agreements. This will require a second Council Decision authorising the presidency to conclude these agreements.

Returning illegally staying non-EU nationals

The Council will take a look at the note of state of play of a draft proposal on common standards and procedures in member states for returning illegally staying non-EU nationals.

The proposal 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 has committed itself to reaching an agreement on the text as soon as possible. The most difficult outstanding issues are the scope of the directive, the entry ban which will accompany return decisions and the detention of non-EU nationals who are subject of return procedures.

The directive has to be adopted in co-decision with the European Parliament. The Presidency has held a series of informal meetings with the rapporteur appointed by the Parliament.

Framework Decision on combating terrorism

The objective of the proposal is to update the Framework Decision 2002/475 on combating terrorism and align it with the Council of Europe Convention on prevention of terrorism, by including public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism.

The Presidency considers that this proposal is very important. It is however also very delicate since it is situated on the borderline of fundamental rights and freedoms such as freedom of expression, assembly or of association and the right to respect for family life. It is therefore essential that the right balance is struck in the instrument.

The discussion at the Council will focus on the safeguards relating to the respect for human rights and the principle of proportionality.

Schengen developments

The Mixed Committee will take note of the state of play of SIS II (Schengen Information System) and examine a new provisional timetable for its implementation.

It will also examine the above-mentioned proposal for a directive on common standards and procedures in Member States for returning illegally third-country nationals.

At 13.00, there will be the signature of protocols on the accession of the Liechtenstein to Schengen and to Eurodac/Dublin. With the Schengen protocol, Liechtenstein will accede to the Schengen association agreement with Switzerland, granting it the same rights and obligations as the Swiss Confederation. With the Eurodac/Dublin protocol, Liechtenstein will have to accept the entire Dublin/Eurodac acquis, which concerns the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland.