



Brussels, 23 July 2008

BACKGROUND

JUSTICE and HOME AFFAIRS COUNCIL

Brussels, 24 and 25 July 2008

The Justice and Home Affairs (JHA) Council will meet for a two-day meeting on Thursday and Friday, 24 and 25 July 2008, in Brussels.

On Thursday 24 July at 10.00, EU ministers for immigration will begin proceedings by examining the European Pact on Immigration and Asylum, a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, and a proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals. They should also reach agreement on draft conclusions on the reception of Iraqi refugees in the Member States of the European Union.

On Thursday afternoon, the Presidency is to report to EU ministers for home affairs on its intentions regarding the transfer and processing of air passenger data (PNR) within the EU. Ministers will also take note of a report by the Future Group on police and immigration, and will examine a plan to combat cyber crime within the EU.

On Friday, EU ministers for justice will attempt to reach agreement on a draft Decision on the strengthening of Eurojust, and on a proposal for a Decision on the European Judicial Network in criminal matters. They will also exchange views on a proposal for a Decision on the establishment of a European criminal records information system, and will consider the possibility of enhanced cooperation on a proposal on the rules concerning applicable law in matrimonial matters (Rome III). Finally, ministers will take note of a report by the Future Group on justice.

Press conferences at the end of each session of the Council (Thursday at +/- 13.00 and +/- 18.00 and Friday at +/- 13.00).

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"HOME AFFAIRS" ITEMS (Thursday 24 July)

European Pact on Immigration and Asylum

The Presidency will brief the Council on the progress of work on the Pact.

At the informal meeting on 7 July 2008, the French Presidency noted that there was a broad measure of agreement between delegations on the draft text of the Pact on Immigration and Asylum. The draft European Pact centres around five key commitments:

- to organise legal immigration to take account of the needs of the market and the reception capacities of each Member State, by attracting highly qualified workers and students, and to encourage integration (based on the rights and obligations of the migrant);
- to combat illegal immigration by granting case-by-case regularisations, to develop cooperation with countries of origin and of transit, and by combating criminal networks involved in trafficking migrants and exploiting illegal immigrants;
- to make border controls more effective by developing biometric visas, setting up electronic recording of entry and exit, and reinforcing the Frontex agency;
- to construct a Europe of asylum by establishing a European support office, and by establishing a single asylum procedure and a uniform status for refugees;
- to create a comprehensive partnership with countries of origin and of transit, encouraging synergy between migration and development.

The Presidency's aim is for the Pact to be adopted at the European Council meeting on 15 October 2008.

Conditions of entry and residency of third-country nationals for the purposes of highly qualified employment

The Council will discuss this proposal for a Directive, on the basis of a series of key questions proposed by the Presidency.

The proposal for a Directive, which was presented by the Commission on 23 October 2007, aims to introduce a flexible, fast-track common procedure for the admission of highly skilled immigrants. Third-country nationals who are admitted as highly qualified workers will be issued with a European blue card (for workers from outside the EU). The text also aims to establish attractive residence and mobility conditions for those immigrants and their families.

The key questions on which guidance from the Council has been requested are as follows:

- "1. Are you in favour of applying the following criteria, under the proposed Directive, for access by third-country nationals to highly qualified employment:
 - *a higher education qualification involving at least three years' study or, as an exception, where provided for by national law, at least five years' equivalent professional experience;*
 - *a pay level of at least 1,5 times the average gross monthly wage or, as an exception, reduction of the minimum to two thirds of that level for those who obtained the required qualification within the last five years?*
2. Are you in favour of application of the European blue card scheme alongside national arrangements for issuing residence permits for employment purposes, where conditions under the latter differ from those under the proposed Directive?"

Sanctions against employers of illegally staying third-country nationals

The Council will discuss this proposal for a Directive, on the basis of the key questions submitted by the Presidency.

The proposal for a Directive, which was submitted by the Commission on 16 May 2007, provides for a minimum harmonisation of administrative, financial and criminal sanctions against employers of illegally staying third-country nationals. The aim is that all the Member States should establish similar sanctions against the employers of these third-country nationals, and apply them effectively. It is proposed that employers should be obliged to make checks before they recruit third-country nationals, and that the Member States should be obliged to carry out a minimum number of inspections of companies on their territory.

The key questions on which the Council has been asked for guidance are:

- "1. *Do you consider that minimum rules on criminal sanctions against employers are justified in order effectively to combat the employment of illegally staying third-country nationals?*
2. *For the purpose of implementing the provisions of the Directive effectively, are you in favour of inspection actions that include quantified common inspection targets in the sectors of activity identified by each Member State as most open to abuse?"*

This proposal for a Directive is part of the EU's general policy on migration and is intended to combat a significant pull factor for illegal immigration and exploitation of migrants.

Reception of Iraqi refugees

The Council should adopt draft conclusions on the reception of Iraqi refugees in the Member States of the European Union.

The main objective is to create the conditions in which displaced persons inside Iraq and refugees in neighbouring countries can return safely to their homes, taking care to protect and defend the human rights of all Iraqis, and paying particular attention to vulnerable groups.

The Council is encouraging the Member States on a voluntary basis to increase or create possibilities for taking in vulnerable persons from Iraq who are in need of protection. The Member States have been invited to inform the Commission of the number of persons they are able to receive. On this basis, the Commission will report to the Council by the end of 2008.

The question of the situation of Iraqi refugees has already been raised at the JHA Council meetings in April and June 2008.

European PNR

The Council will have an exchange of views on the method of work to be followed in coming months, and on a series of topics, in relation to the proposal for a Framework Decision on the use of passenger name records (PNR) by Member States' law enforcement authorities, submitted by the Commission on 17 November 2007 (14922/07).

The Presidency is proposing to point the way for proceedings over the months ahead in the following manner:

- consideration of the substance of the Decision as a matter of priority, with examination of the legal basis being left until the end of discussions;
- seeking to strike a balance between a common tool and the flexibility which Member States may turn out to need;
- consideration based on operational use of data, which appears to be twofold: firstly in real time, resulting in action upon arrival of a flight, and secondly after the event, as part of investigations;
- examination of privacy protection in the light of the intended uses and with the incorporation of standards drawn up at European and national level;
- practical examination of technical arrangements for data collection, treatment of transit flights, the respective roles of passenger information units (PIUs) and relevant law enforcement authorities, and the content of exchanges of information between PIUs.

The specific nature of the work to be carried out in the various areas in many cases makes it very helpful to bring into the discussions those with suitable technical competence. Involvement of the European Parliament in proceedings, by appropriate means, will also allow a constructive dialogue with that institution, which is particularly watchful as regards this proposal.

Since 11 September 2001, law enforcement authorities around the world have come to realise the added value of collecting and analysing so-called PNR data in combating terrorism and organised crime. PNR data are related to travel movements, usually flights, and include passport data, name, address, telephone numbers, travel agent, seat and other information. The PNR data of a certain passenger usually do not contain all PNR fields, but only those that are actually provided by the passenger at the time of the reservation and information received upon check-in and boarding. It must be noted that air carriers already capture the PNR data of passengers for their own commercial purposes, but that non-air carriers do not capture such data. The collection and analysis of PNR data allows the law enforcement authorities to identify high-risk persons and to take appropriate measures.

Future Group (police and immigration)

The Council will take note of the final report of the Future Group on police and immigration.

At the informal meeting of EU Ministers for the Interior and Immigration in Dresden in January 2007, the German Minister of the Interior and the Commission proposed the creation of an informal Group at ministerial level with the objective of considering the future of the European area of justice, freedom and security. The findings and recommendations of the Future Group are meant to be an important contribution and a source of inspiration for the Commission's proposals for the next multi-annual programme (2010 to 2014) in the field of Justice and Home Affairs.

The Future Group was co-chaired by the Vice-President of the Commission and the Minister for the Interior of the Presidency in office. It brought together the Ministers for the Interior of the two team Presidencies in office during the proceedings (Germany, Portugal, Slovenia; France, Czech Republic, Sweden) and a representative of the future Presidency team, i.e. Spain, Belgium and Hungary. The Secretariat General of the Council and the Parliament also took part.

The Future Group on police and immigration identified four cross-cutting challenges essential to safeguard and supplement the home affairs area:

- preserving the "European model" in the area of European home affairs by balancing mobility, security and privacy;
- coping with the growing interdependence between internal and external security;
- ensuring the best possible flow of data within Europe-wide information networks;
- improving the convergence between the operational measures of national police forces.

Cyber crime

The Council will hold a debate on a plan to combat cyber crime in the EU.

The Internet is both a tool for progress and a potential weapon in the hands of criminals. It can be used as a tool without borders in several areas and provides a broad measure of impunity for its users: it is the medium for scams such as "phishing" (usurping identity); it is a means of communication and recruitment between terrorists; it provides access to illegal content (glorifying violence, terrorism and child pornography, etc.) and may itself fall victim to criminal attack.

A number of initiatives have been taken at European level, such as adoption of Framework Decision 2005/222/JHA on attacks against information systems, or the creation in 2004 of a European Network and Information Security Agency (ENISA).

Given that the Internet is constantly changing and that new issues are emerging all the time, European policy on cyber crime has to be continued and updated.

The French Presidency will propose to the Council:

- the creation of a European platform for issuing alerts about offences detected on the Internet. Hosted by EUROPOL, this structure would receive alerts on offences from the national platforms of the EU Member States;
- strengthening the "Check the web" project to combat terrorist propaganda and recruitment on the Internet;
- drawing up an action plan to combat cyber crime.

ITEMS ON JUSTICE (Friday 25 July 2008)

Eurojust

The Council will try to agree on a general approach to a draft Decision on strengthening Eurojust. At the meetings on 18 April and 6 June 2008, the Council had already agreed to a general approach on certain articles related to the composition and tasks of Eurojust, the status of its national members and its staff and on articles concerning the on-call coordination, the exercise of powers of national members of Eurojust, the Eurojust national coordination system and the exchange of information between Member States and national members.

This proposal for strengthening Eurojust was presented in January 2008 by Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal.

The objective of the proposal is to strengthen Eurojust by taking the following steps:

- creating a common minimum basis of national members' powers;
- creating an emergency coordination mechanism;
- improving the transmission of information to Eurojust;
- improving Eurojust's national base;
- strengthening judicial cooperation with third countries by allowing Eurojust to post liaison magistrates in these countries.

European Judicial Network in criminal matters

The Council will endeavour to agree to a general approach on a draft Decision on the European Judicial Network in criminal matters.

The European Judicial Network was established by Joint Action 98/428/JHA of 29 June 1998. Over the years, its usefulness in facilitating judicial cooperation in criminal matters has been demonstrated. Following the EU's enlargements in 2004 and 2007, the European Judicial Network requires strengthening. Over the past five years, the Network has enjoyed preferential relations with Eurojust (following its creation by Decision 2002/187/JHA) based on consultation and complementarity. The five years of co-existence of Eurojust and the European Judicial Network have shown both the need to maintain the two structures and the need to clarify their relationship.

The European Judicial Network facilitates the establishment of the appropriate contacts between the contact points of the different Member States, in particular as regards action to combat serious crime. The contact points provide the European judicial authorities on a constant basis with certain basic information that enables them to draw up a request for judicial cooperation efficiently or improve judicial cooperation in general.

This proposal for creating a European Judicial Network in criminal matters was presented in January 2008 by Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal.

European Criminal Records Information System (ECRIS)

The Council will take note of the Commission's presentation of a proposal for a Decision on the establishment of European Criminal Records Information System (ECRIS).

The objective of the proposal is to devise a computerised system for exchanging information on convictions between the EU Member States.

The proposal defines the features of a standardised format for the electronic exchange of information from criminal records, in particular as regards information on offences leading to convictions and information on the latter, as well other technical and general aspects of implementing the exchange of information.

The actual entry into force of the exchange between criminal records systems (already adopted) is dependent on this proposal.

Jurisdiction and law applicable in matrimonial matters (Rome III)

The Council will hold a debate on the importance of enhanced cooperation regarding an instrument on jurisdiction and the law applicable in matrimonial matters (Rome III), particularly in the case of divorce.

It should be noted that on 18 July 2006 the Commission submitted a proposal amending the Brussels II a Regulation. The aim of the proposal, referred to as Rome III, is to enable spouses, in the context of proceedings for divorce or legal separation, to choose by agreement the place of jurisdiction and to designate the applicable law in respect of such disputes. Where no law is chosen by the spouses, the text would introduce conflict-of-law rules. The proposal provides for a number of connecting factors: divorce is governed by the law of the country of habitual residence of the two spouses; failing that, by that of the country of habitual residence of the spouses if one of them always resides there; failing that, by that of the country of the common nationality of the spouses; or, failing that, by the law of the forum. The conflict-of-law rules provided for in the proposal are intended to ensure that, wherever the spouses petition for divorce, the courts of a Member State normally apply the same substantive law (avoiding "forum shopping").

At its meetings on 5 and 6 June 2008, the Council noted that the unanimity required for ensuring a successful outcome to the Rome III Regulation was lacking and that insurmountable difficulties existed which make any unanimity impossible at present and in the near future. Furthermore, the Council observed that the objectives of Rome III could not be attained within a reasonable period by applying the relevant provisions of the Treaty.

In this context, there would appear to be two possible solutions at this stage:

- abandon the Regulation, or
- introduce enhanced cooperation.

Future Group (Justice)

The Council will take note of the final report of the Future Group on justice.

On the initiative of the Portuguese Presidency of the EU (second half of 2007), a high-level consultative group on the future of European justice policy (known as the Future Group - Justice) was set up. This group was co-chaired by the Presidency of the Council and by the Vice-President of the Commission and is made up of the six justice ministers of the two trio Presidencies in office during the discussions (Germany, Portugal, Slovenia; France, Czech Republic, Sweden) and a representative of the next Presidency trio (Spain, Belgium, Hungary). Ireland was invited as representative of the common law Member States. The General Secretariat of the Council and the Parliament have also participated in discussions.

The Future Group (Justice) has identified five objectives for meeting future challenges in the area of justice:

- improving the protection of citizens;
- increasing legal certainty in family, commercial and civil law;
- promoting access to justice within the EU;
- advancing in the fight against organised crime.
- meeting future challenges in the external dimension of justice policies.