

8278/03 (Presse 111)

PROVISIONAL VERSION

2504th Council meeting

- JUSTICE AND HOME AFFAIRS -

Brussels, 8 May 2003

President : **Mr Philippos PETSALNIKOS**,
Minister for Justice, and

Mr. Michalis CHRISOCHOÏDIS,
Minister for Public Order

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- Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
- The documents whose references are given in the text are available on the Council's Internet site <http://ue.eu.int>.
- Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the above mentioned Council Internet site or may be obtained from the Press Office.

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PARTICIPANTS

The Governments of the Member States and the European Commission were represented as follows:

Belgium:

Mr Antoine DUQUESNE

Minister for the Interior

Denmark:

Mr Bertel HAARDER

Minister for Refugees, Immigration and Integration and Minister without portfolio with responsibility for European Affairs

Germany:

Mr Otto SCHILY

Federal Minister for the Interior

Greece:

Mr Michalis CHRISOCHOÏDIS

Minister for Public Order

Mr Philippos PETSALNIKOS

Minister for Justice

Spain:

Mr Ángel ACEBES PANIAGUA

Minister for the Interior

France:

Mr Dominique PERBEN

Keeper of the Seals, Minister for Justice

Mr Patrick DEVEDJIAN

Minister attached to the Minister for the Interior, Internal Security and Local Freedoms, with responsibility for Local Freedoms

Ireland:

Mr Michael McDOWELL

Minister for Justice

Italy:

Mr Giuseppe PISANU

Minister for the Interior

Luxembourg:

Mr Luc FRIEDEN

Minister for Justice, Minister for the Treasury and the Budget

Netherlands:

Mr Hilbrand NAWIJN

Minister for Aliens' Affairs and Integration

Austria:

Mr Ernst STRASSER

Federal Minister for the Interior

Portugal:

Mr António Jorge FIGUEREIDO LOPES

Minister for the Interior

Mr João MOTA DE CAMPOS

State Secretary to the Minister for Justice

Finland:

Mr Johannes KOSKINEN

Minister for Justice

Mr Kari RAJAMÄKI

Minister for the Interior

Sweden:

Mr Thomas BODSTRÖM

Minister for Justice

Mr Barbro HOLMGREN

State Secretary at the Ministry of Foreign Affairs

United Kingdom:

Lord Geoffrey FILKIN

Parliamentary Under-Secretary of State, Home Office

* * *

Commission :

Mr António VITORINO

Member

The Governments of the Acceding States were represented as follows:

Czech Republic :

Mr Stanislav GROSS

First Deputy Minister and Minister of the Interior

Estonia :

Mr Margus LEIVO

Minister for Justice

Cyprus :

Mr Andreas CHRISTOU

Minister of the Interior

Latvia :

Mr Aksenoks AIVARS

Minister for Justice

Lithuania :

Mr Vytautas MARKEVICIUS

Minister for Justice

Hungary :

Ms Monika LAMPERTH

Minister of the Interior

Malta:

Mr Tonio BORG

Minister of Justice and Home Affairs

Poland :

Mr Sylwester KRÓLAK

Mr Paweł DAKOWSKI

Under-Secretary of State in the Ministry of Justice
Under-Secretary of State in the Ministry of Interior and
Administration

Slovakia :

Mr Vladimír PALKO

Mr Daniel LIPSIC

Minister of the Interior

Minister of Justice

Slovenia :

Mr Rado BOHINC

Mr Ivan BIZJAK

Minister of the Interior

Minister of Justice

ITEMS DEBATED

MINIMUM STANDARDS FOR THE QUALIFICATION AND STATUS OF THIRD-COUNTRY NATIONALS AND STATELESS PERSONS AS REFUGEES OR AS PERSONS WHO OTHERWISE NEED INTERNATIONAL PROTECTION

The Council, with a view to reaching a political agreement within the time limit decided by the Seville European Council (June 2003), examined outstanding issues of the proposal of the Directive on Minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection.

Discussions focused in particular on the rights to be granted to beneficiaries of refugee status and the beneficiaries of subsidiary protection status.

Following the debate, the Council instructed its relevant bodies to continue the work on the Directive with a view to reaching a political agreement at the next Justice and Home Affairs Council scheduled on 5 and 6 June 2003.

The purpose of the proposal is to provide a framework for an international protection regime, based on existing international and Community obligations and current Member States practice, and separated into the two complementary categories of refugee and subsidiary protection. The proposal includes provisions on the minimum rights and benefits to be enjoyed by the beneficiaries of refugee status and of subsidiary protection status.

This proposal does not address the procedural aspects of granting and withdrawing refugee status or subsidiary protection status. The procedures for asylum applicants are laid out in the proposal for a Council Directive on minimum standards on asylum procedures which is currently being examined by the preparatory instances of the Council.

It is recalled that at its meeting on 28 November 2002, the Council reached broad agreement, subject to reservations from one delegation, on the part of the proposal which concerns the rules on recognition of a third country national as a refugee or as a person eligible for subsidiary protection.

STATUS OF THIRD COUNTRY NATIONALS WHO ARE LONG-TERM RESIDENTS

The Council, with a view to reaching a political agreement within the time limit decided by the Seville European Council (June 2003), examined outstanding questions of the proposal for a Directive concerning the status of third-country nationals who are long-term residents.

In particular, the Council reached a broad agreement on the first part of the draft Directive which deals with the conditions for acquiring of the long-term resident status. In this context, the Council welcomed the commitment by the Commission to table a proposal for a Directive on the extension of the long-term resident status Directive to refugees and persons under subsidiary protection within one year.

The Council also had a political debate on the question of the mobility of the third-country nationals who have acquired long-term resident status in a Member State to other Member States.

It is recalled that, at its meeting on 15 October 2002, the Council held a first exchange of views on mobility and that delegations favoured the idea of the mobility of long-term residents, though the granting of this benefit should be subject to some specific conditions.

The purpose of this Directive is to grant an EC statute of long-term resident to third-country nationals who have resided for a relatively long period of time in the territory of a Member State. In accordance with the draft Directive and under certain conditions, long-term residents should enjoy equal treatment with nationals in certain areas (i.e. employment, education, social security, etc..).

This new statute - which is not intended to replace the existing national long-term resident statute - would in principle allow the person concerned to move from one Member State to another without being required to submit all the procedures that new immigrants are subject to.

The Council will again examine this item at its next meeting scheduled on 5 and 6 June 2003 on the basis of the work done by its preparatory bodies.

ROAD-MAP FOR THE FOLLOW-UP TO THE SEVILLE EUROPEAN COUNCIL

The Council took note of the updated version of the Road Map for the follow-up to the conclusions of the European Council in Seville concerning combating illegal immigration, integrated management of external borders, integration of immigration policy into the Union's relations with third countries and speeding up of legislative work in framing a common policy on asylum and immigration.

The Road-Map will serve as an input for drafting a report which will be presented at the next Justice and Home Affairs Council meeting in view of its submission to the Thessaloniki European Council.

The Council also heard a presentation by Commissioner VITORINO concerning the results of the study carried out by the Commission on the Visa Information System (VIS). Commissioner VITORINO also indicated that the Commission is preparing a report to the Thessaloniki European Council regarding the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents.

It is recalled that the European Council in Seville, on 21-22 June 2002, decided to speed up the implementation of all aspects of the programme adopted in Tampere for the creation of an area of freedom, security and justice in the European Union. It pointed out the need to develop a European Union common policy on the separate, but closely related, issues of asylum and immigration.

NEGOTIATIONS WITH SWITZERLAND ON THE SCHENGEN ACQUIS AND ASYLUM MEASURES

The Council took note of the state of play in the negotiations with Switzerland on its participation in the Schengen acquis.

The Council instructed the Permanent Representative Committee to consider the outstanding issues of the negotiations and to examine the ways for arriving at a coordinated position which will have to take into account the general interests of the Union.

It is recalled that on 17 June 2002 the Council adopted directives for the Presidency and the Commission with a view to negotiating an agreement between the EC/EU and Switzerland on the latter's association with the implementation, application and development of the Schengen acquis, as well as directives for the Commission with a view to negotiating an agreement between the Community and Switzerland on the latter's association with the implementation and development of legislation setting up Eurodac and establishing the State responsible for examining asylum applications.

Negotiations with Switzerland began in September 2002 and in the meantime some 15 negotiating rounds have been held, both at the level of technical experts and at the level of the plenary negotiating teams. The discussions have led to an agreement between the negotiating teams on most of the substantive issues. Certain issues remain however outstanding, like the provisions of the Schengen acquis on judicial cooperation in the field of fiscal offences.

JUDICIAL COOPERATION IN CRIMINAL MATTERS AND EXTRADITION WITH THE USA

The Council took note of the position of Member States concerning the text of the Agreements between the European Union and the United States of America on extradition and on mutual legal assistance.

The Presidency also informed delegations that the Justice and Home Affairs Council should take the decision authorising the Presidency to sign the draft Agreements at its next meeting on 5-6 June 2003, with a view to sign them in the context of the EU-US Summit which will be held on 25 June 2003 in Washington.

It is recalled that, at its meeting on 28 February 2003, the Council decided to suspend negotiations on the draft text of the Agreements on mutual legal assistance and on extradition with the USA, in order to enable delegations to examine the texts at national level.

Since the Council meeting, the Presidency has, in accordance with the Council decision, carried out negotiations with the USA on the text of the draft Explanatory Notes that will have to be agreed after the signing of the Agreements. A meeting with the US delegation was held on 3 and 4 April 2003 for that purpose. The texts of the draft Agreements and the Explanatory Notes are to be found in doc. 8295/1/03.

The agreement should supplement (not replace) bilateral agreements between the US and Member States of the EU, and should add value to such bilateral agreements and provide for the necessary guarantees for the protection of human rights and fundamental freedoms and respect the constitutional principles of the Member States.

MUTUAL RECOGNITION TO FINANCIAL PENALTIES

The Council, subject to parliamentary scrutiny reservations by some delegations and the opinion of the European Parliament, reached a general approach on the draft Framework Decision on the application of the principle of mutual recognition to financial penalties.

The objective of this Framework Decision is to apply the principle of mutual recognition to financial penalties imposed by judicial or administrative authorities. In doing so, the list of offences included in the Framework Decision will give rise to recognition and enforcement without verification of the double criminality, if they are punishable in the issuing State and when the financial penalty is below 70 euros.

The list of offences include the offences appearing on the corresponding list in the Framework Decision on the European arrest warrant. Other offences such as road traffic offences are also covered by the Framework Decision.

It is recalled that the European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union, and that on 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition, giving priority to the adoption of an instrument applying the principle of mutual recognition to financial penalties (measure 18).

The Council will formally adopt the Framework Decision at one of its next forthcoming meetings, once some outstanding details have been examined and the text has been revised by the legal-linguistic Working Party.

ANY OTHER BUSINESS

– ***APPOINTMENT OF TWO DEPUTY DIRECTORS OF EUROPOL***

The Council decided to appoint Mr Jens Henrik HØJBJERG and Mr Kevin Philip O'CONNELL as Deputy Directors of EUROPOL from 1 July 2003 to 30 June 2007.

– ***INFORMATION CONCERNING THE MINISTERIAL G8 MEETING ON 5/6 MAY 2003***

The Council was informed by France on the discussion held in Paris by the G8 Member States Ministers of Justice and Home Affairs and Commissioner VITORINO on 5 May 2003, to review the progress made in the fight against terrorism and organised crime since the May 2002 in Mont-Tremblant (Canada).

– ***NOTIFICATION TO THE COUNCIL OF EUROPE IN APPLICATION OF ART. 28(3) OF THE EXTRADITION CONVENTION OF 13.12.1957***

The Council took note of the presentation by Commissioner VITORINO of the proposal for a Council common position on notifying the Council of Europe, pursuant to Article 28(3) of the European Convention on Extradition of 13 December 1957, of the application by the Member States, as between themselves, of the European arrest warrant.

– ***INFORMATION BY THE NETHERLANDS ON ITS CONTRIBUTION TO THE CONVENTION***

The Dutch Minister for Justice, Mr DONNER, informed the Council about his Government's contribution to the works of the Convention concerning judicial cooperation in the EU.

ITEMS APPROVED WITHOUT DEBATE

JUSTICE AND HOME AFFAIRS

Preventing and Combating Trafficking in Human Beings

(Doc 7800/03)

The Council adopted and decided to publish in the OJ the "Brussels Declaration on Preventing and Combating Trafficking in Human Beings", made at the "European Conference on Preventing and Combating Trafficking in Human Beings - Global Challenge for the 21st Century" on 18 to 20 September 2002 as well as Conclusions on this subject.

Mobile telephone cards

(Doc. 7808/03)

The Council adopted Conclusions, as set out below, on the tracing of the use of prepaid mobile telephone cards, in order to facilitate criminal investigations :

"THE COUNCIL OF THE EUROPEAN UNION:

1. REAFFIRMS the objective of providing the Union's citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters, as laid down in the Treaty on European Union;
2. RECOGNISES that organised crime poses a serious threat to the establishment of a European area of freedom, security and justice. Taking advantage of trends towards globalisation and gradual opening of borders to free movement of goods, capital, services and persons, organised crime has assumed a cross-border scale making it necessary for all national efforts to be harnessed within a common strategy;
3. NOTES that technological innovations, the development of the Internet and other new electronic communications services, electronic banking, etc., even where they bring great benefits to our societies, can also be improperly used by criminal organisations;
4. POINTS OUT that the right to have confidentiality of telecommunications respected can only be restricted where necessary in order to safeguard national interests or national security or to investigate serious offences;

5. REFERS to the Council Resolution of 17 January 1995 on the lawful interception of telecommunications¹, setting out the requirements of Member States to enable them to conduct the lawful interception of telecommunications in modern telecommunications systems;
6. STRESSES that although prepaid telephone cards have allowed mobile telephony services to reach large population groups, the anonymous use of such telephone cards also constitutes an attractive means of communication for individuals and organisations pursuing illegal ends;
7. POINTS OUT that, under most Member States' current legal frameworks, no records are kept of prepaid cards or of their users, which allows these cards to be used anonymously in the course of organised criminal activities;
8. RECOGNISES with concern that the use of prepaid mobile telephone cards under present conditions of anonymity for users hinders implementation of the requirements and principles laid down in the Council Resolution of 17 January 1995 on the lawful interception of telecommunications. More specifically, the anonymous use of telephone cards can make it difficult for law enforcement agencies to identify the service used by the person to whom the interception is applied;
9. POINTS OUT that the political guidelines in the action plan to combat organised crime, adopted by the Council on 28 April 1997², explicitly include the need to pave the way for a policy ensuring that law enforcement and judicial authorities have the possibility to prevent and combat abuse of new technologies;
10. REITERATES the requirement for implementation of communications interception measures to respect the right to privacy laid down in Member States' national laws and accordingly highlights the provisions of Directive 2002/58/EC³ concerning the processing of personal data and the protection of privacy in the telecommunications sector, adopted by the European Parliament and the Council on 12 July 2002;
11. CONSIDERS that the introduction, in accordance with the principles of a democratic society, of means of tracing the use of prepaid mobile telephone cards would provide Member States' competent authorities with better means for investigations into serious offences;
12. ACKNOWLEDGES that the means, mentioned in point 11, should be in any case balanced and proportionate, taking especially into consideration their potential impact on the private life of citizens and the business market of prepaid mobile telephone cards;

1 OJ C 329, 4.11.1996, p. 1.

2 OJ C 251, 15.8.1997, p. 1.

3 OJ L 201, 31.7.2002, p. 37

13. CONSIDERS that in identifying the potential solutions to the problem posed by the use of prepaid mobile telephone cards in connection with organised crime, special regard should also be paid to current technological advances in the field of interception of telecommunications.
14. RECOMMENDS that Member States consider a set of appropriate requirements for tracing the use of prepaid card technology with a view to facilitating the application of the interception measures recognised by the Council Resolution of 17 January 1995 on the lawful interception of telecommunications."

Customs files identification database (FIDE)

(Doc 6763/03)

The Council adopted the Act drawing up a Protocol amending the CIS (Customs Information System) Convention as regards the creation of a customs files identification database.

By adopting the Protocol, the Council implements the conclusions of the Tampere European Council of 15 and 16 October 1999, which stressed that maximum benefit should be derived from co-operation between the Member States' competent authorities when investigating cross-border crime (No 43 of the conclusions), a balanced development should be achieved of Union-wide measures to fight crime while at the same time protecting the freedom and the constitutional rights of individuals as well as of economic operators (No 40 of the conclusions), and serious economic crime increasingly includes aspects of tax and customs law (No 49 of the conclusions).

Joint Investigation Team (JIT)

(Doc 7061/03)

The Council adopted a Recommendation for setting up a Joint Investigation Team (JIT). The Recommendation encourages those Member States that wish to set up a JIT with other Member States, to use the model agreement set out in the Annex to the Recommendation.

Separate lanes at the external border crossing points

(Doc 8498/03)

The Council adopted Conclusions for the separate lanes at the external border crossing points, follows:

"THE COUNCIL OF THE EUROPEAN UNION,

Recalling that in accordance with the decision of the Schengen Executive Committee of 22 December 1994 (SCH/Com-ex (94) 17, rev 4), which was integrated into the EU acquis following the entry into force of the Treaty of Amsterdam, separate control lanes were introduced at international airports. These separate lanes aim at reducing delays for persons entitled under Community law (citizens of the European Union, nationals of States parties to the Agreement on the European Economic Area and nationals of the Swiss Confederation, and members of their families), who are generally subject only to an identity check.

Noting that with regard to the control of ferries, point 3.4.4.5 a) Part II of the Common Manual stipulates that "in principle a distinction should be drawn between the controls carried out on aliens and the controls carried out on EU/EEA nationals... Where possible, the necessary construction work should be undertaken to ensure this".

Underlining that despite the fact that there is no similar legal provision to apply these standards to land borders as to air and sea borders, the possible introduction of separate control lanes at external land border crossings constitutes an improvement for persons entitled under Community law. The absence of such provisions could result in the possibility of lengthy delays for these persons and implies that they do not have the same rights as when crossing external air and sea borders of the EU. However, when introducing provisions on separate lanes at external land border crossing points, particular attention should be paid to the local traffic conditions prevailing at these borders and also to the enlargement of the European Union with the accession of ten new Member States.

HEREBY APPROVES THE FOLLOWING CONCLUSIONS:

1. At external land border crossing points, where possible and appropriate, the entry and/or exit controls laid down in the Common Manual should be carried out in separate control lanes in order to avoid lengthy delays for persons entitled under Community law and to bring arrangements - as far as possible - into line with those applied at sea and air border crossing points.
2. The building or implementation of these separate control lanes, taking into consideration the special circumstances which prevail at the Member States' external land border crossing points, largely as a result of intense traffic (vehicles and/or pedestrians), will fall within the competence of the respective Member State, which will decide if and where such separate lanes would be appropriate and helpful.
3. However, in any event, separate lanes may be dispensed with in exceptional circumstances and where traffic and infrastructure conditions so require.
4. These conclusions do not concern the land border crossing points of the present EU Member States with the acceding countries.
5. The Council underlines the importance of good and intensive co-operation with neighbouring countries in implementing, where possible, separate lanes at external land border crossing points.
6. The Council requests the Commission to take these conclusions into account when proposing amendments to the provisions of the Common Manual.
7. The revised Common Manual, once adopted by the Council, shall exclusively cover the matters addressed in these conclusions."

EC - Denmark

The Council authorised the Commission to negotiate two agreements between the European Community and the Kingdom of Denmark, extending to Denmark the provisions of Regulation (EC) n° 44/2001 on jurisdiction and the recognition and the enforcement of judgements in civil and commercial matters, and the provisions of Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters. It designated a special Committee to assist the Commission which, in consultation with the Committee and within the framework of the negotiating Directives adopted as well, shall conduct the negotiations.

The UK and Ireland take part in the adoption and application of this Decision.

EC - Denmark - Iceland - Norway

(Doc 8314/03)

The Council authorised the Commission to negotiate with Denmark the conclusion of an Agreement concerning the criteria and mechanisms for establishing the state responsible for examining a request for asylum lodged in Denmark or any other EU Member State.

In addition, the Council authorised the Commission to negotiate with Iceland and Norway the conclusion of a Protocol pursuant to Article 12 of the Agreement between the EC and Iceland and Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway.

The said Article 12 provides for the participation of Denmark in the Agreement if Denmark so request, which it did by letter of 16 February 2001.

The UK and Ireland took part in the adoption of the Decision.

Romania

The Council adopted the Data protection report on Romania submitted by the Europol Management Board and decided that no obstacles exist for Europol to start negotiations with Romania leading to an agreement including the transmission of personal data by Europol to Romania.

Genocide, crimes against humanity and war crimes

(Doc 6505/03)

The Council adopted the Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes.

The aim of this Decision is to increase co-operation between national units in order to maximise the ability of law enforcement authorities in different Member States to co-operate effectively in the field of investigation and prosecution of persons who have committed or participated in the commission of genocide, crimes against humanity or war crimes as defined in Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court of 17 July 1998.

C.SIS budget for 2004

The Council adopted the multiannual table of authorised C.SIS installation expenditure and the C.SIS installation and exploitation budget for 2004.

Generalised tariff preferences

(Doc. 6947/1/03)

The Council adopted two Regulations respectively amending and implementing Council Regulation (EC) No 2501/2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004.

ACP : use of the reserve of the long-term development envelope

(Doc 8814/03)

The Council decided on the position to be adopted by the Community within the ACP-EC Council of Ministers regarding a decision on the use of the reserve of the long-term development envelope of the ninth European Development Fund for debt alleviation.

Following this position, an amount of EUR 335 million shall be transferred from unallocated resources of the 9th EDF long-term development envelope to the intra-ACP allocation under the envelope for regional co-operation and integration, and used for debt relief in favour of ACP countries that are eligible under the initiative in favour of Highly Indebted Poor Countries (HIPC), in accordance with Article 66 of the ACP-EC Agreement. This amount can be used for the following purposes: meeting the outstanding debt and debt servicing obligations to the Community of ACP countries that are eligible under the HIPC initiative (EUR 135 million), contributing to the financing of the HIPC Trust Fund to the benefit of ACP countries (EUR 200 million).

EXTERNAL RELATIONS

Democratic Republic of Congo – Lusaka cease-fire agreement

(Doc. 8856/03)

The Council adopted a Common Position concerning European Union support for the implementation of the cease-fire agreement signed at Lusaka in July 1999 and the peace process in the Democratic Republic of Congo.

The Common Position commits the EU to supporting action taken by the United Nations and the African Union in the implementation of the Lusaka and other agreements and UN Security Resolutions regarding the DRC, and to co-operating closely with these organisations and the international community. The text, which replaces Common Position 2002/203/CFSP, will be reviewed in the light of developments in the region and a new decision taken within 12 months.

Gulf Co-operation Council

The Council approved an updated version of the directives relating to the negotiation of a free trade agreement between the Community and the States of the Gulf Co-operation Council (Bahrain, Kuwait, Oman, Qatar Saudi Arabia and United Arab Emirates).

ACP States – Preparation of the ACP-EC Council of Ministers on 15/16 May

The Council approved the annotated agenda for the 28th session of the African, Caribbean and Pacific-European Community Council of Ministers on 15 and 16 May in Brussels as well as the outlines of the statements to be made by the Community at the meeting.

Croatia - Heavy goods transit through Austria

(Doc. 7845/03)

The Council adopted a decision on the signature and provisional application of an Agreement between the European Community and the Republic of Croatia concerning the system of "ecopoints" to be used to regulate the transit through Austria of heavy goods traffic from Croatia.

The Council will approve the conclusion of this Agreement once the European Parliament has given its opinion.