



Brussels, 29 March 2004

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Brussels, 30 March 2004

The JHA Council will start its work at 10h00. The Council's agenda includes the following items : the draft Framework Decision on the application of the principle of mutual recognition to confiscation orders, the proposal for a Council Directive on compensation to crime victims and the follow up to the European Council Declaration on Terrorism.

The Council will also examine: the Directive for the qualification of third-country nationals as refugees, the Directive on minimum standards on procedures for granting and withdrawing refugee status, the Directive on the conditions of entry and residence of third country nationals for the purpose of study, vocational training, voluntary service and the Commission communication of admission of researchers in the EU.

Over lunch, Ministers will discuss the filling of the position of the Director of Europol.

The Mixed Committee (EU + Norway + Iceland) will meet at 15h00 to examine the Directive on the obligation of carriers to communicate passenger data and the proposal for a European Agency for the management of operational cooperation at the external borders.

A press conference will be held at the end of the Council meeting (\pm 18h00).

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

APPLICATION OF THE MUTUAL RECOGNITION PRINCIPLE TO CONFISCATION ORDERS

The Council will aim at reaching a general approach on the body of the text of the draft Framework Decision on the application of the principle of mutual recognition to confiscation orders.

The purpose of this Framework Decision is to facilitate cooperation between Member States as regards the recognition and execution of orders to confiscate the proceeds of crime. By means of the Framework Decision, a Member State will have to recognise and execute in its territory confiscation orders issued by judicial authorities of another Member State.

The Council will focus its debate on the grounds for non-recognition or non-execution of a confiscation order. According to the draft text, the executing state may refuse the recognition/execution confiscation order when the offences have been committed wholly or partly within the territory of the executing state. A number of delegations and the Commission consider that this provision needed to be limited in order to avoid the risk that criminals could go unpunished as a consequence of its application. The Council will focus its debate on a number of issues including a ground of refusal linked to territoriality, the definition of “property” and the provision dealing with the transmission of confiscation orders to Member States.

The Presidency will present a compromise text on the grounds of refusal/territoriality question, with a view to reaching an agreement on the body of the proposal.

It should be noted that this Framework Decision is closely linked to the already adopted Framework Decision on the application of the principle of mutual recognition to orders freezing property or evidence. It is also linked to the draft Framework Decision on confiscation of crime-related proceeds, instrumentalities and property on which the JHA Council adopted a general approach in December 2002. For the purpose of making efficient instruments available to practitioners, it is very important to adopt the draft on confiscation orders as soon as possible. The draft is therefore high on the Presidency’s list of priorities in the JHA area.

COMPENSATION TO CRIME VICTIMS

The European Council on 25 and 26 March 2004 called for the adoption, before 1 May 2004, of the Council Directive on compensation to crime victims. Therefore, the Presidency urges the Council to make all efforts to advance this Directive so that this deadline can be met.

This Council aims to agree a general approach on this Draft Directive.

The draft Directive is based on Article 308 of the Treaty, which requires unanimity.

At its meeting on 6 November 2003, the Council noted the need for further work on the proposed Directive, taking account of:

- the budgetary consequences for certain Member States and the Acceding States, at the time when this Directive would become applicable to them;
- aspects relating to the question of the legal basis.

Since then, all aspects of the proposal have been subject to extensive discussions by the Council preparatory bodies.

The Presidency will seek compromise on the draft Directive, and in particular on the question of whether minimum standards for compensation to victims of crime should be included in the proposed Directive.

EUROPEAN COUNCIL DECLARATION ON TERRORISM

The Council will discuss the follow-up to the European Council Declaration on terrorism, adopted on 25 March 2004 (<http://ue.eu.int/newsroom/newmain.asp?LANG=1> - European Council -).

MINIMUM STANDARDS ON PROCEDURES FOR GRANTING AND WITHDRAWING REFUGEE STATUS

The Council will hold an orientation debate on the main outstanding issues of this proposal. In particular, Ministers will be invited to comment on the four following key issues :

- the safe third country concept,
- exceptional application of the safe third country concept,
- the safe country of origin concept, and
- appeal provisions.

Following the debate, the Council preparatory bodies will continue their work with a view to reaching an agreement within the time-limit set by the Amsterdam Treaty (1 May 2004).

The objective of the proposal is to establish minimum procedures in Member States for examining applications for asylum.

The European Council on 12 December 2003 took note of the persisting political obstacles that have been delaying the conclusion of these negotiations. It reaffirmed the importance of developing a common European policy on asylum and invited the Justice and Home Affairs Council to complete its work as soon as possible to ensure that the first phase of the establishment of a European asylum system is fully implemented within the deadline set out in Article 63 TEC.

MINIMUM STANDARDS FOR BEING QUALIFIED AS REFUGEE OR PERSONS IN NEED OF INTERNATIONAL PROTECTION

The Council will aim at reaching an agreement on the proposal for a Council 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.

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 in order to maintain the primacy of the Geneva Convention in such a regime.

The main outstanding issues relate to benefits granted to the beneficiaries of subsidiary protection and its family members, in particular as regards access to employment, social welfare, health care and integration facilities. The Presidency will present a compromise text on all these questions with a view to reaching an agreement on the proposal.

In 2003, an overall compromise was reached on the proposal, subject to reservations from two delegations.

The Council will examine the scope for progress on this measure within the time limit set by the Amsterdam Treaty (1 May 2004).

CONDITIONS OF ADMISSION OF THIRD-COUNTRY NATIONALS FOR THE PURPOSES OF STUDIES, PUPIL EXCHANGE, UNREMUNERATED TRAINING OR VOLUNTARY SERVICE

The Council is expected to reach political agreement on this draft Council Directive.

For the vast majority of the contentious issues a compromise has been achieved by the relevant Council preparatory bodies but there are still few questions (mobility of students, economic activities by students) which need to be solved.

This Proposal has been presented with a view to establishing a full legal framework governing entry and residence of third country nationals, for the purposes which are set in it. A mandate was given by the conclusions of the Tampere European Council on 15 and 16 October 1999: "The European Council acknowledges the need for approximation of national legislation on the conditions for admission and residence of third country nationals [and] requests to this end rapid decisions by the Council, on the basis of proposals by the Commission".

The conditions of entry and residence of third-country nationals for the purpose of studies or vocational training currently diverge widely between the Member States. The first objective of this Directive is to establish a harmonised Community legal framework for the conditions for entry and residence of certain categories of third-country nationals in the territory of the Member States for a period exceeding three months for those purposes.

It defines the requirements whom the persons concerned are subject to in order to be admitted, and the benefits which are attached to the issue, by the Member States, of a residence permit, which allows them to stay legally on their territories during the relevant period.

ADMISSION OF THIRD-COUNTRY NATIONALS TO CARRY OUT SCIENTIFIC RESEARCH IN THE EUROPEAN COMMUNITY

Commissioner Vitorino will present the 'researchers package', which the Commission has recently submitted to the Council.

The Communication and related legal instruments - a proposal for a Council Directive on a specific procedure for admitting third-country nationals for purposes of scientific research of researchers and the proposals for two recommendations respectively dealing with the admission of researchers and with the facilitation of the issue by Member States of uniform short-stay visas in the cases where researchers from third-countries travel within the European Union for the purposes of carrying out scientific research – are intended to implement the conclusions of the European Council of Tampere. These are in fact the last proposals submitted by the Commission in the area of the admission of third-country nationals.

The need for promoting and facilitating the admission of researchers from third-countries has also to be seen in the context of the Lisbon process, which aims at making the EU the most dynamic and competitive economy in the world. According to the Commission, one of the measures to be taken in order to achieve such an objective is to attract researchers from third-countries. Providing favorable conditions to researchers from third-countries for being admitted in the Member States of the EU might contribute to make the EU more attractive for this category of highly skilled third-country nationals.

MIXED COMMITTEE (Tuesday 30 at 15h00)

OBLIGATION OF CARRIERS TO COMMUNICATE PASSENGER DATA

The Mixed Committee aims to reach a common approach on the above mentioned draft Directive, with a view to its adoption before 1 May 2004.

The draft Directive has been examined at length (since April 2003) at technical level. Some outstanding issues still remain, in particular as regards the data to be transmitted and data processing.

The recent European Council on 25-26 March stated that "work will be taken forward on the proposed Council Directive on the obligation of carriers to communicate passenger data with a view to an early conclusion on this measure".

The Directive aims at improving border controls and combating illegal immigration by the transmission of advance passenger data by air carriers to the authorities responsible for carrying out checks on persons at external borders. It lays down obligations for air carriers transporting third-country nationals into the territory of the Member States. In addition, in order to ensure greater effectiveness of this objective, financial penalties are provided for when carriers fail to meet their obligations.

EUROPEAN AGENCY FOR THE MANAGEMENT OF OPERATIONAL COOPERATION AT THE EXTERNAL BORDERS

The Mixed Committee will aim at reaching a common approach on the draft Regulation establishing this Agency.

The Regulation would then be adopted after examination of the European Parliament opinion (which has recently been delivered), the finalisation of the recitals and the usual legal/linguistic revision.

Significant progress has been achieved on this draft Regulation. However, there are still a few outstanding issues, mainly the participation of Norway, Iceland, Ireland, the United Kingdom and Ireland in the Agency, its seat and the linguistic regime.

The European Council, on 12/13 December 2003, invited the JHA Council to finish examining this important proposal as soon as possible in order that it can be adopted in time to allow the Agency to become operational by 1 January 2005.

An urgent adoption of the Regulation, by May 2004, was requested by the European Council on 25-26 March 2004, in the framework of the Declaration on combating terrorism.
