

Supplementary agenda for the meeting of the Council of Justice and Home Affairs, 19 November 2004 in Brussels

It should be remarked that the indication of the public status of the documents mentioned in the items on the agenda reflects their status as of 15 November 2004. An updated status can be found in the documents register of the Council¹. The additions made to the annotated agenda are shown in italics here.

B items

3. Evaluation of implementation of EU Drugs Action Plan (2000-2004)

document	: COM (2004) 707 final	(EN)
status of document	: public	
legal basis	: Articles 29, 31(1)(e) of the European Convention and Article 152 of the EC Treaty	

The Drugs Action Plan (2000-2004) proposed in 1999 by the European Commission and adopted by the Council in 2000 provided for both an interim and a final evaluation. This present Communication from the Commission contains the results of the final evaluation of both the Drugs Action Plan (2000-2004) and the EU Drugs Strategy 2000-2004. The information on which the final evaluation is based comes from a questionnaire which was completed by the Member States as well as from input from the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol.

The object of the final evaluation was to establish in how far the actions proposed in the Action Plan have been carried out, to determine in how far these actions have contributed to achieving the objectives of the Drugs Strategy, and to estimate the impact of both Action Plan and Drugs Strategy on the drugs situation in the EU.

On the one hand the final evaluation shows that progress has been made in achieving the objectives of the EU Drugs Strategy 2000-2004. Moreover it may be stated that a large number of the actions proposed in the Action Plan have been carried out or are now being carried out. On the other hand, the available data do not confirm two of the objectives of the Drugs Strategy, which were a considerable decrease in drug use and a substantial reduction in the availability of drugs.

According to the final evaluation, the following conclusions can be drawn from these outcomes:

- In future Action Plans, it is essential that clear and precise objectives and priorities can be translated into operational indicators and actions. Responsibilities and deadlines for implementation must be defined clearly.
- In monitoring the drugs situation, the availability, quality and comparability of information must be improved; one reason behind this is that no comparable data proved to be available as yet in a number of fields (particularly in the field of enforcement).
- The Multi Annual Programme to strengthen freedom, security and justice must subscribe to the objectives of the new EU Drugs Strategy 2005-2012 and the resulting Action Plans.

In its Conclusions on this evaluation of the EU Drugs Action Plan, which have yet to be published, the Council will take note of the evaluation, the content of which will be taken into consideration in formulating the new drugs strategy.

Supplement

This topic has become an A item.

4. Draft framework decision on the retention of data in relation to the provision of public electronic communications services or data in public communication networks that have been processed and stored with a view to the prevention, investigation, detection and prosecution of criminal offences, including terrorism

document : 8958/04 CRIMORG 36 TELECOM 82 (NL)
status of document : public
legal basis : Article 34(2)b of the European Convention

This draft framework decision was discussed in the meeting of the Council work group for cooperation in the field of criminal law on 27 and 28 September 2004 and again on 19 and 20 October 2004. The draft is still being discussed by the Committee on Article 36 in preparation for the Council Meeting of 19 November 2004. A number of questions will be asked of the Committee on Article 36 in clarification of directional instructions given to the work group as to the scope of the draft framework decision. The focus will be a general orientation on the matter of the scope of an obligation to retain data, the consequences this may have for the legal basis of the framework decision, and in how far it is possible to achieve further harmonization in respect of the data referred to in Article 2(3) (b) and (c) of the draft framework decision (covering aspects such as instant messaging and internet services). Depending on the outcomes of the discussion in the Committee on Article 36, the questions can then be submitted to the Council. The desired scope depends, on the one hand, on the manifest need of the investigative services and the judicial authorities for data traffic and data location in concrete cases, and on the other hand, on an assessment of the effects on individual privacy of a general obligation to retain data, and the practical and financial consequences for telecommunications providers and government. Additionally, the choice of the scope of the framework decision cannot be viewed separately from the legal basis (Article 31(1) (c) and 24(2)(b) of Title VI of the European Convention) for its consideration by the third pillar of the European Union and the length of time this will take. The object of the draft decision is to harmonize existing legislation of the Member States on the retention of data by telecommunications providers with a view to the prevention, detection, investigation and prosecution of criminal offences so as to allow effective judicial cooperation in criminal proceedings. Considering the scope of the minimum set of data as proposed in Article 2(2) of the draft framework decision, it is of great importance to determine whether an obligation to retain data that is imposed on providers should be restricted solely to data which are retained for commercial or business purposes, or whether it should also cover data which the providers possess as part of their own business operations.

Supplement

document : 14190/1/04 COPEN 132 TELECOM 160 REV 1 (EN)
status of document : not public

On 11 November 2004, the Committee on Article 36 held consultations on the private member's bill concerning the obligation to retain telecommunications traffic data on the basis of the document COPEN 132. After discussing this document, the Committee on Article 36 decided to ask the Council meeting of 19 November 2004 whether an obligation to retain traffic data and location data should consist of an "extended retention" of data that are stored by telecommunications providers for business purposes, or whether an obligation to retain data should relate to data irrespective of whether they are already being kept for business purposes.

The Council hopes that it will also be advised of the Committee's standpoint on this private member's bill on 19 November 2004.

5. Draft conclusions of the Council on strengthening the operational collaboration of police forces (European Police Chiefs' Task Force)

document : not available
legal basis : Articles 29, 30 and 32 of the European Convention

The declaration of the European Council of March 2004 on the fight against terrorism includes the following request: "Moreover, the European Council underlines the role of the Police Chiefs' Task Force in coordinating operational measures in response to, and prevention of, terrorist acts. The European Council calls on the Task Force to review how its operational capacity can be reinforced and to focus on proactive intelligence." It is up to the Dutch Presidency to elaborate this in further detail and to reach agreement on it yet this year.

Negotiations are still being conducted at an official level. The discussion is concentrated on defining the strategic and operational duties of the Task Force, and more specifically the relationship of the Police Chiefs' Task Force to Europol.

Supplement:

document : 13075/1/04 CATS 42 REV 1 (EN)
status of document : not public

This topic is still under discussion in the Council work group. The chief item of discussion is the location of strategic cooperation within the organizational structure of the Council. This matter will be submitted to the Council in its meeting on 19 November.

6. Draft framework decision on simplifying the exchange of information and intelligence between the law enforcement authorities of the Member States of the European Union, particularly in respect of serious crimes such as terrorist acts

documents : 10215/04 CRIMORG 46 ENFOPOL 69 COMIX 382 + ADD 1 (NL)
status of documents : public
legal basis : Article 34(2)(b) of the European Convention

This proposal is intended to bring about faster exchange of information between competent authorities in the area of prevention, investigation and detection of criminal offences. Exchange of information for use in criminal investigations and investigations that have not yet attained this status ought to take place within a time frame as set down in this framework decision. The information thus obtained may not be used as evidence in a criminal procedure. This proposal responds to one of the action points of the anti-terrorism declaration by the European Council of 25 March. It also complies with one of the deadlines of the EU Anti-Terrorism Action Plan. The Council must adopt this proposal by 30 June 2005 at the latest.

Discussion of this proposal currently centres around a number of subjects. One such point is the definition of 'competent law enforcement authority'. The specific focus is to what extent 'judicial authorities' can be involved in the exchange of information that may not be used as evidence. Another discussion point is what types of information would qualify for exchange under this proposed regime. An interim report will be submitted to the Council.

This item has been removed from the agenda.

7. Terrorism: state of affairs

document : none
legal basis : Article 29 of the European Convention

As agreed earlier, at each Council meeting a summary is given of the current state of affairs in the implementation of the EU Anti-Terrorism Action Plan. Progress has been made in discussions of the country reports in the mutual evaluation on terrorism. The interim report containing findings from the country reports will be presented to the Council at its meeting of 2-3 December. Discussions are also taking place of the draft framework decision on simplification of the exchange of information and intelligence between the law enforcement authorities of the Member States and the proposal for a framework decision on retention of traffic data. In the meantime, the Council has adopted the regulation setting up the agency for

external borders and has reached general political agreement on the regulation on standards for security features and biometric characteristics in passports of European citizens.

8. Draft conclusions of the Council concerning preparations for the JHA ministerial meeting with the Western Balkans on 3 December 2004

document : 13657/1/04 CRIMORG 112 (NL)
status of document : not public
legal basis : not applicable

After the meeting of the Council on 3 December, a JHA ministerial meeting will take place between the EU and the five Western Balkan countries (Albania, Bosnia-Herzegovina, Croatia, former Yugoslavian Republic of Macedonia and Serbia-Montenegro) (among others). The Presidency has already indicated that this meeting will focus on the following two subjects: the fight against organized crime, and integrated management of the external borders. The Presidency will ask the five Western Balkan countries for an active contribution on both these topics, whilst the Member States and other parties will be invited to make a written contribution if they should wish.

The first item on the agenda will probably include the following topics:

- Following up the Special Action Oriented Measures as agreed between the EU and the Western Balkans and set forth in the Thessaloniki Agreements, and monitoring the implementation by the Western Balkan countries of specific action oriented measures to combat organized crime.
- Strengthening the role of the Regional Centre for Combating Trans-border Crime of the SECI (South East European Cooperative Initiative).
- Cooperation in the area of the judiciary and law enforcement.
- Presentation of the results of the report of the Friends of the Presidency on organized crime originating in the Western Balkans.

This report was discussed at the meeting of the Multidisciplinary Council Work Group on Organized Crime on 22 October 2004. In general terms, the report was well received by the Member States. It contains a number of concrete recommendations intended on the one hand to improve cooperation between the EU organizations which are active in the region and on the other hand to give a new impetus to the cooperation between Member States (and their organizations) and local organizations charged with fighting organized crime. A number of recommendations revolve around the collection, exchange and analysis of criminal intelligence, which is seen as an absolute requirement in effectively combating organized crime. The report proposes setting up a network of Intelligence Development Officers (IDOs) who would take this task upon themselves.

The second item on the agenda will include further discussion of the implementation by the Western Balkan countries of measures arising from the Ohrid Regional Conference on Border Security and Management held on 22 and 23 May 2003.

The Council will adopt written conclusions in respect of the report by the Group of Friends of the Presidency. A statement by the Presidency will be adopted in respect of the ministerial meeting as a whole. The text of this statement is currently under official preparation.

9. Proposal for a Council directive for a specific procedure for admitting third country nationals with a view to scientific research

document : not yet available²
legal basis : Article 63(3)(a), and 63(4) of the EC Treaty

The draft directive and the accompanying recommendations were presented by the Commission to the Council on 30 March 2004, and agreement on the recommendations was reached under the Irish Presidency. The Dutch Presidency aims to obtain approval of the draft directive. Two aspects of the draft directive are still under discussion.

The first point is the extent to which a research organization can be held financially accountable for a researcher from a third country. A few Member States take the position that a research organization can only be held liable in the event of default or fraud. Other Member States are of the opinion that once given, a guarantee is valid in all situations. Also on the subject of the guarantee, there is still discussion of what costs are covered by the financial responsibility. A few Member States feel that it ought to cover both costs of accommodation and costs of a return journey. Other Member States feel that this ought to be only the costs of a return journey.

The second point involves the mobility of researchers within the European Union. Still being discussed are the conditions to be met by a researcher from a third country if he intends to stay in another Member State for less than three months. The focus here is whether a researcher from a third country needs to meet all conditions for temporary residence in the second or subsequent Member State for the entire period. A majority of the Member States are of the opinion that only the conditions set by the first Member State need to be satisfied for such a short period. One Member State is of the opinion that not only must the conditions of the first Member State be satisfied, but also the conditions of the second or subsequent Member State, which may be different. This would mean, for example, that the researcher's income in the second or subsequent Member State would require adjustment because a different minimum wage applies there.

Supplement:

document : 14415/04 MIGR 99 RECH 211 COMPET 176 (EN)
status of document : not public

The appended document was discussed on 10 November in the Permanent Representatives' Committee and agreement was reached on all points under discussion. This means that, after the outcomes of the aforementioned Committee have been incorporated, the draft directive can undergo handling by the Council without any reservations as to content on the part of Member States.

Agreement was also reached on the two aspects mentioned above. In relation to the financial responsibility of a research organization, it was agreed that if a Member State should decide to hold a research organization financially accountable, this can only be done within the context as defined for this purpose in the draft directive. Within this context, Member States may decide for which costs the research organization will be held accountable and for what period this will apply. With regard to the mobility of scientific researchers within the European Union, it was decided that if a scientific researcher will remain in a second or subsequent Member State for a period of less than three months, it does not need to be assessed whether the researcher meets all further conditions for temporary residence. It is essential, however, that the scientific researcher has sufficient funds at all times and does not constitute a threat to public order and safety.

10. Common basic principles concerning integration policy in the European Union

document : not yet available³
legal basis : not applicable

Further to the conclusions of the European Council of Thessaloniki of June 2003, the Dutch Presidency wants to encourage and foster a coherent framework for the integration of

immigrants within the European Union and to develop a European vision on integration policy. To achieve this the Presidency will present to this Council a number of common basic principles (which are not legally binding) plus accompanying explanatory notes in respect of integration.

The basic principles, while respecting the national competencies, serve as a resource for strengthening coordination, cooperation and attunement of the integration policy between Member States. They provide a basis on which the European Union can more closely gear and further develop existing European instruments which include an integration aspect.

These principles assume an integral approach. To summarise the high points of the draft common basic principles: integration is a continuous two-way process; respect for the basic values of the European Union; work; basic knowledge of the language, history and institutions of the host society; education; openness of institutions, accessibility of goods and services; interaction between immigrants and society; the practice of culture and religion; participation in the democratic process; better coordination of integration measures; and formulating objectives, indicators and evaluation mechanisms.

These basic principles are similar to the tenets of the draft multi annual programme discussed by the Council in The Hague on 25-26 October: "Multi Annual Programme: strengthening freedom, security and justice in the European Union".

Supplement:

document : 13973/1/04 MIGR 96 REV 1 (EN)
status of document : not public

The document which is now appended was discussed, in preparation for this Council meeting, in the Permanent Representatives' Committee of 10 November. All Member States and the European Commission responded to this document in a positive sense. These common basic principles were presented for information purposes during the Ministerial Conference on Integration in Groningen held on 10 November. There too, reactions to this document were positive.

11. (Possibly) Council conclusions on a common minimum list of safe countries of origin, to be adopted as annex to the draft directive on minimum standards for the procedures in the Member States for the award or withdrawal of refugee status

document : not yet available⁴
legal basis : not applicable

Upon reaching political agreement on the draft directive concerning minimum standards for asylum procedures on 29 April 2004, the Council decided to draw up a common minimum list of safe countries of origin. The common minimum list will form an annex to the directive. Before the contents of this annex can be determined, the Council must reach agreement on which countries will be included on this list. Draft council conclusions have been formulated for this purpose. You were most recently informed about this in the annotated agenda for the Council of 25-26 October 2004.⁵

The Presidency aims to reach agreement during the Council of 19 November, so that the draft directive can be sent for advice to the European Parliament as soon as possible. The European Parliament has made known that it wishes to issue an advice on the draft directive in the very near future, which could mean that the directive will be adopted during the Dutch Presidency.

Supplement:

⁵ For the annotated agenda of this Council meeting, see 23 490, no. 338.

(new title) Proposal for a directive on minimum standards for the procedures in the Member States for the award or withdrawal of refugee status

documents : 14203/04 ASILE 64 (NL)
14383/04 ASILE 65 (EN)
status of documents : not public
legal basis : Article 63(1)(d) of the EC Treaty

The Council is asked to confirm the political agreement reached on the draft directive on minimum standards for asylum procedures of 29 April 2004, with a technical textual amendment to Article 30. Article 30 of the draft directive made provisions for a procedure for changes to the common minimum list of safe countries of origin. On 29 April 2004, the Council announced that the common minimum list would need to be determined at the same time as the directive. It has since appeared that no agreement can presently be reached as to what countries can be included on the common minimum list, since the matter has led in a few Member States to an internal political impasse between several of the ministers involved. Article 30 of the draft directive therefore had to be altered so that, in addition to a procedure for further changes, it also makes provisions for a procedure to determine the common minimum list. The list will now be determined, at the proposal of the Committee, by a qualified majority in the Council and having heard the European Parliament. The Commission will be invited to submit a proposal as soon as the directive has been adopted.

The Council is also asked to confirm that the European Parliament will be consulted in respect of the draft directive. Even though the common minimum list will not be determined at the same time as the directive, it is still necessary to consult the European Parliament because the Commission's original proposal made no provisions for common lists.

Further discussion of draft council conclusions on a common minimum list of safe countries of origin will be abandoned. The directive can be formally adopted after the advice of the European Parliament has been received and discussed. This will be done as soon as possible, surely in view of the appeal by the European Council upon adoption of the Multi Annual Programme of The Hague on 5 November 2004, to adopt the directive as soon as possible.

Supplement:

12. Draft framework decision to strengthen the criminal law framework for combating pollution originating from ships

document : 13755/04 DROIPEN 58 MAR 179 ENV 575⁶ (NL)
status of document : not public
legal basis : framework decision as referred to in Article 34(2)b of the European Union Convention

The draft framework decision was discussed at the meeting of the Council of 15/26 October 2004. The Dutch Presidency aims to achieve political agreement on the main lines of the framework decision yet this year. Negotiations are now concentrated in particular on discharges in the territorial seas of a Member State, its exclusive economic zone or a similar zone. Pursuant to the draft framework decision, if any such dumping takes place, a ship sailing under the flag of another Member State is not regarded as a foreign ship in the sense referred to in the Law of the Sea Convention (UNCLOS). This makes it possible for the prosecuting Member State to impose prison terms for such discharge or dumping. This tougher formulation, which eliminates the distinction between foreign and non-foreign EU ships, is not yet acceptable to three Member States. It should be noted that the draft directive relating to this framework decision is now scheduled for its second reading in the European Parliament.

Supplement:

13. Draft decision of the Council in order to apply the procedure stated in Article 251 of the EC Treaty to certain aspects of the fields coming under Title IV of Part III of the Treaty

document : 14497/04 JAI 441 ASIM 41 (EN)
status of document : not public
legal basis : Article 67(2), second indent, of the EC Treaty

The draft decision as requested by the European Council on 5 November in adopting the Multi Annual Programme will be submitted to the Council. The draft decision proposes applying the procedure stated in Article 251 of the EC Treaty. This would mean the introduction in the Council of decision making by qualified majority and of a right of co-decision with the European Parliament in respect of all measures stated in Title IV of the EC Treaty, without prejudice to the Treaty of Nice and with the exception of the provisions on legal migration. Approval by the Council will be followed by discussions with the European Parliament, after which the decision can be definitively adopted by 1 April 2005 at the latest.

Supplement:

14. EU Drugs Strategy 2005 - 2012

document : Annex to document 14702/04 CORDROGUE 76 ENF 167 SAN 178
RELEX 524⁷
legal basis : not applicable

The EU Drugs Strategy 2005-2012 was drawn up in June of this year at the instructions of the European Council. The strategy is based on the final evaluation of the previous Strategy and the outcomes of the conference organized by the Irish Presidency, 'EU drugs strategy-the way forward' (May 2004). The strategy discusses all aspects of the drugs issue that are relevant for the EU and its Member States. It defines the framework and the priorities for formulating EU activities for the next eight years. Two successive Action Plans will be drawn up on the basis of the Strategy. The Committee will shortly present a proposal for an Action Plan 2005-2008.

With due observance of the principles of subsidiarity and proportionality, the following central objectives of the strategy were determined:

1. Contributing to a high level of protection of public health and social cohesion within the Union. These contributions, which will complement the activities of the Member States, will relate to drug prevention and reducing use, dependency and drugs related damage to public health.

2. Increasing the safety of the population. Activities will be aimed at jointly tackling drug production, cross-border drug trade and illicit trade in precursors.

The strategy makes clear-cut choices, showing what will be the aim of the European Union in the coming years. At the heart of the European approach is a balanced and integrated approach to the drugs issue on both the demand and the supply side. The themes of coordination, international cooperation, research, information and evaluation play an important supporting role. In the implementation of the Strategy, an important role is reserved alongside the Commission and the Member States for the Horizontal Drug Group (HDG).

Discussion at official level in the Council has now been concluded. The European Parliament has indicated it will make an effort to submit its recommendations in december. Discussions in the council will possibly focus on one of the priorities of the chapter on supply reduction (para

27.3): *"Prevention and punishment of the illicit import and export of narcotic drugs and psychotropic substances, including towards the territories of other Member States"*.

15. Miscellaneous

No further items