



Brussels, 10 October 2005

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**BACKGROUND<sup>1</sup>**

***JUSTICE AND HOME AFFAIRS COUNCIL***

**Luxembourg, 12 October 2005**

*The JHA Council will start its work at 10h00. The main items on the agenda are the **European Order for payment**, the **European Evidence Warrant**, **data retention** and issues relating to **illegal immigration**.*

*Over lunch, the Ministers will have an exchange of views with Mr. António Guterres, UN High Commissioner for Refugees, on **regional protection programmes**. A press conference will be held after the lunch.*

*At 16h00 the Mixed Committee (EU + Norway, Iceland and Switzerland) will discuss a Framework Decision on simplifying the **exchange of information and intelligence** between law enforcement authorities.*

*On Thursday 13 October a Ministerial troika meeting will be held from 10h00 till 13h00 with the Russian Ministers of Justice and Home Affairs.*

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<sup>1</sup> This note has been drawn up under the sole responsibility of the Press Service.

## **EUROPEAN ORDER FOR PAYMENT**

The Council is expected to agree on a uniform method for the production and examination of evidence, in the context of the negotiation of a Regulation creating a European order for payment procedure.

The speedy recovery of outstanding debts whose justification is not called into question is of paramount importance for economic operators in the European Union and for the proper functioning of the internal market.

The Commission presented on March 2004 a proposal for a Regulation creating a European order for payment procedure. As it was discussed during the Informal JHA Council on September 2005 in Newcastle, it would be restricted to matters having cross-border implications, having in mind that Member States that so wish can apply a similar procedure to all cases.

Adoption of a Regulation creating a European order for payment procedure is listed as a priority for 2006 in the Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the EU.

## **DATA RETENTION**

A proposal on data retention was made in April 2004 by France, Ireland, Sweden and the UK, on the basis of Articles 31 and 34 of the Treaty of the European Union, under the so-called "Third Pillar". For its adoption, such a proposal needs unanimity at the Council. But the Commission has considered that the categories of data to be retained and the period for retaining such data fall within EC competence ("First Pillar") and should be adopted by the Council in co-decision with the European Parliament, on the basis of a Commission proposal for a Directive. On 21 September 2005 the Commission adopted such a proposal for a Directive on retention of communication data. The Council will examine the issue of the legal basis with a view to finding an agreement.

The Council will discuss some outstanding issues relating to the content of an instrument on data retention as well as the question of the legal basis.

The issues of substance relate in particular to the costs of implementing such an instrument on Industry, the list of data to be retained (internet data and unsuccessful call attempts) and the periods of retention.

Regarding costs, the Council will examine a Presidency compromise text which leaves it open to each Member State to decide on possible contributions to Industry to cover costs.

On internet data, the Presidency text proposes the retention of a limited list of Internet data (internet email and telephony) coupled with a transitional period and a review clause requiring the Council to consider at a future date whether to extend the list of other forms of internet data.

The Presidency text includes within its scope data on unsuccessful call attempts with a transitional period for implementation to allow industry to update their technology. This is acceptable to a majority of delegations but some Member States insist on an opt-out to the obligation to retain such data on the basis that it will be too expensive and/or technically impractical.

Retention periods in the Presidency text are based on 12 months as a standard with flexibility to go down to 6 months and up to 48 months. The Commission proposal requires 6 months for internet data and 12 months for everything else.

It should be noted that The Declaration of the European Council of 25 March 2004 on combating terrorism provides that an instrument on retention of communication data should be adopted by June 2005. But it has not been possible to respect this deadline. In its declaration of 13 July 2005 on the EU response to the London bombings on 7 July 2005, the JHA Council has provided that the draft Framework Decision on data retention should be agreed by October 2005.

## **REGIONAL PROTECTION PROGRAMMES**

The Council is expected to take note of conclusions on Regional protection programmes. Over lunch, Mr António Guterres, UN High Commissioner for Refugees, will discuss this issue with Ministers.

In particular, the Council will express support to the approach proposed in the Commission's Communication of 1 September 2005, *On Regional Protection Programmes* and will recognise that such programmes are a first step in improving access to protection needs and durable solutions for those in need of international protection, as quickly and as close to their home as possible.

The Council will reiterate the importance of working in close partnership and cooperation with third countries in regions of origin and transit in the development of Regional Protection Programmes. The Council will also recognise the need for a comprehensive and regional approach which is situation specific and protection oriented, including the durable solutions of repatriation, local integration and resettlement where appropriate, with a focus on protection oriented activities for the pilot Regional Protection Programmes. In taking this work forward, the Council will continue to work closely with the UNHCR.

The Council will support that pilot Regional Protection Programmes would be considered for the Western Newly Independent States (Ukraine, Moldova and Belarus) and sub-Saharan Africa.

The Council will invite the Commission to intensify the engagement with relevant partners and to present the Council with further details of the programmes for implementation of the proposed pilot programmes by the end of November 2005.

The Council will also underline the need to ensure appropriate sustainable funding for on-going initiatives under Regional Protection Programmes, including in the context of the work on future financing of EU policies.

## **INTELLIGENCE-LED POLICING AND ORGANISED CRIME THREAT ASSESSMENT**

The Council is expected to adopt conclusions on this subject. According to the draft text, Europol will produce an Organised Crime Threat Assessment (OCTA) in place of its annual Organised Crime Situation Report. This will support the further development of a common intelligence model, by Europol and the Member States.

For the OCTA to be successful, Europol will issue to Member States an Intelligence Requirement which will give Member States a clear indication of what information and criminal intelligence Europol needs.

Member States should send a structured response to Europol by a deadline to be determined by Europol in consultation with the Council.

Europol will consequently produce the OCTA using the information and criminal intelligence it receives from Member States, from EU agencies and bodies, particularly Eurojust, from third countries and agencies with which Europol has co-operation agreements, from information and analysis drawn from the Analysis Work Files held at Europol and from any other information that is available to Europol that is pertinent and may assist with the identification of threats from organised crime to the Member States of the European Union.

## **EUROPEAN EVIDENCE WARRANT (EEW)**

The Council is expected to agree on certain principles which will apply when issuing and executing a EEW. The debate will focus on the conditions under which the obligation to assist a Member State should arise and the cases in which a State can refuse the warrant.

The EEW is a judicial decision intended to improve existing co-operation arrangements for the cross-border exchange of evidence (objects, documents or data) in criminal proceedings. This facilitates national investigations and prosecutions..

The EEW could be issued when evidence is necessary for the purpose of proceedings provided that the evidence sought could have been obtained under the law of the issuing State.

The Framework Decision on the EEW is a mutual recognition measure, with a deadline for completion by the end of 2005. Its adoption requires unanimity.

## **ANY OTHER BUSINESS**

The following issues will be discussed under "Any Other Business":

- Article 3 of the European Convention on Human Rights;
- The consequences of the recent Court of Justice judgement relating to Environmental crime;
- Data protection and application of the principle of availability (presentation by the Commission of these two recently adopted proposals);
- Illegal immigration, in particular the situation in the Spanish Autonomous cities of Ceuta and Melilla, and
- The preparation of the Troika meeting with Russia.

## **MIXED COMMITTEE (at 16.00)**

### **Information and Intelligence Exchange between Law Enforcement authorities**

The Mixed Committee will discuss the scope of the above mentioned Framework Decision. In particular it will examine two questions:

The first question relates to the definition of information and intelligence to be exchanged. The Mixed Committee will examine whether or not the information held in public databases not owned by public law enforcement authorities (e.g. a vehicles databases owned by the Ministry of Transport) and information held in private databases (e.g. a telephone numbers database owned by a telecom company) should be included in the Framework Decision.

The second question relates to the optional or mandatory character of information or intelligence held in databases owned by law enforcement authorities, but which was previously obtained by means of coercive measures.

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