



Brussels, 20 April 2006

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

### ***JUSTICE and HOME AFFAIRS COUNCIL***

**Luxembourg, 27-28 April 2006**

*The Mixed Committee (EU + Norway, Iceland and Switzerland) will meet on Thursday 27 April at 10.00 in view of discussing the following items: the fees to be charged corresponding to the administrative costs of processing the visa applications; the state of play of the Schengen Integration System (SIS II) and the improvement of police cooperation between the Member States of the European Union, especially at the internal borders.*

*After the Mixed Committee, the Council will start its work with the discussion of the "Home Affairs" items: Report of the preparation of the UN High Level Dialogue on International Migration and Development (14.-15.09.2006, New York) by Peter Sutherland, Special Representative of the UN Secretary General for Migration; Trafficking Human Beings; External aspects and List of safe countries of origin.*

*On Friday 28 the Council will discuss the "Justice" items: Law applicable to non-contractual obligations ("ROME II") (this item will be subject to a public deliberation); Questions relating to judicial cooperation in civil matters examined in other Community draft instruments; procedural rights in criminal proceedings throughout the European Union; European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters, and application of the principle of mutual recognition to the enforcement of sentences.*

*The Presidency will hold press conferences at the end of each session.*

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*In the margins of the Council, there will be a presentation of "N-Lex" and "Eur-lex". These two data bases make it possible for every citizen to consult the national and EU legislation online. The presentation will take place on Friday 28 April 2006 at the Press room.*

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*Please note that some of the items mentioned in this note will be re-examined by Coreper on Tuesday 25 April 2006.*

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

## **TRAFFICKING IN HUMAN BEINGS**

The fight against trafficking in human beings is one of the priorities of the Austrian Presidency.

In this regard, the Presidency is preparing conclusions to be adopted by the Council, with a view to implementing the EU Action Plan on Trafficking in Human Beings and to coordinate action in specific cases of major international events, including sport events.

## **EXTERNAL RELATIONS**

The Presidency has started implementing the JHA External Relations strategy, adopted in December 2005.

Priority is being given to enhancing the cooperation with and in the Western Balkans, both in fighting terrorism, organised crime and illegal migration.

The Presidency will inform the Council on the debate that will be held at the Ministerial Conference on the role of External Relations in implementing internal security, scheduled for 4-5 May in Vienna.

In the framework of the implementation of the so-called Common Space for Freedom, Security and Justice, the JHA troika met on 21-22 March 2006 the Ministerial counterparts in Russia. The Presidency will inform the Council about the results of this meeting.

## **LIST OF SAFE COUNTRIES OF ORIGIN**

Commission Vice-President Frattini will inform the Council, explaining the content of a forthcoming Commission proposal containing a list of safe countries of origin in the sense of the Directive on minimum standards for granting and withdrawing refugee status<sup>2</sup>.

Article 29(1) of the said Directive establishes that the Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin.

On the same occasion, the Council entered a statement to its minutes which read: "The Council invites the Commission to submit, as soon as this Directive has entered into force, a proposal allowing the Council to adopt a minimum common list of third countries that shall be regarded by Member States as safe countries of origin."

Under Article 30 of the Directive, Member States may retain or introduce legislation that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum.

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<sup>2</sup> OJ L 326, 13.12.2005, p. 13.

## **LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS**

*(This item will be subject to a public deliberation)*

The Council is expected to reach a political agreement on a proposal on the law applicable to non-contractual obligations (ROME II).

It will allow parties to determine the rule applicable to a legal relationship in advance.

The proposed Regulation has three main objectives:

- guaranteeing legal certainty and predictability to citizens and economic operators who are victims of violations of their rights,
- facilitating the settlement of claims in courts, and
- promoting the reciprocal recognition of legal decisions made in other Member States.

To reach these objectives, the proposal contains a general rule: the law in force in the country where the violation took place will prevail. This rule is complemented by some specific exceptions, notably regarding violations of the environment.

## **PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS THROUGHOUT THE EU**

The Council will take note of progress made with the negotiation of this Framework Decision. The proposal was submitted by the Commission on 3 May 2004. It aims to set common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the EU. The areas where common minimum standards are proposed by the Commission are:

- access to legal advice,
- access to free interpretation and translation,
- ensuring that persons who are not capable of undertaking for following the proceedings receive appropriate attention,
- the right to communicate, inter alia, with consular authorities in the case of foreign suspects, and
- notifying suspected persons of their rights.

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

The Council will examine the main outstanding issue of this proposal: the definition of offences. According to the draft text, for 32 categories of offences, e.g. terrorism, computer-related crime, racism and xenophobia, etc, the executing state may not invoke double criminality as a ground for refusing to execute a EEW. This is in line with earlier instruments such as the European Arrest Warrant.

The aim of this proposal for creating a EEW is to establish a mechanism to facilitate the obtaining of evidence in cross-border cases based on mutual recognition principles. The underlying idea is that the European Evidence Warrant is an order that would be issued by a judicial authority in one Member State and directly recognised and enforced by a judicial authority in another Member State. As compared to the existing mutual assistance procedures that it would replace, the European Evidence Warrant would bring benefits including faster procedures and clear safeguards for the issuing of a warrant and for its execution.

This proposal adopts the same approach to mutual recognition as the European Arrest Warrant. The European Evidence Warrant would thus be a single document translated by the issuing authority into an official language of the executing State. No further translation would be necessary. This means that the European Evidence Warrant could be executed immediately in the same way as a domestic procedural measure. It would lay down the objective to be achieved, while leaving it to the executing State to decide on the most appropriate way of obtaining the evidence in accordance with its domestic law.

### **MUTUAL RECOGNITION TO JUDGEMENTS IN CRIMINAL MATTERS**

Austria, Finland and Sweden submitted on 24 January 2005 a proposal for a Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The purpose is to establish the rules under which a Member State shall recognise and enforce on its territory a sanction imposed by a court of another Member State irrespective of whether or not enforcement has already been started.

The original proposal provided for a derogation from double criminality for 32 offences corresponding to the derogation found in previous instruments on mutual recognition (e.g. European Arrest Warrant).

However, a large majority of delegations thought that in the case of transfer of sentenced persons it should be possible for the executing State to invoke double criminality.

The Council will be therefore invited to examine the question of double criminality.

### **FEES TO BE CHARGED TO VISA**

The Council is expected to reach a political agreement on a draft Decision amending the fees corresponding to the administrative costs of processing the visa applications.

Council Decision 2003/454/EC of 13 June 2003 fixed the amount to be charged corresponding to administrative costs of processing the visa application at € 35. This amount no longer covers current visa application processing costs. Moreover, the consequences of the introduction of the European Visa Information System (VIS) and the biometrics required to introduce the VIS in the visa application examining process should be taken into account.

Therefore the Council is expected to readjust the current amount of € 35 to € 60.

The amount of national long-stay visa would continue to be fixed by the Member States, who may decide to issue these visas free of charge.

## **SIS II**

The Council will take note of the status of the Schengen Information System II (SIS II) project.

SIS II is one of the top-priorities for the Austrian Presidency. The implementation of SIS II is an essential precondition for lifting the borders with the new Member States.

## **IMPROVEMENT OF POLICE COOPERATION BETWEEN THE MEMBER STATES OF THE EU, ESPECIALLY AT THE INTERNAL BORDERS**

As set out in the Hague Programme (point 2.3)<sup>3</sup>, the Commission submitted a proposal for a Council Decision on the improvement of police cooperation. This text consisted on the one hand of an extension of the scope for cross-border surveillance and hot pursuit and on the other hand of proposals for additional measures to enhance day-to-day cooperation, in particular in the areas along the internal borders.

There is broad agreement on a large part of the proposal but a number of fundamental reservations remain outstanding.

The Council will decide if the current result of the negotiations on the Commission proposal fulfils the political declaration as set out in the Hague Programme, to enhance the police cooperation and develop the Schengen Acquis in this matter.

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<sup>3</sup> "The Council should develop cross-border police and customs cooperation on the basis of common principles. It invites the Commission to bring forward proposals to further develop the Schengen Acquis in respect of cross-border operational police cooperation."