



**COUNCIL OF
THE EUROPEAN UNION**



9409/06 (Presse 144)

PROVISIONAL VERSION

PRESS RELEASE

2732nd Council Meeting

Justice and Home Affairs

Luxembourg, 1-2 June 2006

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9409/06 (Presse 144)

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Main Results of the Council

*The Council reached an agreement on a Decision on the **European Evidence Warrant (EEW)** for obtaining objects, documents and data for use in proceedings in criminal matters, on a Regulation establishing a **European small claims procedure** and on the establishment, operation and use of the second generation **Schengen Information System (SIS II)**.*

Furthermore, in the context of the recent events in the Canary Islands and the Mediterranean Sea, the Council reiterated its commitment to the global approach to migration and supported the action of the Commission with a view to providing all the assistance to the Member States facing large scale arrivals of illegal immigrants in a spirit of active solidarity.

Finally, the Council adopted the following items:

- *conclusions on the EU's emergency and crisis response capacities,*
- *a general approach on EU programmes on security, safeguarding liberties and justice,*
- *a decision providing for an increase for EUR 35 to EUR 60 of the fees to be charged for the processing of visa applications, and*
- *a media communication strategy for combating radicalisation and recruitment.*

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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 abovementioned 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:

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Ms Laurette ONKELINX

Deputy Prime Minister and Minister for the Interior
Deputy Prime Minister and Minister for Justice

Czech Republic:

Mr Miloslav KOUDELNÝ

First Deputy Minister for the Interior with responsibility
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Deputy Minister for Justice

Mr Roman POLÁŠEK

Denmark:

Mr Clause GRUBE

Permanent Representative

Germany:

Mr Wolfgang SCHÄUBLE
Ms Brigitte ZYPRIES

Federal Minister for the Interior
Federal Minister for Justice

Estonia:

Mr Kalle LAANET
Mr Rein LANG

Minister for the Interior
Minister for Justice

Greece:

Mr Anastasis PAPALIGOURAS
Mr Byron POLYDORAS

Minister for Justice
Minister for Public Order

Spain:

Mr Juan Fernando LÓPEZ AGUILAR
Mr Antonio CAMACHO VIZCAÍNO

Minister for Justice
State Secretary for Security

France:

Mr Pascal CLÉMENT
Mr Christian ESTROSI

Keeper of the Seals, Minister for Justice
Minister with responsibility for Regional Planning

Ireland:

Mr Bobby McDONAGH

Permanent Representative

Italy:

Mr Clemente MASTELLA

Minister for Justice

Cyprus:

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Mr Lazaros SAVVIDES

Minister for Justice and Public Order
Permanent Secretary, Ministry of the Interior

Latvia:

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Mr Guntars GRINVALDS

Minister for the Interior
Minister for Justice

Lithuania:

Mr Gintaras Jonas FURMANAVIČIUS
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Minister for Justice

Luxembourg:

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Ms Judit FAZEKAS LÉVAYNÉ

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Malta:

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Deputy Prime Minister, Minister for Justice and Home
Affairs

Netherlands:

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Minister for Justice

Austria:

Ms Liese PROKOP

Federal Minister for the Interior

Poland:

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Deputy Prime Minister, Minister for the Interior and
Administration
State Secretary, Ministry of Justice

Ms Beata KEMPA

Portugal:

Mr António COSTA

Ministro de Estado, Minister for the Interior
Minister for Justice

Mr Alberto COSTA

Slovenia:

Mr Dragutin MATE

Minister for the Interior

Mr Lovro ŠTURM

Minister for Justice

Slovakia:

Ms Lucia ŽITŇANSKÁ

Minister for Justice

Finland:

Mr Kari RAJAMÄKI

Minister for the Interior

Ms Leena LUHTANEN

Minister for Justice

Sweden:

Mr Thomas BODSTRÖM

Minister for Justice

Ms Barbro HOLMBERG

Minister at the Ministry of Foreign Affairs with
responsibility for Migration Policy

United Kingdom:

Lord GOLDSMITH

Attorney General

Mr Tony McNULTY

Minister of State for Immigration, Citizenship and
Nationality

Baroness ASHTON of UPHOLLAND

Parliamentary Under-Secretary of State, Department for
Constitutional Affairs

.....

Commission:

Mr Franco FRATTINI

Vice-President

.....

General Secretariat of the Council:

Mr Gijs de VRIES

EU counter-terrorist-co-ordinator

.....

Other participants:

Mr Max-Peter RATZEL

Director of Europol

.....

The Governments of the Acceding States were represented as follows:

Bulgaria:

Mr Rumen YORDANOV PETKOV
Mr Margarit Nikolov GANEV

Minister for the Interior
Deputy Minister of Justice

Romania:

Mr Vasile BLAGA
Mr Ion CODESCU

Minister for Administration and the Interior
Secretary of State, Ministry of Justice

ITEMS DEBATED

EUROPEAN EVIDENCE WARRANT (EEW)

The Council reached a general approach on a draft Decision on the EEW for obtaining objects, documents and data for use in proceedings in criminal matters. The aim of this proposal is to establish a mechanism to facilitate the obtaining of evidence in cross-border cases based on mutual recognition principles.

The Council's agreement is based on a compromise text put forward by the Presidency which, in particular, addressed the two main outstanding issues, i.e, the possibility of a refusal of a EEW because of reasons linked to territoriality, and the definition of offences.

The key features of the draft Decision as agreed upon by the Council are the following:

Main purpose of the EEW

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.

Scope of application and type of proceedings concerned

The European Evidence Warrant covers the objects, documents and data specified needed in the issuing State for the purpose of criminal proceedings or other proceedings that might give rise to further proceedings before a criminal court.

The EEW is being established in two steps. The first step covers in principle evidence which exists and is readily available. The Commission will in due time make a proposal for a second instrument to cover other evidence. This means that the following evidence is not included in the provisions just agreed and will be covered by the second instrument:

- to conduct interviews, taking statements or initiating other types of hearings involving suspects, witnesses, experts or any other party;

- to carry out bodily examinations or obtain bodily material or biometric data directly from the body of any person, including DNA samples or fingerprints;
- to obtain information in real-time such as through the interception of communications, covert surveillance or monitoring of bank accounts;
- to conduct analysis of existing objects, documents or data, and
- the Council added to the Commission's proposal, the obtention from the executing authority of communications data retained by providers of a publicly available electronic communications service or a public communications network.

Nevertheless, under the text agreed, it is also covered evidence falling in these categories which has been gathered prior to the issuing of the warrant. For example, this would include obtaining a statement previously given by a suspect to an investigating authority in the executing State with respect to an earlier investigation conducted by that State.

Issuing and transmission of a EEW

The European Evidence Warrant will 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.

Before sending a EEW, the issuing authority has to assess that the objects, documents or data can be obtained under the law of the issuing State in a comparable case if they were available on the territory of the issuing State, even though different procedural measures might be used.

The EEW may be transmitted to a Member State in which the competent authority of the issuing State has reasonable grounds to believe that relevant objects, documents or data are located or, in the case of electronic data, directly accessible under the law of the executing State.

Recognition and execution of a EEW

The executing authority will recognise a EEW, transmitted in accordance with rules provided for in the text, without any further formality being required and take the necessary measures for its execution unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement specified in the text.

In principle, any decision to refuse recognition or execution must be taken as soon as possible and, no later than 30 days after the receipt of the European Evidence Warrant by the competent executing authority. Unless either grounds for postponement exist or the executing authority has the objects, documents or data sought already in its possession, the executing authority will, in general, execute the EEW without delay and, no later than 60 days after the receipt of the European Evidence Warrant.

Grounds for non-recognition and non-execution of a EEW:

– Territoriality

The original Commission's proposal did not provide for any territoriality clause. However, the Council decided to include it in the text at its February 2005 meeting. The solution retained in the compromise text limits the scope of that ground of refusal to the cases where the offence concerned has been committed wholly or partly in the territory of the executing State, but that the decision to refuse must be taken exceptionally and on a case by case basis.

Where a competent Authority considers to use territoriality as a ground for refusal of a EEW, it will consult Eurojust before taking the decision. If the competent Authority is not in agreement with Eurojust's opinion Member States shall ensure that it will motivate its decision and that the Council be informed.

– Double criminality

Regarding the definition of offences, the proposal provides that, for 32 categories of offences, double criminality may not be invoked by the executing State as a ground for refusing an EEW if the offence concerned is punishable in the issuing State with at least three years of imprisonment. This approach is in line with earlier instruments such as the European arrest warrant, freezing orders, financial penalties or the draft text on confiscation orders.

However, Germany may by a declaration reserve its right to make the execution of an EEW subject to verification of double criminality in cases, relating to terrorism, computer related crime, racism and xenophobia, sabotage, racketeering and extortion or swindling if it is necessary to carry out a search or seizure for the execution of the EEW, except where the issuing authority has declared that the offence concerned under the law of the issuing State falls within the scope of criteria indicated in the declaration.

The provisions relating to territoriality and to the German possibility for opting-out for the definition of offences will be reviewed by the Council no later than 5 years after the entry into force of this framework Decision.

The Council preparatory bodies will finalise the necessary form for the EEW and the recitals of the text with a view to the adoption of the text as soon as possible.

TRANSFER OF SENTENCED PERSONS

The Council examined two questions relating to 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 consent of the sentenced person, and
- the consent from the executing State to the forwarding of the judgement.

The main aim of this draft Framework Decision is to establish cases where the consent of the executing State is not necessary and to limit the need for the consent of the person concerned.

Without prejudice to observations by some delegations on specific points, a large majority of delegations broadly agreed on the following principles:

- as far as the consent of the sentenced person is concerned, consent is needed for transferring the person to a Member State different from the Member State in which the person has his or her permanent legal residence. This would also apply where the intention is to transfer the person to his or her State of nationality in the case where the person has his or her legal residence in another Member State.
- regarding the consent of the executing State, it would not be needed where the judgment together with the certificate is forwarded to:
 - (a) the State of nationality of the sentenced person where he or she lives/resides,
 - (b) the State of nationality or the State of permanent legal residence of the sentenced person to which he or she would anyway be deported/expulsed as a consequence of the judgment after having served the sentence,
 - (c) the State of permanent legal residence of the sentenced person unless he or she has lost or will lose his or her residence permit as a consequence of the judgment.

On this basis, the Council preparatory bodies will further work on the text of the framework Decision, in particular regarding the definition of residence, with a view to reaching an agreement as soon as possible.

On 24 January 2005 Austria, Finland and Sweden submitted this proposal with a view to establishing 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.

Under the existing arrangements (the 1983 Convention on transfer of sentenced persons and its 1997 Protocol and Articles 67-69 of the Schengen Convention) the consent of the State asked to enforce the sentence is always needed. The consent of the sentenced person is also necessary, except for two cases: the sentenced person has fled to his or her State of nationality or the sentenced person will be deported to that State as a consequence of the conviction after having served his or her sentence.

PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS

The Council held an exchange of views on this proposal, in particular on the question of the legal basis of the instrument, and agreed to continuing working on the basis of a Presidency compromise based on the following principles:

- only minimum standards are established and there are no "upper limit" of rights. Consequently Member States will not be prevented to provide for further reaching rights for suspects in criminal proceedings.
- there will be full compliance with the rights enshrined in the European Convention of Human Rights and the case law of the European Court of Human Rights. Member States will not be allowed to go below this level.

As compared to the Commission proposal, the Presidency proposal limited the number and scope of the rights covered and focused on general standards rather than specifying in detail how the rights will be applied in each Member State in view of the different procedural systems.

The areas where common minimum standards were proposed by the Presidency are:

- right to information,
- right to legal assistance,
- right to interpretation, and
- right to translation of documents of the procedure for any person subject to criminal proceedings.

Furthermore, the Council agreed that further work on procedural right should also include work on practical measures.

The original proposal was submitted by the Commission on 3 May 2004 with a view to setting common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the EU.

EUROPEAN SMALL CLAIMS PROCEDURE

The Council reached a general agreement on a Regulation establishing a European small claims procedure.

This Regulation will simplify and speed up litigation concerning small claims in cross-border cases and reduce costs by establishing a European procedure for small claims. It will also eliminate the intermediate measures necessary to enable recognition and enforcement of judgments given in one Member State in a European Small Claims Procedure in other Member States.

The Regulation will apply, in cross-border cases, in civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2000 at the time the procedure is commenced, excluding all interest, expenses and outlays. It will not apply, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of state authority ("acta iure imperii").

The Regulation will not apply to matters concerning:

- (a) the status or legal capacity of natural persons and maintenance obligations,
- (b) rights in property arising out of a matrimonial relationship, wills and succession,
- (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings,
- (d) social security,
- (e) arbitration,
- (f) employment law,
- (g) tenancies of immovable property, except actions on monetary claims,
- (h) violations of privacy and rights relating to personality, including defamation.

A claimant will commence the European Small Claims Procedure by completing a claim form set out in the Annex of the text and lodging it at the competent court or tribunal directly, by post or by any other means of communication such as fax or e-mail acceptable to the Member State in which the procedure is commenced. The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.

In the context of the internal market individuals and businesses will benefit of this instrument when reclaiming smaller debts in a cross-border context.

The Commission presented its proposal on 21 March 2005.

COOPERATION BETWEEN ASSET RECOVERY OFFICES

Pending the lifting of a reservation by the Irish delegation, the Council broadly agreed on a draft Decision concerning arrangements for cooperation between asset recovery offices of the Member States.

The Council preparatory bodies will be in charge of finalising the text of the Decision, with a view to its adoption at a forthcoming Council meeting.

It should be noted that the main motive for cross border organised crime is financial gain. This financial gain is a stimulus for committing further crime to achieve even more profit. Accordingly law enforcement services should have the necessary skills to investigate and analyse financial trails of criminal activity. In order to combat organised crime effectively, information that can lead to the tracing and seizure of proceeds from crime and other property belonging to criminals has to be exchanged rapidly between the Member States of the European Union.

It is therefore necessary that close cooperation takes place between the relevant authorities of the Member States involved in the tracing of illicit proceeds and other property that may become liable to confiscation and that provision be made allowing for direct communication between those authorities.

To that end, this Decision will allow Member States to put in place national Asset Recovery Offices with competences in these fields and will ensure that these offices can rapidly exchange information.

EU PRIORITIES IN THE FIGHT AGAINST CRIME - Council conclusions

The Council heard a presentation by Mr Max-Peter Ratzel, Director of Europol on the 2006 EU organised crime threat assessment and adopted the following conclusions:

"Considering the Hague Programme and in particular section 2.3 which calls upon Europol to replace its Organised Crime Situation Report by threat assessments on serious forms of organised crime,

Considering the need for the EU to set up an architecture for its internal security and adopt and implement a methodology for intelligence-led law enforcement, putting an emphasis on the collection and analysis of information and intelligence to identify where action by law enforcement and prosecution authorities would be most effective,

Taking into account the Commission's communication on a strategic concept for tackling Organised Crime and its associated action plan and the Council and Commission action plan for implementing the Hague Programme,

Taking into account the Council conclusions of 12 October 2005 on intelligence-led policing and the development of the Organised Crime Threat Assessment

On the basis of the Europol 2006 Organised Crime Threat Assessment (OCTA)

THE COUNCIL CONCLUDES THE FOLLOWING

Definition of EU priorities and approach to fight organised crime

1. The Europol Organised Crime Threat Assessment (OCTA) 2006 is a first attempt to develop a threat assessment of current and expected trends in organised crime across the EU. Annex 1 sets out the main threats from organised crime as they result from the OCTA. Concretely, the OCTA conclusions should be focused on in national priorities, with a view to also promote co-operation with Member States with shared regional problems.

On that basis, the Council sets the following priorities in the fight against organised crime:

- in South West Europe, attention should be paid to the impact of African OC groups in the field of smuggling and trafficking of human beings, smuggling of illegal immigrants as well as drug trafficking, thereby promoting co-operation between, initially, French and Spanish law enforcement authorities. African OC groups should be focused upon and their involvement in cannabis smuggling and further distribution into the EU.

- the focus in South East Europe should be on ethnic Albanian OC and its involvement both in heroin trafficking and distribution and in trafficking in human beings. This would promote co-operation initially between Italy, Slovenia and Greece and partners in the Balkan region.
- priorities in North East Europe should be focused on OC groups, including Russian speaking OC groups, primarily involved in commodity smuggling, promoting co-operation in the Baltic Sea region
- activities in the Atlantic region should be focused on the production of synthetic drugs by OC groups based in Belgium and the Netherlands and their ensuing distribution within the European Union and via Germany and the UK across the Atlantic into the US and Canada. This would promote co-operation between these countries and across the Atlantic.
- the fight against money laundering and illicit arms trafficking should be included in all of these priorities.

1a. The priorities set by these conclusions and in the OCTA need to be combined with priorities

- set in crime areas other than organised crime
- established at national level (in matters of organised crime)
- following from previous and other Council conclusions and/or action plans, such as the Drugs Action Plan and the Action Plan on trafficking in human beings
- Priorities as set out in point 1 have to be understood as areas in which the EU, through its Member States, institutions and bodies should (increasingly) coordinate and enhance its action, which should be reactive, but also preventative and proactive. Together, these concerted activities will ensure an in-depth understanding and provide tools for enhanced targeting of OC impacting on the EU.

2. The fight against organised crime requires a multi-disciplinary intelligence-led approach in order not only to disrupt criminal activities but also dismantle criminal organisations, bring the offenders to justice and deprive them of the proceeds of crime, thereby providing much more effective and longer-term results and reducing the harm caused by organised crime. This implies that (specialised) resources are dedicated to and structures organised with a view to using all information that is available to law enforcement and thus identifying and tackling the most threatening criminal groups. As a consequence, law enforcement action, in particular investigations and prosecutions, should, where possible, mainly focus on the upper levels of the organised crime groups, including logistics, financing and assets. As a consequence, Member States are invited to increase their efforts in the financial aspects of the investigations and prosecutions, for example seizure of assets, in order to sanction all the levels of organised crimes groups.
3. For Member States to mutually benefit from one another's efforts, information on the outcomes of and difficulties in such investigations and prosecutions should be communicated to Europol and, where appropriate, Eurojust and OLAF so that a stronger EU position can be taken.

Implementation of the priorities

4. All relevant authorities in the Member States should, alongside other national considerations, take account of the strategic priorities adopted by the Council and the OCTA in planning their individual and joint responses to the threats they face from organised crime. In so doing, they should use the mechanisms and structures mentioned in the action plan in annex 2 but also implement the priorities through national, bilateral and regional means and in their external relations, in accordance with national legislation.
5. All relevant EU bodies, agencies, working groups shall take account of these priorities and reflect them in their strategic planning, working programmes, budgets, annual reporting and external relations. They shall also be taken into account in the mid-term review and updating of the Hague Programme (Action Plan). Regular and practical measures shall be taken to ensure a horizontal coordination and cooperation between the different parties involved.
6. *In concreto*, the tasks as set out in the (non-exhaustive) action plan in annex should be carried out. Member States, the Commission and relevant EU Agencies agree to carry out the tasks as set out in annex II. The Presidency, in association with the Commission, is responsible for overseeing this implementation. Member States, in taking forward the priority setting as specified in paragraph 4 and the concrete responses, should consider setting up meetings to ensure the co-ordination of activities between the relevant authorities responsible for organised crime. The Article 36 Committee shall monitor the implementation of this action plan and the coordination applied in doing so and shall provide an interim report to the Council in December 2006.

Methodology

7. It is necessary to evaluate and refine the methodology for producing the OCTA. Europol and the Member States will optimise the OCTA procedures in line with the experience gained with the 2006 OCTA, and in particular ensure enhanced preliminary coordination with the Member States on the drafting of the OCTA and include a clearer explanation on the sources used for the OCTA and the way the conclusions are drawn. Europol will hold a meeting before the end of July 2006 in order to clarify the methodology for the production of the OCTA, in particular with regard to the criteria for the selection of open sources and private sector sources as well as for the evaluation of information originating from these sources.
8. To that end, Europol will issue a structured and detailed Intelligence Requirement, where necessary specified for certain areas/respondents. Member States and other relevant stakeholders invited to contribute (PCTF, Eurojust, Frontex, OLAF, ECB, SitCen, private sector, ...), will reply to this Requirement by 31 October 2006 at the latest.
9. Europol is invited to submit an update of the OCTA by end of February 2007.

Information of the European Parliament

10. The European Parliament shall be informed of these conclusions. "

FUTURE OF EUROPOL - Council conclusions

The Council took note of a report by the Friends of the Presidency's group sketching options to improve the efficiency and accountability of Europol and adopted conclusions on the future of Europol, as follows:

- "1. During the past five months the Presidency has strived to identify the way to improve the effectiveness of Europol. On the basis of the debate in the informal JHA Council, a high level meeting was organised in Vienna, followed by an in-depth debate in the Friends of the Presidency.
2. The debates have resulted in a number of draft conclusions which are set out below. COREPER is requested to forward these conclusions to Council in order to allow the Council to debate these conclusions and reach agreement on the way to improve the functioning of Europol.

3. **Conclusion 1: finalise the ratification of the three Protocols amending the Europol Convention**

In line with the conclusions of several (European) Councils, the Member States are urged to finalise the ratification of the three Protocols amending the Europol Convention before 31 December 2006 (the state of play is in 9589/06 + ADD 1).

The incoming Presidency is asked to report to the Council in December 2006 on the state of ratification.

4. **Conclusion 2: start the implementation of the three Protocols**

The Commission, the Member States, Europol, as well as competent Council and Europol bodies are requested to prepare as far as possible the entry into force of the three Protocols amending the Europol Convention in order for them to be fully applicable as shortly as possible after their entry into force.

The incoming Presidency is invited to report in December 2006 on the progress as far as the implementation of the Protocols is concerned.

5. **Conclusion 3: to improve the functioning of Europol**

a) *On the basis of the current legal framework*

In line with the options outlined by the Friends of the Presidency (9184/1/06), competent Council and Europol bodies (notably the Europol Working Party and the Europol Management Board) should consider the options which can be implemented without changing the Europol Convention (as enumerated on page 37 of the Friends of the Presidency's report to the Future of Europol in points 9, 10, 11, 12 and 13).

The incoming Presidency is invited to report in December 2006 on the progress as far as the implementation of these quick wins is concerned.

b) *Beyond the current legal framework*

In parallel with the debate on the new legal framework of Europol (see below), competent Council bodies should equally consider the options which are marked as long term solutions and which require an amendment of the Europol Convention (as listed on page 37 of the Friends of the Presidency's report to the Future of Europol in point 8).

6. **Conclusion 4: to replace the Europol Convention by a Council Decision**

Competent Council bodies should commence work in order to consider whether and how to replace by 1 January 2008, or as soon as possible thereafter, the Europol Convention by a Council Decision as foreseen in Article 34(2)(c) TEU, where possible on the basis of a concrete initiative or proposal.

The incoming Presidency is invited to report in December 2006 on the progress as far as the replacement of the Europol Convention by a Council Decision is concerned.

7. **Conclusion 5: to explore the method to abrogate the Europol Convention**

The incoming Presidency should, through competent Council bodies, explore which way the Europol Convention could be abrogated in case it is replaced by a Council decision. Notably the question whether a protocol abrogating the Convention is a legal prerequisite or not, needs to be resolved.

The incoming Presidency should report on the result of this debate in December 2006."

COUNTER-TERRORISM

The EU Counter terrorism Coordinator, Gijs de Vries, reported on the implementation of the EU-Counter-Terrorism Strategy/Action Plan and the EU Strategy on Radicalisation and Recruitment (9589/06 + ADD 1).

Mr de Vries' report assessed progress since December 2005 and the state of play regarding ratification of the conventions and implementation of the legislative acts regarded as having priority.

In particular, he stressed that the search for more effective ways of decisions making is a critical element of the EU effectiveness in the fight against terrorism. The use of instruments such as framework decisions and conventions under the third pillar needs to be reconsidered, as it generally takes too long for the EU to reach decisions. Furthermore, decisions that are reached are not as ambitious as originally foreseen and once agreed, decisions often take years before they are implemented by all Member States.

In December 2005 the European Council adopted the European Counter-Terrorism Strategy, which has provided the framework for EU activity in this field. The strategic commitment of the Union is to combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice. The strategy groups all actions under four headings - PREVENT, PROTECT, PURSUE, RESPOND. The revised Action Plan follows this pattern with the objective of setting out clearly what the EU is trying to achieve and the means by which it intends to do so.

*

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European Arrest Warrant

It should be noted that according to recent statistics relating to the functioning of the European Arrest Warrant, from 17 Member States in 2005, from 1526 people arrested, 1295 were effectively surrendered to the requesting Member State (85% surrender rate). The surrender procedures took approximately 30-40 days. The 90 days limit requested by the EAW was respected in most cases. 309 nationals were surrendered.

EXTERNAL RELATIONS

The Council took note of the state of play regarding the implementation of the strategy for the external dimension of JHA: global freedom, security and justice.

The Council also adopted Action Oriented Papers on:

- improving co-operation, on organised crime, corruption, illegal immigration and counter-terrorism, between the EU and Western Balkans, and
- increasing EU support for combating drug production in and trafficking from Afghanistan, including transit routes.

The external strategy calls for the elaboration of a partnership with third countries in the field of JHA, which includes strengthening the rule of law, and promoting the respect for human rights and international obligations.

This strategy was approved by the JHA Council on 1 December 2005 and the process led up to:

- the Vienna Ministerial Conference on 4-5 May 2006,
- the EU-US Ministerial Troika on 3 May 2006,
- a dialogue on internal security issues between the EU, the Russian Federation and the US on 4 May 2006, and
- the preparation of the two above-mentioned Action Oriented Papers.

HAMPTON COURT: FOLLOW-UP

In the context of the recent events in the Canary Islands and the Mediterranean Sea, Commission Vice-President Franco Frattini informed the Council on the current state of play of the implementation of the December 2005 European Council Conclusions relation to the global approach to migration: priority actions focusing on Africa and the Mediterranean.

The Council reiterated its commitments to the global approach and also expressed its support to the action of the Commission with a view to providing all the assistance it can to the Member States facing large scale arrivals of illegal immigrants in a spirit of active solidarity.

The Council also looked to the forthcoming Euro-Africa Regional Ministerial Conference, which will take place in Rabat on 10 and 11 July, as an important opportunity to promote operational cooperation between countries of origin, transit and destination.

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Over lunch Ministers discussed:

- a report by Mr Michel Barnier on a European civil protection force: Europe aid,
- the consequences of the 31 May 2006 Court of Justice's judgment relating to the EU-US agreement on Passenger Name Records (PNR agreement), and
- the state of play regarding a forthcoming Commission proposal in relation to the list of safe countries of origin in the sense of Article 29(1) of the Directive on minimum standards for granting and withdrawing refugee status (OJ 326, 13.12.2006, p. 13).

MIXED COMMITTEE

– ***SIS II***

The Mixed Committee (EU + Norway, Iceland and Switzerland) reached an agreement on a draft Regulation on the establishment, operation and use of the second generation Schengen Information System (SIS II).

This draft Regulation defines the conditions and procedures for the processing of alerts entered in the SIS II in respect of third country nationals, the exchange of supplementary information and additional data for the purpose of refusing entry or stay in the territory of the Member States.

This Regulation also lays down provisions in particular on the technical architecture of the SIS II, the responsibilities of the Member States and of the Management Authority, general data processing, the rights of the persons concerned and liability.

On May 31 2005, the Commission submitted legislative proposals setting out the legal basis for SIS II: two Regulations to be adopted by the codecision procedure and one Council Decision. In order to allow SIS II to be operational as soon as possible and consequently to lift the checks at the internal borders for the new Member States, the legislative instruments have to be adopted by the Council and the European Parliament quickly.

– ***COMMON VISA APPLICATION CENTRES***

Commission Vice-President Frattini presented this recently adopted Commission proposal (10023/06) which is intended to create the legal basis for Member States to take mandatory biometric identifiers - the facial image and ten flat fingerprints - from visa applicants and to give a legal framework for the organisation of Member States consular offices.

According to the Hague Programme, the Commission was invited to submit a proposal providing for a legal framework for Member States to set up Common Application Centres. The creation of such common application centres for visas is intended to allow Member States to share premises, staff and equipment and thus the economic burden caused by the introduction of biometric data in visa.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Europol

The Council approved the Europol annual report 2005 and the Europol work programme 2007.

EU's emergency and crisis response capacities - Council conclusions

The Council adopted the following conclusions:

- "1. Helping citizens in an emergency, crisis or disaster, whether natural or man-made, requires effective delivery of assistance where and when it is needed. Member States are responsible for managing emergencies, crises or disasters on their territory and determining whether they require any outside assistance. However, many major risks inside and outside the European Union could affect one or more Member States or engage the whole European Union. In such circumstances, support may be needed from other Member States and EU structures.
2. In addressing such situations, Member States are able to draw on existing EU mechanisms managed by the Commission, in particular the Civil Protection Monitoring and Information Centre in the Commission, as well as the Joint Situation Centre in the Council Secretariat.
3. Following the remits given by point 2.4 of the Hague Programme of 5 November 2004 on strengthening freedom, security and justice in the European Union, the JHA Council Declaration of 13 July 2005 on the EU response to the London bombings and Coreper of 18 January 2006, the Council agrees to take the following further steps to ensure that the Union can react more effectively and lend assistance when major emergencies occur inside or outside the Union:
 - The Council endorses the operational EU emergency and crisis coordination manual drawn up by the Presidency in close cooperation with the Commission and the Council Secretariat. This manual sets out two strands of work:

Firstly, the manual contains internal arrangements for political coordination in Brussels for major emergencies inside or outside the European Union.

These generic arrangements do not duplicate or supplant existing networks or rapid alert systems; they will help deliver a better coordinated EU response and fill any gaps by providing input for coordinated action or decisions by COREPER or the Council. The manual will be updated by the forthcoming Presidencies in cooperation with the Council Secretariat, the Commission and the Member States in the light of tests to be undertaken shortly after adoption, experience and practice.

Secondly, the manual pre-identifies 24h/7 contact points in Member States which could be called upon in the event of coordinated terrorist attacks or an influenza pandemic. It is the purpose, in the medium term, to identify the relevant national contact points for all kinds of emergency and crisis situations. Moreover, the manual contains an overview of operational networks and emergency support which may help to coordinate or assist Member States in handling emergency and crisis situations. The Council encourages the Presidency, the Council Secretariat and the Commission to further develop the manual drawing on best practices under existing bilateral and multilateral arrangements and identifying gaps to be filled. A progress report should be presented to the Council by 30 June 2007.

- The Council invites Member States to put in place, where appropriate, the necessary internal structures to ensure that they are in a position to respond rapidly to all requests for assistance in relation to all types of emergencies or crises. In doing so, Member States should, for the purpose of the present arrangements, consider whether a single national contact point for the coordination of all emergency or crisis situations would ensure greater effectiveness.
4. Furthermore, the Council also takes note of the contribution of civil protection to reinforcing the EU's emergency and crisis response capacities and welcomes in particular the progress on the Commission's proposals on establishing a rapid response and preparedness instrument and on the recast of the Community's civil protection mechanism. The Council intends to work towards the adoption of both proposals by the end of 2006 in order to help reinforce the European Union's crisis response capability inside and outside the European Union.
 5. It is highlighted that the above actions of civil protection are to be regarded as a contribution to the implementation of the Tsunami Action Plan which called for the development of a European Union rapid response capability. They are complemented by ongoing work on the General Framework for the use of Member States' military or military chartered transportation assets and ESDP coordination tools in support of EU disaster response as well as on an improved European consular cooperation."

Service of judicial and extrajudicial documents

The Council agreed on a general approach on a proposal for a Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, pending the European Parliament's opinion in first reading.

This proposal is aimed at Regulation (EC) No 1348/2000 of 29 May 2000 with a view to improving and expediting the transmission and service of this kind of documents between the Member States, simplifying the application of certain provisions of the Regulation and to improving legal certainty for the applicant and for the addressee.

EU programmes on Security and Safeguarding Liberties and on Fundamental Rights and Justice

The Council reached an agreement on a general approach on three draft decisions establishing the following EU specific programmes for the period 2007-2013:

General programme on Security and Safeguarding Liberties:

- specific programme on the Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks, and
- specific programme on the Prevention of and Fight Against Crime.

General programme on Fundamental Rights and Justice:

- specific programme on Criminal Justice.

The general approach was adopted without prejudice to the examination in due time of the opinion of the European Parliament, not delivered yet, and of the European Economic and Social Committee.

Architecture of internal security

The Council endorsed a Presidency note outlining a process for the establishment of a reference framework for EU internal security.

Counter-terrorism

The Council took note of conclusions of the first high level political dialogue on Counter-Terrorism, between the European Parliament, the Council and the European Commission, which took place on 10 May (9246/06).

The Presidency called the first meeting on the basis of the EU Counter Terrorism Strategy, adopted by the European Council in December 2005. The second high level meeting will most likely take place in November 2006.

Fees to be charged to visa applicants *

Following a political agreement reached at the JAI Council of 27 and 28 April, the Council adopted a decision providing for an increase from 35 EUR to 60 EUR of the fees to be charged for the processing of visa applications, as a consequence of the implementation of the visa information system and the collection of biometric data from visa applicants (8558/06).

The Greek, Hungarian and Swedish delegations voted against.

The decision will apply from 1 January 2007 at the latest.

For more details see press release 8402/06, p. 11.

Report on Schengen evaluation of new EU member states

The Council took note of an interim report sketching the progress reached in the Schengen evaluation process by the new ten EU member states.

Schengen evaluation

The Council adopted conclusions on Schengen evaluation of Denmark, Finland, Iceland, Norway and Sweden.

European Police College - Cooperation with Iceland, Norway and Switzerland

The Council approved draft cooperation agreements between European Police College (Cepol) and the Icelandic National Police College, the Norwegian Police University College and Swiss Police Institute (9179/06, 9259/06, 9265/06).

The purpose of these agreements is to define the relations between Cepol and above mentioned training institutes and to establish the arrangements necessary for the facilitated cooperation.

European Police College - 2005 Annual report

The Council endorsed the European Police College 2005 annual report (9230/06).

Europol - New terrorism situation and trend report

The Council endorsed Europol's proposal for a new terrorism situation and trend report (TE-SAT) which is intended to inform the European Parliament on the phenomenon of terrorism in the EU (8196/2/06).

Europol is responsible for developing the methodology for the new TE-SAT in consultation with the contributors. The data collection plan and the intelligence requirement for the new TE-SAT will be coordinated by Europol and the draft TE-SAT will be discussed with the contributors. The final report will be agreed within Europol structures.

Non-confidential report on the terrorist activity in the EU - October 2004- October 2005

The Council took note of the non-confidential report on the terrorism situation and trends in Europe (TE-SAT) (8195/1/06). The report prepared by Europol covers the period from October 2004 to October 2005.

The objective of this report is to outline the terrorism situation in the EU and analyse the trends established. The report is intended to inform the European Parliament on the phenomenon of terrorism targeting the Member States.

The first part of the report relates to terrorist activities carried out by various indigenous groups within the EU Member States and the second part focuses on international terrorist activities affecting the EU.

Radicalisation and Recruitment Action plan - Media communication strategy

The Council took note of the media communication strategy elaborated under the Action Plan to Combating Radicalisation and Recruitment, adopted by the European Council of December 2005, in close consultation with the Commission.

The media communication strategy contains a list of agreed key messages for delivery to target audiences and entries for a common lexicon. It also identifies ways to engage with the media, including specialised Muslim press and media overseas.

Information mechanism on asylum and immigration measures

Pending the opinion of the European Parliament, the Council agreed on a general approach on a draft decision establishing a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration which are likely to have a significant impact on several Member States or on the European Union as a whole (9617/06).

The establishment of this mechanism will facilitate the exchange of views among Member States at technical and at political level in the areas of asylum and immigration. Member States are encouraged to transmit relevant information as soon as possible and at the latest when the measure concerned become publicly available.

EU drugs assistance projects in third countries

The Council endorsed a note concerning the level of funding and the geographic and thematic distribution of EU drug projects (9376/06).

The note provides an overview aimed at improving coordination and avoiding of duplication and gaps in EU drugs assistance projects to third countries.

EU drugs strategy - Alternative development

The Council endorsed the EU approach on alternative development which will serve as a political fundament in contacts with third countries and international organisations (9597/06).

Schengen acquis - Iceland, Norway, Switzerland, Liechtenstein

The Council authorised the Commission to initiate negotiations with Iceland, Norway, the Swiss Confederation and Liechtenstein with a view to concluding an agreement on the latter's association with the work of the Committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis.

Law applicable to non-contractual obligations (Rome II)

The Council confirmed its agreement on the text as a whole of the regulation applicable to non-contractual obligations ("Rome II"). It should be noted that the Council already reached a political agreement at its meeting of 27 and 28 April 2006¹ on the articles of this draft regulation. After finalisation of the text, the Council will adopt its common position and will forward it to the European Parliament for a second reading (*9143/06 + ADD 1 and ADD 2*).

The objective of this Regulation is to standardize the rules regarding non-contractual obligations and thus extend the harmonisation of private international law in civil and commercial matters.

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

Simplified regime for the control of persons at the external borders

The Council adopted a decision introducing a regime of unilateral recognition by new Member States of certain documents issued by other Member States for the purposes of transit through their territories of third-country nationals subject to a visa obligation (*PE-CONS 3609/06*). The decision is addressed to the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

The Council also adopted a decision establishing a regime of unilateral recognition by Member States of residence permits issued by Switzerland and Liechtenstein to third-country nationals subject to a visa obligation as equivalent to their uniform or national visas for the purpose of transit (*PE-CONS 3610/06*).

The duration of the transit of the third country national through the territory of the Member States(s) shall not exceed five days.

Any new Member State that decides to apply these decisions will notify the Commission thereof by 10 working days of their entry into force (the twentieth day following that of its publication in the Official Journal of the EU). The Commission will publish this information in the Official Journal of the EU.

Electronic exchange of photos and fingerprints

The Council adopted a recommendation inviting EU member states to make progress on a method for electronic exchange of photos and fingerprints between law enforcement services (SIRPIT project) (*9696/1/06*).

¹ See press release *8402/06*.

TERRORISM

Recommendations on counter-terrorism

The Council approved a set of policy recommendations on counter-terrorism, in view of their integration into the EU Counter-Terrorism action plan.

EXTERNAL RELATIONS

Disaster Relief Activities

The Council took note of a Presidency report on the "Seminar on Co-ordination and Communication between EU and UN in Disaster Relief Activities outside the EU: Towards closer Cooperation between the Community Civil Protection Mechanism and the UN" that was held in Salzburg, on 8–11 May 2006.

COMMON FOREIGN AND SECURITY POLICY

Sudan - Restrictive measures

The Council adopted a decision implementing common position 2005/411/CFSP in order to impose restrictive measures against certain individuals from Sudan, in accordance with United Nations Security Council resolution (UNSCR) 1672(2006) (9204/06).

In May 2005, the Council adopted common position 2005/411/CFSP in order to implement the measures imposed by UNSCR 1591(2005), consisting of a travel ban and a freeze on economic resources against those individuals who impede the peace process, commit violations of human rights law and violate the arms embargo, designated by the UN sanctions committee established by resolution 1591(2005).

On 25 April 2006 the UN Security Council adopted resolution 1672(2006) deciding to implement the measures of the resolution 1591(2005) with respect to the following persons:

1. Elhassan, Gaffar Mohamed (Major-General and Commander of the Western Military Region for the Sudanese Armed Forces)
2. Hilal, Sheikh Musa (Paramount Chief of the Jalul Tribe in North Darfur)

3. Shant, Adam Yacub (Sudanese Liberation Army (SLA) Commander)
4. Badri, Gabril Abdul Kareem (National Movement for Reform and Development (NMRD) Field Commander).

EUROPEAN ECONOMIC AREA

Amendments to the EEA agreement

The Council approved two draft decisions of the European Economic Area (EEA) Joint Committee amending the EEA agreement concerning cooperation in specific fields outside the four freedoms:

- a decision aimed at extending co-operation in the field of the implementation and development of the internal market for the year 2006 (8711/06); and
- a decision aimed at extending co-operation through the multiannual programme for the dissemination of good practices and monitoring of the take-up of information and communication technologies for the year 2006 (8717/06).

The Council also approved a draft decision with a view to introduce a number of Community acts that have been adopted in recent years into the EEA agreement on the abolition of technical barriers to trade in wine (8723/06).

The EEA Joint Committee must integrate all Community legislation relevant to the EEA agreement in order to ensure the necessary legal certainty and homogeneity of the internal market.
