



**COUNCIL OF
THE EUROPEAN UNION**



9956/08 (Presse 146)

PROVISIONAL VERSION

PRESS RELEASE

2783rd Council meeting

Justice and Home Affairs

Brussels, 5-6 June 2008

President

Mr Dragutin MATE
Minister of the Interior of Slovenia
Dr Lovro Šturm
Minister of Justice of Slovenia

P R E S S

Rue de la Loi 175 B – 1048 BRUSSELS Tel.: +32 (0)2 281 9548 / 6319 Fax: +32 (0)2 281 8026
press.office@consilium.europa.eu <http://www.consilium.europa.eu/Newsroom>

9956/08 (Presse 146)

1
EN

Main results of the Council

The Council expressed its support to an overall compromise on the proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (the "Return Directive").

It also reached a general approach on a decision laying down the necessary administrative and technical provisions for the implementation of a decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the "Prüm decision").

Regarding counter-terrorism, the Council shared the views of the EU counter-terrorism coordinator on his proposals to concentrate work in the coming months on the prevention of radicalisation and on the identification of technical assistance to Northern Africa/Sahel and Pakistan.

Furthermore, the Council reached a general approach on a draft agreement between the European Union and Australia on the processing and transfer of EU-sourced passenger name record (PNR) data to the Australian Customs Service, and on a draft Framework Decision on enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition in respect of decisions rendered in the absence of the person at the trial (trials "in absentia").

Finally, it agreed on the complete abolition of exequatur for the recognition and enforcement of decisions in matters relating to maintenance obligations.

CONTENTS¹

PARTICIPANTS.....	6
ITEMS DEBATED	
MIXED COMMITTEE	8
Schengen Information System (SIS).....	8
Return of illegally staying third-country nationals	8
Other business.....	8
RETURN OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS	9
EXTENSION OF LONG-TERM RESIDENT STATUS TO BENEFICIARIES OF INTERNATIONAL PROTECTION	11
RESETTLEMENT OF THE REFUGEES FROM IRAQ.....	12
STEPPING UP COOPERATION FOR PURPOSES OF PREVENTION AND INVESTIGATION OF CRIMINAL OFFENCES.....	13
TERRORISM - REPORT BY THE EU COUNTER-TERRORISM COORDINATOR	14
AGREEMENT WITH AUSTRALIA ON TRANSFER OF PASSENGER NAME RECORD	15
PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW.....	16
SHIP-SOURCE POLLUTION	18
HIGHER STANDARDS FOR DECISIONS RENDERED IN ABSENTIA	19
EUROJUST	20
MAINTENANCE OBLIGATIONS	21
JURISDICTION AND APPLICABLE LAW IN MATRIMONIAL MATTERS (ROME III).....	22
E-JUSTICE.....	23
EXTERNAL DIMENSION OF JUSTICE AND HOME AFFAIRS (JHA).....	24

¹

- 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.
- Documents for which references are given in the text are available on the Council's Internet site (<http://www.consilium.europa.eu>).
- 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 Council's Internet site or may be obtained from the Press Office.

OTHER ITEMS APPROVED

CIVIL LAW

- The Hague Convention of 1996 on the international protection of children25
- Judicial cooperation in civil matters - External relations strategy25
- Recognition and enforcement of judgments in civil and commercial matters.....26
- Contractual obligations in civil and commercial matters26

COOPERATION IN POLICE AND CRIMINAL LAW MATTERS

- Further development of the SECI centre - *Council conclusions*.....26
- Cooperation on organised crime, corruption, illegal immigration and counter-terrorism27
- Report on fight against organised crime27
- European Crime Prevention Network (EUCPN) Annual report 2007 - *Council conclusions*27
- Assistance to produce a common threat assessment on organised crime for South East European region - *Council conclusions*.....27
- Application of the European Arrest Warrant - Evaluation report27

CIVIL PROTECTION

- European critical infrastructure28
- Cooperation with the candidate countries and potential candidate countries of the Western Balkans in the field of Civil Protection28

VISA

- EU/Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis, and the Seychelles - Visa agreements29

EUROPOL

- Cooperation between Europol and Eurojust.....29
- Possible cooperation mechanisms between civilian ESDP missions and Europol as regards the mutual exchange of information - *Council conclusions*30
- Budget for 2009 - Financing plan 2009-201330

SCHENGEN

–	SIS II global schedule.....	30
–	Schengen evaluation - <i>Council conclusions</i>	30
–	Application of SIS in Switzerland.....	32
–	Sirene Manual - declassification	33

MIGRATION AND BORDERS CONTROL

–	Mobility partnerships with Cape Verde and with the Republic of Moldova.....	33
–	Enhancing the global approach to migration - <i>Council conclusions</i>	34
–	Development of the FADO system (False and Authentic Documents Online) - <i>Council conclusions</i>	34
–	Management of external borders of the member states of the EU - <i>Council conclusions</i>	34
–	Simplified regime for the control of persons at the external borders.....	34

DEVELOPMENT COOPERATION

–	EU/ACP Council of Ministers - Preparation.....	35
---	--	----

PARTICIPANTS

The governments of the Member States and the European Commission were represented as follows:

Belgium:

Mr Jo VANDEURZEN

Deputy Prime Minister and Minister for Justice and Institutional Reforms
Minister for Immigration and Asylum

Ms Annemie TURTELBOOM

Bulgaria:

Ms Miglena Ianakieva TACHEVA

Minister for Justice

Mr Mihail MIKOV

Minister for the Interior

Czech Republic:

Mr Jiří POSPÍŠIL

Minister for Justice

Ms Lenka PTÁČKOVÁ MELICHAROVÁ

Deputy Minister for the Interior with responsibility for European affairs

Mr Tomáš BOČEK

Deputy Minister for Justice

Denmark:

Ms Lene ESPERSEN

Minister for Justice

Mr Claes NILAS

State Secretary, Ministry of Refugee, Immigration and Integration Affairs

Germany:

Ms Brigitte ZYPRIES

Federal Minister for Justice

Mr Wolfgang SCHÄUBLE

Federal Minister for the Interior

Estonia:

Mr Rein LANG

Minister for Justice

Mr Jüri PIHL

Minister for Internal Affairs

Ireland:

Mr Bobby MCDONAGH

Permanent Representative

Greece:

Mr Sotirios HADJIGAKIS

Minister for Justice

Mr Prokopios PAVLOPOULOS

Minister for the Interior

Spain:

Mr Julio PÉREZ HERNÁNDEZ

State Secretary for Justice

Mr Antonio CAMACHO VIZCAÍNO

State Secretary for Security

Ms María Consuelo RUMÍ IBÁÑEZ

State Secretary for Immigration and Emigration

France:

Ms Rachida DATI

Keeper of the Seals, Minister for Justice

Mr Brice HORTEFEUX

Minister for Immigration, Integration, National Identity and Development Solidarity

Italy:

Mr Angelino ALFANO

Minister for Justice

Mr Roberto MARONI

Minister for the Interior

Cyprus:

Mr Kypros CHRISOSTOMIDES

Minister for Justice and Public Order

Mr Neoklis SYLKIOTIS

Minister for the Interior

Latvia:

Mr Gaidis BĒRZIŅŠ

Minister for Justice

Mr Aivars STRAUME

State Secretary, Ministry of the Interior

Lithuania:

Mr Petras BAGUŠKA

Minister for Justice

Mr Regimantas ČIUPAILA

Minister for the Interior

Luxembourg:

Mr Luc FRIEDEN

Minister for Justice, Minister for the Treasury and the Budget

Mr Nicolas SCHMIT

Minister with responsibility for Foreign Affairs and Immigration

Hungary:

Ms Judit FAZEKAS

State Secretary (with special responsibility), Ministry of Justice and Law Enforcement

Malta:

Mr Carmelo MIFSUD BONNICI

Minister for Justice and Home Affairs

Netherlands:

Mr Ernst HIRSCH BALLIN
Ms Nebahat ALBAYRAK

Minister for Justice

Austria:

Ms Maria BERGER

Federal Minister for Justice

Poland:

Mr Łukasz Antoni RĘDZINIAK
Mr Piotr STACHAŃCZYK

Deputy State Secretary, Ministry of Justice
Deputy State Secretary, Ministry of the Interior and Administration

Portugal:

Mr Alberto COSTA
Mr Rui PEREIRA

Minister for Justice
Minister for the Interior

Romania:

Mr Cătălin Marian PREDOIU
Mr Vasile Gabriel NITA

Minister for Justice
Secretary of State, Ministry for Internal Affairs and Administrative Reform

Slovenia:

Mr Lovro ŠTURM
Mr Dragutin MATE
Ms Katja REJEC LONGAR

Minister for Justice
Minister for the Interior
Deputy State Secretary, Ministry of Justice

Slovakia:

Mr Štefan HARABIN

Deputy Prime Minister and Minister for Justice

Finland:

Ms Tuija BRAX
Ms Anne HOLMLUND

Minister for Justice
Minister for the Interior

Sweden:

Ms Beatrice ASK
Mr Tobias BILLSTRÖM

Minister for Justice
Minister for Migration

United Kingdom:

Mr Jack STRAW
Baroness ASHTON of UPHOLLAND

Secretary of State for Justice and Lord Chancellor
Leader of the House of Lords and Lord President of the Council

Mr Frank MULHOLLAND
Ms Meg HILLIER

Solicitor General, Scottish Government
Parliamentary Under Secretary of State, Home Office

Commission:

Mr Jacques BARROT

Vice-President

ITEMS DEBATED

MIXED COMMITTEE

In the margins of the Council, the Mixed Committee (UE, Norway, Iceland, Liechtenstein and Switzerland) met on Thursday 5 June 2008 at 10.00 with a view to discussing the following items:

Schengen Information System (SIS)

The Mixed Committee took note of the current state of play and of a new schedule for implementing the second generation of SIS (SIS II).

In accordance with the schedule, the date for migration from SIS1+ to SIS II is foreseen for September 2009.

The schedule was afterwards adopted by the Council without discussion (see page 21).

Return of illegally staying third-country nationals

The Mixed Committee expressed support for an overall compromise on the proposal for a Directive of the European Parliament and of the Council on common standards and procedures in member states for returning illegally staying third-country nationals, the "Return directive" (see also page 9).

Other business

The Mixed Committee took note of a common letter of the Minister of Foreign Affairs of Hungary, Poland and the Slovak Republic on the state of implementation of the local border traffic regulation 1931/2006.

The Greek delegation gave additional information concerning the difficulties that their country is facing as a result of illegal immigration and on how they are dealing with asylum applications.

RETURN OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS

The Council confirmed the support given by the Mixed Committee to an overall compromise on the proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (the "Return Directive").

The Presidency will inform the Parliament about the content of this compromise. The Council hopes that an agreement in first reading with the European Parliament will be possible on this basis.

Background

This Directive will establish a common set of rules applicable to third-country nationals staying illegally in the territory of Member States, irrespective of which Member State. The Directive will ensure a more harmonised and effective approach to return procedures on the part of Member States while respecting the rights of third-country nationals in an illegal situation.

This Directive follows from the need to have common rules on returns as a result of the development of Europe as an area without internal borders and with a common immigration policy.

The Directive will leave unaffected the procedural and substantive safeguards for asylum seekers, regulated in another Directive.

The Directive makes special provision for vulnerable persons including in particular unaccompanied minors.

Other important features of the Directive include the following:

The ending of the illegal stay of non-EU nationals will be carried out through a fair and transparent procedure which sets out the rights for illegally staying persons facing return.

The decisions which will be taken under this Directive will be adopted on a case-by-case basis and will be based on objective criteria.

The Directive provides for a return decision to be issued for any third-country national staying illegally in the territory of a Member State subject to certain exceptions (e.g. where an autonomous residence permit or other authorisation to stay is granted for compassionate, humanitarian or other reasons).

The return decision will impose an obligation on the third-country national staying illegally to leave the territory of the Member State concerned. Persons to whom a return decision have been issued will be allowed the opportunity to leave voluntarily unless there are specific grounds which preclude the granting of such a period such as a risk that the third-country national concerned will abscond.

Detention will only be permitted where other less coercive measures cannot be applied in the case and will require a decision in writing with reasons in fact and in law. Detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress. It shall be subject to reviews by a judicial authority at reasonable intervals.

The maximum period of detention will be limited to six months (with the possibility of extending it for a further twelve-month period in specified circumstances e.g. due to lack of co-operation by the third-country national). When it appears that a reasonable prospect of removal no longer exists detention will cease to be justified and the person concerned will be released.

Detention will be carried out as a rule in specialised detention facilities.

The draft Directive deals with key issues in the policy of return such as the voluntary departure of returnees, the execution of a return decision through a removal procedure, the postponement of removal, the imposition of entry bans as accompanying measure to a return decision, the form of the return decision, the remedies against a return decision and the safeguards for a returnee pending return, the possibility of an accelerated procedure for return in certain cases and the detention of returnees and its conditions.

This proposal was submitted by the Commission in 2005 and has been examined at length, under successive presidencies. It is to be adopted in co-decision with the European Parliament.

EXTENSION OF LONG-TERM RESIDENT STATUS TO BENEFICIARIES OF INTERNATIONAL PROTECTION

The Council held a debate on this proposal which aims at amending Directive 2003/109/EC with a view to extending the possibility of obtaining the long term resident status to beneficiaries of international protection.

The debate focused on the scope of the Directive. A majority of delegations could support the inclusion of both refugees and beneficiaries of subsidiary protection in the scope of the directive, without any difference of treatment between the categories. But some delegations argued for a broader scope of the directive to include other forms of protection granted by member states, while others were in favour of limiting the scope to refugees only.

The Presidency, noting that the necessary unanimity to adopt the directive could not be obtained today, concluded that the negotiations on this file should continue under the French Presidency.

Council Directive 2003/109/EC determines the status of third-country nationals who are long-term residents (residing more than 5 years in a member state). At the time of the adoption of this directive, the Council welcomed the Commission commitment to follow it up with a proposal for the extension of long-term resident status to refugees and persons benefiting from subsidiary protection. The new Commission proposal, presented in June 2007, responds to this commitment.

RESETTLEMENT OF THE REFUGEES FROM IRAQ

At the initiative of the German delegation, the Council held an exchange of views on the resettlement of refugees from Iraq in the European Union. The Council expressed concern about the humanitarian situation of displaced persons inside Iraq and Iraqi refugees in neighboring countries while acknowledging the heavy burden being placed on those countries.

Ministers underlined that protection should continue to be provided primarily in the region itself in order to facilitate the return of refugees and internally displaced persons to their homes. They welcomed the contributions which Member States are already providing by giving financial assistance to the region, by hosting asylum seekers and refugees from Iraq and by resettling refugees under national programmes. In particular, Member States were encouraged to increase or create, on a voluntary basis, resettlement opportunities for vulnerable persons from Iraq in need of protection.

Member States were asked to cooperate with UNHCR and other relevant organizations and actors in the region in the implementation of resettlement. The Commission was invited to examine the possibilities for the resettlement of Iraqi refugees to be funded under existing programmes.

The Council noted that many Member States expressed their readiness to offer or to further explore resettlement opportunities for Iraqi refugees. The Council will continue the discussion on this issue under the French Presidency.

STEPPING UP COOPERATION FOR PURPOSES OF PREVENTION AND INVESTIGATION OF CRIMINAL OFFENCES

The Council reached a general approach on a decision laying down the necessary administrative and technical provisions for the implementation of a decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the "Prüm decision").

The "Prüm decision", agreed by the council on June 2007, is designed to improve the exchange of information between authorities responsible for the prevention and investigation of criminal offences.

To this end, the decision contains rules in the following areas:

- on the conditions and procedure for the automated transfer of DNA profiles, dactyloscopic data and certain national vehicle registration data,
- on the conditions for the supply of data in connection with major events with a cross-border dimension,
- on the conditions for the supply of information in order to prevent terrorist offences, and
- on the conditions and procedure for stepping up cross-border police cooperation through various measures.

The implementing decision establishes those common provisions which are indispensable for administrative and technical implementation of the forms of cooperation set out in the Prüm decision, especially for automated exchange of DNA data, dactyloscopic data and vehicle registration data.

TERRORISM - REPORT BY THE EU COUNTER-TERRORISM COORDINATOR

The Council held a debate on counter-terrorism on the basis of a report presented by the EU Counter-terrorism coordinator (CTC), Mr Gilles de Kerchove.

The Council appreciated the analysis made by the CTC and shared his views on the proposals that he made to concentrate work in the coming months on the prevention of radicalisation and on the identification of technical assistance to Northern Africa/Sahel and Pakistan.

The Council also invited the Commission to present its announced communication on radicalisation as early as possible.

The EU CTC's report, which is a response to the European Council's request for a report every six months, summarises progress since December 2007 and the state of play regarding ratification of the conventions and implementation of the legislative acts regarded as having priority (document 9416/1/06).

The CTC's priorities for further action in the field of EU counter-terrorism are set up in document 9417/08 and relate, in particular to information sharing, the issue of radicalisation, and the technical assistance to non-EU countries.

In December 2005 the European Council adopted the European Counter-Terrorism Strategy, which has provided the framework for EU activity in this field.¹ The strategic commitment of the Union is to combat terrorism globally while respecting human rights, and to 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.

¹ 14469/4/05 REV 4

AGREEMENT WITH AUSTRALIA ON TRANSFER OF PASSENGER NAME RECORD

Pending the lifting of a Parliamentary reservation, the Council reached a general approach on a draft agreement between the European Union and Australia on the processing and transfer of EU-sourced passenger name record (PNR) data to the Australian Customs Service (document *9127/2/08*).

On 28 February 2008 the Council decided to authorise the Presidency, assisted by the Commission, to open negotiations for this agreement. Those negotiations have been successful and a draft agreement has been drawn up.

The agreement contains detailed assurances for the protection of PNR data transferred from the EU concerning passenger flights to or from Australia.

Australia and the EU will periodically review the implementation of the agreement, so as to allow them, in the light of such a review, to take any action deemed necessary.

PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

The Presidency informed the Council of a first reading agreement reached on 21 May 2008 with the European Parliament on a proposal for a directive on the protection of the environment through criminal law.

Once formally adopted by both Institutions, the Directive will establish a minimum set of conducts that should be considered criminal offences throughout the EU when unlawful and committed intentionally or with at least serious negligence. Inciting, aiding and abetting of such conducts will equally be considered a criminal offence.

Those conducts are:

- the discharge, emission or introduction of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the environment (quality of air, quality of soil, quality of water, animals or plants);
- the collection, transport, recovery and disposal of waste, which causes or is likely to cause death or serious injury to any person or substantial damage to the environment;
- the shipment of waste, whether executed in a single shipment or in several shipments which appear to be linked;
- the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant causes or is likely to cause death or serious injury to any person or substantial damage to the environment;
- the production, processing, handling, use, holding, storage, transport, import, export and disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the environment;
- the killing, destruction, possession, taking and trading of specimens of protected wild fauna or flora species, except for cases when the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;

- any conduct which causes the significant deterioration of a habitat within a protected site;
- production, importation, exportation, placing on the market or use of ozone-depleting substances.

Each Member State shall take the necessary measures to ensure that these offences are punishable by effective, proportionate and dissuasive criminal penalties.

SHIP-SOURCE POLLUTION

The Council took note of the state of play regarding a proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements.

In the aftermath of major accidental oil spills and the increasing uncontrolled operational discharges of polluting substances from ships at sea, the Commission proposed in 2003 a Directive providing that ship-source pollution should be considered as criminal offence and consequently should be subject to criminal penalties. The Commission also proposed a Framework decision providing for the approximation of criminal penalties' levels for the ship-source pollution criminal offences.

These two instruments were adopted by the Council in 2005. But the Court of Justice annulled the above-mentioned Framework Decision in 2007 considering that it was adopted by the Council on a wrong legal basis.

The Commission therefore proposed in March 2008 a new Directive with a view to filling the legal vacuum created by the annulment by the Court. The examination of the proposed Directive started under Slovenian Presidency and will continue under successive Presidencies.

HIGHER STANDARDS FOR DECISIONS RENDERED IN ABSENTIA

The Council reached a general approach on a draft Framework Decision on enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition in respect of decisions rendered in the absence of the person at the trial (trials "in absentia").

The Framework Decision means that Member States should enforce each others' judgments

in even greater confidence that proper safeguards are in place for defendants who were convicted in their absence. Differences in approach across the European Union have been creating a degree of uncertainty and delay in such cases. The Framework Decision aims at addressing these problems, while fully respecting the persons' rights of defence.

The agreement includes notably a clear requirement to guarantee a right to a retrial or appeal when the defendant was not properly informed about the original trial and had not appointed a lawyer to represent him or her.

In order to achieve its aims, the Framework Decision proceeds by modifying existing instruments on mutual recognition (Framework Decisions on the European arrest warrant, on financial penalties, on confiscation orders, on transfer of sentenced persons, and on the supervision of probation measures and alternative sanctions). The new provisions should also serve as a basis for future instruments in this field.

The initiative for a Framework Decision on "in absentia" was presented on 11 January 2008 by Slovenia, France, the Czech Republic, Sweden, Slovakia, the United Kingdom and Germany.

EUROJUST

The Council, subject to further discussions on one issue, agreed on a compromise package on certain articles of a draft Decision on the strengthening of Eurojust.

The agreement related to articles concerning a 24/7 on-call coordination, the exercise of powers of national members of Eurojust, Eurojust national coordination system and the transmission of information to Eurojust.

During its meeting of 18 April 2008, the JHA Council already reached a general approach on some other articles related to Eurojust's composition, tasks, status of its national members and staff.

This proposal for reinforcing Eurojust was submitted on January 2008 by Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal.

MAINTENANCE OBLIGATIONS

The Council agreed a set of political guidelines concerning a proposal for a Regulation on jurisdiction, applicable laws, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

The six elements of the guidelines agreed refer to the scope, jurisdiction, applicable law, recognition and enforceability, enforcement and a review clause. In particular, the Council agreed on the principal goal of the Regulation, which is the complete abolition of exequatur on the basis of harmonised applicable law rules.

The ambition of the proposal is to eliminate all obstacles which still today prevent the recovery of maintenance within the European Union, in particular the requirement of exequatur procedure. By abolishing this procedure all decisions on maintenance obligations would be allowed to circulate freely between the Member States without any form of control on the substance in the Member State of enforcement and this would significantly speed up the recovery of maintenance owed. This will enable the creation of a legal environment adapted to the legitimate expectations of the maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order capable of circulation without obstacles in the European area of justice and enabling regular payment of the amounts due.

JURISDICTION AND APPLICABLE LAW IN MATRIMONIAL MATTERS (ROME III)

The Council had a debate on a proposal for a Council Regulation on rules concerning applicable law in matrimonial matters (Rome III).

A large majority of Member States supported the objectives of this proposal for a Council Regulation. Therefore and due to the fact that the unanimity required to adopt the Regulation could not be obtained, the Council established that the objectives of Rome III cannot be attained within a reasonable period by applying the relevant provisions of the Treaties. Work should continue with a view to examining the conditions and implications of possibly establishing enhanced cooperation between Member States.

The purpose of this Regulation is to provide a clear and comprehensive legal framework, covering both jurisdiction as well as applicable law rules in matrimonial matters, and allowing the parties a certain degree of autonomy in choosing the competent court and applicable law in case of divorce and legal separation.

Spouses would be allowed to choose a competent court or the law applicable to divorce. In the absence of a choice of law by the spouses, the text would introduce conflict-of-law rules. According to the proposal, there is a cascade of connecting factors: the divorce is governed by the law of the country of habitual residence of both spouses, failing that, by that of the last habitual residence of the spouses if one of them still resides there; failing that, of the common nationality of the spouses or, failing that, by the law of the forum. The conflict-of-law rules of the proposal aim at ensuring that, wherever the spouses lodge their request for divorce, the courts of any Member State would normally apply the same substantive law, (therefore avoiding the "forum shopping").

E-JUSTICE

The Council took note of a report on progress made during the Slovenian Presidency on e-justice.

The report describes the work done on issues like a prototype for a European e-justice portal, its content, videoconferencing, or getting access to electronic registers.

It also describes priorities for further work, such as:

- introducing additional sets of content to the e-Justice portal in particular relating to legal aid, mediation and translation;
- continuing the creation of conditions for the networking of insolvency registers and to the extent possible discussing the possibilities to create the conditions for the networking of commercial and business registers and land registers;
- giving all the necessary technical assistance to facilitate the networking of criminal records;
- finalising technical preparations for the use of IT for the European payment order procedure, in full compliance with Regulation (EC) No 1896/2006 by the end of November 2008;
- facilitating the use of video-conferencing technology for communication in cross-border proceedings, in particular for the taking of evidence and interpretation;
- completing technical work by the end of December 2008 on the concept of authentication and securisation in the context of the portal and continuing technical work on interoperability and standardisation.

The working party on legal data processing will, in the light of the Commission's Communication of 30 May 2008, work on aspects related to the constitution of a coordination and management structure capable of developing multiple projects on a large scale and within a reasonable timeframe in the field of e-justice, and will launch discussions on the establishment of a multi-annual work programme.

EXTERNAL DIMENSION OF JUSTICE AND HOME AFFAIRS (JHA)

The Council took note of the progress made regarding the implementation of the strategy for the external dimension of JHA.

This strategy, adopted by the Council in December 2005, can be seen as one of the practical expressions of the wider European Security Strategy adopted by the European Council in 2003. It aims at both setting thematic priorities, clarifying underlying principles, reviewing mechanisms and tools and presenting EU structures and processes which are involved in the field of JHA-RELEX policies.

The Strategy holds that "The Commission and Council Secretariat will systematically monitor the progress of JHA external activity and report to the JHA Council and GAERC every 18 months". An early Progress report was issued in November 2006, which provided a valuable assessment of the Strategy's implementation. In the perspective of the Strategy's new reporting due in June 2008, time has come to carry out a second evaluation.

The second progress reports focus on implementation efforts in 2007 and the first half of 2008 as regards thematic and geographical priorities and call the attention of the Council to areas, where more work might be done, in particular: taking forward civil law cooperation, coping with data protection requirements, improving existing cooperation, establishing new partnerships and designing more effective instruments.

OTHER ITEMS APPROVED

CIVIL LAW

The Hague Convention of 1996 on the international protection of children

The Council adopted a decision authorising Belgium, Germany, Ireland, Greece, Spain, France, Italy, Cyprus, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Finland, Sweden and the United Kingdom to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of parental responsibility and measures for the protection of children (7573/08).

The decision also authorises certain member states to make a declaration on the application of the relevant internal rules of Community law.

Judicial cooperation in civil matters - External relations strategy

The Council agreed on external relations strategy in the field of judicial cooperation in civil matters, with the aim of updating the general framework for the strategy and to ensure its effective implementation.

The document is not a legal framework but rather an evolving process of defining and achieving policy objectives in full conformity with the provisions of the EC Treaty.

In The Hague Programme the European Council called for the development of a strategy reflecting the Union's special relations with third countries, groups of countries and regions and focusing on the specific needs for JHA cooperation with them.

In April 2006 the Council approved a strategy document outlining aspects of judicial cooperation in civil matters (8140/06). As indicated in this document, the development of an area of freedom, security and justice can only be successful if it is underpinned by a partnership with third countries on these issues which includes strengthening the rule of law and promoting respect for human rights and international obligations.

Recognition and enforcement of judgments in civil and commercial matters

The Council adopted a decision approving the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which will replace the Lugano Convention of 16 September 1988 (9196/08).

Contractual obligations in civil and commercial matters

The Council adopted a Regulation aimed at harmonising conflict-of-law rules concerning contractual obligations, accepting all amendments voted by the European Parliament at first reading ([3691/07](#) and [7689/08](#) ADD 1).

The new Regulation will replace the 1980 Rome Convention on the law applicable to contractual obligations, while modernising some of its rules.

In the context of the European judicial area it is important to improve certainty as to the law applicable, the predictability of the outcome of litigation and the free movement of judgments. The new Regulation will assure that even though the substantive law of the Member States is different, all courts of the Member States will apply the same law – be it their own or that of another EU country – to the contract in question.

The Regulation is based on the principle of party autonomy, i.e. in most cases the parties are free to choose the law to govern their contract. However, in the absence of choice, the Regulation sets out clear and predictable rules to determine the law applicable to a contract. Apart from the general regime, it also contains specific conflict-of-law rules for particular cases such as consumer contracts, contracts of carriage and individual employment contracts.

COOPERATION IN POLICE AND CRIMINAL LAW MATTERS

Further development of the SECI centre - *Council conclusions*

The conclusions can be found in document 9395/08.

Cooperation on organised crime, corruption, illegal immigration and counter-terrorism

The Council to took note of the second report on the state of implementation by member states and EU bodies of the action-oriented paper on improving cooperation on organised crime, corruption, illegal immigration and counter-terrorism between the EU, the Western Balkans and relevant European Neighbourhood Policy countries.

Report on fight against organised crime

The Council took note of a report on the state of implementation by member states and EU bodies of EU priorities for the fight against organised crime based on Europol's 2007 Organised Crime Threat Assessment (OCTA).

The Council sets such priorities every two years. The current priorities having been decided in June 2007 (7547/3/0) and it will adopt its next conclusions on this topic in 2009. Implementation of the priorities, however, is monitored annually.

European Crime Prevention Network (EUCPN) Annual report 2007 - *Council conclusions*

The conclusions can be found in document 9945/08.

Assistance to produce a common threat assessment on organised crime for South East European region - *Council conclusions*

The conclusions can be found in document 9731/08.

Application of the European Arrest Warrant - Evaluation report

The Council took note of a report on the first seven evaluation visits carried out in Ireland, Denmark, Belgium, Estonia, Spain, Portugal and the United Kingdom within the framework of the fourth round of mutual evaluations on the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States.

It decided to forward it to the European Parliament for information.

CIVIL PROTECTION

European critical infrastructure

The Council reached a political agreement on a directive on the identification and designation of European Critical Infrastructure (ECI) and the assessment of the need to improve their protection (9403/08).

The directive establishes the necessary procedure for the identification and designation of ECI and a common approach to the assessment of the needs to improve the protection of such infrastructure in order to contribute to the protection of people. The directive concentrates on the energy and transport sector and will be reviewed after three years, in order to assess its impact and the need to include other sectors within its scope, such as the Information and Communication Technology (ICT) sector.

"European Critical Infrastructure" are those assets, systems or parts thereof located in EU member states which are essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people (e.g. electricity, gas and oil production, transport and distribution ; telecommunication ; agriculture ; financial and security services ; etc.), and the disruption or destruction of which would have a significant impact on at least two EU member states.

Critical infrastructure industries are becoming more and more interdependent as the economic, technological, and social processes of globalization intensify. Therefore, the damage or loss of a piece of infrastructure in one member state may have negative effects on several others and on the European economy as a whole. Because of this trans-boundary dimension, an integrated EU-wide approach would complement and have an added value to the already existing national programmes for critical infrastructure protection in place in the member states.

Cooperation with the candidate countries and potential candidate countries of the Western Balkans in the field of Civil Protection

The conclusions can be found in document 9199/08.

VISA

EU/Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis, and the Seychelles - Visa agreements

The Council adopted decisions authorising the Commission to open negotiations for the conclusion of short-stay visa waiver agreements between the European Community and Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis, and the Seychelles.

EUROPOL

Cooperation between Europol and Eurojust

The Council adopted the following statement on the cooperation between Europol and Eurojust:

"The Council urges Europol and Eurojust to prepare amendments to their cooperation agreement, before the end of 2008, including in particular the mutual exchange of information necessary for the achievements of the tasks of Europol and Eurojust and in keeping with their respective legal frameworks. These amendments should include:

- a) Enhancing the possibility for Eurojust to request Europol to open, in accordance with the Europol legal framework, an Analytical Work File.
- b) Formalising the circumstances under which :
 - i) Europol provides Eurojust with results of Analytical Work Files. This information should in particular include strategic analysis and results that may need a judicial follow up.
 - ii) Eurojust participates in AWFs
- c) Formalising the circumstances under which Eurojust provides Europol with information for the purpose of its AWFs, as well as other information and advice which may be required for the tasks of Europol

The Council further decides that a Task Force should be set up by the Presidency, under its responsibility, to assist Europol and Eurojust in preparing the above mentioned amendments. The Commission shall form part of the Task Force. The Presidency shall report on progress on this item to the Article 36 Committee during the French Presidency."

Possible cooperation mechanisms between civilian ESDP missions and Europol as regards the mutual exchange of information - *Council conclusions*

The conclusions can be found in document 9657/08.

Budget for 2009 - Financing plan 2009-2013

The Council endorsed the Europol budget for 2009 (7802/08). Europol budget for 2009 amounts to EUR 65.4 million (EUR 63.9 million in 2008).

The Council took also note of the Europol financing plan for 2009-2013 (7803/08) and decided to forward them to the European Parliament for information.

SCHENGEN

SIS II global schedule

The Council adopted the Schengen Information System (SIS) II global schedule that will allow all sides - Schengen states, non-Schengen states and the Commission - to prepare their planning for the further development and start of the operations of the SIS II.

Schengen evaluation - *Council conclusions*

The Council adopted the following conclusions:

"The Council of the European Union:

- a) Confirming the Schengen Evaluation Working Party's mandate as laid down in SCH / ex-COM (98) 26 def. and striving for a more integrated approach towards Schengen evaluations;

- b) Welcoming the enlargement of the Schengen area to 24 Member States, resulting in a vast area stretching from the Atlantic Ocean to the Baltic Sea;
- c) Considering the new challenges of the European space in the field of security and the new threats linked to (the development of) increasing immigration pressure, organised crime and terrorism;
- d) Reaffirming the need to continue evaluations of Schengen candidate states prior to their entry into the Schengen area and to render the Schengen Evaluation Working Party's working methods and activities more efficient as regards ensuring the correct application of the provisions of the Schengen acquis by the Member States;
- e) Having regard to the objective of the Hague Programme concerning the new instrument which is to be proposed by the Commission to supplement the existing Schengen evaluation mechanism,

Has adopted the following conclusions:

1. The evaluation of Schengen candidate countries shall continue according to the existing mandate (SCH/ex-COM (98) 26 def.) to ensure that they fulfil all the necessary conditions prior to the full application of the Schengen acquis.
2. The evaluation of the correct application by Member States of the Schengen acquis shall be organised by way of:
 - "classic" evaluations on a country-by-country basis, starting with those Member States which have not been evaluated for a number of years and which require evaluation of all parts of the Schengen acquis;
 - supplementary thematic and/or regional evaluations involving one or more Member States or regions based on risk analyses (provided by relevant stakeholders, such as FRONTEX, EUROPOL, the Member States and the Commission).
3. To this end, an indicative five-year programme of continued "classic" evaluations of Member States already applying the Schengen acquis shall be adopted.

4. A supplementary thematic and/or regional evaluation schedule supported by and reflecting analyses of relevant stakeholders can be adopted as part of the programme of each Presidency.
5. A full or partial evaluation of Member States' public authorities which are responsible for the application of the Schengen *acquis* and which have undergone a fundamental reorganisation can also be adopted as part of the Scheval programme of each Presidency.
6. The Multi-Presidency Proposal for a Schengen Evaluation Programme (6949/3/08), approved by the Schengen Evaluation Working Party, shall serve as the basis for planning the Working Party's evaluation activities for the next five-year period. This document can be updated and/or amended depending on future developments, including developments with regard to the instrument to be proposed by the Commission to supplement the existing Schengen evaluation mechanism in accordance with the Hague Programme."

Application of SIS in Switzerland

The Council approved a decision on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System (SIS) in Switzerland (9059/08).

The decision allows for real SIS data to be transferred to Switzerland as from 9 June 2008, and allows Switzerland to enter data into the SIS and use SIS data as from 14 August 2008.

The concrete use of data by Switzerland will allow the Council to verify the correct application of the Schengen *acquis* provisions relating to the SIS. This evaluation is scheduled by the end of August or beginning of September 2008.

The lifting of checks at internal borders with Switzerland is foreseen for the end of 2008. Until this date, Switzerland is not would not be obliged to refuse entry on its territory to or to expel nationals of third states for whom an SIS alert has been issued by a member state for the purpose of refusing entry.

According to the agreement concluded by the EU and Switzerland concerning Switzerland's association with the implementation, application and development of the Schengen *acquis* (Council decisions 2004/849/EC and 2004/860/EC), the provisions of the Schengen *acquis* would only be applied in Switzerland following a Council decision, after verification that a satisfactory level of data protection exists. Such a verification took place in March 2008 and the Council concluded that the necessary conditions had been fulfilled.

Sirene Manual - declassification

The Council adopted a decision on declassifying the Annex 4 of the Sirene Manual (9481/08).

The Sirene Manual is a set of instructions to operators in the Sirene bureaux of each member state, which describes in detail the rules and procedures governing the bilateral or multilateral exchange of supplementary information required for the implementation of certain provisions of the Schengen Convention.

MIGRATION AND BORDERS CONTROL

Mobility partnerships with Cape Verde and with the Republic of Moldova

The Council took note of two joint declarations on mobility partnerships between the EU and Cape Verde (9460/08 ADD2) and between the EU and the Republic of Moldova (9460/08 ADD1+COR1).

The two joint declarations were signed in the margins of the Council.

In December 2007, the European Council welcomed, in the framework of the implementation of the a global approach to migration, the Commission communication on circular migration and mobility partnerships. The European Council stated that the mobility partnerships should be considered in those cases where they bring added value, both to the EU and the third country, on the management of migration flows and on the understanding that the willingness to contribute to this partnership and to cooperate actively is the basis for the opportunities offered by them.

Enhancing the global approach to migration - *Council conclusions*

The conclusions can be found in document 9604/08.

Development of the FADO system (False and Authentic Documents Online) - *Council conclusions*

The conclusions can be found in document 9665/08.

Management of external borders of the member states of the EU - *Council conclusions*

The conclusions can be found in document 9873/08.

Simplified regime for the control of persons at the external borders

The Council adopted a decision introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through their territories (PE-CONS 3607/08).

The decision is aimed at introducing a simplified regime for the control of persons at the external borders of the EU in order to avoid imposing unjustified administrative burdens on Bulgaria and Romania. Those burdens stem from the enlargement of the EU in 2004 and in 2007 and from the implementation of the Schengen acquis in the last acceding member states.

The proposed regime will be implemented on an optional basis: member states concerned have the possibility either to implement the new instrument or to continue issuing national visas as required by the Accession Treaties. If Bulgaria, Cyprus and Romania decide to apply this decision, they will notify the Commission thereof within 10 working days of the date of entry into force of the decision. The Commission will publish that information in the Official Journal of the EU.

The Council also adopted a decision amending decision 896/2006/EC enabling Bulgaria and Romania recognise certain residence permits issued by Switzerland and Liechtenstein as equivalent to their transit visa (PE-CONS 3608/08).

DEVELOPMENT COOPERATION

EU/ACP Council of Ministers - Preparation

The Council approved a draft agenda for the 33rd session of the ACP-EC Council of Ministers that will take place in Addis Ababa, Ethiopia, on 12-13 June 2008.
