



Brussels, 24 February 2009

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Brussels, 26 and 27 February 2009

*The Justice and Home Affairs Council will hold a two-day meeting on 26 February (under the chair of **Ivan Langer, Minister of Interior**) and 27 February (under the chair of **Jiří Pospíšil, Minister of Justice**) in the Justus Lipsius building in Brussels.*

*On Thursday 26, the Council session will be preceded by a meeting of the Mixed Committee (EU + Norway, Iceland, Liechtenstein and Switzerland), starting at 10.00, which will examine the state of play of the **Schengen Information System (SIS II)**. Simultaneously, a set conclusions on SIS II will be put forward to the Council for adoption.*

*The Council will start with a public exchange of views on a new proposal for establishing a **European Asylum Support Office**, following the presentation by the Commission. Later on, a joint initiative elaborated by Mediterranean countries will allow the Council to hold an exchange of views on the fight against **illegal immigration in the Mediterranean** region.*

*The Council will also analyse the current situation of **Iraqi refugees in the EU** and will be invited to take note of a report concerning the **free movement of workers** inside the Community.*

*The working lunch will be an opportunity for interior ministers to express views on two different topics: the appointment of a new **director for Europol** and the situation in **Guantanamo**.*

*On Friday 27, the Council is expected to hold an orientation debate on a draft framework decision concerning **conflicts of jurisdiction in criminal proceedings**.*

*EU ministers for justice will be dealing with a negotiating mandate for a **mutual legal assistance agreement with Japan**.*

*Finally, they will take stock of the state of play on the implementation of the European **e-Justice action plan**.*

¹ This note has been drawn up under the responsibility of the press office.

Over lunch, ministers of justice will discuss the procedure concerning conclusion of treaties between the European Community and third states if the treaties contain coercive measures or criminal provisions.

The presidency will organise press conferences at the end of each Council session: on Thursday 26 after lunch and on Friday 27 before lunch.

Press conferences and public events can be followed by video streaming:

<http://video.consilium.europa.eu/>

* * *

HOME AFFAIRS (Thursday 26 February)

Schengen Information System: SIS II

The Council will be invited to adopt conclusions on the Schengen Information System « SIS II ». Beside that the Commission will present within the Mixed Committee (the EU countries and Norway, Iceland, Liechtenstein and Switzerland) the development of the SIS II project; the political debate might follow.

The second generation of the SIS II database is intended to facilitate the integration of a greater number of member states enabling them to fully participate into the Schengen cooperation space. Pending the SIS II development, 9 new member states were integrated into the current SIS 1+ application (named “SISone4all”) in 2007, plus Switzerland in 2008.

The conclusions will take note of the current status of the SIS II, including a number of technical difficulties that will put off the date for migration from the SIS 1+ to the new SIS II application. The entry into operation of SIS II was originally planned for September 2009.

Under the conclusions, the Council will endorse the implementation of a SIS II analysis and repair plan allowing the identification of operational solutions with a view to establishing, within a brief deadline, the calendar for the definitive entry into operation of SIS II.

The EU presidency is deploying the greatest efforts leading to a swift and successful completion of the project.

The Commission, responsible for the development of the central computerised system and the communication infrastructure, and the member states, which are in charge of the development of the national systems, remain committed to cooperate fully in order to achieve the common goals, including the creation of conditions for the integration of waiting countries into the Schengen structure (Bulgaria, Cyprus, Ireland, Liechtenstein, Romania and the United Kingdom).

European asylum support office

The Council will hold, in public session, a first exchange of views on a new proposal for establishing a European asylum support office (6700/09), supplemented by an amendment of the Decision on European Refugee Fund, in the context of the development of a common European asylum system. The exchange of views will follow a presentation by the Commission.

The main tasks of European asylum support office –designed as a regulatory agency without decision-making powers– would be the following:

- facilitate, coordinate and improve cooperation on asylum matters between the EU countries, improving therefore the international protection to asylum seekers;
- assist EU governments in comparing good practices and organising training at EU level in order to develop a more consistent and transparent asylum policy in the EU ;
- coordinate teams of national experts who can be deployed at the request of any EU country facing a heavy influx of refugees;
- provide scientific and technical assistance in cooperation with national authorities and the UN High Commission for Refugees;
- increase practical cooperation on asylum matters between EU and third countries.

The draft foresees that the new agency, with an estimate launching budget of 5 million €, will be governed by a management board where all the EU member states will be represented, together with the Commission and a representative of the United Nations High Commissioner for Refugees (as an observer).

If the proposal, submitted by the Commission on 18 February 2009, receives an early approval by the Council and the European Parliament, the asylum support office could be operational in 2010 . The decision on the location of the headquarters will be taken by the Heads of State and Government of the EU.

The proposal also meets the request made by the European Council last October, when adopting the European Pact on immigration and asylum (*13440/08*), to "establish in 2009 a European asylum support office with the task of facilitating the exchange of information, analysis and experience between Member States and developing practical cooperation between the administrations in charge of examining asylum applications".

Illegal immigration in the Mediterranean

Cyprus, Greece, Italy and Malta will introduce an initiative with a view to raise awareness and recommend action at EU level on the challenges posed by illegal migration and asylum in the Mediterranean region. The Council will subsequently hold an exchange of views on ways to combat illegal immigration.

The joint initiative, briefly presented at the mid-January informal ministerial meeting in Prague, lies on the Pact on immigration and asylum adopted by the European Council in October 2008. It intends to promote the spirit of mutual responsibility and solidarity between member states and with third countries concerned. The fundamental principles set out in the Pact are to be reflected in a series of measures that will be implemented at both EU and national levels.

The common initiative is aimed at reinforcing practical cooperation measures and coordinated synergies in order to enhance the capacity of the member states to protect the lives of illegal migrants and to regulate migratory flows entering from sea or land borders. These practical measures include intensifying efforts through the strengthening of Frontex (the agency for the management of operational cooperation at the EU's external borders) and the continuation of joint operations in the Mediterranean region.

The four Mediterranean countries also call for complementary actions with a view to assisting neighbouring countries in the areas of management of mixed migration flows, border control and the fight against illegal migration.

The attention on migration from the Mediterranean was previously reflected in the Council conclusions of 27-28 November 2008 concerning the global approach to migration (16041/08). The global approach offers a common policy framework which enables to improve the integration of migration issues into the EU's external relations, on the basis of an effective and balanced partnership with third countries.

An international conference on the extension of the global approach to the East and South-East is scheduled for April 2009 in Prague.

Free movement of EU citizens within the Community

The Council will be invited to exchange views on a report concerning the application of directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states (5553/09).

The report, elaborated by the Commission, presents an overview on how directive 2004/38/EC¹ is transposed into national law and how it is applied in everyday life.

It also encourages member states to launch awareness-raising campaigns to inform EU citizens of their rights under the directive.

In November 2008, the Council adopted conclusions on abuses and misuses of the right to free movement of persons. In the conclusions, the Council left open the possibility of a more extensive examination of the issue after the Commission submitted a report on the operation of the directive. Moreover, they underlined the importance which EU member states attach to protecting the right to free movement from the abuses created *inter alia* by illegal immigration (see press release 16325/1/08, page 27).

¹ Published in the Official Journal of the EU L 158, 30.4.2004, p. 77.

At the request of the Council, the Commission intends to offer information and assistance to member states by issuing guidelines at the beginning of 2009 on a number of issues, such as expulsions and fight against abuse, in order to facilitate an effective application of the directive.

Article 39 of directive 2004/38/EC requires the Commission to monitor the application of the provisions of the directive and to report to the European Parliament and to the Council.

Situation of Iraqi refugees in Europe

Interior ministers, after hearing information provided by the Commission, will have the opportunity to assess the progress made to date as regards the situation of Iraqi refugees in Europe.

Last November, the Council adopted a set of conclusions based on a Commission report on a mission in Syria and Jordan to examine the possibilities for the resettlement of Iraqi refugees in member states willing to receive them (*16325/1/08, page 23*).

At that occasion the Council emphasized that the main objective is to create the conditions in which displaced persons inside Iraq and refugees in neighbouring countries can return safely to their homes, while ensuring that the human rights of all Iraqis are protected and defended. It also requested the Commission to report at the beginning of 2009 on the information gathered from member states.

On 1 and 2 December 2008, the Netherlands convened a high-level meeting in The Hague aimed at contributing to a coordinated response by the EU to migratory flows from or to Iraq.

JUSTICE AFFAIRS (Friday 27 February)

Conflicts of jurisdiction in criminal proceedings

The Council will have an orientation debate on key elements of a draft framework decision on prevention and settlement of conflicts of jurisdiction in criminal proceedings, with a view to providing with political guidance to carry out further work (5208/09).

Some of the key elements concern, in particular, the objectives and scope of the future instrument, the competent authorities and the communication procedures.

The proposal is a joint initiative presented by the Czech Republic, Poland, Slovenia, Slovakia and Sweden last January.

In a common area of freedom, security and justice it is necessary to ensure that national authorities are made aware, at an early stage, of facts of a case which fall within the jurisdiction of two or more member states and that agreement is reached to concentrate, as far as possible, criminal proceedings for such facts in a single jurisdiction.

In order to achieve these principles, the following measures are proposed:

- avoiding, as early in the proceedings as possible, situations where the same person is subject to parallel criminal proceedings in different member states;
- ensuring that there is sufficient exchange of information between member states, from an early stage, about ongoing proceedings which are significantly linked to another jurisdiction;
- putting in place transparent rules and common criteria which will be applied when member states are seeking the agreement on the best placed jurisdiction;
- making it possible for the national authorities concerned to enter into direct consultations with each other in order to reach quickly an agreement.

The framework decision is aimed at improving judicial cooperation in the EU, as well as contributing to a better application of the principle of mutual recognition, both in the pre-trial and post-trial stage. It is also aimed at allowing a more thorough consideration of the rights and interests of individuals in relation to the place of the trial, including the victims protection. To avoid undue bureaucracy, in situations where more flexible instruments or arrangements are in place between Member States, those should prevail.

This initiative has been forwarded to the European Parliament for consultation.

EU/Japan negotiations on mutual legal assistance

The Council will examine the framework conditions for a mandate to be given to the EU presidency in order to enter into negotiations with Japan with a view to concluding a future agreement on mutual legal assistance with this country.

Such an agreement could contribute to strengthening and facilitating mutual legal assistance between Japan and the 27 EU member states, while safeguarding fundamental rights and guaranteeing respect for member states' common values. It would constitute a further element within the framework of the strategic partnership between the EU and Japan.

The launch of preliminary talks on cooperation in the area of mutual legal assistance in criminal matters was welcomed at the 16th EU-Japan summit in June 2007. The two sides held three informal meetings in 2007 and 2008 to assess the feasibility of concluding an agreement in this field.

Currently, none of the EU member states has a bilateral agreement of this kind with Japan.

e-Justice action plan

The Council will take note of the state of play as regards the implementation of the European e-Justice action plan (15315/08) adopted by the Council in November 2008 and which provides in particular for the setting up of a European "e-Justice" portal. The Council will specifically look into the work done so far to develop the portal and note the ongoing work on videoconferencing.

The first version of the portal is scheduled to be launched by December 2009.

Videoconferencing is an important aspect of the European e-Justice system, as approved by the ministers for justice at the informal meeting in January in Prague. In order to promote and facilitate the use of videoconferencing in cross-border proceedings, work has already been done on an information booklet (published by the Czech presidency on the occasion of an international e-Justice Conference in Prague, held on 17-18 February) and a draft manual. Further work will include issues such as a booking system for arranging videoconferences and interpretation via videoconferencing (booking system is supposed to be added to the European e-Justice portal in the mid-term horizon). In this respect, the presidency is planning to develop a pilot project in close cooperation with other interested member states regarding the creation and use of the booking system for cross-border videoconferencing.

The European e-Justice system is a step on the way to the completion of a European judicial area. It aims at simplifying procedures in cross-border proceedings and facilitating access to justice.

The term "e-Justice" means the use of information and communication technologies in the field of justice. The system is intended to serve as a tool not only for legal practitioners, judicial authorities and businesses, but also for citizens in general, informing them of their rights and of the ways to make use of these rights. Its purpose is to fulfil three basic functions:

- giving broad access to information in the field of justice, especially via the portal;
- enabling the use of electronic communication in cross-border judicial and extra-judicial proceedings between a court and the parties to the proceedings;
- improving communication between judicial authorities, for example by means of videoconferencing and secure electronic networks.

While the Commission, in close cooperation with the member states, is responsible for the practical implementation of the scheme, the Council will take the necessary management decisions on new projects.

A progress report will be submitted to the Council in June 2009.

The creation of the European e-Justice portal, videoconferencing and technical security issues were also topics discussed at an international conference on "e-Justice without barriers", held in Prague on 17/18 February 2009 (see www.justice2009.cz/en).

It remains a high priority of the current EU presidency.
