



**COUNCIL OF  
THE EUROPEAN UNION**



10551/09 (Presse 164)

**PROVISIONAL VERSION**

## **PRESS RELEASE**

2946th Council meeting

### **Justice and Home Affairs**

Luxembourg, 4-5 June 2009

Presidents

**Mr Martin PECINA**

Minister of Interior of the Czech Republic

**Ms Daniela KOVÁŘOVÁ**

Minister for Justice of the Czech Republic

# **P R E S S**

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10551/09 (Presse 164)

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**EN**

## **Main results of the Council**

*The Council adopted conclusions on the further direction of the **Schengen Information System "SIS II"**.*

*The Council and the governments of the member states adopted conclusions on the closure of the **Guantanamo Bay detention centre**.*

*Ministers held discussions on **asylum** as well as on **illegal immigration in the Mediterranean**.*

*The EU's counter-terrorism coordinator, Gilles de Kerchove, presented reports on the implementation of the **EU strategy to combat terrorism**.*

*The Council agreed on **procedures for the negotiation and conclusion of bilateral agreements** between member states and third countries concerning:*

- jurisdiction, recognition and enforcement of judgments and decisions *in matrimonial matters, parental responsibility and maintenance obligations*, and applicable law in matters relating to maintenance; and
- *applicable law in **contractual and non-contractual obligations**.*

*The Council adopted guidelines on a common frame of reference for European contract law.*

*Ministers for justice took note of the agreement reached with the European Parliament for amending directive 2005/35/EC on **ship-source pollution** and the introduction of penalties for infringements, with a view to the formal adoption of the instrument at later stage.*

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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.
- 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.

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## **PARTICIPANTS**

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

### **Belgium:**

Mr Stefaan DE CLERCK Minister for Justice  
Ms Annemie TURTELBOOM Minister for Policy on Migration and Asylum

### **Bulgaria:**

Ms Miglena TACHEVA Minister for Justice  
Mr Kalin SLAVOV Deputy Minister for the Interior

### **Czech Republic:**

Mr Martin PECINA Minister for Interior  
Ms Daniela KOVÁŘOVÁ Minister for Justice and Chairperson of the Government  
Legislative Council  
Ms Lenka PTÁČKOVÁ MELICHAROVÁ Deputy Interior Minister  
Mr Tomáš BOČEK Vice minister for EU and International Affairs

### **Denmark:**

Ms Birthe Rønn HORNBECH Minister for Refugee, Immigration and Integration Affairs

### **Germany:**

Mr Wolfgang SCHÄUBLE Federal Minister for the Interior  
Mme Brigitte ZYPRIES Federal Minister for Justice

### **Estonia:**

Mr Rein LANG Minister for Justice

### **Ireland:**

Mr Rory MONTGOMERY Permanent Representative

### **Greece:**

Mr Prokopios PAVLOPOULOS Minister for the Interior

### **Spain:**

Mr Francisco CAAMAÑO DOMÍNGUEZ Minister for Justice  
Mr Antonio CAMACHO VIZCAÍNO State Secretary for Security

### **France:**

Ms Rachida DATI Keeper of the Seals, Minister for Justice  
Mr Eric BESSON Minister for Immigration, Integration, National Identity  
and Development Solidarity

### **Italy:**

Mr Roberto MARONI Minister for the Interior  
Mr Angelino ALFANO Minister for Justice

### **Cyprus:**

Mr Louas LOUCA Minister for Justice and Public Order

### **Latvia:**

Mr Mārtiņš LAZDOVSKIS State Secretary, Ministry of Justice

### **Lithuania:**

Mr Raimundas PALAITIS Minister for the Interior  
Mr Remigijus ŠIMASIUS Minister for Justice

### **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:**

Mr Dezső AVARKESZI State Secretary, Ministry of Justice and Law Enforcement  
Ms Judit FAZEKAS LÉVAYNÉ State Secretary (with special responsibility), Ministry of  
Justice and Law Enforcement

**Malta:**

Mr Carmelo MIFSUD BONNICI

Minister for Justice and Home Affairs

**Netherlands:**

Mr Guusje ter HORST

Minister for the Interior and Kingdom Relations

Ms Nebahat ALBAYRAK

State Secretary for Justice

**Austria:**

Ms Maria FEKTER

Federal Minister for the Interior

Ms Claudia BANDION-ORTNER

Federal Minister for Justice

**Poland:**

Mr Andrzej CZUMA

Minister for Justice

**Portugal:**

Mr Rui PEREIRA

Minister for the Interior

Mr Alberto COSTA

Minister for Justice

**Romania:**

Mr Dan NICA

Vice Prime Minister, Minister for the Interior

Ms Alina BICA

State Secretary, Ministry of Justice

**Slovenia:**

Ms Katarina KRESAL

Minister for the Interior

Mr Aleš ZALAR

Minister for Justice

**Slovakia:**

Mr Josef BUČEK

State Secretary, Ministry of Interior

Ms Anna VITTEKOVA

State Secretary, Ministry of Justice

**Finland:**

Ms Tuija BRAX

Minister for Justice

Mr Antti PELTTARI

State Secretary, Ministry of the Interior

**Sweden:**

Mr Tobias BILLSTRÖM

Minister for Migration

Mr Magnus GRANER

State Secretary to the Minister for Justice

**United Kingdom:**

Lord WEST of SPITHEAD

Parliamentary Under Secretary of State for Security and Counter-Terrorism

Lord BACH

Parliamentary Under Secretary of State, Ministry of Justice

Mr Kenny MacASKILL

Cabinet Secretary for Justice (Scottish Government)

**Commission:**

Mr Jacques BARROT

Vice-President



**ITEMS DEBATED**

**SCHENGEN INFORMATION SYSTEM: SIS II - Council conclusions**

The Council held a debate on the further steps for the future of the Schengen Information System « SIS II ». and adopted the following conclusions:

“The Council of the European Union,

1. *Recalling* the Conclusions of the Council of 26-27 February 2009 on SIS II<sup>1</sup>,
2. *Reaffirming* that the entry into operation of the second generation Schengen Information System remains an absolute priority and requires a joint effort and close cooperation of the Member States and the Commission,
3. *Taking note of* the results of the repair and analysis period in the current SIS II project, while highlighting positive contribution of the SIS II Global Programme Management Board (GPMB),
4. *Taking note of* the results regarding the elaboration of an alternative technical scenario for developing SIS II based on SIS 1+ evolution (SIS 1+ RE) as part of a contingency plan,
5. *Welcoming* the submission of the Report by the Presidency and the Commission on the further direction of SIS II, containing an in-depth assessment and comparison of both scenarios, in the light of the criteria set out by the Council in its Conclusions on SIS II of 26-27 February 2009 (10005/09 + ADD 1), addressing in particular the following aspects:
  - (a) calendar for bringing the SIS II into operation,
  - (b) calendar for integration of Ireland, the United Kingdom, Cyprus, Bulgaria, Romania and Liechtenstein into the SIS,
  - (c) expenditures for the EU budget and for the Member States,

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<sup>1</sup> 6896/09

- (d) technical feasibility and corresponding risks,
  - (e) possible legal implications,
6. *Bearing in mind* the implications of the discontinuation of the current SIS II project, inter alia the contractual implications as set out in the Report referred to in paragraph 5,
7. *Notes*
- (a) the completion of the SIS II repair and analysis period, during which a considerable number of known issues and bugs have been fixed and solutions have been either designed or implemented to remedy them, while some other outstanding issues remain and need to be implemented taking into account recommendations and opinions given by the appropriate bodies;
  - (b) the ability of the alternative SIS 1+ RE scenario to realise the objectives of SIS II set out in the legal framework governing the establishment, operation and use of SIS II provided it is integrated into the SIS II legal framework;
  - (c) that both technical solutions provide for the possibility to integrate additional countries into the SIS, either after their completion or until then by using SISone4ALL in order to meet their declared calendar.
8. *Recalls* that the current instruments to develop and migrate to SIS II, set out in Council Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA ("Migration Instruments") will expire on 30 June 2010.
9. *Decides* that the development of SIS II will continue on the basis of the current SIS II project and that the SIS 1+ RE will be retained as the contingency plan for a period necessary to back the project until the tests defined in the milestones as laid down in the Annex are accomplished. In this regard,
- a) agrees to two milestones specifying the technical aspects of conditions and exit criteria which must be met in order to continue with the current SIS II project;
  - (b) *invites* the Commission to ensure that these milestones are part of the deliverables under the contract for the current SIS II project and to reach an understanding with its contractors that non-compliance with these milestones constitute resolute conditions with regard to the existing contracts;

- (c) *invites:*
- the Presidency to inform the Council about the results of the tests set out in the milestones on the basis of the assessment carried out jointly with the Commission and the SIS II Task Force, and the Global Project Management Board (GPMB);
  - the Commission jointly and in full agreement with the SIS II Task Force and the GPMB, to validate the results of these tests;
- (d) resolves in case tests demonstrate non-compliance with the milestone requirements, to decide to invite the Commission to stop the current SIS II project and to continue with the SIS II development on the basis of the SIS 1+ RE technical solution, unless the Council decides otherwise, within two months and on the basis of comprehensive financial and contractual information;
- (e) stresses the need, in that case, for a rapid integration of SIS 1+ RE into the SIS II legal framework, thus allowing for financing of its development from the EU budget including the possibility of delegating the budget implementation to national public sector bodies and immediate development.

10. *Urges* the Member States to finalise their SIS II national developments and pursue the necessary testing activities of their national SIS II with the central SIS II.

11. *Invites* the Commission:

- (a) to continue implementing necessary developments stemming from the analysis and repair period and the architecture review, including the proof of concept;
- (b) to table and immediately implement an enhanced IT management structure and approach for the SIS II project, along the lines indicated in 10237/1/09, building upon the experience of and the lessons learned from the global SIS II programme management approach established by the Council Conclusions of 26-27 February 2009, which:

- ensure utmost transparency, insight and increased participation of the Member States in order to best fulfil the needs of the project at its current stage of development and testing which require increased Member States involvement,
  - meeting the requirements of managing large scale IT-projects, reflect the common will of all Member States to give a fresh impetus to the project while being compliant with SIS II legal instruments, as it is considered by the Council as a key element in the project,
  - to this end further integrate GPMB into the whole management structure;
- (c) to submit as soon as possible, but by October 2009 at the latest, appropriate legislative proposals to amend the Migration Instruments.
12. *Reiterates* the invitation to the Commission to fully inform the European Parliament and the Council on a regular basis about the expenditure figures related to the central SIS II project and the measures taken to ensure the complete financial transparency.
13. *Invites* the Presidency and the Commission to keep the European Parliament fully informed about the latest state of play in the development of SIS II.”

**GUANTANAMO - Council conclusions**

The Council held a debate on the closure of the Guantanamo Bay detention centre and adopted the following conclusions:

“The Council of the European Union and the representatives of the Governments of the Member States

*Wishing* to foster closer transatlantic cooperation with the United States of America in the area of Freedom, Security and Justice based on shared values, in particular on respect for the rights of individuals and for the rule of law, principles resulting from the constitutional traditions of the United States and the EU Member States, and on mutual respect, common interests and reciprocity,

*Considering* that the European Union and the United States of America share the common objectives of fighting terrorism while upholding the rule of law and observing and promoting respect for international law, human rights and fundamental freedoms,

*Welcoming* the decision of the President of the United States of America to close the Guantanamo Bay Detention Centre and to order a review of detention, trial, transfer and interrogation policies in the fight against terrorism,

*Taking note* of the request made by the Government of the United States to assist it in finding residence for those persons “cleared for release”, who for compelling reasons cannot return to their countries of origin, but have expressed the wish to be received by one or other EU Member State or Schengen associated country,

*Reaffirming* that the primary responsibility for closing Guantanamo and finding residence for the former detainees rests with the United States,

*Taking note* that the United States recognises its responsibility in accepting certain former detainees who indicate a desire to be admitted to the United States.

*Wishing* to lend its support to this process against the background of a thorough review of US counter-terrorism policies consistent with the rule of law and international law in the expectation that the underlying policy issues would be addressed,

*Recognising* that decisions on the reception of former detainees and the determination of their legal status fall within the sole responsibility and competence of a receiving Member State or Schengen associated country,

*Considering* that as a rule third country nationals legally residing within one Member State or Schengen associated country have the right to move freely within the territories of the other Member States or Schengen associated countries, under conditions set by the provisions of Schengen acquis,

*Recognising* that as a result of the abolition of controls at internal borders within the Schengen area, a decision to accept a former detainee by one Member State would be relevant for other Member States and Schengen associated countries including in regard to internal security, and that therefore consultation and thorough information-sharing is important both before and after decisions to receive former detainees are taken including information on a change of residence of former detainees, in order to give all Member States and Schengen associated countries the opportunity to share relevant information and to take appropriate measures including measures that may temporarily affect freedom of movement if necessary, in accordance with the Schengen acquis and national law.

*Stressing* the importance of involving Schengen associated countries in information-sharing among the Member States as described in the annex to these Conclusions,

*Wishing* to contribute to creating conditions which may help those Member States that are willing to receive former detainees to cooperate with the United States Government in finding residence for those former detainees who are “cleared for release” and who the US administration does not wish to prosecute, and who for compelling reasons cannot return to their home countries of origin and who want to be transferred to a Member State or Schengen associated country,

*Call upon* the Member States who are willing to receive former detainees to consider accepting only those former detainees, who fall into the category defined above,

*Call upon* the receiving Member States to take into account the public order and security concerns including those of other Member States so as to avoid former detainees compromising the public order or internal security of the Member States and Schengen associated countries and also call upon the receiving Member States, without prejudice to possible support from United States, to promote integration of the persons concerned through appropriate measures, while fully respecting their human rights and fundamental freedoms,

*Agree* that information sharing through existing channels among all Member States and Schengen associated countries is equally important both before and after decisions to receive former detainees are taken,

*Agree* herewith on the mechanism for the exchange of information concerning former detainees of Guantanamo as described in the annex to these Conclusions,

*Take note* of the full support for these Conclusions on the part of the Schengen associated countries.

*Reaffirm* that nothing in these Conclusions should be interpreted as an invitation to those Member States or Schengen associated countries which do not intend to receive former detainees to do so. "

**Mechanism on the exchange of information concerning  
Guantanamo former detainees**

**Countries associated with the application of the Schengen acquis will be involved in both phases of the information sharing mechanism**, given the possibility under the rules of that acquis for third country nationals legally residing in one of the Member States or Schengen associated countries concerned to move within the entire Schengen area.

The decision on the reception of former detainees falls within the competence of a receiving Member State or Schengen associated country. As a result of the rule that third country nationals legally residing within one Member State or Schengen associated country have the right to move freely within the territories of the other Member States or Schengen associated countries, under conditions set by the provisions of the Schengen acquis such a decision would be relevant for other Member States or Schengen associated countries. The receiving Member State or Schengen associated country shall therefore take into account the public order and security concerns of other Member States and Schengen associated countries since it is the Member States which are responsible for ensuring security within the EU and the Schengen area.

Therefore the information sharing and cooperation are essential and fall within the **responsibility of the Member States and Schengen associated countries**.

Questions relating to the protection of **personal data** contained in information exchanged and the security of the data exchanged are governed by the national laws of the Member States and Schengen associated countries involved and by the EU and Council of Europe legislation and with full respect for human rights and fundamental freedoms.



**1<sup>st</sup> phase of information-sharing**

Any Member State or Schengen associated country considering the acceptance of a former detainee **will inform** all other Member States and Schengen associated countries before taking a final decision to that effect and provide the other Member States and Schengen associated countries with all information necessary, including the information on their envisaged legal status as soon as it is known, to make their own determination of the possible security risk implied by the reception and to check whether the person concerned is subject to judicial procedure. This is necessary to enable the latter to express any comments they may wish to make and/or to prepare such measures as they deem appropriate for internal security purposes.

To that end, as soon as a Member State or Schengen associated country has been asked by the United States to receive persons and has indicated its willingness to consider such a reception, that Member State or Schengen associated country shall request and obtain from the United States all available (confidential and other) intelligence and information concerning that person, relevant in order to allow it to take an informed decision and to share the necessary information with other Member States and Schengen associated countries.

All Member States as well as Schengen associated countries will be informed about the final decisions taken by the Member States or Schengen associated countries concerned.

**There are existing information-sharing mechanisms among the above-mentioned countries** (such as among the national entities competent in the framework of security intelligence, SIRENE, Europol) which will be used, subject to all legal conditions, as in other similar cases, for information exchange.

The Member States will use these mechanisms in the most efficient way, so as to allow for the widest possible exchange of information among all Member States and Schengen associated countries which is necessary to give a full picture of the possible implications of accepting a former detainee.

**In addition to ensuring awareness among the Member States at the EU level**, any Member State or Schengen associated country considering the acceptance of a former detainee should pass this general information on the request received by the US as well as the information about its decision (accept or not) to the Mixed Committee at the level of senior officials, fully in line with the rules on data protection.

**2<sup>nd</sup> phase of information-sharing**

Without prejudice to existing channels for the sharing of information and intelligence, the law enforcement and judicial cooperation information channels or to the specific mandates of existing Working Parties of the Council and of such bodies as Europol, there may also be a need to allow for sharing of information/experiences about the good practices for integrating former detainees into the society, media communication, and possible general security aspects related to the persons accepted including information on a change of residence of former detainees, in accordance with national and European legislation, once they have been admitted to reside in the territory of a Member State or Schengen associated country. This may also cover former Guantanamo detainees who have already been received in the past.

This exchange of information and experiences could be conducted through competent existing Working Parties of the Council or informal ad-hoc Groups (e.g. Friends of Presidency Group) under the supervision of Coreper at the request of any delegation if such a need should arise.”

**ASYLUM**

In public deliberation, the Council held a policy debate on the state of negotiations regarding five legislative acts concerning asylum. The Council welcomed the progress already made and instructed its preparatory bodies to continue the examination of the proposals taking account of the European Parliament's opinion, delivered on 7 May, as well as the views expressed by delegations in the discussion.

The five proposals involve amendments to the so called "Dublin" regulation, the EURODAC regulation, the reception conditions directive as well as a proposal for the establishment of a European asylum support office and a related amendment of the European refugee fund.

These measures stem from the commitments undertaken in the European Pact on Immigration and Asylum adopted by the European Council in October 2008, with the purpose to complete the Common European Asylum System provided for in the Hague Programme.

During the previous months, the Council preparatory bodies carried out intensive discussions on the five proposals. A first reading of the text has been completed in all cases.

On 7 May, the European Parliament adopted legislative resolutions setting out amendments to the Commission proposals under the Council-Parliament codecision procedure. The examination of these amendments is now underway.

**FREE MOVEMENT OF EU CITIZENS WITHIN THE COMMUNITY**

The Commission briefed the Council regarding the elaboration of guidelines for the implementation 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.

Delegations welcomed the announcement by the Commission that it expected to adopt the guidelines on 2 July. They also emphasized the need for continued monitoring of the implementation of the directive, as well as keeping the issue, including the implication of any new emerging trends for migration policy, under review at the level of the Council.

At its meeting in February, the Council welcomed the Commission's intention to offer information and assistance to member states by issuing guidelines on a number of issues, such as expulsions and the fight against abuse, in order to facilitate effective application of the directive.

At that occasion, the Council took note of a report ([5553/09](#)) presenting an overview of how directive 2004/38/EC<sup>1</sup> is transposed into national law and how it is applied in everyday life.

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

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<sup>1</sup> Published in the Official Journal of the EU, OJ L 158, 30.4.2004, p. 77.

**ILLEGAL IMMIGRATION IN THE MEDITERRANEAN**

Ministers held an exchange of views on illegal immigration in the Mediterranean following a presentation by the Commission on recent developments in the region.

They took note of proposals presented by the Commission to tackle the problem, which relate in particular to asylum and humanitarian protection, border control and maritime operations and dialogue with neighbouring countries.

Ministers deplored the loss of human lives at sea and noted with concern the increasing number of migrants risking their lives to enter the EU illegally.

They agreed to further examine ways for preventing human tragedies and strengthening the fight against illegal immigration.

**EU STRATEGY AND ACTION PLAN TO COMBAT TERRORISM**

The Council took note of the report by Gilles de Kerchove, the EU Counter-Terrorism Coordinator (CTC), on the implementation of the EU Strategy and Action Plan to Combat Terrorism (9717/09).

In response to the European Council's request, he submits such a report every six months.

The report summarises progress made since December 2008 and the state of play regarding implementation of the priority legislative acts in this area and ratification of the Conventions.

His report pinpoints the late implementation by nine member states of some key legal instruments, such as the 3rd money laundering directive, the directive on data retention and the 2001 Protocol to the Convention on mutual legal assistance of 21 May 2000.

In his presentation to the ministers, Mr de Kerchove highlighted a number of issues, in particular:

- Information sharing among law enforcement agencies and between them and Europol/Eurojust. The CTC emphasized the need for the EU to define a comprehensive strategy for data collection and data sharing. He encouraged ministers to develop the "check the web" project at Europol and took note towards a closer cooperation between Europol and Eurojust;
- in the area of counter radicalisation and recruitment, the progress made in six national lead projects. These projects cover the following subjects: strategic media communication on counter-terrorism; imam-training in Europe; violent extremist websites; the capacities of local police to recognise and prevent radicalisation; best practices for front line professionals (social workers, schools etc.) to understand and prevent radicalisation at local level; and deradicalisation, disengagement programmes;
- the importance of honouring victims of terrorism;
- the need to adopt an action plan on Chemical, Biological and Radio-Nuclear threats (CBRN) by the end of the year on the basis of the proposal that the Commission will make shortly;

- regarding external relations, he reported on his recent visits to Turkey, Pakistan and Yemen and his planned visits to Afghanistan, India and North Africa. He welcomed the recent decision of the Commission to set up a special financial programme under the stability instrument and urged member states to provide the increasing expertise to build capacities in priority countries: Pakistan/Afghanistan, the Sahel region, and Yemen.
- finally, the CTC invited the Council to step up the work on the abuse of charities, the protection of cyberspace, security and related research.

The strategic commitment of the EU 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 EU Strategy groups all actions under four objectives:

- to *prevent* people from turning to terrorism,
- to *protect* citizens and infrastructure and reduce our vulnerability to attack, *inter alia* through improved security of borders, transport and critical infrastructure,
- to *pursue* and investigate terrorists across our borders as well as globally,
- to *respond* to, i.e. to manage and minimize the consequences of a terrorist attack.

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.

The Action Plan to Combat Terrorism was adopted by the European Council in June 2004 and revised in 2007. The EU Counter-Terrorism Strategy which provides the framework for EU activity in this field was adopted in December 2005.

**EXTERNAL RELATIONS: UKRAINE – RUSSIA –USA**

The Council took note of the outcome of the following meetings:

- Ministerial troika EU – Ukraine, held on 3 June in Luxembourg (10602/09).
- EU – Russia justice and home affairs Permanent Partnership Council, held on 14 and 15 May in Kaliningrad.
- Ministerial troika EU – USA, held on 28 April in Prague.



**CIVIL LAW: BILATERAL AGREEMENTS WITH THIRD COUNTRIES**

The Council agreed on procedures for the negotiation and conclusion of bilateral agreements between member states and third countries concerning:

- jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance; and
- applicable law in contractual and non-contractual obligations.

The aim of the agreed regulations is to authorise a member state to amend an existing agreement or to negotiate and conclude a new agreement with a third country in certain areas of civil justice through a functional and simplified arrangement, while ensuring that the "acquis communautaire" will be safeguarded.

*More information in press release 10697/09.*

**COMMON FRAME OF REFERENCE FOR EUROPEAN CONTRACT LAW**

The Council adopted the following guidelines:

**"I. INTRODUCTION**

1. In April 2007, the JHA Council decided to mandate the Committee on Civil Law Matters to define a Council position on fundamental aspects of a future common frame of reference<sup>1</sup>.
2. In accordance with that mandate, the JHA Council on 18 April 2008 approved a position on four fundamental aspects of the common frame of reference (i.e. purpose, scope, content and legal effect)<sup>2</sup>.
3. Further to this position, the JHA Council on 28 November 2008 adopted a set of conclusions setting out some major guidelines for future work (covering structure, scope, respect for diversity and the involvement of the Council, the European Parliament and the Commission in the setting up of the Common Frame of Reference)<sup>3</sup>. Both the position and the conclusions provide that the Committee on Civil Law Matters will follow the work of the Commission on the Common Frame of Reference (hereinafter "CFR") on a regular basis.
4. To ensure regular follow-up to the discussions and to enlarge on and clarify the guidelines previously adopted, the Presidency submitted a questionnaire to delegations on 8 January 2009<sup>4</sup> and invited them to reply in writing.
5. In the light of the comments made and the discussions held, the Committee on Civil Law Matters invites Coreper to recommend to the Council that it approve the guidelines set out below and suggest that the Commission take them into account in its future work.

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1 8548/07

2 8286/08

3 15306/08 For a consolidated version of the various Council conclusions, see 5784/09.

4 5116/09

**II. POINTS CONSIDERED**

6. The Council indicated that it wished the CFR to have a three-part structure: one containing definitions of key concepts in contract law, one setting out common fundamental principles of contract law and one containing model rules.
7. The replies to the questionnaire and the subsequent discussions held within the Committee on Civil Law Matters consequently focused specifically on (a) the fundamental principles to be adopted, (b) the definitions which should be included and (c) the model rules to be provided for. The Committee also considered (d) the relationship that the CFR should have with the proposed Directive on consumer rights<sup>1</sup> and (e) the form that the instrument establishing the CFR might take.

**(a) Fundamental principles**

8. The Council confirmed that one part of the CFR would set out common fundamental principles of contract law, possibly accompanied by guidelines to cover cases where exceptions to those principles were required.
9. In this framework, the Committee on Civil Law Matters considers it advisable to lay down as of now certain fundamental principles which would definitely have to appear in this part of the CFR without, however, excluding that it could contain others. Such principles should reflect the values underpinning the CFR. They should apply to all stages of the contractual relationship, including the pre-contractual stage.
10. Of the principles that might apply throughout the contractual relationship, the following few should be mentioned by way of examples:
  - the principle of freedom of contract (party autonomy),
  - the principle of legal certainty in contractual matters which includes, *inter alia*, the binding force of the contract (*pacta sunt servanda*),
  - the principle of fair dealing which includes, *inter alia*, the principles of good faith and of reasonable behaviour.
11. These principles would have to be delineated and described in greater detail in the CFR.

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<sup>1</sup> Proposal for a Directive of the European Parliament and of the Council on consumer rights (COM(2008) 614 final) (14183/08).

**(b) Definitions**

12. The Council took the view that one part of the CFR should be dedicated to definitions of key concepts in contract law.
13. In this connection, the Committee on Civil Law Matters feels that it is still too early to determine precisely what definitions the CFR should include.
14. However, the Committee takes the view that in any event the definitions should relate directly to general contract law and to the scope and the priorities of the CFR as described in previous Council conclusions. Hence, certain definitions relating to contracts or concepts which do not come within the ambit of the CFR should be omitted. On the other hand, other definitions relating to certain types of contract covered by the CFR should be included. Due attention should be given to the definitions in the area of consumer contracts as this area constitutes an important part of the Community *acquis* in the area of contract law. In this context it would be useful to clarify some key concepts specific to consumer contract law.

**(c) Model rules**

15. The Council has specified that one part of the CFR should contain "model rules" drawing on the fundamental principles and using the definitions chosen.
16. The Committee on Civil Law Matters has agreed that the model rules should be general in nature so that they can apply to all contracts and should be drafted in sufficiently broad terms to be easily adaptable to all contractual situations. However, it is recalled that the Council has not ruled out that special contracts falling within the Community *acquis* could be included in the CFR at a later stage<sup>1</sup>. The CFR could therefore, if such were to be the case, include some more specific model rules applicable to certain special contracts, above all in the area of consumer contract law.
17. The Committee considers that the number of model rules should be commensurate with what is necessary in the light of the scope and objectives of the CFR. Furthermore, the CFR could, under certain conditions, offer alternative solutions for situations where a substitute model rule may prove useful.

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<sup>1</sup> See paragraph 12 of doc. 15306/08.

**(d) Relationship with the proposed Directive on consumer rights**

18. In its previous conclusions, the Council has specifically included consumer contracts within the scope of the CFR. The Committee on Civil Law Matters has accordingly launched a discussion on how the provisions of the proposed Directive on consumer rights should be reflected in the CFR.
19. The Committee considered that in order to achieve the appropriate consistency between the two projects it would be desirable during the setting up of the CFR to follow and to take into account the development in the negotiation of the proposed Directive. It acknowledged, however, that the two projects are separate and are intended to pursue objectives which may not always coincide.

**(e) Form of the CFR**

20. The Committee on Civil Law Matters considers that it is too early at this stage to decide on the form in which the CFR should be presented. However, the form must be such as to allow a non-binding instrument to be drawn up comprising a set of guidelines which the Community legislators would use at the level of the Council, the European Parliament and the Commission as a common source of inspiration or reference in the legislative process.

**III. CONCLUSION**

21. The Committee on Civil Law Matters invites Coreper to recommend to the Council that it:
- (a) approve this report as the Council's position on certain aspects of the CFR;
  - (b) forward this report to the Commission, asking it to take due account thereof in its future work on the CFR;
  - (c) forward this report to the European Parliament for information; and
  - (d) take note that the Committee on Civil Law Matters will continue to follow the Commission's work on the CFR on a regular basis."

**e-JUSTICE ACTION PLAN**

The Council took note of the progress made regarding the implementation of the European e-Justice action plan ([15315/08](#)) adopted in November 2008 and which provides in particular for the setting up of a European "e-Justice" portal.

The portal, to be launched on 15 December 2009, will promote the use of information and communication technologies in the field of justice. The use of the new technologies is intended to rationalise and simplify judicial procedures by facilitating them and by reducing operating costs, to the benefit of citizens, undertakings, legal practitioners and the administration of justice.

EU delegations welcomed the work accomplished up to now, and encouraged the plans announced by the incoming Swedish Presidency to develop the e-Justice functionalities in order to get the justice closer to their citizens.

**SHIP-SOURCE POLLUTION**

The Council took note of information provided by the presidency on the agreement reached with the European Parliament for amending directive 2005/35/EC on ship-source pollution and the introduction of penalties for infringements, with a view to the formal adoption of the instrument at later stage.

On 5 May, the European Parliament voted in plenary session paving the way for a first reading agreement under the codecision legislative procedure.

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 a criminal offence and consequently should be subject to criminal penalties. The Commission also proposed a Framework decision providing for the approximation of the levels of criminal penalties for the ship-source pollution criminal offences.

These two instruments were adopted by the Council in 2005. But the European Court of Justice annulled the abovementioned Framework Decision in 2007 considering that it was adopted 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.

**EUROPEAN ARREST WARRANT: REPORT ON PRACTICAL APPLICATION**

The Council adopted a report on mutual evaluations concerning the practical application of the European Arrest Warrant (EWA) and corresponding surrender procedures between member states.

Ministers highlighted that the EWA is working well and that can be considered a symbol for the practical legal cooperation among EU member states. In the fight against crime, it has proved to be an useful tool and a model worldwide.

The Council also asked the Commission and the expert working groups to continue evaluations with a view to updating the rules on the EWA.

The report, drawn at the end of the fourth round of mutual evaluations, addresses the application in practice of the European Arrest Warrant and cooperation between member states in this regard. In particular, the exercise's objectives were to evaluate the practical processes operated and encountered by member states when acting both as issuing member state and as executing member state and to assess relevant training provisions and provision for defence.

The report reflects the main questions identified in the course of the evaluation exercise from a general perspective and to propose recommendations either to the European Union as a whole or to its individual member states.

The Council framework decision of 13 June 2002 defines "European arrest warrant" as any judicial decision issued by a member state with a view to the arrest or surrender by another Member State of a requested person, for the purposes of:

- conducting a criminal prosecution;
- executing a custodial sentence;
- executing a detention order.



**SEXUAL EXPLOITATION OF CHILDREN / TRAFFICKING IN HUMAN BEINGS**

The Council examined the state of play regarding two proposals aimed at:

- a) improving the fight against sexual abuse and exploitation of children ([8150/09](#)) and
- b) strengthening the fight against trafficking in human beings ([8151/09](#)).

The Council instructed its preparatory bodies to continue the examination of the proposals, pending the opinion of the European Parliament.

A number of outstanding issues have been identified concerning both proposals, including:

- the question of the legal basis;
- the penalties' system, in particular the severity of the penalties and the level of differentiation according to the types and gravity of the offences;
- the question of jurisdiction, in particular the extra territorial one in order to combat such phenomenon as sex tourism;
- the question of protection and assistance to victims.

**TRAINING OF JUDGES, PROSECUTORS AND JUDICIAL STAFF**

The Council took stock on the follow-up of a resolution<sup>1</sup> on the training of judges, prosecutors and judicial staff in the EU, adopted in October 2008 ([10226/09](#)).

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Over a working lunch, ministers for justice exchange views on the problem of international abductions of children to countries which are not contracting parties to the 1980 Hague Convention on the civil aspects of international child abduction.

The Hague convention on the civil aspects of international child abduction has already proved its significance for resolving cases of international child abductions between the 81 participating countries.

The situation is different when a child has been abducted to state which is not a contracting party to the convention, where it becomes more difficult to get the child returned safely and promptly.

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<sup>1</sup> Official Journal C 299 of 22.11.2008.

**ANY OTHER BUSINESS**

**Visa liberalisation roadmap for Western Balkan countries**

The Commission made a presentation of factual draft reports regarding the implementation by Albania, Bosnia-Herzegovina, FYROM, Montenegro and Serbia of the roadmap for visa facilitation. Commissioner J. Barrot announced that final reports would be sent to these countries in July.

The Slovenian delegation highlighted the convenience of helping these countries to make further progress in the implementation of the roadmap.

**Prevention of natural and man-made disasters**

The Council took note of a presentation by the vice-president of the Commission J. Barrot, on behalf of Commissioner S. Dimas, of the communication on a Community approach on the prevention of natural and man-made disasters ([7075/1/09](#)).

The communication focuses on three main features: the development of knowledge-based disaster prevention policies; linking the actors and policies throughout the disaster management cycle and ensuring that existing EU instruments perform better when it comes to disaster prevention.

**International protection of children**

The Presidency provided the Council with information aimed at deepening international protection of children, focusing in particular on a better use of the Schengen Information System (SIS) database for the purpose of searching for missing children, as this system can be a quick information source for police authorities.

### **Succession and wills in Europe**

The Council took note of information by the Presidency and the Commission on the outcome of the conference on succession and wills in a European context, held on 20 and 21 April in Prague.

The Council took also note of plans from the Commission to present a proposal for a regulation on this subject in the near future.

### **Financial crisis - actions in the field of justice**

Following the exchange of views held by the Council on 6 April, the Presidency invited ministers to further contribute to the collective reflections on legislative and non-legislative initiatives in the field of justice that could have a positive impact in the economic recovery, by adapting relevant instruments to the situation created by the economic crisis.

### **Free trade agreement with the Republic of Korea**

The Presidency briefed the Council on the state of negotiations with Korea on the conclusion on a future free trade agreement.

### **Mediation in cross-border disputes**

The Slovenian delegation presented the main elements dealing with the project "Beyond Winning", which is financed under the EU Civil Justice programme for 2007/13, with the purpose to spread knowledge on mediation in cross-border disputes..

### **Slovenian chairmanship of the Committee of Ministers of the Council of Europe**

The Slovenian delegation briefed the Council on upcoming events in relation with the protection of democracy, human rights and rule of law in the course of the Slovenian presidency of the Committee of Ministers of the Council of Europe (12 May - 18 November 2009).

### **Priorities of the incoming EU presidency**

The Swedish delegation gave an overview of priorities to be carried out during the next EU presidency in the field of justice and home affairs. These priorities are consistent with the rolling programme prepared by three consecutive presidencies together. They will include, namely, the negotiations for achieving the next multi-annual "Stockholm programme".

**MIXED COMMITTEE**

In the margins of the Council, the Mixed Committee (the EU countries plus Norway, Iceland, Liechtenstein and Switzerland) discussed the way forward on the second generation of the Schengen Information System « SIS II ». The draft conclusions were afterwards approved by the Council.

The Mixed Committee was also informed by the Presidency and the Commission on the state of play regarding the deployment of the Visa Information System (VIS), including the preparations for the planned starting up of operations in December 2009.

Finally, ministers discussed a set of draft conclusions on the closure of the Guantanamo detention centre, which were submitted to and adopted by the Council later on.

The Mixed Committee took note of a statement made by Bulgaria and Romania on the integration to the SIS 1+ via SISone4ALL.

**OTHER ITEMS APPROVED**

**JUSTICE AND HOME AFFAIRS**

**European Judicial Network**

The Council adopted a decision amending decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters ([3735/08](#)).

The European Judicial Network in civil and commercial matters has been active since the end of 2002. Its purpose is to foster cooperation between the judicial authorities of Member States in order to enhance the dissemination and application of Community law and to facilitate access to justice for people facing cross-border disputes, through its members - including contact points - in each member state.

It has become necessary to broaden and strengthen the missions assigned to the network in 2001. In this context, four innovations were developed and should be noted:

- strengthening the role of contact points: when the law of another Member State is applicable, the courts or authorities seized may use the contact points within the relevant network to obtain specific information about the content of this law;
- increasing the human, financial and technological means available at national level so that contact points can perform their duties satisfactorily;
- opening the network to the legal professions, such as lawyers, notaries and bailiffs and
- improving access to justice for citizens: in practice, offering comprehensive information through the Network's website <sup>1</sup>, which contains regularly updated legal information in all official languages of the Union.

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<sup>1</sup> (<http://www.ejn-crimjust.europa.eu/>)

**Implementation of the EU Drugs Action Plan for 2009-2012 regarding supply reduction indicators - Council conclusions**

The Council adopted conclusions on the above subject ([9634/09](#)).

**Better use of SIS and SIRENE for the protection of children - Council conclusions**

The Council adopted conclusions on the above subject ([9148/09](#)).

**Follow-up to the Schengen evaluation of Switzerland conducted in 2008 - Council conclusions**

The Council adopted conclusions on the above subject.

**Civil protection awareness raising - Council conclusions**

The Council adopted conclusions on the above subject ([9976/09](#)).

**European Crime Prevention Network annual report 2008 - Council conclusions**

The Council adopted conclusions on the above subject ([9410/2/09](#)).

**Establishing an informal EU network of national rapporteurs or equivalent mechanisms on trafficking in human Beings - Council conclusions**

The Council adopted conclusions on the above subject ([8723/4/09](#)).

**Setting the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA - Council conclusions**

The Council adopted conclusions on the above subject ([8301/3/09](#)).

**Seventh Eurojust annual report 2008) - Council conclusions**

The Council adopted conclusions on the above subject ([7682/1/09](#)).

**Improving radio communication between operational units in border areas - Council recommendation**

The Council adopted a recommendation on the above subject ([10141/09](#)).

**Tackling illegal motor races - Council recommendation**

The Council adopted a recommendation on the above subject ([10140/09](#)).

**New approach to Schengen evaluation**

The Council took note of an Interim Report on implementing the new approach to Schengen evaluation and invited future Presidencies to continue efforts to render the Schengen evaluation mechanism more efficient ([9432/1/09](#)).

**Eurojust - Europol cooperation agreement**

The Council approved a revised cooperation agreement between Eurojust and Europol ([10019/09](#)). The agreement has been approved by the College of Eurojust, as well as by the Joint Supervisory Body.

The agreement is aimed at establishing and maintaining close cooperation between Eurojust and Europol in order to increase their effectiveness in combating serious forms of international crime. In particular, this will be achieved through the exchange of operational, strategic, and technical information, as well as the coordination of activities. The cooperation will take place with due regard to transparency, complementarity of tasks and coordination of efforts.

### **Europol annual report 2008**

The Council endorsed the Europol annual report 2008 and forwarded it to the European Parliament for information ([8131/09](#)). This annual report reviews Europol's activities during 2008 and offers an overview of the most important products and services that Europol has provided to the member states and its cooperation partners, and summarises the activities of the Europol Liaison Bureaux.

### **Informal ministerial meeting on modern technologies and security**

The Council took note of the follow-up to the January informal Justice and Home Affairs ministerial meeting in the field of modern technologies and security ([10143/09](#)).

### **Protection of public figures**

The Council adopted a decision amending decision 2002/956/JHA setting up a European network for the protection of public figures ([9770/09](#)).

## **EXTERNAL RELATIONS**

### **Western Balkan countries - Cooperation in fight against organised crime and terrorism**

The Council took note of an interim report concerning the implementation of Council conclusions on the co-operation with Western Balkan countries in the fight against organised crime and terrorism ([10232/1/09](#)).

### **Cape Verde - Short-stay visas and readmission negotiations**

The Council adopted two decisions authorising the Commission to open negotiations with the Republic of Cape Verde for the conclusion of agreements on facilitation of issuance of short-stay visas and on readmission.



### **Pakistan - Readmission agreement**

The Council adopted a decision approving the signing of an agreement with Pakistan on the readmission of persons residing without authorisation ([8793/09](#), [10227/09](#)).

The agreement is designed to strengthen the cooperation between the two parties to combat illegal immigration. To this end, it establishes, on the basis of reciprocity, procedures for the identification and return of persons who do not, or no longer, fulfil the conditions for entry into, presence in, or residence on the territories of Pakistan or one of the member states of the European Union.

### **Equatorial Guinea - Ratification of the revised Cotonou agreement**

The Council approved the letter addressed to the president of the Republic of Equatorial Guinea ([10432/1/09](#)) requesting clarification on the reservation included in the instrument of ratification deposited in September 2008 by the Republic of Equatorial Guinea, in the framework of the revised ACP - EU partnership agreement (Cotonou agreement) which entered into force in July 2008 .

The Community and its Members States had already indicated that they objected to an unilateral reservation on a previously agreed common text. If the reservation is not lifted by the end of June, the revised Cotonou agreement between Equatorial Guinea and the EU cannot therefore enter into force at this stage.

### **Madagascar - Opening of consultations**

The Council approved a draft letter to the authorities of the Republic of Madagascar inviting them to consultations under Articles 9 and 96 of the ACP-EC Cotonou Agreement ([10046/09](#)). The aim of the consultations is to give the Malagasy authorities an opportunity to present their proposals for ending the crisis and allow the European Union to judge whether and how it could, on the basis of this dialogue, support initiatives tending towards respect for human rights, democratic principles and the rule of law.

On 17 March 2009 the President of Madagascar, Mr Marc Ravalomanana, dissolved the government and issued a decree conferring full powers on a board of members of the military. The military board subsequently transferred the full powers to the opposition leader, Mr Andry Rajoelina. The double transfer of power was approved by the High Constitutional Court which declared Mr Rajoelina President of the Republic. The international community in its entirety has condemned this double transfer of power as unconstitutional.

**ENVIRONMENT**

**Placing of biocidal products on the market**

The Council decided not to oppose a Commission decision to include certain active substances of biocidal products in Annex I of directive 98/8/EC

**SOCIAL AFFAIRS**

**Statistics on income and living conditions**

The Council decided not to oppose the adoption by the Commission of a implementation regulation concerning statistics on income and living conditions.

**APPOINTMENTS**

**Committee of the Regions**

The Council adopted a decision appointing for the remainder of the current term of office, ending on 25 January 2010

a) as members:

- Mr Ahmed ABOUTALEB, Burgemeester van Rotterdam (mayor of Rotterdam)
- Ms Sue RAMSEY, Member of the Legislative Assembly, Northern Ireland.

b) as an alternate member:

- Mr Chris HOLLEY, Councillor for City and Council of Swansea, Wales.
-