



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From : Presidency
To : Permanent Representatives Committee
Subject : Draft Conclusions of the Council and of the representatives of the Governments of the Member States on the closure of the Guantanamo Bay Detention Centre

Introduction:

As a result of the discussions in the Mixed Committee at Ministerial level held on 6 April 2009 on the forthcoming closure of the Guantanamo Bay Detention Centre, Coreper was mandated to explore the need for and modalities of a mechanism for the exchange of information in view of the possible reception of former Guantanamo detainees by some EU Member States and Schengen associated countries. Subsequently, discussions took place on 16 and 22 April and 11 May at the level of experts and on 23 April and 6 May in Coreper. In light of these discussions, the Presidency proposes adoption of Conclusions of the Council and of the representatives of the Governments of the Member States including the information sharing mechanism as is described in annex to these Conclusions. Presidency considers that such Conclusions should be adopted at the JHA Council meeting in June 2009.

**Draft Conclusions of the Council and of the representatives of the Governments
of the Member States
on the closure of the Guantanamo Bay Detention Centre**

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

Wishing to foster a closer transatlantic cooperation with the United States of America in the area of Freedom, Security and Justice, based on shared values, in particular with 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,

Wishing in this context also to address with the United States Government the underlying policies relating to the fight against terrorism in general,

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 the one or the 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 recognize their responsibility in accepting certain former detainees who indicate a desire to be admitted to the United States.

Wishing to lend its support in 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,

Recognizing the political importance of this gesture in the context of closer transatlantic cooperation,

Recognizing that decisions on the reception of former detainees and the determination of their legal status fall within the 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,

Recognizing 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. Therefore, consultation and information sharing is important both before and after decisions to receive former detainees are taken, in order to give all Member States and Schengen associated countries the opportunity to take appropriate measures if necessary,

Stressing the importance of involving States associated with the application of the Schengen acquis in information sharing among the Member States as described in the annex to these Conclusions,

Wishing to create conditions which may help the Member States to cooperate with the United States Government in finding residence for those former detainees who will not be prosecuted for any offence, who are “cleared for release” by the US administration, and who for compelling reasons [due to a serious risk that they would be subjected to torture or other inhuman or degrading treatment or punishment] 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 to consider accepting only those former detainees, who fall into the category defined above,

Call upon the receiving Member States to promote integration of the persons concerned through appropriate measures and also to take into account the public order and security concerns of other Member States so as to avoid that former detainees compromise the public order or internal security of the Member States and Schengen associated countries, while fully respecting their human rights and fundamental freedoms,

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

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 of these Conclusions by the Schengen associated countries.

**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 States or Member States 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 a 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. The receiving Member State or Schengen associated country should therefore take into account the public order and security concerns of other Member States and Schengen associated countries as that 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.

1st 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 to make their own determination of the possible security risk implied by the reception. 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. 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 get 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 (Article 36 Committee), fully in line with the data protection rules.

2nd phase of information sharing

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

The Council is the best placed institution to organize this information sharing at the EU level. The involvement of Council bodies in the information/experience sharing will depend on the nature of the information. For the sharing of experience or for other necessary discussions related to this issue the "Friends of the Presidency Group" could be used if such a need evolves. This Group can be convened at the request of any delegation.
