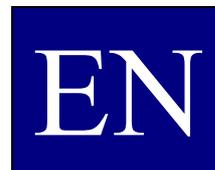




**COUNCIL OF  
THE EUROPEAN UNION**



12645/05 (Presse 247)

**PROVISIONAL VERSION**

**PRESS RELEASE**

2683rd Council Meeting

**Justice and Home Affairs**

Luxembourg, 12 October 2005

President

**Mr Charles CLARKE**  
Secretary of State for the Home Department; Home Secretary  
of the United Kingdom

**P R E S S**

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12645/05 (Presse 247)

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**EN**

## **Main Results of the Council**

*The Council agreed on conclusions relating to the retention of communication data with a view to finding an agreement before the end of the year.*

*It adopted conclusions on Regional protection programmes, and on intelligence-led policing and organised crime threat assessment.*

*The Council held an exchange of views on the situation in the Spanish autonomous cities of Ceuta and Melilla.*

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<sup>1</sup>

- Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
- The documents whose references are given in the text are available on the Council's Internet site <http://ue.eu.int>.
- Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the abovementioned Council Internet site or may be obtained from the Press Office.

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*JUSTICE AND HOME AFFAIRS*

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## **PARTICIPANTS**

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

**Belgium:**

Ms Laurette ONKELINX

Deputy Prime Minister and Minister for Justice

**Czech Republic:**

Mr Pavel NĚMEC

Deputy Prime Minister and Minister for Justice

Mr František BUBLAN

Minister for the Interior

**Denmark:**

Ms Lene ESPERSEN

Ministry for Justice

Ms Rikke HVILSHØJ

Minister for Refugees, Immigration and Integration

**Germany:**

Mr Otto SCHILY

Federal Minister for the Interior

Ms Brigitte ZYPRIES

Federal Minister for Justice

**Estonia:**

Mr Kalle LAANET

Minister for the Interior

Mr Rein LANG

Minister for Justice

**Greece:**

Mr Anastasis PAPALIGOURAS

Minister for Justice

**Spain:**

Mr Juan Fernando LÓPEZ AGULAR

Minister for Justice

**France:**

Mr Pascal CLÉMENT

Keeper of the Seals, Minister for Justice

Mr Christian ESTROSI

Minister with responsibility for Regional Planning

**Ireland:**

Mr Michael McDOWELL

Minister for Justice, Equality and Law Reform

**Italy:**

Mr Roberto CASTELLI

Minister for Justice

**Cyprus:**

Mr Doros THEODOROU

Minister for Justice and Public Order

**Latvia:**

Mr Ēriks JĒKABSONS

Minister for the Interior

Ms Solvita ĀBOLTIŅA

Minister for Justice

**Lithuania:**

Mr Gintaras FURMANAVIČIUS

Minister for the Interior

Mr Gintautas BUŽINSKAS

Minister for Justice

**Luxembourg:**

Mr Nicolas SCHMIT

Minister with responsibility for Foreign Affairs and Immigration

**Hungary:**

Mr Miklós HANKÓ FARAGÓ

Political State Secretary, Ministry of Justice

Ms Krizstina BERTA

Deputy State Secretary, Ministry of Home Affairs

**Malta:**

Mr Tonio BORG

Deputy Prime Minister, Minister for Justice and Home Affairs

**Netherlands:**

Mr Piet Hein DONNER

Minister for Justice

Ms Rita VERDONK

Minister for Immigration and Integration

**Austria:**

Ms Liese PROKOP

Federal Minister for the Interior

Ms Karin GASTINGER

Federal Minister for Justice

**Poland:**

Mr Sylweryusz KRÓLAK

Deputy State Secretary, Ministry of Justice

**Portugal:**

Mr António COSTA

Mr Alberto COSTA

Ministro de Estado, Minister for the Interior  
Minister for Justice

**Slovenia:**

Mr Lovro ŠTURM

Minister for Justice

**Slovakia:**

Mr Daniel LIPŠIC

Deputy Prime Minister and Minister for Justice

**Finland:**

Mr Kari RAJAMÄKI

Ms Leena LUHTANEN

Minister for the Interior

Minister for Justice

**Sweden:**

Mr Thomas BODSTRÖM

Minister for Justice

**United Kingdom:**

Mr Charles CLARKE

Ms Baroness ASHTON of UPHOLLAND

Secretary of State for the Home Department;  
Home Secretary

Parliamentary Under-Secretary of State, Department for  
Constitutional Affairs

.....  
**Commission:**

Mr Franco FRATTINI

Vice-President

.....  
The Governments of the Acceding States were represented as follows:

**Bulgaria:**

Mr Rumen PETKOV

Mr Georgi PETKANOV

Minister for the Interior

Minister for Justice

**Romania:**

Mr Vasile BLAGA

Ms Monica MACOVEI

Minister for Administration and for the Interior

Minister for Justice

**ITEMS DEBATED**

**EUROPEAN ORDER FOR PAYMENT**

The Council took note that a very large majority of delegations could agree on a uniform method for the production and examination of evidence, in the context of the negotiation of a Regulation creating a European order for payment procedure.

Alongside an explanation of the circumstances giving rise the claim, the application form would require claimants to *describe* the evidence that could be used in support (for example, the claimant might make reference to an invoice which the defendant is liable to pay). However claimants would not need to produce the supporting documentary evidence.

To help claimants complete forms in this way, the application form<sup>1</sup> should include as exhaustive a list as possible of examples of the types of evidence that are usually produced, although it would be open to the claimant to refer to whatever evidence appears appropriate.

To promote completion of the application form in good faith, the form would include, in clear language, a statement to the effect that the information provided is true to the best of the claimant's knowledge and belief, and that he understands that any deliberate false statement could lead to an appropriate criminal or other sanction under applicable national laws.

The court would examine the application on the basis of the information provided in the form, including the description of evidence. This would allow the court to examine *prima facie* the merits of the claim and to exclude clearly unfounded or inadmissible claims.

Such a solution would allow for automatic processing of claims and reduce the cost of the procedure by avoiding the costs of translating evidence. It would establish a uniform, simple and effective procedure while guaranteeing appropriate safeguards for the defendant.

The speedy recovery of outstanding debts whose justification is not called into question is of paramount importance for economic operators in the European Union and for the proper functioning of the internal market.

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<sup>1</sup> The form would require the claimant to indicate the kind(s) of evidence available to support the claim, either from the list given in the form (e.g. an invoice, a receipt for delivery of goods, etc.) or in a space for "other" kinds of evidence not on the list. The claimant could indicate more than one item on the list, and could use both the list and the "other" box if he so wished. The form could also require the creditor to indicate the subject matter of the claim, for example non-payment for goods delivered or services rendered. Other details might also be included, provided these could be accommodated for all forms of processing of applications that Member States may wish to adopt.

Pending the opinion of the European Parliament, the Presidency will work further with a view to reaching a political agreement on this file by the end of 2005.

It should be noted that the Commission presented on March 2004 a proposal for a Regulation creating a European order for payment procedure. As it was discussed during the Informal JHA Council on September 2005 in Newcastle, it would be restricted to matters having cross-border implications, having in mind that Member States that so wish can apply a similar procedure to internal cases.

Adoption of a Regulation creating a European order for payment procedure is listed as a priority for 2006 in the Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the EU.

## **DATA RETENTION**

The Council held an exchange of views on the basis of a paper from the Presidency.

A large number of delegations could accept the elements set out below as the basis for further work, subject to maintaining the derogation in Article 15(1) of the 2002 Telecommunications Directive and clarifying its future scope.

In the next stage, the Framework Decision will remain on the table, as an option favoured by a number of delegations. However, a majority of delegations were also open to the idea of adopting a Directive.

There was wide agreement that any measure must reflect the elements referred to below, notably in respect of the provisions on retention periods, scope and costs.

The Council agreed that work should be taken forward urgently. It instructed Coreper to finalise agreement on all outstanding issues as soon as possible and agreed that informal contacts with the European Parliament should continue in order to maximise common ground between the Council and the EP on issues of substance, while respecting the Council's position as set out above. The Council agreed to revert to this issue at its next meeting with a view to a final decision before the end of the year.

### **Elements set out as the basis for further work**

Scope – inclusion of data on fixed network and mobile telephony; Internet access and Internet communication services (telephony and email); and unsuccessful call attempts, with an extended implementation period of an additional two years for Internet data and data on unsuccessful call attempts.

Retention periods – approximation based on a minimum level of 6 months for Internet and 12 months for telephony, with a maximum level of 2 years retention, recalling the possibility for Member States who already have national legislation going beyond that period to retain such legislation by virtue of Article 95 TEC.

Costs – discretion for Member States to decide at a national level whether to reimburse industry for the additional costs associated with the retention of data for law enforcement purposes, achieved by having no provision at all on costs in the instrument.

Review clause / comitology – use of a fixed technical list of the data to be retained with the inclusion of a review clause (rather than a comitology arrangement) to consider practical experience in the effectiveness of the Directive 5 years after its implementation and to ensure that it remains in line with developments in telecommunications technology.

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It should be noted that a proposal on data retention was made in April 2004 by France, Ireland, Sweden and the UK, on the basis of Articles 31 and 34 of the Treaty of the European Union, under the so-called "Third Pillar". For its adoption, such a proposal needs unanimity at the Council. But the Commission has considered that the categories of data to be retained and the period for retaining such data fall within EC competence ("First Pillar") and should be adopted by the Council in co-decision with the European Parliament, on the basis of a Commission proposal for a Directive. On 21 September 2005 the Commission adopted such a proposal for a Directive on retention of communication data.

**REGIONAL PROTECTION PROGRAMMES - Council conclusions**

Over lunch, Ministers had an exchange of views with Mr António Guterres, UN High Commissioner for Refugees, on regional protection programmes. The Council subsequently endorsed the following conclusions:

"THE COUNCIL

- *recalls* the European Council Conclusions of Tampere of 15/16 October 1999 which stressed the need for a comprehensive approach to migration and asylum and in which the Union, as well as Member States, was invited to contribute to the greater coherence of its internal and external policies in this area. Partnership with the third countries concerned was designated as a key element for the success of such a policy,
- *recalls the* Council Conclusions on the Communication of the Commission on *Integrating migration issues into the European Union's relations with third countries* of May 2003, which emphasise that migration policy is a strategic priority for the European Union and invites the Commission, inter alia, to develop concrete proposals to make additional funding available for assistance for refugees in the region and for reducing poverty in host communities,
- *recalls* the European Council Conclusions of Thessaloniki of 19/20 June 2003 which invited the Commission to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection, and to examine ways and means to enhance *the* protection capacity of regions of origin with a view to presenting to the Council, before June 2004, a comprehensive report suggesting measures to be taken, including legal implications,
- *recalls* the Council Conclusions *On the managed entry in the EU of persons in need of international protection and enhancement of the protection capacity of regions of origin 'improving access to durable solutions'*, of 2 November 2004, in which the Council invited the Commission to present an action plan for one or more Regional Protection Programmes to the Council by July 2005 which should be situation specific, protection oriented and complementary to the further development of a Common European Asylum System,
- *recalls* the Hague Programme of 4 and 5 November 2004, which welcomed the Commission's Communication on "*improving access to durable solutions*" and invited the Commission to develop EU Regional Protection Programmes in partnership with third countries concerned and in close consultation and co-operation with the UNHCR and that these programmes should be built on the experience gained in pilot protection programmes to be launched before the end of 2005. These programmes would incorporate a variety of relevant instruments, primarily focused on capacity building and include a joint resettlement programme for Member States willing to participate in such a programme,

- *recalls* that the Hague Programme reiterated the need to ensure a comprehensive approach to migration and urged the Council, the Member States and the Commission to pursue *coordinated*, strong and effective working relations between those responsible for migration and asylum policies and those responsible for other policy fields relevant to these areas.

AND ADOPTS THE FOLLOWING CONCLUSIONS:

1. The Council supports the approach proposed in the Commission's Communication of 1 September 2005, *On Regional Protection Programmes* and recognises that such programmes are a first step in improving access to protection and durable solutions for those in need of international protection, as quickly and as close to their home as possible.
2. The Council reiterates the importance of working in close partnership and cooperation with third countries in regions of origin and transit in the development of Regional Protection Programmes. The Council also recognises the need for a comprehensive and regional approach which is situation specific and protection oriented and includes activities, which could enhance access to durable solutions, i.e. repatriation, local integration and resettlement where appropriate, with a focus on protection oriented activities for the pilot Regional Protection Programmes, within a broader partnership with countries and regions of origin. Activities under the Regional Protection Programmes should, where appropriate, include projects which benefit the local population hosting the refugees, for example by addressing wider concerns which affect both refugees and the host population. In taking this work forward, the Council further notes the importance of continuing to work closely with the UNHCR and, where relevant, other international organisations and also draw from experiences from capacity building within the EU, where relevant. Regional Protection Programmes should, through a co-ordinated approach, be coherent with general development and humanitarian assistance.
3. The Council supports the proposal that pilot Regional Protection Programmes should be considered for the Western Newly Independent States (Ukraine, Moldova and Belarus) and sub-Saharan Africa (in particular the Great Lakes/East Africa).
4. The Council invites the Commission, in accordance with the Commission's Communication "*on improving access to durable solutions*", to intensify the engagement with relevant partners and to inform the Council of detailed programmes for implementation of the proposed pilot programmes by the end of November 2005. The Council looks forward to receiving the evaluation of the pilot programmes as early as possible in 2007. Within this framework, the Council underlines the importance of using the experiences gained from the pilot Regional Protection Programmes in these and other regions of transit and origin, such as North Africa, the Horn of Africa, the Afghanistan region and the Western Balkans.

5. The Council underlines the need to ensure appropriate sustainable funding for on-going and future initiatives under Regional Protection Programmes, including in the context of the work on future financing of EU policies. Taking account of the targeted and strategic use of resettlement, the Council notes the Commission's intention to bring forward as soon as possible a proposal to amend the *Council Decision establishing the European Refugee Fund*, as announced in the Communication."

On 27 June 2004, the Commission forwarded a Communication to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity on the regions of origin - "Improving access to durable solutions". The Council examined this Communication and adopted conclusions on this item on 2 November 2004. In its conclusions, the Council invited the Commission to present an action plan for one or more pilot regional protection programmes, situation specific and protection oriented. This pilot programme should be developed in close partnership and be the result of dialogue with the third countries concerned. These principles were reiterated in The Hague Programme.

On 5 September 2005, the Commission forwarded its Communication on regional protection programmes to the Council and the European Parliament. The Communication makes recommendations for geographic application: the first pilot programme should be implemented in a transit region, i.e. the Western Newly Independent States (Ukraine, Moldova and Belarus). The Commission will also initiate dialogue with countries in a region of origin (sub-Saharan Africa, in particular the Great Lakes/East Africa) to identify areas where the second pilot programme should take place.

The aim of these programmes is to deliver direct benefits to refugees, as well as to contribute to improvement of the protection and human rights situation in the host country. Several actions will be envisaged for each programme, including registration, training, infrastructure building, provision of equipment, etc. A joint resettlement programme, to be implemented by Member States on a voluntary basis, is also envisaged.

**INTELLIGENCE-LED POLICING AND ORGANISED CRIME THREAT ASSESSMENT -  
Council conclusions**

The Council adopted the following conclusions:

"Considering the Hague Programme and in particular section 2.3 which calls upon Europol to replace its Crime Situation Reports by threat assessments on serious forms of organised crime with effect from 1 January 2006,

Building on the work done, in particular under the Luxembourg Presidency but more widely, to examine the way in which the structure of and response to the EU organised crime report may be improved,

Considering the action plan to implement the Hague Programme which was agreed by the JHA Council on 3 June 2005,

The Council concludes:

1. From 1 January 2006, Europol will produce an Organised Crime Threat Assessment (OCTA) in place of its annual Organised Crime Situation Report. This will support the further development of a common intelligence model, by Europol and the Member States. Europol with the Heads of Europol National Units will continue to give this detailed consideration.
2. For the OCTA to be successful, the Council agrees on the importance of Europol issuing, in good time, to Member States, an Intelligence Requirement which will give Member States a clear indication of what information and criminal intelligence Europol needs. The intelligence requirement will be approved by the Europol Management Board. The intelligence requirement will be issued through the Heads of Europol National Units. The national experts previously involved in the production of the Organised Crime Report (OCR) should be used to facilitate and instigate the transmission of information and intelligence in accordance with the intelligence requirement of the OCTA.
3. Member States should respond to that Intelligence Requirement. Member States should send a structured response to Europol by a deadline to be determined by Europol in consultation with the Council. In addition, Member States should, insofar as is possible send criminal intelligence to Europol, responding to that Intelligence Requirement as that information arises on an ad hoc basis throughout the year.

4. Europol will also communicate that Intelligence Requirement to EU agencies and bodies and to third countries and agencies with which it has co-operation agreements. The Council urges all those agencies and bodies, particularly those which are agencies or bodies of the European Union, to respond positively to that Intelligence Requirement and to support Europol.
5. Europol will consequently produce the OCTA using the information and criminal intelligence it receives from Member States, from EU agencies and bodies, particularly Eurojust, from third countries and agencies with which Europol has co-operation agreements, from information and analysis drawn from the Analysis Work Files held at Europol and from any other information that is available to Europol that is pertinent and may assist with the identification of threats from organised crime to the Member States of the European Union. As far as possible, Europol will make use of relevant comparable national statistical data in drawing up the OCTA.
6. Europol will be responsible for changing its internal processes prior to the 1 January 2006, so as to be able to produce an effective OCTA in the Spring of 2006. The Management Board of Europol will ensure that any changes are made that may be necessary within Europol.
7. Building on this framework, Europol in conjunction with the Member States will set out the detail of its proposals for the production of the OCTA, including the form of the structured response and content of the Intelligence Requirement. That methodology will be annexed to these Council conclusions but will be adapted, revised and improved as necessary.
8.
  - a. The Heads of Europol National Units with the support of national experts, will assist Europol with ensuring the accuracy of the OCTA during its production.
  - b. The findings presented in the OCTA will be and will remain Europol's independent assessment of the nature of the organised crime threats facing the Union. Europol should present the OCTA to the Council.
  - c. The appropriate Working Parties (especially the Multidisciplinary group on organised crime) will prepare recommendations on strategic priorities on the fight against organised crime, taking into account the advice of Eurojust on the priorities. The Council will consequently adopt strategic priorities on the basis of the OCTA.

- d. The OCTA and the strategic priorities adopted by the Council will be used by Europol to guide the definition of Europol's work programme and strategic planning for Europol. The OCTA will also be used as a tool by the Council to adopt the strategic priorities that other appropriate agencies and bodies at EU level engaged in the fight against crime, (...) in particular the Police Chiefs Task, will take forward. As appropriate the OCTA may also inform the Council's wider work on the fight against terrorism, in particular the links between organised crime and terrorism.
9. The OCTA and the strategic priorities adopted by the Council will guide the Police Chiefs' Task Force to assist with planning its priorities and operational activity for the COSPOL strategy or any other operational strategy the Police Chiefs' Task Force may take forward. Member States should, alongside other national considerations, take account of the OCTA and the strategic priorities adopted by the Council in planning their individual and joint responses to the threats they face from organised crime.
10. Each year, Member States should send their structured responses to Europol by the end of October so that in the Spring (March, or if possible earlier) of the following year Europol would produce the Organised Crime Threat Assessment and by the end of Spring (May, or if possible earlier) the Council will have adopted the strategic priorities for the fight against organised crime. The overall timetable for the production of the OCTA will be reviewed regularly with a view to improving the procedure. In 2005, however, due to the new process being introduced, exceptionally the deadline for sending structured responses to Europol will be extended to 30 November. Europol will produce the first Organised Crime Threat Assessment by April 2006 (or if possible earlier) and the Council will adopt Conclusions setting out strategic priorities by June 2006 at the latest.
11. This process should contribute to the goal of setting up and implementing a methodology for intelligence-led law enforcement at EU level.
12. Member States will assist with the preparation of the Intelligence Requirement for each organised crime threat assessment and will help with the identification of what further information and criminal intelligence Europol may need. This will allow Europol to adjust the Intelligence Requirement accordingly.
13. The goal of setting up and implementing a widely used and common methodology for intelligence-led law enforcement at EU level must be further enhanced through concerted and co-ordinated action by all bodies and agencies of the European Union involved in these efforts, as well as the Member States, and must be sustained over a longer period of time. The Council notes and welcomes the Commission's intention to bring forward proposals, prepared in co-operation with the relevant bodies and agencies, as well as the Member States, for further action in this area during 2006.
14. The process outlined and the OCTA will be evaluated regularly with a view to improving the quality of the OCTA and its usefulness to the Member States."

**EUROPEAN EVIDENCE WARRANT (EEW)**

The Council broadly agreed on certain principles which will apply when issuing and executing a EEW. The debate focused on the conditions under which the obligation to assist a Member State should arise and the cases in which a State can refuse the warrant.

The EEW is a judicial decision intended to improve existing co-operation arrangements for the cross-border exchange of evidence (objects, documents or data) in criminal proceedings. This facilitates national investigations and prosecutions.

The EEW could be issued when evidence is necessary for the purpose of proceedings provided that the evidence sought could have been obtained under the law of the issuing State.

The Framework Decision on the EEW is a mutual recognition measure, with a deadline for completion by the end of 2005. Its adoption requires unanimity.

**PROCEDURES ON SURRENDER/EXTRADITION WITH NORWAY AND ICELAND**

Pending some parliamentary and scrutiny reservations, the Council agreed on a text of a draft agreement with Iceland and Norway on the surrender procedure.

The text will be brought to Iceland and Norway for finalisation.

In 2001 the Council authorised the Presidency to open negotiations with Norway and Iceland to extend to those countries the non-Schengen related provisions of the 1996 EU Extradition Convention. The mandate was updated in 2002 after it was agreed that extradition within the EU would be replaced by surrender procedures under the European Arrest Warrant (EAW). Although it was decided that the EAW was not Schengen-related, the Council agreed there would be benefit in applying the model of a surrender procedure to the Schengen countries given their privileged partnership with the EU Member States.

**ANY OTHER BUSINESS**

The following issues were discussed under "Any Other Business":

– ***Situation in the Spanish Autonomous cities of Ceuta and Melilla***

Commission Vice-President Frattini and the Spanish Minister of Justice, Mr López Aguilar, raised the question of the situation of Ceuta and Melilla, where large groups of third-country nationals, coming from Morocco, had made several attempts to illegally enter the two Spanish autonomous cities.

In particular, Mr Frattini provided some preliminary information on the technical mission the Commission organised and which took place on 7-10 October 2005, as well as suggesting some further concrete measures to be taken in the short and medium terms.

– ***Article 3 of the European Convention on Human Rights***

The Presidency briefed the Council about the UK and the Netherlands positions regarding the possibility for the European Court of Human Rights of revisiting an earlier Court decision in the 1996 Chahal case.

– ***Court of Justice judgement relating to Environmental crime***

The Council had an exchange of views on the consequences of the Court of Justice judgement of 13 September 2005 relating to environmental crime (Affaire C-176/03) and agreed to discuss this issue in depth at the Informal Ministerial meeting that will be held in Vienna in January 2006.

In its judgement, the Court of Justice annulled Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law.

– ***Application of the principle of availability***

Commission Vice-President Frattini presented this Commission proposal which was adopted today.

**IN THE MARGINS OF THE COUNCIL**

– ***Mixed Committee***

The Mixed Committee discussed the scope of a draft Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States.

The Council will re-examine this issue at its meeting on December with a view to reaching an agreement on the whole text before the end of the year.

– ***EU-Russia Permanent Partnership Council (13 October 2005)***

To be completed on 13 October 2005.

**OTHER ITEMS APPROVED**

**JUSTICE AND HOME AFFAIRS**

**Admission of third-country nationals to carry out scientific research in the UE \***

The Council adopted:

- a directive on a specific procedure for admitting third-country nationals for purposes of scientific research (9288/05+COR 1, 10510/05) and
- a recommendation to facilitate the admission of third-country nationals to carry out scientific research in the EU (9290/05+COR 1+COR 3).

The directive lays down the conditions for the admission of third-country researchers to the member states for more than three months for the purposes of carrying out a research project under hosting agreements with research organisations.

The aim of the directive is to foster the admission and mobility for research purposes of third-country nationals in order to make the EU more attractive to researchers from around the world and to boost its position as an international centre for research.

Pending the implementation of the directive by the member states, the recommendation calls on member states to facilitate the admission of such individuals already.

The recommendation covers four areas in which the member states are asked to adopt measures to facilitate the admission of third-country nationals: admission for the purposes of research, issue of residence permits, family reunification and operational cooperation.

The directive and the recommendation are completed by a third text: a recommendation to facilitate the issue by member states of uniform short-stay visas for researchers from third countries, which was adopted by the Council on 18 July 2005 (3621/1/05, *see press release no 10817/05*).

**Voluntary return - Council conclusions**

The Council adopted the following conclusions:

"RECALLING THAT

- (1) The European Council, at its special meeting in Tampere on 15-16 October 1999, underlined the need for more efficient management of migration flows at all their stages.
- (2) The Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union, adopted by the Council on 28 February 2002 and based on the Commission's Communication of 15 November 2001 on a common policy on illegal immigration, states that readmission and return policy is an integral and vital component of the fight against illegal immigration.
- (3) The European Council, at its meeting in Seville on 21 and 22 June 2002, highlighted the need to fight against illegal immigration and attached top priority – inter alia – to return policy.
- (4) The Return Action Programme, approved by the Council on 28 November 2002 and based on the Commission's Communication of 14 October 2002 on a Community Return Policy on Illegal Residents, recognised the importance of voluntary returns.
- (5) The Council Conclusions of 8 June 2004 on elements for establishing preparatory actions for a financial instrument for return management in the area of migration envisaged Community support for integrated return plans, including voluntary returns.
- (6) The Hague Programme for strengthening freedom, security and justice in the European Union approved by the European Council at its meeting on 5 November 2004 stated, in line with Article 23 of the Schengen Agreement, that migrants who do not or no longer have the right to stay legally in the EU must return on a voluntary or, if necessary, compulsory basis.
- (7) The Council Conclusions of 2 December 2004 on best practices on return with regard to specific countries of third country nationals illegally staying on the territory of the Member States included in the indicative list of best practices the promotion of existing assisted voluntary return programmes and return counselling at the earliest opportunity and clear communication of the availability of voluntary return.

- (8) Return management should be implemented with due respect for human rights and fundamental freedoms, and in particular for the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment of 10 December 1984, the Geneva Convention of 28 July 1951 and the New York Protocol thereto of 31 January 1967, relating to the Status of Refugees, the Convention on the Rights of the Child of 20 November 1989, and the Charter of Fundamental Rights of the European Union of 18 December 2000, as far as they are applicable.

THE COUNCIL CONSIDERS THAT

1. Return management is an essential element of a comprehensive approach to the efficient management of migration flows. Furthermore, within the broader framework of a coherent migration policy, it can prove beneficial to the host country, the country of return and the persons concerned. Voluntary return is an important component of a balanced, effective and sustainable approach to the return and, where applicable, reintegration of unsuccessful asylum seekers, individuals currently in the asylum or international protection system but wishing to return, and other migrants. Such a balanced approach needs to include the prospect, where appropriate, of enforced return.
2. More broadly, effective immigration and asylum policies which are compatible and complementary to applicable capacity building and development assistance programmes in countries of return, can help strengthen the sustainability of voluntary returns operated by Member States. Furthermore, strengthened co-operation between the host country and the country of return, as well as with relevant international organisations and non-governmental organisations, where considered appropriate by Member States, can contribute substantially to the success of voluntary return programmes.
3. Voluntary return, carried out in conformity with obligations deriving from applicable international instruments, is the assisted or independent departure to the country of return based on the will of the returnee and his/her informed decision to return.
4. Voluntary return can be most effective where its scope covers a wide range of third country nationals wishing to return home. This may include, without prejudice to the applicable rules under national legislation, unsuccessful asylum seekers or those awaiting a final decision, those with a temporary protection status and, where applicable, illegally staying third country nationals and/or legal migrants.

5. In addition to general voluntary return programmes, there can be significant added value in establishing programmes tailored to the circumstances and needs of specific categories of persons, in particular those who are deemed to be more vulnerable or with other special needs. Tailor-made programmes might also be envisaged for certain destination countries. Programmes that assist the voluntary return of qualified and skilled persons, as well as those which include labour market oriented training for unskilled persons immediately following their return, can contribute to the development and reconstruction of countries.
6. Information on the possibility of voluntary return should be made readily available and as early as possible. In order to facilitate sustainable voluntary returns, this may include the provision of pre-return information and counselling, for example, in respect of the conditions and circumstances in the country of return. Innovative Member States' approaches, such as those which raise awareness amongst prospective returnees of conditions in the country of return, might also be useful in this respect.
7. Assisted Voluntary Return programmes, which entail a greater level of support from the host country, can also contribute to the general objective of sustainable voluntary returns. Where appropriate, such programmes may, for example, include assistance in respect of some or all of the following:
  - (i) travel arrangements (which may cover costs, travel documents, transit arrangements, transport of belongings);
  - (ii) medical assistance, where applicable;
  - (iii) reception on arrival in the country of return and referral to relevant local bodies/agencies;
  - (iv) onward transportation to the final destination in that country;
  - (v) adequate temporary accommodation for the first few days after arrival;
  - (vi) essential initial expenses after return;
  - (vii) relevant training, including that which is labour market oriented, and help in finding employment;
  - (viii) limited start-up assistance for economic activities, for example micro-credit schemes; and
  - (ix) post return assistance and counselling.

8. The implementation of voluntary return programmes should be monitored and evaluated with a view to informing future policy and programmes and facilitating exchanges of good practice between Member States.
9. Given the importance of these issues to the operation of effective policies on return at national and EU level, as well as in respect of immigration and asylum more generally, the Council invites the appropriate bodies to further examine these matters, in particular with a view to:
  - facilitating the exchange of best practice between Member States, including the promotion and effective implementation of voluntary return programmes as a suitable alternative to forced return;
  - identifying opportunities to strengthen practical co-operation between Member States and relevant third countries, international organisations and non-governmental organisations, where considered appropriate by Member States, including through joint projects, research and evaluation; and
  - making maximum use of the possibilities afforded under appropriate Community funding programmes in support of the above."

## **Eurojust**

The Council approved the re-election of Mr. Michael Kennedy as president of the College of Eurojust (12095/05).

### **Third Eurojust Annual Report (calendar year 2004) - Council conclusions**

The Council adopted the following conclusions:

"The Council:

1. Welcomes the third Annual Report of Eurojust (calendar year 2004)<sup>1</sup>; and notes with satisfaction that most of the objectives set out in the Annual Report 2003 to be achieved in 2004 have been successfully attained;

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<sup>1</sup> Doc. 9522/05 EUROJUST 33.

2. In particular, notes with appreciation
  - the adoption of the agreement between Eurojust and Europol and the conclusion of the agreement with Norway, both approved by the Council, respectively in 2004 and early in 2005;
  - the adoption of the Rules of Procedure on the processing and protection of personal data, approved by the Council on 24.2.2005;
  - the installation of the Case Management System being operational since 15 October 2004;
3. Underlining the importance of Eurojust's role in the improvement of judicial co-operation between the Member States, in particular as regards the fight against organised serious crime and terrorism, the Council welcomes the figures outlined in the Report whereby it emerges that the number of operational cases handled by Eurojust has increased remarkably, and especially that terrorism-related cases and multilateral cases involving more than three countries have more than doubled; at the same time it notes that there are still 2.5 times fewer multilateral than bilateral cases;
- 3bis Encourages Eurojust to continue working closely with the European Judicial Network so that competent national authorities know how best to choose the right channels of support in bi-lateral and multilateral cases; Welcomes the fact that the privileged partnership with the EJM has deepened and that Eurojust's work in the field of infrastructures is carried out with the aim of including a network connecting the contact points of the EJM;
4. Notes that, although there are positive trends in the casework, there are still significant differences between Member States as regards the use of Eurojust and that Eurojust's capacity to deal with serious cross-border crime and terrorism-related cases is still not being fully exploited by the Member States' authorities. The Council, therefore, calls on all Member States to make maximum use of Eurojust's potential to support them, primarily in the multilateral cases and in other cases if appropriate, namely by referring cases at an early stage of the investigations. The Council also requests Eurojust to consider the issue of statistics with a view to giving the budgetary authority and policy makers more detailed information about the full extent of national members' involvement in judicial cooperation in Europe;
5. Suggests Eurojust focus on complex cases which require coordination and to make internal periodical assessments on the case referrals from each country and on the quality of the cases handled with a view to improving the value of casework; invites Eurojust to report on such assessments to the Council as appropriate;

6. Urges the Member States, mentioned in the 2004 Annual Report of Eurojust, that have yet to implement the Eurojust Decision to take all necessary measures to comply with it in order to provide all National Members with the necessary powers and means to perform their tasks effectively. To that extent the Council takes note of the report from Eurojust on judicial powers of the national members of Eurojust<sup>1</sup>. Invites all Member States to ensure regular and, if possible, full time representation in the College of Eurojust;
7. Takes note that all Member States have appointed the Eurojust national correspondents for terrorism by virtue of the Council Decision 2003/48/JHA and takes note of the guidelines recommended by Eurojust as regards the arrangements to be put in place with a view to enabling national correspondents and national authorities to communicate the appropriate communication to Eurojust. The Council calls on Member States to take all necessary initiatives to ensure effective implementation of the Council Decision, particularly by making all arrangements needed to provide national correspondents with rapid access to the relevant information on terrorism and then to forward it to Eurojust;
8. Asks Eurojust to assess the progress made and to analyse criminal trends highlighted as a result of Eurojust's activities in the fight against terrorism, and to report to the Council as necessary and at least once a year. The report should identify measures necessary to conduct the fight against terrorism, including where appropriate priorities, structures, targets and deadlines;
9. Requests Eurojust to explore all possible fields of collaboration according to the agreement with Europol and to strengthen their partnership with a view to building up a comprehensive strategic approach to the fight against trans-national organised crime and terrorism;
10. Underlines that Eurojust should be associated with work of Joint Investigation Teams as far as possible; the Council therefore welcomes Eurojust's and Europol's offer to host a meeting of the Network of experts on Joint Investigation Teams, to be designated in accordance with the Hague Programme;
11. Calls on Eurojust and OLAF to improve their collaboration and notes with satisfaction that OLAF and Eurojust have recently started to work together to co-operate within their respective competencies in investigations and prosecutions regarding the protection of the financial interests of the Communities; calls on Eurojust and the Commission (OLAF) to examine legal requirements permitting rapid arrangements for the exchange of personal data;

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<sup>1</sup> 11943/05 EUROJUST 58.

12. Welcomes the development of external relations between Eurojust and third countries, through both the designation of contact points and the conclusion of agreements. The Council encourages Eurojust to continue with negotiations for concluding agreements with USA, Russia, Switzerland and Ukraine and to prepare for further agreements with key partners;
13. Takes note of Eurojust's concerns about the lack of certainty due to the fact that neither a Seat Agreement nor a Lease Agreement have been concluded with the Host country. The Council therefore urges all parties involved to conclude the ongoing negotiations as soon as possible and to find suitable solutions for definitive premises; in that context, a possible relocation together with Europol should be examined;
14. Asks the Member States' authorities to examine closely the Annual Report with a view to further enhancing Eurojust's tasks improving co-operation and co-ordination between the relevant authorities of the Member States and to have a role in identifying criminal trends, priorities and targets to be achieved within such co-operation."

### **Organised crime - 2004 Annual report**

The Council endorsed the 2004 annual report of the European Crime Prevention Network and decided to forward it to the European Parliament.

### **New functions for the Schengen Information System**

The Council adopted a decision fixing the date of application of certain provisions of a decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (*12578/05, 12579/05 and 12580/05*).

### **Europol**

The Council endorsed a Europol document on development of an EU strategy towards the Western Balkan region.