



Brussels, 1 December 2006

BACKGROUND¹

JUSTICE and HOME AFFAIRS COUNCIL

Bruxelles, 4-5 December 2006

The Council will start its work on Monday 4 December 2006 at 10h00 with a debate on the "justice" issues: The Hague programme review, how to take into account convictions in the course of new criminal proceeding and enforcement of judgments in criminal matters, procedural rights in criminal proceedings, the establishment of a EU Agency for Fundamental rights.

The "interior" items will be discussed on Tuesday the 5th December: Implementation of the global approach to migration, reinforcing the management of the EU Southern borders, enlargement of the Schengen area, civil protection financial instrument, future of Europol, trafficking in human beings and counter-terrorism.

The Council will start the second day at 10.00 with the meeting of the Mixed Committee². As the Framework Decision on the protection of personal data has to be dealt by the Ministers of Justice, the Mixed Committee will discuss it on Monday, at 15.00.

The President of the Court of Justice, Mr Vassilios Skouris, will attend the lunch on Monday and the subject of the discussion will be "Assessment of the procedure for dealing with request for preliminary ruling".

On Tuesday, the lunch will be attended by Mr Barnier (subject: "How to promote European Crisis preparedness"). Ms Kristiina Kangaspunta (Chief of Anti-trafficking Unit from UNODC) will follow Mr Barnier and speak about identification of victims of Human Trafficking.

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Press conferences will be held at the end of each day's working sessions.

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¹ This note has been drawn up under the sole responsibility of the Press Service.
² EU + Norway, Iceland and Switzerland

Monday 4 December 2006

Hague programme review

The Council will adopt conclusions on the review of the Hague Programme and will take note of a Presidency report on the same issue.

The Hague Programme "Strengthening Freedom, Security and Justice in the European Union" was adopted by the European Council in November 2004. It reaffirmed the importance that the European Union attaches since the Tampere European Council in 1999 to the area of Freedom, Security and Justice, placing it high among the Union's priorities – not only because it is one of the Union's fundamental objectives, but also, and above all, because it is at the heart of EU citizens' interests.

Since the end of 2004, the Member States and the EU Institutions have worked to ensure the implementation of the Programme in accordance with the Council and Commission Action Plan adopted in June 2005.

The European Council stated in December 2004 that "since the Programme will run for a period during which the Constitutional Treaty will enter into force, a review of its implementation is considered to be useful. To that end, it invited the Commission to report in 2006 "to the European Council on the progress made and to propose the necessary additions to the Programme".

In the absence of the entry into force of the Constitutional Treaty, it is still necessary to draw up a first political assessment of progress made in implementing The Hague Programme and to propose the necessary adjustments.

Significant progress has already been made in implementing the Hague Programme and the measures already taken since the adoption of the Programme contribute in a real way to strengthening freedom, security and justice in the European Union. However, insufficient progress has been made in certain areas of judicial cooperation in criminal matters and police cooperation in particular, and improvements can and should be achieved.

Taking into account previous convictions in the course of new criminal proceedings

The Council is expected to adopt a general approach on the text of this proposal for a Framework Decision. The text would then be prepared by the Legal Linguists and adopted when all the parliamentary reservations are lifted.

The purpose of this Framework Decision is to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.

In accordance with this instrument, each Member State will ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account and equivalent legal effects are attached to them as to previous national convictions.

Some Member States attach effects to convictions handed down in other Member States, whereas others take account only of convictions handed down in their own courts.

In contrast to other instruments this Framework Decision does not aim at the execution in one Member State of judicial decisions taken in other Member States, but rather aims at enabling consequences to be attached to a previous conviction handed down in one Member State to the extent that such consequences are attached to previous national convictions under the law of that other Member State.

The scope of the Framework Decision is limited to convictions handed down by criminal courts. However, in some Member States a decision imposing a criminal sanction can be passed by a judicial authority other than a criminal court or by an administrative authority. In general, such decisions may in these Member States be taken into account in new criminal proceedings.

Transfer of sentenced persons to another Member State

The Council is expected to reach a general approach on the text of the draft Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU.

The objective of this proposal is to allow the transfer of sentenced persons to another Member State for the purpose of enforcement of the sentence imposed, taking into account the possibility of social rehabilitation of the sentenced person.

The main outstanding issues of this proposal relate to the transitional period to accommodate Member State's legal and penitentiary systems in order to fully apply this Framework Decision, the criteria for forwarding a judgment and a certificate to another Member State (opinion and notification of the sentenced person), and the grounds for non-recognition and non-enforcement.

All Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to the Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.

Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, this legal instrument envisages a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments, in particular where EU nationals or other persons legally residing in one Member State have been subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State.

Enforcement of the sentence in the executing Member State enhances the possibility of social rehabilitation of the sentenced person, given the opportunity for him or her to maintain family, linguistic, cultural and other links.

This Framework Decision respects fundamental rights and observes the principles recognised by

Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on anyone of those grounds.

Procedural rights in criminal proceedings

The Council is expected to agree that work should be pursued on this proposal while affirming that this does not preclude adopting an accompanying instrument on practical measures.

The main outstanding issues of this proposal relate to the question whether to adopt a Framework Decision or a non-binding instrument, and the risk of developing conflicting jurisdictions with the European Court of Human Rights.

On 1/2 June 2006 the JHA Council agreed on some principles for further work on this proposal. The scope would be limited to the right to information, the right to legal assistance, the right to legal assistance free of charge, the right to interpretation and the right to translation of documents of the procedure.

At its meeting on 15/16 June 2006, the European Council, urged the finalisation of negotiations on the procedural rights of accused persons in criminal proceedings.

EU Agency for Fundamental Rights

The Council will aim at reaching an agreement on the establishment and effective functioning of the EU Agency for fundamental rights.

The main outstanding question is the extension of the scope of the Agency to questions relating to police and judicial penal cooperation (Title VI of the Treaty on European Union, the so-called "Third Pillar"). Other outstanding issues are the inclusion in the text of a reference to the charter of fundamental right of the EU and the geographical scope of the Agency.

The Presidency will submit a compromise solution to delegations with a view to solving these questions.

On 5 July 2005, the Commission submitted to the Council a proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and a proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on European Union³.

In accordance with the Commission proposal, the Agency will provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.

³ 10774/05; COM(2005) 280 final

The Agency should collect objective, reliable and comparable information on the development of the situation of Fundamental Rights, analyse this information in terms of causes of disrespect, consequences and effects and examine examples of good practice in dealing with these matters.

The Agency should have the right to formulate opinions to the Union institutions and to the Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission, without interference with the legislative and judicial procedures established in the Treaty. Nevertheless, the institutions should be able to request opinions on their legislative proposals or positions taken in the course of legislative procedures as far as their compatibility with Fundamental Rights are concerned.

In addition, it should present an annual report on Fundamental Rights issues covered by the areas of the Agency's activity, also highlighting examples of good practice. Furthermore, the Agency should produce thematic reports on topics of particular importance to the Union's policies.

The Agency should take measures to raise the awareness of the general public about their Fundamental Rights, and about possibilities and different mechanisms for enforcing them in general, without, however, dealing itself with individual complaints.

Finally, the Agency should collaborate closely with the Council of Europe. Such cooperation should guarantee that any overlap between the activities of the Agency and those of the Council of Europe is avoided, in particular by elaborating mechanisms to ensure complementarity and added value.

Tuesday 5 December 2006

Global approach to migration and reinforcement of EU's southern maritime borders

The Council will have a first exchange of views on two Commission communications:

- Communication on the implementation of the follow-up to Hampton Court/Global approach to migration; and
- Communication on reinforcing the management of the Southern Maritime Borders.

Both Communications were adopted by the Commission on 30 November 2006.

The Communication "The global approach to migration one year on: A comprehensive European migration policy", takes stock of the vast amount of work carried out this year with African states and regional organisations. This approach is geographically limited to Africa as it responds to the mandate given to the Commission by the European Council. However it suggests how similar measures could be extended, where relevant, to other regions such as Eastern Europe, Latin America and Asia.

The Communication proposes ways to step up the dialogue and cooperation on migration issues with Africa, covering the whole range of migration issues, from legal and illegal migration to strengthening protection for refugees and better harnessing the links between migration policy and development policy. Other proposals include offering more assistance to African countries in better managing migration, also by establishing Migration Support Teams that would bring in technical expertise to improve operational and administrative capacity. The Communication furthermore proposes the establishment of European Job Mobility Portals that will provide African countries with information about the job opportunities in Europe.

Other actions should facilitate the matching between demand and supply of labour. By fostering professional training, skills development programmes and language courses, potential migrants can enhance their chances of finding legal employment. For this purpose, specific Migration Centres could be established in partner countries, supported by EC funding. Such centres could also play a role in facilitating the management of seasonal workers, the exchanges of students and researchers and other forms of legal movement of people. In an effort to make dialogue with African countries truly comprehensive the Commission proposes the development of Mobility Packages. These would provide the overall framework for managing the various forms of legal movement between the EU and third countries and would bring together the possibilities offered by the Member States and the European Community, while fully respecting the division of competences as provided by the Treaty.

The second communication focuses on the operational work which supports EU migration policy. It addresses maritime borders management as they face the ever increasing pressure of illegal migration. This communication concerns maximising the capacity of FRONTEX. It outlines a number of new tools to improve the European integrated border management. These include a Coastal Patrol Network, a European surveillance system and operational assistance to improve the capacity of Member States to deal with mixed flows of illegal immigrants. Finally the Commission has suggested establishing a pool of experts from Member States' administrations. These experts could be deployed rapidly to help Member States with the initial analysis of asylum seekers by providing, for example, translations or expertise on the asylum seekers' country of origin.

Enlargement of the Schengen area : SISone4all, SIS II

The Council will adopt conclusions on SISone4all and the enlargement of the Schengen area.

After examining the technical, financial, legal and organisational aspects of a proposal forwarded by Portugal, the Council will decide on whether or not to proceed with the integration of the new Member States into the Schengen Information System, SISone4all, on a temporary basis pending the establishment of SIS II.

At the same time, the Council will reaffirm that the development of SIS II remains the absolute priority and will invite the Commission to present a revised time table for SIS II.

The SIS project is crucial for the security of the European Union and for the lifting of internal border controls with Member States who joined the European Union on 1 May 2004, allowing these countries to fully participate in the Schengen acquis.

The SIS is a compensatory measure contributing to maintaining a high level of security within an area without internal border controls between Member States by supporting operational cooperation between police authorities and judicial authorities in criminal matters.

The Council will also examine the state of preparedness of the new Member States towards the implementation of the provisions of the Schengen acquis, following the results of the first round of non-SIS related evaluation visits.

Civil protection financial instrument

The Council is expected to agree on the establishment of the financial basis for Community action in the field of civil protection :

- the response and preparedness actions covered by the Civil Protection Mechanism,
- actions presently covered by the Civil Protection Action Programme 1999-2006, such as contributing to prevention (study of causes of disasters, forecasting, public information) and preparedness (detection, training, networking, exercises, mobilisation of expertise) inside the EU,
- new areas such as financing additional equipment and transport in response actions under the civil protection mechanism.

The indicative amounts made available under the Financial Framework 2007-2013 are annually EUR 17 mio for actions inside the EU and EUR 8 mio for actions in third countries.

Since the current Civil Protection Action Programme will expire on 31.12.2006, and since the present proposal includes the financing for the Civil Protection Mechanism, a failure to formally adopt the present financial instrument before January 2007 would lead to difficulties in financing after that date civil protection activities currently covered by that programme, as well as the operation of the Mechanism.

The main outstanding questions relate to the Community facilitation and financing of transport and equipment.

The Presidency proposes as a compromise solution :

- Free grants for transport, both inside and outside the EU, if the criteria of absolute need and unavailability are met, without reimbursement /waiver clause,
- no finance for equipment.

Future of Europol

The Council will adopt conclusions on the future of Europol.

The Council will note that the ratification of the three Protocols amending the Europol Convention has been completed by nearly all Member States. Provided that the remaining ratifications are notified by the end of the year, the Protocols will enter into force during the first quarter of 2007.

In addition, the Council will note that the procedure for the adoption of the Management Board decisions needed for the implementation of the three Protocols amending the Europol Convention is well underway. The Council will call for the procedure to be finalised as soon as possible, allowing these instruments to enter into force either together with, or shortly after, the entry into force of the respective Protocols.

The Council will also agree that the Europol Convention should be replaced by a Council Decision, subject to a full assessment of its implications. The Council will try to reach a political agreement on the essential elements of this Decision before the end of the German Presidency.

Counter - terrorism

The EU Counter terrorism Coordinator, Gijs de Vries, will report on the implementation of the EU-Counter-Terrorism Strategy/Action Plan and the EU Strategy on Radicalisation and Recruitment.

Mr de Vries' report will assess progress and the state of play regarding ratification of the conventions and implementation of the legislative acts regarded as having priority.

In December 2005 the European Council adopted the European Counter-Terrorism Strategy, which has provided the framework for EU activity in this field. The strategic commitment of the Union is to combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice. The strategy groups all actions under four headings - PREVENT, PROTECT, PURSUE, RESPOND. The revised Action Plan follows this pattern with the objective of setting out clearly what the EU is trying to achieve and the means by which it intends to do so.

Personal data processed in the framework of police and judicial co-operation in criminal matters

The Council will take note of the state of play concerning this file.

The main fundamental outstanding question remains whether this Framework Decision should also apply to domestic data processing, or only to cross-border data processing. Without resolving this question, it is impossible to finalise the text of other provisions.

The position of the vast majority of delegations has been that any data gathered in the context of an internal investigation could, at a later stage, possibly be exchanged with foreign authorities and that therefore the scope of the Framework Decision should encompass all data. The opposing delegations thought the scope of the Framework Decision should be limited to the cross-border exchange of data.

This Framework Decision would determine common standards to ensure the protection of individuals with regard to the processing of personal data in the framework of police and judicial co-operation in criminal matters, provided for by Title VI of the Treaty on European Union, while safeguarding citizens' freedom and providing them with a high level of safety.

This Framework Decision would apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system by a competent authority for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

Other business

- Council Framework decision on the European Evidence Warrant (EEW) for obtaining objects documents and data for use in proceedings in criminal matters (state of play)
- State of play of European Contract Law (*at the request of Estonia*)
- Violent video and Computer games (*at the request of the Commission*)
- Situation on Lithuanian - Latvian border (*at the request of Lithuania*)

Mixed committee

4 December at 15.00:

- Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters

5 December at 10.00:

- Enlargement of the Schengen Area: SISone4all, SIS II
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