



Brussels, 14 February 2007

BACKGROUND ¹

JUSTICE and HOME AFFAIRS COUNCIL

Brussels, 15 February 2007

The Council will start its work on Thursday 15 February 2007 at 9.30 with a meeting of the Mixed Committee². The main item on its agenda relates to the reinforcement of Frontex. Ministers will discuss the state of play of a proposal for the creation of Rapid Border Intervention Teams and the creation in Frontex of a centralised register of technical equipment.

The Council will continue with a debate on how to integrate the Treaty of Prüm into the EU legal order. Then it will discuss migration issues, in particular steps forward in light of the conclusions of the European Council of 14 and 15 December 2006.

The Council will also examine a 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.

Over lunch, Ministers of Justice will have a general discussion about the draft of a Council Framework Decision on combating racism and xenophobia.

Ministers of Interior will have an informal dinner on Wednesday 14 February 2007, with a view to continuing the discussion about the future of European home affairs policy. This discussion already started at the informal meeting of Justice and Home Affairs Ministers which was held in Dresden on 15 and 16 January 2007.

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A press conference will be held at the end of the first working session (Ministers of the Interior +- 13.00) as well as after the lunch of the Ministers of Justice (+- 15:00) and at the end of the Council meeting (+- 18.00).

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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

INTEGRATION OF THE TREATY OF PRÜM INTO THE EU LEGAL ORDER

Following the discussion held at the informal ministerial meeting in Dresden in January 2007, the Council will have a more detailed follow-up debate on this issue.

In particular, the Council will discuss what will be taken from the Prüm Treaty and how it will be done.

A broad consensus was reached in Dresden on the integration into the EU framework of the parts of the Prüm Treaty related to data sharing and police cooperation, even though there were some concerns about the cost of implementation and about cross-border police intervention in the event of imminent danger.

A legislative initiative has been recently submitted to the Council by the Member States signatories to the Prüm Treaty as well as those having notified their wish to join the Treaty (signatory states: Germany, Belgium, Spain, France, Luxembourg, The Netherlands, Austria; states having notified their wish to accede: Slovenia, Italy, Finland, Portugal, Bulgaria, Romania, Greece and Sweden), with a view to integrating parts of the Treaty (data sharing and police cooperation) into the EU legal order (doc 6002/07).

The Prüm Treaty

Signed on 27 May 2005 at Prüm/Germany, it is designed to intensify cross-border police cooperation, especially in the fight against terrorism, cross-border crime and illegal migration.³

The Treaty has meanwhile entered into force in Austria, Spain and Germany and is expected to be in force in the other original signatory states in the first half of 2007 at the latest. The ratification processes in the countries intending to accede to the Treaty are also well advanced.

Already at this early stage, the automatic information exchange has brought about noticeable operational success: For instance, the German authorities matched DNA profiles of open cases against data held by Austrian authorities and found hits in more than 1500 cases. In this context, over 700 open traces from Germany could be attributed to persons known to the Austrian criminal

prosecution authorities. Broken down by types of crime, 14 hits in homicide or murder cases, 885 hits in theft cases, and 85 hits in robbery or extortion cases were found (as of January, 4th). It is true that every hit needs to be examined carefully, and it will not be possible to clear up open cases by an DNA hit alone. Nevertheless it can be expected that hitherto unsolved cases in Germany and Austria can be closed and the perpetrators be brought to justice. In any case, prosecution authorities are confident that the number of hits will increase constantly as further Prüm countries take part in this process, and that they will thus be able to solve numerous other open cases.

³

The Treaty text is contained in Doc. 10900/05 CRIMORG 65.

The special value of the Treaty lies in the substantially improved and efficiently organized procedures for the exchange of information. The states involved may now give one another automatic access to specific national databases. This amounts to a quantum leap in the cross-border sharing of information.

The contracting states have full and direct online read access to vehicle registration data held by their partners. They give one another access to their DNA analysis and dactyloscopic (fingerprint) databases in what is called a hit/no hit system. Police services may launch a query in the data system of a contracting partner to find out whether it contains data concerning a specific profile, and are automatically informed of the result within a matter of minutes. Further information, such as personal data, may be communicated in the course of mutual legal assistance.

Furthermore, the exchange of data concerning potential terrorist perpetrators and hooligans is regulated. Police cooperation may also be stepped up through operational measures, such as joint patrols, transferring sovereign powers to police forces of other contracting states, or assistance in the case of large-scale events.

The Treaty contains cooperation mechanisms that need to be regulated at EU level in the First Pillar. This includes provisions regarding document advisers, sky marshals and return measures.

An important aspect of the Treaty is the comprehensive range of modern data protection regulations.

As the drafters of the Prüm Treaty sought to further develop European cooperation, the Treaty has been designed with its conversion into EU law in mind.

MIGRATION

The Council will have an exchange of views on the implementation of the European Council conclusions of 14 and 15 December 2006.

In particular, the Council will take forward the discussion on migration which begun at the Ministerial informal meeting in Dresden on January 2007: strengthening cooperation with third countries in the fight against illegal migration through the development of incentives to cooperate, partnership agreements on migration and development, promoting circular migration by allowing temporary stays for the purpose of work or further training and education.

In order to structure the debate, the Presidency will table a note which will further develop a number of the ideas discussed in Dresden.

It should be noted that the Commission was invited to examine by June 2007 how possibilities for legal migration might be incorporated into the EU's policy in the field of external relations, in order to arrive at a balanced partnership with third countries. At the same time, the Commission was also tasked with presenting detailed proposals by June 2007 to better organise legal migration between the EU and third countries and of providing information about the various forms of legal migration.

FRONTEX

The Council will review progress in relation to the proposed Regulation establishing rapid border intervention teams. The Presidency will seek support from delegations with a view to reaching political agreement on the proposal between Parliament and the Council at the next JHA Council in April.

For the purpose of the proposed Regulation, rapid border intervention team means a team of border guards of Member States who can be rapidly deployed by the Agency to a requesting Member State. The Regulation will establish this mechanism and will define the powers of and tasks to be performed by border guards of the Member States participating in joint operations and pilot projects.

The Council will also review progress in relation to the establishment by Frontex of a centralised register of technical equipment (the so-called "toolbox") offered by Member States and which could be put at the disposal of another Member State. On 24 January 2007 the Commission sent a letter to Member States suggesting to bring forward the toolbox. Frontex asked for contributions by Member States to the toolbox by 12 February 2007.

TRANSFER OF SENTENCED PERSONS TO ANOTHER MEMBER STATE

The Council will examine a new Presidency compromise text with a view to reaching an agreement on a 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 adoption of this instrument is very important for improving the judicial cooperation in the EU, as it will 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 Presidency text will try to solve the main outstanding problem: the lack of consent of the sentenced person in cases where the person is sent to the State of nationality in which he or she lives. The Presidency text would provide for a temporary derogation of this provision to Poland.

At the JHA Council in December 2006, all delegations except Poland supported the content of a Presidency text. As unanimity was required, the text could not be agreed by the Council.

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 the 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, giving him or her the opportunity to maintain family, linguistic, cultural and other links.

This draft 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 any one of those grounds.

COMBATING RACISM AND XENOPHOBIA

Over lunch, Ministers of Justice will have a general discussion about the draft of a Council Framework Decision on combating racism and xenophobia.

This FD has been discussed since 2001. Despite extensive examination it was not able to reach agreement during two JHA Councils in 2003 and 2005.

The German Presidency has conducted a series of preliminary meetings and is of the opinion that now all delegations are principally committed to reaching an agreement on the basis of a new text. This text is basically the same which was discussed in 2005 under Luxembourg presidency but with the following changes:

- Incitement to discrimination has been removed from the scope of the Framework Decision.
- There is the possibility of excluding from criminal liability conduct which is not likely to disturb public order.

The draft text establishes that the following intentional conduct will be punishable in all EU Member States:

- Publicly inciting to violence or hatred , even by dissemination or distribution of tracts, pictures or other material, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.

- Publicly condoning, denying or grossly trivialising
 - crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, and
 - crimes defined by the Tribunal of Nüremberg (Article 6 of the Charter of the International Military Tribunal, London Agreement of 1945) directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.

Member States will ensure that these conducts are punishable by criminal penalties of a maximum of at least between 1 and 3 years of imprisonment.

The Framework Decision will not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty of the EU.

Member States will not have to modify their constitutional rules and fundamental principles relating to freedom of association, freedom of the press and the freedom of expression.

After its adoption, Member States will have 2 years to comply with the Framework Decision.