



**COUNCIL OF
THE EUROPEAN UNION**



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2781st Council meeting

Justice and Home Affairs

Brussels, 15 February 2007

President

Mr Wolfgang SCHÄUBLE

Federal Minister of the Interior of Germany

Ms Brigitte ZYPRIES

Federal Minister of Justice of Germany

P R E S S

Main Results of the Council

The Council agreed on the integration into the EU legal framework of the parts of the Prim Treaty relating to police and judicial cooperation in criminal matters (Title VI of the EU Treaty, the so-called "third pillar"), with the exception of the provision relating to cross-border police intervention in the event of imminent danger (Article 18). This last particular issue will be further examined by the Council at one of its forthcoming sessions.

The Council also reached a general approach 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. This instrument 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.

Finally the Council adopted a Regulation establishing the EU Agency for Fundamental Rights. This Agency will provide the relevant institutions and Member States with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action to fully respect fundamental rights.

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

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PARTICIPANTS

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

Belgium:

Ms Laurette ONKELINX
Mr Patrick DEWAELE

Deputy Prime Minister and Minister for Justice
Deputy Prime Minister and Minister for the Interior

Bulgaria:

Mr Georgi PETKANOV
Mr Rumen PETKOV

Minister for Justice
Minister for the Interior

Czech Republic:

Mr Jiří POSPIŠIL
Mr Ivan LANGER

Minister for Justice
Minister for the Interior

Denmark:

Ms Lene ESPERSEN

Minister for Justice

Germany:

Ms Brigitte ZYPRIES
Mr Wolfgang SCHÄUBLE
Mr Lutz DIWELL
Mr Peter ALTMAIER

Federal Minister for Justice
Federal Minister for the Interior
State Secretary, Federal Ministry of the Interior
Parliamentary State Secretary to the Federal Minister for the Interior

Estonia:

Mr Rein LANG
Mr Kalle LAANET

Minister for Justice
Minister for the Interior

Ireland:

Mr Bobby McDonagh

Permanent Representative

Greece:

Mr Byron POLYDORAS

Minister for Public Order

Spain:

Mr Alfredo PÉREZ RUBALCABA
Ms Cristina LATORRE SANCHO

Minister for Interior
Director-General for International Legal Cooperation

France:

Mr Pierre SELLAL

Permanent Representative

Italy:

Mr Giuliano AMATO

Minister for the Interior

Cyprus:

Mr Sofoklis SOFOKLEOUS

Minister for Justice and Public Order

Latvia:

Mr Ivars GODMANIS

Minister of the Interior

Lithuania:

Mr Petras BAGUŠKA
Mr Raimondas SUKYS

Minister for Justice
Minister for the Interior

Luxembourg:

Mr Luc FRIEDEN

Minister for Justice, Minister for the Treasury and the Budget
Minister with responsibility for Foreign Affairs and Immigration

Mr Nicolas SCHMIT

Hungary:

Mr József PETRÉTEI

Minister for Justice and Law Enforcement

Malta:

Mr Tonio BORG

Deputy Prime Minister, Minister for Justice and Home Affairs

Netherlands:

Mr E.M.H. HIRSCH BALLIN

Minister for Justice

Austria:

Ms Maria BERGER
Mr Günther PLATTER

Federal Minister for Justice
Federal Minister for the Interior

Poland:

Mr Andrzej Sebastian DUDA
Mr Wiesław TARKA

Deputy State Secretary, Ministry of Justice
Deputy State Secretary, Ministry of the Interior and
Administration

Portugal:

Mr Alberto COSTA
Mr António COSTA

Minister for Justice
Ministro de Estado, Minister for the Interior

Romania:

Ms Monica Luisa MACOVEI
Mr Vasile BLAGA

Minister for Justice
Minister for Administration and for the Interior

Slovenia:

Mr Lovro ŠTURM
Mr Dragutin MATE

Minister for Justice
Minister for the Interior

Slovakia:

Mr Štefan HARABIN
Mr Robert KALIŇÁK

Deputy Prime Minister and Minister for Justice
Deputy Prime Minister and Minister for the Interior

Finland:

Ms Leena LUHTANEN
Mr Kari RAJAMÄKI

Minister for Justice
Minister for the Interior

Sweden:

Ms Beatrice ASK
Mr Tobias BILLSTRÖM

Minister for Justice
Minister for Migration and Asylum Policy

United Kingdom:

Baroness SCOTLAND OF ASTHAL

Ms Joan RYAN

Minister of State for the Criminal Justice System and
Offender Management
Parliamentary Under-Secretary of State, Home Office

.....
Commission:

Mr Franco FRATTINI

Vice-President

.....

Other participants:

Mr Ilkka LAITINEN

Executive Director of the European Agency for the
Management of Operational Cooperation at the External
Borders of the Member States of the European Union
(Frontex)

ITEMS DEBATED

INTEGRATION OF THE TREATY OF PRÜM INTO THE EU LEGAL ORDER

The Council agreed on the integration into the EU legal framework of the parts of the Prüm Treaty relating to police and judicial cooperation in criminal matters (Title VI of the EU Treaty, the so-called "third pillar"), with the exception of the provision relating to cross-border police intervention in the event of imminent danger (Article 18). This last particular issue will be further examined by the Council at one of its forthcoming sessions.

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.¹

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.

¹ 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.

The signatory states are: Germany, Belgium, Spain, France, Luxembourg, The Netherlands, and Austria.

Those states having notified their wish to accede to the Prüm Treaty are: Slovenia, Italy, Finland, Portugal, Bulgaria, Romania, Greece and Sweden.

MIGRATION

The Council had an exchange of views on the implementation of the European Council conclusions of 14 and 15 December 2006 relating to a Comprehensive European Migration Policy.

In particular, the Council took 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.

The debate was held on the basis of a Presidency note which addressed the following ideas:

- countries of origin and transit should be given practical support for capacity-building within the framework of region-specific cooperation platforms for migration and development;
- the appropriate cooperation platforms should be designed on the basis of uniform principles (e.g. regular meetings, ongoing dialogue and exchange of information, monitoring and accompanying evaluation);
- in establishing country-specific migration profiles, particular account should be taken of:
 - causes of migration,
 - own capacity of countries of origin to regulate migration and
 - obstacles in the countries of origin which stand in the way of economic development and exploitation of the potential which exists in those countries.

In concluding partnership agreements on migration and development, the following could be considered:

- creation of temporary residence permits for work, educational or further-training purposes according to Member States' possibilities;
- granting of optional quotas for certain sectors of the labour market or education by the Member States;

- obligation on partner countries to recognise principles of democracy and the rule of law as well as protection of human rights;
- reliable readmission of own nationals and third-country nationals by the partner countries;
- EU measures to promote reintegration of migrants who have returned to the partner country, and to exploit the knowledge and know-how acquired;
- obligation to create framework conditions in the countries of origin which make it possible to use the development-policy and economic potential of migration in those countries.

Moreover, there must be reliable guarantees of unrestricted national competence of Member States for their labour markets in any proposals to regulate labour migration and any proposed models for circular migration.

It should be noted that in December 2006, the European Council invited the Commission 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 invited to present detailed proposals by June 2007 to better organise legal migration between the EU and third countries and provide with information about the various forms of legal migration.

The discussion held today by the Council will help the Commission to draft these proposals. Commission Vice-President Franco Frattini agreed to inform orally the Council on the state of play of its work on these issues at the next Justice and Home Affairs Council meeting in April 2007.

TRANSFER OF SENTENCED PERSONS TO ANOTHER MEMBER STATE

The Council reached a general approach 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 agreement reached today on this instrument 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 Council recognised that Poland needed more time than the other Member States to face the practical and material consequences of transfer of Polish citizens convicted in other Member States, especially in the light of an increased mobility of Polish citizens within the European Union. For that reason, a temporary derogation of a limited scope for a maximum period of five years was foreseen to Poland.

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 had a general discussion about a draft Council Framework Decision on combating racism and xenophobia. This proposal, which was presented in 2001, has not reached the agreement of the Council so far.

The Presidency is of the opinion that Member States are now committed to reaching an agreement. Therefore the Presidency will prepare a new text on the basis of the discussion held today.

MIXED COMMITTEE

– ***SISone4all***

The Mixed Committee took note of the state of play of the project SISone4all. Portugal indicated that this project, which will allow, among other conditions, the lifting of the internal borders with the Member States which acceded in 2004, is running well and in time.

– ***Global rescheduling of the Schengen Information System II***

It also took note of a Commission's revised timetable for SISII. Commission Vice-President Franco Frattini announced that SISII is expected to be delayed of six months, and therefore it would be operational in mid-December 2008.

– ***Network for SIS, SIRENE and Vision (SIS-NET and S-Testa)***

The Mixed Committee also took note of the agreement reached between the Council Secretariat, the Commission and the Presidency on the options for the replacement of the SISNET network contract (network used for the Schengen Information System).

– ***FRONTEX***

Furthermore, the Mixed Committee reviewed progress in relation to the proposed Regulation establishing rapid border intervention teams. The Presidency urged delegations to lift their reservations as soon as possible on this proposal with a view to reaching a political agreement with the European Parliament in April 2007.

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 provide rapid operational assistance, for a limited period of time, to a requesting Member State facing a situation of urgent and exceptional pressure. 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.

Finally, the Mixed Committee reviewed 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. Member States were encouraged to actively contribute to the toolbox.

ANY OTHER BUSINESS

– *Moldova*

Commission Vice-President Franco Frattini raised the question of Moldavian citizens increasingly asking for Roumanian passports.

The Council mandated its preparatory bodies to further examine this question.

– *Environmental protection through criminal law*

Commission Vice-President Franco Frattini informed the Council about the recent Commission proposal for a Directive which would oblige Member States to treat serious offences against the environment as criminal acts and would ensure that they are effectively sanctioned. The proposal also sets minimum sanctions for environmental crimes across the Member States

In September 2005, the European Court of Justice confirmed that the Community had the competence to oblige Member States to adopt criminal law measures for the protection of the environment if necessary to ensure the efficient implementation of its environmental policy. For this reason it annulled the Framework Decision on environmental crime adopted in 2003 by the Council on the basis of a Member State initiative based on the provisions for judicial cooperation in criminal matters contained in the EU Treaty (Title VI, so called 3rd pillar). The proposal presented today by the Commission therefore is aimed to replace both the Council's Framework Decision of 2003 and a proposal for a directive already presented by the Commission in 2001, the Council rejected when adopting the 2003 Framework Decision.

Member States would be required to ensure that a range of activities (e.g. illegal shipment of waste and unlawful trade in endangered species or in ozone-depleting substances) already prohibited by EU or national legislation are considered criminal offences, when committed intentionally or with serious negligence. Member states would have to ensure that particularly serious environmental crimes are punishable by a maximum of at least 5 years imprisonment and fines for companies of at least €750 000 . These cases would include crimes that have resulted in death or serious injury of a person or a substantial damage to air, soil, water, animals or plants or when the offence has been committed by a criminal organisation. In addition, the proposed directive foresees supplementary or alternative sanctions, such as the obligation to clean up/reinstate the environment or the possibility of stopping businesses from operating.

The proposed measures will ensure that criminals cannot exploit the significant differences which currently exist between the Member States. Loopholes in the action against environmental crime should therefore no longer exist within the European Union.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

EU Agency for Fundamental Rights

The Council adopted a Regulation establishing the EU Agency for Fundamental Rights (16241/06).

The objective of the Agency will be to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States 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.

The Agency will collect objective, reliable and comparable information on the development of the situation of fundamental rights, analyse this information in terms of causes of failure to respect, consequences and effects and examine examples of good practice in dealing with these matters.

The Agency will 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 adopted in the course of legislative procedures as far as their compatibility with fundamental rights is concerned.

In addition, it will 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 will produce thematic reports on topics of particular importance to the Union's policies.

The Agency will 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 with individual complaints itself.

The Regulation repeals Regulation (EC) No 1035/97 with effect from 1 March 2007. The Agency will become operational by 1 March 2007.

In December 2003, the European Council agreed to extend the mandate of the European Monitoring Centre on Racism and Xenophobia, established by Regulation (EC) No 1035/97, and transform this Centre into the EU Agency for Fundamental Rights. The seat of the Agency will remain in Vienna (Austria).

EU agency for fundamental rights - Cooperation with the Council of Europe

The Council adopted a decision authorising the Commission to open negotiations with the Council of Europe, for the conclusion of an agreement concerning cooperation between the EU agency for fundamental rights and the Council of Europe.

Customs cooperation

The Council took note of a report on the implementation of the action plan for the strategy for customs cooperation in the third pillar (2004-2006).

The Council also took note of a report covering the period from September 2005 to October 2006, on the efficiency and effectiveness of the Customs Information System (CIS).

The aim of the CIS is to develop an efficient alert system in the framework of the fight against fraud in the EU.

Europol - Cooperation agreement with Australia

The Council authorised the director of Europol to conclude a draft agreement with Australia.

The purpose of the agreement is to establish a cooperation between Australia and Europol in order to support the Member States of the EU and Australia in the combating of serious forms of international crime, in particular through the exchange of information and regular contacts at all appropriate levels.

Europol - 2005 budget – Audit report and discharge to the director

The Council gave discharge to the Director of Europol in respect of the budget for 2005 after examining the audit report of the Joint Audit Committee of Europol (16330/06).

Europol - Negotiations with third States and non EU-related bodies

The Council adopted a decision whereby Montenegro is added to the list of third States and non EU-related bodies with which the Director of Europol is authorised to enter into negotiations (5328/07).

Trafficking in human beings - 2006 World Cup in Germany

The Council took note of a report summarising and assessing the measures adopted by Germany and describing the actual extent of trafficking in human beings and forced prostitution (5006/1/07) and a report outlining the preventive measures implemented by non-governmental organisations and specialist advisory bodies with the support of the Federal Government (5008/07).

Both reports will be forwarded to the European Parliament for information.

EU agency for cooperation at external borders - Participation of Iceland and Norway

The Council adopted a decision approving an arrangement between the EC and Iceland and Norway on the modalities of those states' participation in the EU agency for cooperation at external borders (Frontex) (5489/07).

Frontex was established in 2004 by Council Regulation No 2007/2004 (OJ L 349 of 25.11.2004).

Mexico - Partnership Agreement - EU enlargement

The Council adopted a decision authorising the signature and provisional application of a Second Additional Protocol to the Economic Partnership, Political Coordination and Cooperation Agreement with Mexico to take account of the accession of Bulgaria and Romania to the EU.

Special representatives of the EU - Extension of mandates - New representatives for the African Great Lakes

The Council adopted today joint actions appointing new European Union special representatives (EUSRs) for the African Great Lakes region and for Moldova and extending - for some of them with amendments - the mandates of six other EUSRs.

The joint actions:

– appoint:

Mr Roeland VAN DE GEER as EUSR for the African Great Lakes region from 1 March 2007 to 29 February 2008 (5246/07). He succeeds Mr Aldo Ajello.

Mr Kálmán MIZSEI as EUSR for the Republic of Moldova as from 1 March 2007 to 29 February 2008 (5124/07). He succeeds Mr Adriaan Jacobovits de Szeged.

See Statements (S055/07 and S056/07) by EU High Representative Javier SOLANA welcoming the appointments.

– Extend the mandates of:

the EUSR for Sudan, Mr Pekka HAAVISTO until 30 April 2007; and the EUSR for Afghanistan, Mr Francesc VENDRELL until 29 February 2008 (5125/07 and 5123/07);

– Extend and amend the mandates of:

the EUSR for Central Asia, Mr Pierre MOREL until 29 February 2008 (5332/07). His mandate is amended chiefly to take account of the objective of developing bilateral energy cooperation with important producer and transit partners in Central Asia;

the EUSRs for the South Caucasus, Mr Peter SEMNEBY (5128/07); for the Middle East Peace Process, Mr Marc OTTE (5127/07) and in the former Yugoslav Republic of Macedonia, Mr Erwan FOUÉRE (5126/07) until 29 February 2008. Their mandates are amended chiefly in order to contribute to the implementation of the EU human rights policy.
