



Brussels, 11 June 2007

BACKGROUND¹
JUSTICE and HOME AFFAIRS COUNCIL
Luxembourg, 12 and 13 June 2007

The Council will start its work on Tuesday 12 with the discussion of the "Home Affairs" issues. At 10.00 the Mixed Committee² will examine:

- *the state of play of the Schengen Information System: SISone4all and SISII,*
- *a draft Regulation and a draft Decision concerning the Visa Information System (VIS),*
- *a proposal on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, and*
- *a proposal laying down a uniform format for residence permits for third-country nationals.*

The Council will continue with a discussion on the replacement of the Europol Convention by a Council Decision and on a Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime. The "Home Affairs" Ministers will also examine the application of the global approach to migration, the common European Asylum System, the integration policies in the EU and the refugee situation in Iraq and surrounding regions.

The "Justice" issues will be discussed on Wednesday 13 June 2007. The Council will examine the following legislative proposals:

- *on procedural rights in criminal proceedings throughout the EU,*
- *on the organisation and content of the exchange of information extracted from criminal records,*
- *on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences, and*
- *on the protection of the environment through criminal law.*

The Ministers of Justice will also consider a report on violent video and computer games and conclusions on E-Justice as well as on a horizontal approach in respect of certain list offences.

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A press conference will be held before the lunch on Tuesday (Interior issues +/- 12:45) and at the end of the first working session (Interior issues +/- 17.00) as well as at the end of the second working session (Justice issues +/- 16.00).

In the margins of the Council, a ministerial meeting will be held, on 11 June 2007 at 14.30, between Ukraine and the troika of the EU with a view to discussing among other issues: the state of play concerning the readmission and visa facilitation agreements, border management, and the fight against organised crime and terrorism. At 17.00 there will be a signature of a working arrangement between FRONTEX and the State Border Guard Service of Ukraine (photo opportunity).

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

TUESDAY, 12 JUNE 2007

Schengen Information System (SIS)

The Council is expected to adopt conclusions on SIS. These conclusions will confirm the intention of the Council to go ahead, as scheduled, with four parallel projects:

- the enlargement of the Schengen area (removal of internal border checks in the new Member States) between December 2007 and March 2008,
- the implementation of the SISone4all project (extension of the current SIS I to include the new Member States),
- the development of a SIS II, and
- the prolongation of the Schengen communication network.

In this context, the Council will also adopt a Decision on SIS II and a Decision concerning the provisions of the Schengen acquis relating to the SIS and applying to the new Member States.

Visa Information System (VIS)

The Council will confirm that an agreement has been reached on

- a Regulation of the European Parliament and of the Council concerning the VIS and the exchange of data between Member States on short-stay visas and
- on a Council Decision concerning access for consultation of the VIS by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.

Protection of personal data relating to police and judicial co-operation in criminal matters.

The Council is expected to adopt conclusions concerning a draft Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters.

The purpose of this Framework Decision is to ensure a high level of protection of the basic rights and freedoms, in particular the privacy, of individuals, while guaranteeing a high level of public safety.

The Council reiterates its intention to give priority to the examination of the proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters, and to reach a political agreement on the proposal as soon as possible.

Uniform format for residence permits

This item will be discussed on the basis of an oral report by the Chair on the state of play of the negotiations.

Replacing the Europol Convention by a Council Decision

The Council is expected to agree on conclusions on this issue. It will also reach an agreement on chapter 1 ("Establishment and tasks") of the proposal for a Council Decision establishing Europol.

It should be noted that on 4 and 5 December 2006, the Justice and Home Affairs Council agreed that the Europol Convention should be replaced by a Council Decision. This will constitute a clear improvement of the operational and administrative functioning of Europol. At that meeting, the Council also decided that a full assessment of the implications of financing Europol from the general budget of the EU and the application of the Protocol on the Privileges and Immunities of the European Communities should be done, guided by the principle of budget neutrality and taking into account the specific requirements resulting from Europol's mandate and tasks.

Cooperation for purposes of prevention and investigation of criminal offences

The Council is expected to reach an agreement on a Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

This Decision contains provisions based on the essential parts of the Prüm Treaty and is designed to improve the exchange of information between authorities responsible for the prevention and investigation of criminal offences.

To this end, the Decision contains rules in the following areas:

- on the conditions and procedure for the automated transfer of DNA profiles, dactyloscopic data and certain national vehicle registration data,
- on the conditions for the supply of data in connection with major events with a cross-border dimension,
- on the conditions for the supply of information in order to prevent terrorist offences, and
- on the conditions and procedure for stepping up cross-border police cooperation through various measures.

This closer police and judicial cooperation in criminal matters will go hand in hand with respect for fundamental rights, in particular the right to respect for privacy and to protection of personal data, which will be guaranteed by special data protection arrangements tailored to the specific nature of different forms of data exchange.

The Decision is the result of an initiative submitted by Belgium, Germany, Spain, France, Luxembourg, the Netherlands and Austria with the aim of incorporating the substance of the provisions of the Prüm Treaty into the legal framework of the European Union.

Global Approach to Migration

The Council is expected to adopt Conclusions on Extending and enhancing the Global Approach to Migration.

In December 2005, the European Council adopted the Global Approach to Migration. It initially focused on Africa and the Mediterranean region. Following a Commission Communication, the European Council, in its Conclusions of December 2006, called on the Commission to make proposals on enhanced dialogue and concrete measures with regard to applying the Global Approach to the Eastern and South-Eastern regions neighboring the EU.

The European Council also invited the Commission:

- to propose ways to integrate legal migration opportunities into the Union's external policies in order to develop a balanced partnership with third countries, adapted to specific Member State's labour market needs,
- to suggest ways and means to facilitate circular and temporary migration, and
- to present detailed proposals on how better organise an inform about the various form of legal movement between the EU and third countries.

The Commission has now submitted two Communications aiming to respond to these invitations that constitute the base of the draft Conclusions aiming at rendering operational the actions envisaged by the Commission.

Current Situation of the EU's southern maritime Borders

The Council will address the recent events in the Mediterranean sea regarding illegal immigrants.

Sanctions against employers of illegally staying third country nationals.

The Council will debate a Commission proposal for a Directive of providing for sanctions against employers of illegally staying third country nationals.

This proposal forms part of the EU's efforts to develop a comprehensive migration policy. In accordance with the Commission proposal, one of the factors encouraging illegal immigration into the EU is the possibility of finding work. This proposal aims to reduce that pull factor by targeting the employment of third-country nationals who are illegally staying in the EU. Building on existing measures in the Member States, the aim is to ensure that all Member States introduce similar penalties for employers of such third-country nationals and enforce them effectively.

Under this proposal, it is the employer who will be sanctioned, not the illegally employed third-country nationals.

Strengthening of integration policies in the European Union

The Council is expected to adopt draft Conclusions on the strengthening of integration policies in the EU by promoting unity in diversity.

The basis of these Conclusions has been the outcome of the informal meeting of EU Integration Ministers which took place in Potsdam, on 10 and 11 May 2007.

The focus of the Ministerial Meeting was the promotion of a global and coherent approach regarding integration policies of the Member States, to establish priorities and means to achieve them in the field as well as lay the foundations for future action.

The draft Presidency Conclusions, which resulted from the meeting, encompassed many issues concerning the integration of migrants in the Member States both of political and technical nature. Among them were the acknowledgement of the role of the host society, of the local governments and of having an agreed value system for the facilitation of the migrants integration.

Refugee situation in Iraq and surrounding regions

This item will be discussed by the Council on the basis of an oral report by the Commission.

In accordance with the United Nations High Commissioner for Refugees (UNHCR), the situation in Iraq continues to worsen, with more than 2 million Iraqis now believed to be displaced inside Iraq and another 2.2 million sheltering in neighbouring states.

Common European Asylum System

The Council will have an exchange of views on the following items:

- a proposal for a Council Directive concerning the extension of the scope of a Council Directive 2003/109/EC determining the status of third-country nationals who are long-term residents to beneficiaries of international protection,
- a Green paper on the future common European asylum system, and
- a report on the evaluation of the "Dublin" system.

Council Directive 2003/109/EC determines the status of third-country nationals who are long term residents. At the time of the adoption of this Directive, the Council welcomed the Commission commitment to table a proposal for the extension of long-resident status to refugees and persons under subsidiary protection status, taking into account the question of transfer of protection status. The new Commission proposal responds to this commitment.

Concerning the Green Paper on the future Common European Asylum System, the Hague Programme foresees the adoption of such a system by the end of 2010. This means that, after the stage of minimum standard rules on asylum currently in place, a full harmonisation of asylum legislation will be achieved. With a view to this goal, the Commission intends to launch an in-depth reflection and debate. The Commission will synthesize the results of this reflection, together with the results of the evaluation of the first stage EC asylum instruments, and will then submit a road map of the work that will have to be carried out in the future, in order to achieve the Common European Asylum System.

The so-called "Dublin system" includes Council Regulation 343/2003 establishing the criteria for determining the Member State responsible for examining an asylum application, and Council Regulation 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (subsequently, Regulation 343/2003).

These two Regulations required the Commission to report on their application after three years of operations and to propose, where appropriate, the necessary amendments. The Commission has now submitted a merged report on both instruments, given their complementary character. The Commission intends to propose in the future, within the framework of the future Common European Asylum System, the necessary measures aiming at improving the practical application and the effectiveness of the "Dublin system".

Visa reciprocity

This item will be discussed on the basis of an oral report by the Commission.

WEDNESDAY, 13 JUNE 2007

Procedural rights in criminal proceedings throughout the European Union

The Council will have a public debate on a proposal for a Council Framework Decision on certain Procedural rights in criminal proceedings throughout the European Union.

The draft Framework Decision, establishes rules defining certain rights of persons arrested in connection with or charged with a criminal offence in order to safeguard the fairness of criminal proceedings throughout the European Union.

On 1/2 June 2006, the Justice and Home Affairs Council agreed on the principles for further work on this proposal. It was concluded that the scope of the proposed Framework Decision 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. The Council also instructed its preparatory bodies to examine practical measures.

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

At its meeting on 19 April 2007, the Council concluded that work should be pursued in order to reach a consensus on the scope of the instrument at the meeting of the Council in June. The dividing line has been the question whether there is competence for the Union to legislate on purely domestic proceedings (at least 21 Member States share this view) or whether the legislation should be devoted solely to cross-border cases. The Presidency now proposes a text of a Framework Decision which reflects the view of this vast majority. Ministers are asked to accept this proposal and to pronounce themselves on the possibility of enhanced cooperation, if an unanimous agreement is not possible.

Exchange of information extracted from criminal records between Member States

The Council is expected to reach a general approach on a proposal for a framework decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

This Framework Decision is an important step to improve the exchange of information on criminal convictions handed down against nationals of the EU Members States.

It will lay the ground rules for the transmission of information on convictions to the Member State of the person's nationality as well as for the storage of such information by that Member State and for the retransmission, upon request, to other Member States.

The Framework Decision is intended to apply both to requests in case of criminal proceedings as well as non-criminal proceedings. The Framework Decision also addresses the important issue of information exchange arising from convictions for sexual offences committed against children.

The outstanding issues relate to the rules applicable to the deletion of information from criminal records and to the rules applying to the transmission of data to third countries.

"Violent video games"

The Council is expected to adopt conclusions on violent video games.

The Informal Justice and Home Affairs ministerial meeting on 14-16 January 2007 supported the intention of the Presidency to launch a debate on the production and distribution of violent videos and computer games to explore solutions with producers and distributors.

On 7 March 2007 the German Presidency launched a questionnaire in order to obtain an overview of legal provisions for possible criminal sanctions as well as legal provisions for protecting minors from obtaining access to violent video games.

The answers to this questionnaire represent the basis of the conclusions. In accordance with the results of the questionnaire, Member States have various legislations in place to protect the minors against the negative effects of violent video games.

Therefore, the conclusions will not foresee EU legislative action for the time being but will focus on increased co-operation in the practice and ask for further exchange of information between the Member States concerned.

Recognition and supervision of suspended sentences, alternative sanctions and conditional sentences

The Council is expected to reach a common understanding on certain "key elements" of the draft Framework Decision:

- aim of the Framework Decision,
- scope of application,
- types of suspensory measures and alternative sanctions, and
- division of competences between issuing State and executing State.

This draft Framework Decision aims at setting rules under which a Member State, to which a person has returned or intends to return following a conviction for a criminal offence, supervises suspensory measures imposed on the basis of a judgment which was issued in another Member State, or alternative sanctions contained in such a judgment, and takes all other decisions relating to such a judgment.

The Council will also debate one specific element of the draft Framework Decision, which relates to "double criminality".

E-Justice

The Council is expected to adopt Conclusions on E-Justice.

The Council will agree that work should be carried on in the area of E-Justice with a view to creating at European level a technical platform giving access, in the sphere of justice, to existing or future electronic systems at national, Community and, where appropriate, international level.

An E-Justice system should give access to citizens, economic operators, practitioners of law, judicial authorities and courts, which will benefit from available modern technologies. It should ensure a user-friendly access.

Other Business

- Protection of the environment through criminal law

The Council will take note of a Presidency report on the state of play of the Proposal for a Directive on the protection of the environment through criminal law.

The aim of this Directive is to establish a uniform level of protection in the field of environmental criminal law throughout Europe.

It will probably be one of the first sets of legal instruments by means of which criminal law arrangements can be made in the context of the first pillar.

- Rome II (Regulation on the law applicable to non-contractual obligations)

The Council will hear an oral report by the Presidency about the agreement reached with the European Parliament on Rome II.

The purpose of this draft Regulation is to lay down a uniform set of rules of law applicable to non-contractual obligations, irrespective of the country of the court in which an action is brought. This should increase certainty as to the applicable law and improve the predictability of legal disputes and the free movements of judgments.

As a general rule, the draft Regulation sets out that the law applicable to a tort/delict is the law of the country where damage occurred. Only in certain limited, duly justified circumstances, the general rule will be derogated from and special rules applied. The draft Regulation contains special rules in matters of product liability, unfair competition, environmental damage, infringements of intellectual property and industrial action.

- Cyber-crime

Commission Vice-president Franco Frattini will brief the Council about a recently approved Commission Communication on cyber-crime.

- **Horizontal approach in respect of certain list offences**

The Council will take note of the state of play of work done after the JHA Council from 1-2 June 2006. The Council instructed its preparatory bodies to examine the horizontal issue of the scope of the categories of offences further with a view to the adoption of a horizontal approach on this issue by the end of 2007. The state of play contains some possible options for the future.
