



The “Conclusions” of the special Justice and Home Affairs Council on 20 September 2001 and their implications for civil liberties

Summary

Judicial cooperation

The Council has expressed its intention to fast-track two Framework Decisions on terrorism and the European Arrest Warrant, both of which were due to be proposed at this time anyway. The proposal on terrorism has raised concerns because it includes a definition that could also cover protests and “urban violence”.

Fair Trials Abroad has warned of a “witch-hunt” against people with Arabic roots or connections and suggests that fast-track extradition may expose increasing numbers of innocent citizens to injustice. The European Arrest Warrant does not just cover terrorists but will replace *all* extradition procedures and widen the scope of offences for which people can be extradited. ‘Eurowarrants’ may also carry orders to have persons searched, detained or surrendered by police in one state on behalf of those in another.

The fifteen-week time frame for political agreement on the proposals may effectively exclude proper parliamentary scrutiny by the European Parliament (although in the “consultation” procedure for justice and home affairs measures its reports rarely have much influence). It is alarming that EU governments have pledged to agree such far-reaching proposals in such a short time that will leave so little chance for national parliaments, let alone civil society, to make their views known.

EU member states are to implement Article 13 of the 2000 EU Mutual Legal Assistance Convention on joint investigation teams in under another proposed Framework Decision. No member state has yet ratified the Convention, which must be ratified by all states to enter into full force. Although the joint teams proposal was made at the special EU Council on the terrorist attacks, it covers investigations into drug trafficking and illegal immigration as well as terrorism

A number of measures intend to place Eurojust, the EU’s public prosecutions unit, at the centre of a concerted EU effort to prosecute “terrorists” within the EU. The final Eurojust text is scheduled for adoption in December 2001, “pro-Eurojust” has been operating since January 2001 and is currently dealing with 110 cases. The recommendation from the European Parliament that the provisional agency be subject to the 1981 Council of Europe Convention on data protection was ignored.

Police and intelligence cooperation

There is a similar commitment to placing Europol at the centre of the EU’s counter-terrorism programme. Last year Europol opened an analysis work file on “extremist Islamic terrorism” within the EU, with the aim of constructing an operational analysis of all information on actual and potential suspects, witnesses, victims, contacts, associates and informants; suspected and alleged offences; modus operandi and suspected membership of a criminal organisation; convictions, and references to investigations by national police forces.

It already has a counter terrorist department, to which specialist liaison officers from the member states are to be appointed. One of the measures is aimed at overcoming an apparent reluctance on the part of national police and intelligence agencies to fulfill their obligations to cooperate with Europol and contribute their intelligence to analysis files.

Proposing joint investigation teams for counter terrorist (and other) investigations suggests an operational role for the special counter-terrorist unit at Europol, in possible breach of the provisions in the Convention that ostensibly restrict its 225 staff to 'non-operational' activities.

The Belgian League of Human Rights has called for democratic controls on Europol and advised the Belgian presidency of the EU that the proposed new counter-terrorist powers require greater legitimacy.

However, much of the cooperation will be informal. The EU Police Chief's Operational Task Force, which does not yet have an official legal basis, is to work closely with Europol and pro-Eurojust, and a new EU Task Force of Security Service Chiefs is also to be created without a formal EU Decision. Neither of the task forces will be subject to data protection regulations, formal democratic controls or parliamentary accountability.

Immigration controls

Amnesty International has expressed its concern that the EU may introduce "unreasonable" measures against immigrants and asylum-seekers in light of the terrorist attacks in the US and will not take heart from these Council Conclusions. They recommend that member states step up external border controls, increase police ID checks, monitor the movement of legally resident "aliens" between member states, register more people on the Schengen Information System and consider widened access, and invite the Commission to examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments. This is a obvious reference to undermining the 1951 Geneva Convention on the protection of refugees, to which the EU supposedly reaffirmed its full commitment in July.

Analysis of the conclusions

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Judicial cooperation

1.

- Sets objective of "significant political agreement" on the European Commission's proposed Framework Decisions on terrorism and European arrest warrant at EU Council on 6-7 December 2001.

The proposed Framework Decision on terrorism includes a possible broadening of the concept of terrorism to cover protests and "urban violence" and has been criticized by human rights groups.

The European Arrest Warrant raises constitutional issues for some member states in regard to the possible extradition of their own nationals, and several states are opposed to the weakening of the dual criminality requirement (that the offence for which extradition is sought is recognized and penalized by both states).

The proposal itself is not limited to terrorist offences but covers any offences where extradition procedures would previously have applied. Euro-warrants can also be issued by authorities in one member state to order that a person in another be searched, detained or surrendered by police in that state.

The terrorism proposal seeks to harmonize criminal penalties for a common list of terrorism offences. An EU Framework Decision on trafficking in human beings has not yet been adopted because of reservations by the Austrian, Danish and Netherlands delegations on the sentencing provisions.

“Significant political agreement” among the member states after just 15 weeks negotiation is perhaps ambitious but certainly not impossible. The trafficking Framework Decision was proposed on 21 December 2000 and there was political agreement on all points except sentencing by the end of May 2001; sentencing was finally agreed at the 27-28 September JHA Council.

However, consultation of the European Parliament is required on framework decisions and on earlier proposals the procedure has not been completed in this short a time-frame.

Both the Framework Decisions were due to be presented by the European Commission in the third quarter of 2001, regardless of events in America (see Commission work programme 2001 and Commission’s ‘scoreboard’ on the creation of an “Area of Freedom, Security and Justice”).

They are part of a far-reaching package of forthcoming proposals to implement the principle of the mutual recognition of criminal judgments in the EU – that Court Orders and Decisions taken in one member state are recognized and enforced by all the others. The agenda is already unbalanced in favour of facilitating the free movement of investigations and prosecutions ahead of the need to guarantee the fundamental rights of suspects and defendants. Criminal lawyers and human rights organizations were already urging caution and will be dismayed by the speed in which the EU intends to agree these measures.

References: Proposed Framework Decision on terrorism from the Commission, COM (2001) 521, 19.9.01; Proposed Framework Decision on a European Arrest Warrant from the Commission, COM (2001) 522, 19.9.01; Proposed Framework Decision on on trafficking in humans from the Commission, COM (2000) 854, 21.12.00; Programme of measures to implement the principle of mutual recognition of decisions in criminal matters, 13750/1/00, 24.11.00.

- Member states urged to take steps for the two EU Extradition Conventions entry into force by January 2002.

Full ratification of the EU extradition conventions is optimistic. Five states have yet to ratify the 1995 EU Convention on simplified (consented) extradition procedure and four have yet to ratify the 1996 EU Convention on (disputed) extradition between the member states.

References: Convention on simplified extradition procedures between the Member States of the EU, signed 10.3.95; Convention on extradition between the Member States of the EU, signed 27.9.96.

2.

- Urges member states to ratify the 2000 EU Mutual Legal Assistance Convention as soon as possible.

No EU member state has yet ratified the MLA Convention.

Reference: Convention on Mutual assistance on criminal matters between the Member States of the EU (OJ 2000 C 197/1).

- Invites member states to set up Joint Investigation teams of “police and magistrates specialising in counter-terrorism” and “pro-Eurojust representatives”.

The joint teams scenario is based on early implementation of provisions in the MLA Convention on joint investigation teams (see point 3 below), with the participation of prosecutors from the provisional Eurojust (the EU’s public prosecutions office) and possibly Europol.

The Decision that will create Eurojust proper has been on the negotiating table since February 2000 and is scheduled for adoption in December 2001. The most contentious provisions have been data protection, Eurojust’s relationship with other EU bodies (particularly Europol), management and

accountability and financing of the unit.

The provisional Eurojust began operating in January 2001, a member of “pro-Eurojust” told Statewatch that the agency is already working on 110 cases.

There is no reference to data protection in the Council Decision of December 2000 creating pro-Eurojust, despite a recommendation from the European Parliament that the 1981 CoE Convention and supplementary Recommendation 87 (15) should apply.

References: Decision 2000/799/JHA setting up a provisional Judicial Cooperation Unit (Eurojust) (OJ 2000 L 324/2), Draft Council Decision setting up Eurojust, 11685/2/01, 20.9.01.

3.

- Sets objective of Council adoption of joint Belgian, Spanish, French and UK proposal on early entry into force of Article 13 of the MLA Convention at the EU Council on 6-7 December 2001.

This builds on existing plans stemming from the Tampere objective of providing a legislative framework for Europol participation in joint investigation teams operating in two or more member states.

It requires amendment of the Europol Convention and early implementation of the relevant provisions of the MLA Convention. Amendment of the 1995 Europol Convention requires ratification of a protocol by national parliaments, and negotiations have only recently got underway.

At an operational level, it appears that Europol has already been participating in de facto joint teams for some time in contravention of Article 4(2) of the 1995 Convention.

In the Conclusions the Council “welcomes the draft framework Decision covering, inter alia, acts of terrorism”. The proposal actually authorises joint teams “to carry out criminal investigations concerning trafficking in drugs and human beings as well as terrorism”.

Members of a joint investigation team working in a member state other than their own are regarded as seconded to the national authorities (Article 1(4)) and may be entrusted to undertake certain investigative measures and be present when investigative measures take place with the consent of their hosts (Articles 1(5-6)).

Any intelligence that seconded agents lawfully come across during the course of investigations in a ‘foreign’ jurisdiction may be used for any purpose whatsoever with the consent of the authorities of the member state in which it originated (Article 1(10) (d)). There is no reference to international data protection law in the proposed Framework Decision.

The proposal authorizes the participation of Europol and pro-Eurojust in joint teams (Article 1(12) with the consent of the state setting-up the team and the pre-ambule suggests that the member states “should have the possibility to decide” whether “representatives of authorities of non-member states, and in particular ...[from] the United States” can participate (Paragraph 1).

The Framework Decision is to be implemented by 1 July 2001.

The Commission is due to propose a measure on the democratic control of Europol and joint investigation teams during the fourth quarter of 2001. Will this proposal be fast-tracked in the same way? There is no mention of it in the Conclusions or the proposal on joint teams.

Reference: Belgian, Spanish, French and UK proposed Framework Decision on joint investigation teams, 11990/01, 19.9.01.

4.

- Requests the Commission to submit proposals on for law enforcement authorities access to communications data for the “purpose of criminal investigations”.

This scope of this proposal would cover all telecommunications (not just those concerning terrorism investigations). It is based on the demands of the EU law enforcement agencies who are backed by a number of EU governments.

Most member states already have legislation allowing them to surveil and intercept the telecommunications of suspected terrorists.

5.

- Calls on Commission to “review EU legislation to ensure that it contributes to law enforcement measures”.

This appears to refer to all **existing** legislation and all **new** legislation. In the context of point 4 above it suggests a review of data protection legislation and in particular the current proposal to revise the EU Directive on privacy in the telecommunications sector.

Law enforcement agencies want to remove an obligation on service providers to erase or make anonymous communications data after it has been held for billing purposes (the only purposes allowed under existing Directives). EU data protection Commissioners, the European Commission’s internal market directorate and MEP’s oppose this.

See <http://www.statewatch.org/soseurope.html> for the latest EU legislative developments on the surveillance of telecommunications and retention of data.

6.

- Calls on ‘Pro-Eurojust’ to bring together magistrates specialising in counter-terrorism to examine the possibility of joint investigations into terrorism by 15 October 2001.

Seeks to ensure international cooperation on any connected prosecutions or investigations into terrorism in the member states.

- Reaffirms commitment to December adoption of Decision to create Eurojust proper.

7.

- Speed up linking of national contact points in the European Judicial Network to the “secure electronic network”.

The European Judicial Network was created in July 1998 and links the mutual legal assistance units in the justice ministries of member states in order to expedite the administration of requests for police and judicial assistance between the EU member states.

Reference: Joint Action 98/428/JHA establishing a European Judicial Network (OJ L 191, 7.7.98).

Police and intelligence cooperation

8.

- Requests the EU Police Chief’s Operational Task Force to organize an ad hoc meeting of heads of EU counter-terrorist agencies by 1 November 2001 to “improve operational cooperation between Member States and third countries”; coordinate national measures on “security, including in the field of air safety” and “consider the missions to be entrusted to the team of counter-terrorist specialists within Europol”.

The creation of a European Police Chief’s Operational Task Force was agreed at the Tampere summit

(Finland) in October 1999. According to the UK delegation to the EU's Article 36 Committee (senior officials from the interior ministries of the member states) "the idea was formulated after a gap was identified between the intelligence and information on serious organised crime (through Europol) and its translation into operational activity. It is envisaged that the European Police Chief's Operational Task Force will fill this gap".

The task force covers all areas of police policy, although it is "geared essentially towards operational aspects" and "top priority" organised crime problems. It is comprised of "top-level" police officers, Europol and representatives of the European Commission.

The task force has met on at least three occasions: 7-8 April 2000 (Lisbon), 14-15 September 2000 (Paris) and 8-9 March 2001 (Stockholm). At the first meeting, it was decided "to create a flexible, evolving and initially informal structure".

This means that there are no rules of procedure, accountability or reference to data protection provisions. Initial documentation suggested that a formal EU agreement would give the police chiefs' task force a legal status, but no proposals followed. Instead the matter will be left to the review of the Tampere recommendations in December 2001. It currently has no legal basis.

The Conclusions spell out the explicit link between the EU Police Chief's Task Force and Europol. A counter-terrorist unit is to be set-up at Europol (see point 10 below) and the task force is to meet to draw up an operational strategy.

Reference: European Police Chiefs Operational Task Force, 5858/00, 2.2.00 (see *Statewatch European Monitor* vol 2 no 1, 2000).

9.

- Calls on both police and intelligence agencies in the member states to pass on relevant information on terrorism in the framework of the Europol Convention and instructs the Europol Director to report back to the Council on any problems.

This reflects a wider problem Europol has with the amount of intelligence that member states are contributing which has led to a "malfunctioning" of Europol's analysis files.

Analysis files can contain information on actual and potential suspects, witnesses, victims, contacts, associates and informants; suspected and alleged offences; modus operandi and suspected membership of a criminal organisation; convictions, and references to investigations by national police forces.

Europol is already running an analysis file on "extremist Islamic terrorism in the EU", and is believed to be running another on "eco-terrorism".

Member states have an obligation under the Convention to contribute their relevant intelligence to Europol analysis files, but can withhold intelligence on a broad range of grounds (national security, protecting investigations or personal security, or specific intelligence activities).

In discussions on amending the Europol Convention, Europol has suggested that "it is necessary to clarify the legal obligation to supply information to Europol, unless the exceptions of article 4(5) [of the Europol Convention] apply".

10.

- Sets up, for a renewable period of 6 months, a team of counter-terrorist specialists in Europol to which member states are invited to appoint liaison officers from their police and intelligence services. Remit includes collection of "all relevant information and intelligence concerning the current threat", undertaking an "operational and strategic analysis" and "drafting a threat assessment document".

According to Europol's 2001 budget its staff of 224 includes 7 counter terrorism specialists. (There are

17 investigation and operational support staff, 66 in the intelligence analysis and documentation departments and 39 technology services posts).

As well as the permanent staff, there are another 60 Europol liaison officers already seconded to the agency from the 15 member states.

11.

- Requests Europol to update the EU Directory of counter-terrorist specialists created under a 1996 Joint Action.

Reference: Joint Action 96/610/JHA on the creation and the maintenance of a directory of competent counter-terrorist authorities and specialists aimed at facilitating counter-terrorism cooperation between EU Member States (OJ L 273 25.10.96).

12.

- Requests Article 36 Committee (senior officials from the justice ministries of the member states) to ensure the closest possible cooperation between Europol, pro-Eurojust and the EU Police Chief's Task's Force.

Only Europol has a proper legal base governing its powers, mandate, activities, obligations and liability so all cooperation is informal.

Europol is supposed to conclude formal agreements with any agency that it exchanges information or cooperates with, but is obviously unable to conclude agreements with informal bodies that do not yet have legal personality.

13.

- Examination of the possibility of extending, "in the context of counter-terrorism, SIS access to other public services".

This could refer to existing plans to give access to SIS data on stolen vehicles to the licensing authorities in the member states. Could also be a veiled reference to wider access for law enforcement agencies in general in respect to wanted persons.

14.

- Creates new EU Intelligence Chief's Task Force to begin meeting regularly. First meeting to be held before 1 November 2001.

This creates a second informal international forum for senior law enforcement officials from the member states. Like the EU Police Chief's Operational Task Force, the Heads of EU Security Services task force will have no rules of procedure, formal mandate, provisions for accountability or reference to data protection rules.

Given that national security services are generally less 'regulated' than their counterparts in the police force, formalizing the role of the new 'forum' and providing regulation, accountability and democratic control seems very unlikely (though very necessary).

15.

- Instructs Article 36 Committee to work out a simpler and quicker evaluation and assessment mechanism than in the 1997 Joint Action in order to find a procedure for assessing national anti-terrorist arrangements on the basis of legislative, administrative and technical procedures. Examples given are legislation on "administrative telephone-tapping" and a "list of terrorist organizations".

The Joint Action to which the Council refers provides a framework for assessing whether member states have implemented EU law enforcement measures effectively.

The UK Home Office has made no secret of its desire to see its list of “proscribed organizations” (which closely mirrors that of the FBI) adopted by other EU states. However, since this is not an EU measure it presumably falls outside the scope of the Joint Action on mutual evaluation.

The proposal allows officials, officers and agents to recommend policy changes.

Reference: Joint action 97/827/JHA establishing evaluation procedures for the international undertakings in the fight against organised crime (OJ L 344, 15.12.97).

16.

- Instructs EU Working Party on Terrorism to draw up an inventory of national measures to combat terrorism (controls at airports, internal and external borders) and, in collaboration with Europol to work out an “alert and intervention plan to deal with any transfrontier terrorist acts”.

17.

- The Council has decided to provide the European Parliament with regular non-confidential reports on the terrorism situation and trends.

18.

- The Council has agreed on the rapid exchange of information and intelligence on terrorist incidents.

This measure provides a bulletin of terrorism alerts between the liaison offices of member state counter-terrorism departments with detailed bilateral exchanges of information to follow. It had been proposed before the terrorist attack in America.

For the purposes of the alert procedure “terrorist incidents” policy-makers have drawn up a much more specific definition of terrorist offences than in the terrorism proposal from the Commission:

- 2.4.1 Terrorist bombing or attempted bombing;
- 2.4.2 Terrorist bombing or attempted bombing using an incendiary device;
- 2.4.3 Terrorist attack or attempted attack with firearm(s);
- 2.4.4 Terrorist attack or attempted attack with biological or chemical weapons;
- 2.4.5 Terrorist hijacking or attempted hijacking of a means of transport;
- 2.4.6 Terrorist seizure or attempted seizure of hostages;
- 2.4.7 Arrest of individuals or dismantling of a network in the framework of the fight against terrorism;
- 2.4.8 Search or home visit in the framework of the fight against terrorism, where explosives and firearms are found;
- 2.4.9 Protection measures for institutions, diplomatic representations and VIPs in the context of a terrorist threat.

These definitions are clear and limited in their scope to terrorism.

A liaison office that receives the bulletin can only circulate it beyond the “national police or intelligence departments concerned” with “the express agreement Member State of origin”. There is no reference to the 1981 CoE Convention on data protection or Recommendation (87)15 of the CoE Committee of Ministers on the protection of personal data in the police sector.

Reference: Rapid information exchanges on terrorist attacks, 10524/5/01, 17.9.01.

19.

- Invites EU member states to “step-up cooperation... on methods of detecting explosives and arms and on surveillance of the production, storage, transfer and trafficking in arms and explosives”.

Enhanced cooperation on tracking arms and explosives may refer to the firearms protocol to the United Nations Convention on Transnational Organised Crime which seeks to create an international regime regulating the manufacturing and trafficking in firearms and ammunition. The Commission has proposed European Community accession to the Protocol and a Council decision is pending. Last year the Commission produced a report on the existing EC Directive on firearms.

It may also refer to the joint French, Belgian and Spanish proposal on extending surveillance under the Schengen Convention. The proposed Decision would amend Articles 40(1) and 40(7) to extend scope of persons who can be placed under cross-border surveillance and the list of crimes for which cross-border surveillance does not need prior authorization.

References: Proposed Council decision on signature of Protocol to UN organized crime Convention regarding firearms COM (2001) 397, 13.7.01; Report from the Commission to the European Parliament and the Council: the implementation of Council Directive 91/477/EEC, of 18 June 1991, on control of the acquisition and possession of weapons, COM (2000) 837, 15.12.2000; Initiative of the Kingdom of Belgium, the Kingdom of Spain and the French Republic with a view to the adoption by the Council of a Decision amending Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985, 11896/01, 25.9.01.

- Invites the European Commission to examine the possibility of harmonizing firearms licensing legislation.

A proposal on the registration and tracking of firearms was on the agenda for adoption at the May 2001 JHA Council but the proposal was never made.

Financing of terrorism

20.

- Invites EU member states to ratify the 1999 United Nations Convention on the suppression of terrorist financing.

The UN Convention on terrorist financing has only been ratified by one EU state so far.

- Intends to adopt protocol to 2000 EU Mutual Legal Assistance Convention after the European parliament has delivered its opinion.

There was political agreement on this protocol to the 2000 MLA Convention at the May 2001 JHA Council. The protocol extends the MLA Convention to place obligations on member states to provide information on bank accounts, banking transactions, surveillance of banking transactions and removes some of the existing grounds on which member states can refuse to cooperate with requests (banking secrecy, if the request is only related to fiscal offences and the ‘political offence’ exception).

The protocol also gives Eurojust a role in seeking “practical solutions” if one member state refuses to cooperate with a request for legal or police assistance from another.

Reference: Draft Protocol to the 2000 Convention on mutual assistance in criminal matters between the Member States of the European Union, 10076/01, 29.6.01.

21.

- Review of EC and EU financial legislation to ensure that banking systems comply with anti-terrorism investigations and rapid adoption of “provisions for extending mechanisms for the

automatic exchanges of information between national financial intelligence units to data concerning all sources of terrorist funding”.

Under a 1991 EC Directive all member states were obliged to designate or set up Financial Intelligence Units (FIUs) in a network “to establish links between suspicious financial transactions and underlying criminal activity in order to combat money laundering”. The Directive placed an obligation on banks and financial institutions to report “suspicious” transactions to the FIUs.

An agreement last year formalised arrangements for cooperation between the FIUs, including forced disclosure of data in investigations and prosecutions. It also encouraged the FIUs to "spontaneously" exchange data on suspicious financial transactions. There was no definition of what should constitute a "suspicious" transaction in the 1991 Directive, and none in last years Decision.

22.

- Intention to adopt framework Decision on the execution of orders freezing assets or evidence as soon as possible and widen its scope to terrorist offences.

The EU adopted Framework Decision 2001/500 on money laundering, the identification, tracing, seizing and confiscation of instrumentalities and the proceeds from crime in June 2001.

A proposal on the mutual recognition and execution of orders to freeze assets and evidence of suspects by all member states was made in November 2000. As drafted it only covers drugs trafficking, EC budget fraud, money laundering, counterfeiting of the euro, corruption and trafficking human beings.

- Welcomes imminent adoption of draft EC Directive on money-laundering.

The proposed EC Directive on action to combat money laundering has been on the table for two years and amends a 1991 Directive (91/308).

References: Framework Decision 2001/500 on money laundering, the identification, tracing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ 2001 L 182/1); French, Swedish and Belgian proposal on the execution of orders assets and evidence 13986/00, 30.10.00; Commission proposal for Directive amending Directive 91/308/EC, COM (1999) 352, 14.7.99.

23.

- EU’s Financial Action Task Force to identify non-cooperative courts in third states and Council to examine measures to be taken against them.

Border controls

24.

- Invites the member states to strengthen controls at EU external borders and requests the EU Police Chief’s Task Force to examine the “procedures of achieving this”.

Gives the new Police Chief’s Task Force a mandate to increase security checks at external borders (no distinction between land borders and airports).

- Recommends member states strengthen the surveillance measures in Article 2(3) of the Schengen Convention.

This effectively recommends police in member states to step up identity checks (Article 2(3) of the Schengen Convention states that the removal of internal border controls does not prejudice police powers to check identity cards or residence permits in accordance with national laws).

Article 2(3) of the Schengen Convention also states that the removal of internal border controls does not prejudice Article 22, which states that any “alien” who legally enters the territory of a member state must be subject to national immigration controls and that any “aliens” who are legally resident in one state and enter the territory of another must declare themselves to the competent authorities.

25.

- Recommends member states to exercise vigilance when issuing ID’s, residence permits and more systematic checking to detect falsification.

26.

- Requests Member States to apply procedures for visa issue rigorously and invites the Commission to submit proposals for establishing a “network for information exchange concerning visas issued”.

On 9 October 2001 the Commission proposed an amendment to the Regulation 1683/95/EC on a uniform format for visas, supplementing an existing proposal made in March. The new amendment will mean that photographs are included on visas that are issued “to establish a more reliable link between the holder and the visa format”. Other technical standards to combat forgery are also to be introduced.

According to the Commission’s explanatory memorandum: “the integration of the photograph will also open the way to storage in a future visa information system, with search possibilities”.

References: Proposal for a Council Regulation amending Regulation (EC) No 1683/95 laying down a uniform format for visas, COM (2001) 577, 9.10.01; Proposal for a Council Regulation amending Regulation 1683/95 laying down a uniform format for visas; Proposal for a Council Regulation on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents which are not recognised by the Member State drawing up the form; Proposal for a Council Regulation laying down a uniform format for residence permits for third-country nationals”, COM (2001) 157, 23.3.01.

27.

- Invites the member states to contribute more data to the Schengen Information System under Articles 95, 96 and 99.

Article 95 covers persons wanted for arrest for extradition purposes. Article 96 covers aliens to be refused entry or who are believed to be a threat to public order or national security. Article 99 covers persons or vehicles to be placed under discreet surveillance.

28.

- Council will study “arrangements for coordinated recourse by the member states to Article 2(2) of the Schengen Convention”.

Article 2(2) allows Schengen states to reinstate internal border controls on the basis of public policy or national security.

29.

- Council invites the Commission to examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments.

This is a clear reference to the 1951 Geneva Convention, to which the EU recently reaffirmed commitment on its 50th anniversary. Nevertheless, some interior ministries have made no secret of their desire to undermine their commitments and obligations.

30.

- **Urgent examination of the situation in regions where “large scale population movements may take place as a result of heightened tensions following the attacks on the US”.**
- **Examine the scope for provisional application of the Directive on temporary protection should “special protection arrangements” be required.**

Member states have until December 2002 to implement the Directive on temporary protection of refugees during “mass-influxes”. It allows the EU Council to declare a “temporary protection” (TP) regime in respect to specific groups of refugees.

TP beneficiaries generally receive less protection than recognized refugees, but are in a stronger position than asylum-seekers. Member states are free to ban persons from simultaneously holding TP and asylum-seeker status and can delay processing their asylum applications until the “mass-influx” is deemed to have subsided. Thereafter member states may be able to transfer TP beneficiaries into national regimes or remove asylum applicants all together.

Reference: Directive 2001/55 on temporary protection (OJ 2001 L 212/12).

Other measures

31-33 cover civil protection measures

Measures designed to improve cooperation with the USA

1.

- **Joint EU-US threat assessment project and joint meetings of EU-US senior officials on terrorism.**

Meetings already take place at both EU working party level and under the framework of the Transatlantic dialogue.

2.

- **Plans to be drawn-up for increased cooperation and closer consultation with the US in all relevant international fora, and calls for a more active role for the EU within the UN.**

3.

- **Reiterates commitment to pressurizing countries whose banking systems are suspected of being used by terrorists.**

4.

- **Invites US representatives to participate in the EU Police Chief’s Operational Task Force ad hoc meeting of counter terrorist specialists.**

See point 8 above.

5.

- **Calls for Europol to make use of the possibilities in the Convention for informal cooperation with the US and for the pending formal agreement to be authorized at the Council meeting of 16 November 2001.**

It is not clear what possibilities for informal cooperation with third states the Convention affords Europol.

Europol has so far only concluded cooperation agreements with Iceland, Norway and Interpol. Agreements with Poland, Slovenia, Estonia and Hungary are the only others on the EU agenda at present.

Cooperation agreements with US law enforcement agencies may be more difficult to conclude because the US does not have the same standards of data protection found in Community law. However, with national security and the third pillar exempt and EU police and judicial cooperation measures increasingly excluded from the scope of data protection rules, officials may try to persuade the Europol Joint Supervisory Body on data protection to help fast-track any agreements.

6.

- Invites the Europol counter-terrorism unit to establish relations with the competent US authorities for “exchanges of urgent information, without prejudice to bilateral contacts”.

See point 10 above.

7.

- Calls for the negotiation of an agreement between the EU and US in the field of penal cooperation on terrorism under Article 38 of the TEU.

This is likely to prove problematic as some EU states will be reluctant to enter into an agreement on penal cooperation because the US has the death penalty.

8.

- Invites Eurojust and magistrates from the US to consider and measures that could improve judicial cooperation in counter-terrorism between the EU and US.

The draft Eurojust Decision gives the prosecutions agency a policy-making role and allows it to cooperate with third states.

Statewatch has produced number of reports on post Gothenburg and Genoa EU planning to counter protests and post-11 September 2001 EU plans to counter terrorism, these are available on:

www.statewatch.org/observatory2.htm