



Brussels, 24 May 2006

DRAFT
BACKGROUND¹

JUSTICE and HOME AFFAIRS COUNCIL

Luxembourg, 1-2 June 2006

The Council will start its work on Thursday 1 June 2006 at 10h00 with a debate on the "Justice" issues: the European Evidence Warrant, application of the principle of mutual recognition to judgments imposing custodial sentences or mesures involving deprivation of liberty, procedural rights in criminal proceedings and a draft Regulation establishing a European small claims procedure.

On Friday 2 June the discussion at the Council will focus on the "home affairs" items: future of Europol, intelligence-led law enforcement, counter-terrorism, EU emergency and crisis response capacities and the external dimension of EU Justice and Home Affairs.

In the margins of the Council, the Mixed Committee (EU+ Norway, Iceland and Switzerland) will meet on 2 June at 10h00 with a view to discussing the progress made on the establishment of the Schengen information system (SIS II).

*
* *

Press conferences will be held at the end of the working sessions.

The Minister of the Interior will hold a press conference on 2 June 2006, +/- 13.15 h

*
* *

Please note that some of the items mentioned in this note could be re-examined by Coreper on 31 May 2006.

¹ This note has been drawn up under the sole responsibility of the Press Service.

THURSDAY 1 JUNE 2006

EUROPEAN EVIDENCE WARRANT (EEW)

On the basis of a Presidency compromise package, the Council is expected to reach a general approach on a draft Decision on the EEW for obtaining objects, documents and data for use in proceedings in criminal matters.

The main outstanding questions relate to the possibility of a refusal of a EEW because of reasons linked to territoriality, and the definition of offences.

Regarding territoriality, at its February 2005 meeting the Council agreed to include in the text a ground for refusal based on the principle of territoriality. The debate at the Council this time will focus on the scope of that ground for refusal and on the possibility of limiting it for a period of time (review clause).

Regarding the definition of offences, the proposal provides that, for 32 categories of offence, double criminality may not be invoked by the executing State as a ground for refusing an EEW if the offence concerned is punishable in the issuing State with at least three years of imprisonment. This approach is in line with earlier instruments such as the European arrest warrant, freezing orders, financial penalties or the draft text on confiscation orders.

However, at the JHA Council on 27-28 April 2006, one delegation called for the introduction of legally binding criteria defining 6 of these 32 offences. The other delegations and the Commission could not agree to that, but could only accept the inclusion of criteria of an advisory nature. On 1 June, the Council will explore different possibilities for finding a compromise, including the possibility of an opting out for that delegation limited in time.

The aim of this proposal for creating an EEW is to establish a mechanism to facilitate the obtaining of evidence in cross-border cases based on mutual recognition principles. The underlying idea is that the European Evidence Warrant is an order that would be issued by a judicial authority in one Member State and directly recognised and enforced by a judicial authority in another Member State. As compared to the existing mutual assistance procedures that it would replace, the European Evidence Warrant would bring benefits including faster procedures and clear safeguards for the issuing of a warrant and for its execution.

This proposal adopts the same approach to mutual recognition as the European Arrest Warrant. The European Evidence Warrant would thus be a single document translated by the issuing authority into an official language of the executing State. No further translation would be necessary. This means that the European Evidence Warrant could be executed immediately in the same way as a domestic procedural measure. It would lay down the objective to be achieved, while leaving it to the executing State to decide on the most appropriate way of obtaining the evidence in accordance with its domestic law.

TRANSFER OF SENTENCED PERSONS

Two questions will be submitted to the Council:

- Consent of the sentenced person, and
- Consent from the executing State to the forwarding of the judgement.

The main aim of the draft Framework Decision on enforcement of sentences is to establish cases where the consent of the executing State is not necessary and to limit the need for the consent of the person concerned.

The Presidency compromise text follows the approach that as far as the consent of the sentenced person is concerned, consent is needed for transferring the person to a Member State different from the Member State in which the person has his or her permanent legal residence. This also applies where the intention is to transfer the person to his or her State of nationality in the case where the person has his or her legal residence in another Member State.

Regarding the consent of the executing State, the Presidency suggests that the consent of the executing State shall not be needed where the judgment together with the certificate is forwarded to:

- a) the State of nationality of the sentenced person where he or she lives/resides,
- b) the State of nationality or the State of permanent legal residence of the sentenced person to which he or she would anyway be deported/expulsed as a consequence of the judgment after having served the sentence,
- c) the State of permanent legal residence of the sentenced person unless he or she has lost or will lose his or her residence permit as a consequence of the judgment.

On 24 January 2005 Austria, Finland and Sweden submitted this proposal with a view to establishing the rules under which a Member State shall recognise and enforce on its territory a sanction imposed by a court of another Member State irrespective of whether or not enforcement has already been started.

Under the existing arrangements (the 1983 Convention on transfer of sentenced persons and its 1997 Protocol and Articles 67-69 of the Schengen Convention) the consent of the State asked to enforce the sentence is always needed. The consent of the sentenced person is also necessary, except for two cases: the sentenced person has fled to his or her State of nationality or the sentenced person will be deported to that State as a consequence of the conviction after having served his or her sentence.

PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS

Discussions on this instrument has shown so far that delegations have concerns relating to, inter alia, the legal basis and the relationship of this instrument with the European Convention on Human rights.

In order to make progress, the Presidency has established a compromise which is based on the following principles:

Firstly it establishes only minimum standards and does not provide for an "upper limit" of rights. Consequently it does not prevent any Member State to provide for further reaching rights for suspects in criminal proceedings.

Secondly it aims at ensuring full compliance with the rights enshrined in the European Convention of Human Rights and the case law of the European Court of Human Rights and does not allow Member States to go below this level.

As compared to the Commission proposal, the Presidency proposal limits the number and scope of the rights covered and focuses on general standards rather than specifying in detail how the rights should be applied in each Member State in view of the different procedural systems.

The Council will be asked to agree that the Presidency proposal should serve as basis for further discussions.

The areas where common minimum standards are proposed by the Presidency are:

- right to information,
- right to legal assistance,
- right to interpretation, and
- right to translation of documents of the procedure.

The original proposal was submitted by the Commission on 3 May 2004 with a view to setting common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the EU.

EUROPEAN SMALL CLAIMS PROCEDURE

The purpose of this proposal is to simplify and speed up litigation concerning small claims in cross-border cases and to reduce costs by establishing a European procedure for small claims. The proposal also eliminates the intermediate measures necessary to enable recognition and enforcement of judgments given in one Member State in a European Small Claims Procedure in other Member States.

The European Council in Tampere invited the Council to establish special common procedural rules for simplified and accelerated litigation on small claims, and to abolish the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgment in the requested State for all titles in respect of small claims.

The Hague Program for strengthening freedom, security and justice in the European Union, adopted at the end of 2004, calls for work to be pursued actively concerning small claims. Adoption of the Regulation establishing a European Small Claims procedure is listed as a priority in the Council and Commission Action Plan implementing The Hague Programme.

In the context of the internal market individuals and businesses are often deterred from reclaiming smaller debts because of the complexity, delays and costs of proceedings. Those obstacles are even greater in the cross-border context. Many Member States have introduced simplified procedural rules to deal with smaller claims.

The Commission presented its proposal on 21 March 2005.

FUTURE OF EUROPOL

The Council will be invited to

- adopt conclusions on the future of Europol, and
- to take note of a report of the Friends of the Presidency sketching options to improve the efficiency and accountability of Europol.

During the past five months the Presidency has strived to identify the way to improve the effectiveness of Europol.

The debates have resulted in a number of draft conclusions regarding the ratification and implementation of the three Protocols amending the Europol Convention², and how to improve the functioning of Europol on the basis of the current legal framework and beyond it.

EU PRIORITIES IN THE FIGHT AGAINST CRIME

The Council is expected to adopt conclusions setting the EU priorities for the fight against crime based on the Europol 2006 organised crime threat assessment, (OCTA).

OCTA 2006 is a first attempt to develop a threat assessment of current and expected trends in organised crime across the EU.

On that basis, the draft Council conclusions set the following priorities in the fight against organised crime:

- in South West Europe, attention should be paid to the impact of African groups in the field of smuggling of human beings as well as drug trafficking, thereby promoting co-operation between, initially, French and Spanish law enforcement authorities. African groups should be focused upon and their involvement in cannabis smuggling and further distribution into the EU.
- the focus in South East Europe should be on ethnic Albanian groups and its involvement both in heroin trafficking and distribution and in trafficking in human beings. This would promote co-operation initially between Italy, Slovenia and Greece and partners in the Balkan region.
- priorities in North East Europe should be focused on groups, including Russian speaking groups, primarily involved in commodity smuggling, promoting co-operation in the Baltic Sea region

² 9589/06 ADD 1,
Protocol of 30 November 2000 amending the Europol Convention,
Protocol of 28 November 2002 amending the Europol Convention and the Protocol on the
privileges and immunities of Europol
Protocol of 27 November 2003 amending the Europol Convention.

- activities in the Atlantic region should be focused on the production of synthetic drugs by groups based in Belgium and the Netherlands and their ensuing distribution within the European Union and via Germany and the UK across the Atlantic into the US and Canada. This would promote co-operation between these countries and across the Atlantic.
- the fight against money laundering should be included in all of these priorities.

COUNTER-TERRORISM

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

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

Mr de Vries' report will summarize progress since December 2005 and the state of play regarding ratification of the conventions and implementation of the legislative acts regarded as having priority.

REINFORCING THE EU EMERGENCY AND CRISIS RESPONSE CAPACITIES

Mr Michel Barnier will present his report on a European civil protection force "Europe aid"

EXTERNAL RELATIONS

The Council will take note of the state of play regarding the implementation of the strategy for the external dimension of JHA: global freedom, security and justice.

The external strategy calls for the elaboration of a partnership with third countries in the field of JHA, which includes strengthening the rule of law, and promoting the respect for human rights and international obligations.

This strategy was approved by the JHA Council on 1 December 2005 and the process led up to:

- the Vienna Ministerial Conference on 4-5 May 2006,
- the EU-US Ministerial Troika on 3 May 2006,
- a dialogue on internal security issues between the EU, the Russian Federation and the US on 4 May 2006, and
- the preparation of action papers on:
 - improving cooperation, on organised crime, corruption, illegal importation and counter-terrorism between the EU and Western Balkan, and
 - on increasing EU support to combating drug production in and trafficking from Afghanistan, including transit routes.

The Council will therefore take note of the Vienna Declaration and the Communiqué between EU-Presidency, Russian Federation and USA. The Council will also adopt the AOP's on Western Balkans and Afghanistan / Drugs

LIST OF SAFE COUNTRIES OF ORIGIN

Following the discussion at the February and April JHA Councils, the Commission was expected to present to the Council its formal proposal in relation to the list of safe countries of origin in the sense of the Directive on minimum standards for granting and withdrawing refugee status³. On May 24, 2006 the internal proposal of a list of safe countries of origin was rejected by the "collège"

Article 29(1) of the Directive establishes that the Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin.

Under Article 30 of the Directive, Member States may retain or introduce legislation that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum.

HAMPTON COURT: FOLLOW UP

Regarding to the recent events in the Mediterranean Sea VP Frattini will inform the Council on the current state of play of the implementation of the December 2005 European Council Conclusions relation to the Global approach to migration: priority actions focusing on Africa and the Mediterranean.

³ OJ L 326, 13.12.2005, p. 13.

MIXED COMMITTEE (Friday 2 June at 10h00)

SIS II

The Mixed Committee is expected to reach political agreement on the main part of the legal initiatives on the establishment, operation and use of the second generation Schengen Information System (regulation on SIS II).

On 31 May 2005, the Commission submitted legislative proposals setting out the legal basis for SIS II: two Regulations to be adopted by the codecision procedure and one Council Decision. In order to allow SIS II to be operational in 2007 and consequently to lift the checks at the internal borders for the new Member States, the legislative instruments have to be adopted quickly.

COMMON VISA APPLICATION CENTRES

The Commission will present to the Council a proposal on common application centres.

According to the Hague Programme, the Commission was invited to submit a proposal providing for a legal framework for Member States to set up Common Application Centres. The creation of such common application centres for visas is intended to allow Member States to share premises, staff and equipment and thus the economic burden caused by the introduction of biometric data in visa.
