



**COUNCIL OF
THE EUROPEAN UNION**



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PRESS RELEASE

2652nd Council meeting

– Justice and Home Affairs –

Luxembourg, 14 April 2005

President

Mr Luc FRIEDEN

Minister for Justice, Minister for the Treasury and the
Budget, Minister for Defence

Mr Nicolas SCHMIT

Minister with responsibility for Foreign Affairs and
Immigration

of Luxembourg

P R E S S

Main results of the Council

The Council held a general discussion on the proposal for a Regulation creating a European order for payment procedure that will enable creditors to collect pecuniary claims of a specific amount as swiftly and as simply as possible. A very great majority of delegations took the view that this procedure should be confined solely to cross-border disputes.

The Council held a policy debate on the exchange of information extracted from criminal records. In the case of Community nationals, broad agreement was reached on giving access to information concerning convictions through the Member State of the nationality of the convicted person. In the case of nationals of non-member countries, a European index would be established.

The Council signified its agreement to a progressive approach to the implementation of the principle of availability and, in this context, decided to start working on six types of information deemed to be important for the conduct of criminal investigations.

It adopted conclusions on a mutual information system between those in charge of migration and asylum policy in the Member States and adopted a Resolution concerning a comprehensive EU policy against corruption.

The Council decided unanimously to establish the seat of the External Borders Agency in Poland.

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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://ue.eu.int>.
- 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.

PARTICIPANTS

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

Belgium:

Mr Jan DE BOCK

Permanent Representative

Czech Republic:

Mr František BUBLAN

Mr Roman POLAŠEK

Minister for the Interior

Deputy Minister for Justice

Denmark:

Mr Claus GRUBE

Permanent Representative

Germany:

Mr Otto SCHILY

Ms Brigitte ZYPRIES

Federal Minister for the Interior

Federal Minister for Justice

Estonia:

Mr Väino REINART

Permanent Representative

Greece:

Mr Leonidas EVANGELIDIS

Secretary-General

Spain:

Mr José Antonio ALONSO SUAREZ

Mr Juan Fernando LOPEZ AGUILAR

Minister for the Interior

Minister for Justice

France:

Mr Dominique de VILLEPIN

Mr Dominique PERBEN

Minister for the Interior, Internal Security and Local Freedoms

Keeper of the Seals, Minister for Justice

Ireland:

Mr Frank FAHEY

Minister of State at the Department of Justice, Equality and Law Reform (with special responsibility for Equality Issues)

Italy:

Mr Rocco Antonio CANGELOSI

Permanent Representative

Cyprus:

Mr Doros THEODOROU

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Latvia:

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Mr Gintaras ŠVEDAS

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Deputy Minister for Justice

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Minister with responsibility for Foreign Affairs and Immigration

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Mr József PETRÉTEI

Minister for Home Affairs

Minister for Justice

Malta:

Mr Tonio BORG

Deputy Prime Minister, Minister for Justice and Home Affairs

Netherlands:

Mr Piet Hein DONNER

Minister for Justice

Austria:

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Ms Karin MIKLAUTSCH

Federal Minister for the Interior
Federal Minister for Justice

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Mr Ryszard KALISZ
Mr Andrzej KALWAS

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Minister for Justice

Portugal:

Mr António COSTA
Mr Alberto COSTA

Minister of State at the Ministry of the Interior
Minister for Justice

Slovenia:

Mr Dragotin MATE
Mr Robert MAROLT

Minister for the Interior
State Secretary at the Ministry of Justice

Slovakia:

Mr Vladimír PALKO
Mr Daniel LIPŠIČ

Minister for the Interior
Deputy Prime Minister and Minister for Justice

Finland:

Mr Kari RAJAMÄKI
Mr Johannes KOSKINEN

Minister for the Interior
Minister for Justice

Sweden:

Mr Thomas BODSTRÖM
Ms Charlotte SVENSSON

Minister for Justice
State Secretary at the Ministry of Foreign Affairs

United Kingdom:

Baroness SCOTLAND of ASTHAL

Minister of State for the Criminal Justice System and Law Reform

Baroness ASHTON of UPHOLLAND

Parliamentary Under-Secretary of State at the Department of Constitutional Affairs

Commission:

Mr Franco FRATTINI

Vice-President

ITEMS DEBATED

EUROPEAN ORDER FOR PAYMENT PROCEDURE

Pending the European Parliament's opinion, the Council held a general discussion on this proposal for a Regulation so that proceedings could continue within the preparatory subordinate bodies.

The purpose of the proposal is to create a European order for payment procedure that will enable creditors to collect pecuniary claims of a specific amount as swiftly and as simply as possible.

In the light of the discussion, the Presidency noted that:

- on the matter of whether the Regulation should be confined to cross-border situations or be applied also to national order for payment procedures, a very great majority of delegations took the view that the European order for payment procedure should be confined solely to cross-border disputes;
- as to whether or not supporting documents were to be produced when submitting the application, the Council reached broad agreement on the requirement that in the European order for payment application the applicant should always give a brief description of at least one means of evidence to support his claim. In addition, the relevant supporting documents or copies thereof should be attached to the application if the Member State of origin so required, as indicated in a communication from that State;
- a large majority of delegations thought that the court should issue a European order for payment while informing the defendant of the claim and of his right to oppose it within a period of one month. At the end of that period, and after verification, the court of the Member State of origin could issue an enforceable order for payment;
- all delegations considered that it should be possible for a European order for payment issued to become enforceable in the other Member States of the European Union without any intermediate procedure, i.e. without any declaration of enforceability being required in the Member State of enforcement provided that the procedural guarantees were sufficient.

The swift recovery of outstanding debts whose justification is not called into question is of paramount importance for economic operators in the European Union and for the proper functioning of the internal market. A legal framework that does not guarantee a creditor access to the rapid settlement of uncontested claims may afford bad debtors a certain degree of impunity and thus provide an incentive to withhold payments intentionally to their own advantage. Late payments are a major reason for insolvency threatening the survival of businesses, particularly small and medium-sized ones, and resulting in numerous job losses. The need to engage in lengthy, cumbersome and costly court proceedings even for the collection of uncontested debts inevitably exacerbates those detrimental economic effects.

All the Member States are trying to tackle the issue of mass recovery of uncontested claims through their courts from their national perspectives within the framework of their procedural systems and traditions. Not surprisingly, the solutions that have been devised differ widely, both in their technical nature and in their rate of success. In some Member States, judgments by default, special summary proceedings within the structure of ordinary civil procedure or even provisional measures that are quasi-definitive as in practice main proceedings hardly ever ensue are the principal procedural instruments to cope with uncontested claims.

In most Member States, however, a specific payment order procedure has proved to be a particularly valuable tool to ensure the rapid and cost-effective collection of claims that are not the subject of a legal controversy.

The payment order procedures available in the Member States vary considerably with regard to such crucial aspects as the scope of application, the attribution of competence to issue an order or the formal and substantive requirements for obtaining a favourable decision. In spite of these discrepancies between the existing models of legislation, all of them share certain distinctive features that can serve as elements of a definition of a payment order procedure.

On 22 March 2004 the Commission submitted a proposal for a Regulation of the European Parliament and of the Council creating a European order for payment procedure. The proposal is subject to the codecision procedure. The European Parliament has not yet delivered its opinion at first reading.

EXCHANGE OF INFORMATION EXTRACTED FROM CRIMINAL RECORDS

The Council held a policy debate on the exchange of information extracted from criminal records with a view to defining general guidelines for future proceedings and in particular for future Commission proposals on the interconnection of national criminal records.

In addition, information was provided by France and Germany, which - together with Belgium and Spain - have engaged in a pilot operation involving the interconnection of criminal records which should be operational by the end of 2005.

On the basis of the discussions, the Presidency noted that broad agreement had been reached within the Council concerning the following questions:

- the need to base exchanges of information on bilateral communications between criminal records,
- in the case of Community nationals, access to information concerning convictions should be through the Member State of the nationality of the convicted person. The Member State of nationality would also have to concentrate information concerning the criminal records of Community nationals and would be obliged actually to record in full all convictions handed down against its nationals in other Member States of the European Union. The practical arrangements for such an obligation (scope, filtering, period of storage, deletion, etc.) will be considered in detail at a later stage on the basis of a proposal to be submitted by the Commission before the summer of 2005,
- in the case of nationals of non-member countries, or where the nationality of the convicted person is not known to the Member State of conviction, a European index would be created identifying the Member State of conviction.

It should be recalled that when it adopted the Hague Programme the European Council meeting on 4 and 5 November 2004 made the exchange between Member States of information concerning criminal convictions a priority matter and asked the Commission to prepare new proposals.

On 25 January 2005 the Commission submitted the "White paper on exchanges of information on convictions and the effect of such convictions in the European Union".

It also organised two meetings of experts on the white paper and the related feasibility study.

JHA FINANCIAL PROGRAMMES

The Commission submitted to the Council its new proposals promoting liberty, security and justice under the next financial framework for the period from 2007 to 2013.

The Council will return to this point at one of its forthcoming meetings.

The Commission's approach towards achieving this objective is based on three framework programmes which will replace the plethora of instruments which the Commission is currently administering in this area.

In order to implement fully the concept of European citizenship, the Commission proposes establishing the framework programme on fundamental rights and justice. The incorporation of the Charter of Fundamental Rights into the Constitutional Treaty means that the Union is legally obliged to ensure not only respect for fundamental rights, but also the active promotion of such rights. The right to physical integrity should also be guaranteed by combating violence. For the purposes of public health protection, information on drugs and the prevention of narcotics consumption also play an important role.

The programme will enable actions to be developed which would be less effective at national level, (e.g. judicial cooperation in both civil and criminal matters), allow private individuals and undertakings to assert their civil and commercial interests in other Member States and guarantee that crime and criminals will never go unpunished.

The framework programme on solidarity and migration management will support national measures aiming in particular to:

- improve the effectiveness of controls at the EU's external borders, while ensuring that *bona fide* travellers can cross the borders without hindrance;
- finance civic orientation courses, provide cross-cultural training and manuals for newcomers and (local) governments and facilitate the integration process;
- ensure appropriate reception conditions for persons seeking international protection in the EU and a fair and efficient examination of their applications for asylum;
- advise asylum applicants whose applications have been refused and illegal immigrants so that they can return with dignity to their country of origin.

The proposed framework programme on security and protection of freedoms pursues the following main objectives:

- to promote and develop prevention of crime (whether organised or not) and measures to combat this phenomenon, in particular terrorism, trafficking in human beings and crimes against children, drugs trafficking, arms trafficking, corruption and fraud;
- to protect citizens, their freedoms and society against terrorist attacks, and to protect the EU by promoting and developing the prevention of, preparation for and management of the consequences of terrorist attacks.

The budget proposed by the Commission for the area of justice, security and freedom is EUR 8,3 billion in 2004 prices (or EUR 9,5 billion if inflation projections are taken into account). This represents an increase of 228% between 2006 (the final year of budgetary programming) and 2013.

IMPLEMENTATION OF THE PRINCIPLE OF AVAILABILITY

Without calling into question work currently in progress, the Council has agreed on a gradual approach to the implementation of this principle, consisting of:

- the selection of six types of information considered important for criminal investigations:
 - DNA
 - fingerprints
 - ballistics
 - vehicle registrations
 - telephone numbers (both confidential and public)
 - minimum data for identification of persons (contained in civil registers)

and

- the determination of the most suitable of the following modalities for implementing the principle of availability:
 - indirect access to information upon request;
 - direct access to the databases of another Member State;
 - indirect access to information of another Member State through a central index;
 - creation or extended use of central European and international databases; and
 - enhanced access to police data rendered public by Member States' law enforcement authorities.

An initial report on the technical modalities of the implementation of the principle of availability for the six types of information will be submitted to the Council by the end of 2005.

The Hague Programme (OJ C53, 3.3.2005) stipulates that, with effect from 1 January 2008, the exchange of law-enforcement information should be governed by the principle of availability: a law enforcement officer in one Member State who needs information in order to perform his duties should be able to obtain it from another Member State.

Available information should be exchanged as swiftly as possible between law enforcement agencies in the European Union, with the appropriate data-protection guarantees.

The principle of availability also concerns the use of technical means which must make it easier for law-enforcement authorities to find out whether law-enforcement authorities in other Member States hold information which is of interest to the investigation they are conducting. In this regard, the Hague Programme states that "*The methods of exchange of information* should make full use of new technology and must be adapted to each type of information, where appropriate, through reciprocal access to or interoperability of national databases, or direct (on-line) access, including for Europol, to existing central EU databases such as the SIS (Schengen Information System)".

The Ministers for Justice and Home Affairs of the 25 Member States discussed the issue at their informal meeting in January 2005. The Commission has published a communication entitled "Towards enhancing access to information by law enforcement agencies" and organised a number of expert meetings at which Member State experts engaged in discussions about possible avenues for implementing the principle.

Other important work under way, which will facilitate access to information, concerns: access to the Visa Information System, the development of the Europol Information System and access to national criminal record databases.

Outside the EU structures, a number of Member States have also engaged in discussions which are material to the implementation of the principle of availability. Some Member States have recently decided to ask their experts to work on the exchange of information in a number of sectors.

REPORT ON A TECHNICAL MISSION TO LIBYA ON ILLEGAL IMMIGRATION

The Council conducted an initial exchange of views on the report after the Commission had presented it.

The Presidency welcomed Libya's cooperation and stated that the Council would return to this point at a forthcoming meeting with a view to adopting operational conclusions.

In November 2002, the General Affairs and External Relations Council considered that it was essential to initiate cooperation with Libya on migration.

On 14 April 2003, the Council agreed on the sending of an expert mission to Libya to begin discussions on illegal immigration.

An exploratory mission was organised by the Commission in May 2003, to test Libya's willingness to cooperate.

When the exploratory mission had returned, the Council decided on 16 June 2003 to arrange another mission, of a purely technical character, and requested its preparatory bodies to establish the mission's mandate.

The mandate was forwarded by the Commission services to the Libyan authorities, which responded favourably.

The expert mission, led by the Commission and with the participation of experts from the Member States and one Europol representative, took place from 26 November to 5 December 2004.

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Ministers discussed the following questions over lunch:

– ***European External Borders Agency***

Ministers unanimously decided to fix the headquarters of the External Borders Agency in Poland. The decision was confirmed by the Council and will be formally adopted at a forthcoming meeting. They also took note of preparations for the establishment of the Agency, which should become operational on 1 May 2005. The first meeting of the Agency's governing board could be held at the beginning of May 2005.

– ***Police Chiefs Task Force***

Ministers were briefed on progress since November 2004 by the Police Chiefs Task Force.

– ***Cooperation with Arab countries***

The Austrian delegation reported on cooperation between the EU and Arab countries on internal security.

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In the margins of the Council:

– ***Signing of the Convention on Accession to the 1980 Rome Convention***

The ten new Member States signed the Convention on accession to the 1980 Rome Convention and the protocols thereto, as adjusted by subsequent Accession Conventions (6238/05, 6240/05).

The purpose of the 1980 Rome Convention is to establish uniform rules on the law applicable to contractual obligations in the European Union.

– ***Signing of the readmission agreement with Albania***

An agreement between the European Community and Albania on the readmission of persons residing without authorisation was signed by the Presidency (Mr Nicolas SCHMIT), the Commission (Mr Franco FRATTINI) and Albania (Ms Ermelinda MEKSI).

OTHER ITEMS APPROVED**JUSTICE AND HOME AFFAIRS****List of authorities with direct access to the SIS**

The Council took note of the list of competent authorities which are authorised to search directly the data contained in the Schengen Information System (16023/04+COR 1).

Seafarers' Identity Documents Convention

The Council adopted a Decision authorising Member States to ratify, in the interests of the European Community, the Seafarers' Identity Documents Convention of the International Labour Organisation (6686/05).

Member countries of the Convention are required to issue a seafarers' identity document to each of their nationals who is a seafarer and makes an application to that effect. The issuance of seafarers' identity documents may be subject to the same conditions as those prescribed by national laws and regulations for the issuance of travel documents.

System of mutual information between those in charge of migration and asylum policy in the Member States – *Council conclusions*

The Council adopted the following conclusions:

"Having regard to the Hague Programme, which calls for "reinforcing the collection, provision, exchange and efficient use of up-to-date information and data on all relevant migratory developments",

Having regard to the Commission communication entitled "Study on the links between legal and illegal migration", which calls for more intensive and targeted use of consultation and information exchange in specific areas which have a significant impact on several Member States or on the EU as a whole,

Having regard to the letter sent by the Luxembourg Presidency and the Commission to the Justice and Home Affairs Ministers on 11 February 2005 on the necessity of establishing an information system to apprise those in charge of migration and asylum policy in the Member States of important decisions to be taken by one or more Member States,

Having regard to the initial exchange of views on the establishment of such a system at the JHA Council on 24 February 2005, during which all delegations welcomed the principle of the system's creation,

Taking into account the respective competences of the Member States and of the Community with regard to immigration and asylum,

The Council:

- considers that in an area of freedom, security and justice characterised among other things by the free movement of persons, questions regarding migration and asylum are of common interest and thus require coordinated, strong and effective working relationships between authorities in the Member States in charge of migration and asylum policy,
- affirms the importance of establishing a mutual information network between authorities in the Member States in charge of migration and asylum policy,
- considers that such a system will help to increase mutual trust and lead to a more coordinated approach in the Member States' migration and asylum policies,
- invites the Commission to submit to the Council, by the end of May 2005, a proposal for the establishment of a system of mutual information between those in charge of migration and asylum policy in the Member States, based on the necessity to communicate information on measures considered likely to have a significant impact on several Member States or on the EU as a whole and allowing for an exchange of views between Member States and the Commission at the request of either one of them,

considers that such a system should not unreasonably increase the administrative burden on Member States and that therefore its establishment should lead to the simplification and merger of existing systems, structures and networks at Community level."

Comprehensive EU policy against corruption*

The Council adopted a Resolution concerning a comprehensive EU policy against corruption (6902/05, 6901/2/05).

The comprehensive EU policy against corruption aims, in particular, at:

- achieving further progress in combating and preventing corruption at European level,
- defining those areas where further improvements are necessary, and
- suggesting future EU initiatives within the EU institutions, in EU Member States and outside the EU.

In its Resolution the Council urges the Member States that have not already done so to ratify and implement the following anti-corruption instruments:

- the Second Protocol to the EU Convention on the protection of the European Communities' financial interests,
- the EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States,
- the Council of Europe's Criminal and Civil Law Conventions on Corruption, and
- the UN Convention against Corruption.

As regards the mechanism for evaluating and monitoring the application of international anti-corruption instruments, the Council calls on the Commission to consider all viable options, such as participation in the Council of Europe's GRECO mechanism ("Group of States against Corruption"), or a mechanism to evaluate and monitor EU instruments in relation to the development of a mutual evaluation and monitoring mechanism.

EXTERNAL RELATIONS**Republic of Guinea – Consultations under the ACP-EU Agreement ***

The Council adopted a Decision concluding consultations with the Republic of Guinea concerning human rights, democratic principles and the rule of law in that country (Article 96 of the ACP-EU Agreement) (7367/05, 7440/1/05).

The Decision incorporates a letter to the Guinean Prime Minister conveying the EU's expectations regarding the Guinean government's undertakings concerning principally:

- a review of the electoral arrangements;
- respect for human rights and fundamental freedoms;
- authorisation for private electronic media to be set up before the local elections in June 2005;
- continued decentralisation and continuation of measures to enhance macroeconomic management and sectoral reforms.

Following the consultations, and in the light of the progress made so far and the measures still to be implemented, it was decided to adopt the following measures under Article 96 of the Cotonou Agreement:

- cooperation financed from the unexpended balances of the 6th, 7th and 8th European Development Funds (EDFs) will continue;
- programmes to strengthen civil society, respect for and reinforcement of democracy, human rights and good governance and the emergence or consolidation of free media may also be supported;
- contributions to regional projects will be considered on a case-by-case basis;
- humanitarian operations and trade cooperation will be continued;
- the 9th EDF has been reduced by EUR 65 million in the context of the mid-term review.

The EU will continue to monitor the situation in Guinea closely. An enhanced political dialogue will be conducted with a view to consolidating democracy and the rule of law, in particular through the holding of parliamentary elections in 2007, and also respect for human rights and fundamental freedoms.

TRANSPARENCY

Public access to documents

With the French, Swedish and Finnish delegations voting against, the Council approved the reply to the confirmatory application made by Mr David CRONIN (15/c/03/05) (7561/05 + COR 1).
