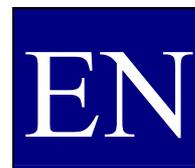




**COUNCIL OF
THE EUROPEAN UNION**



6228/05 (Presse 28)

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PRESS RELEASE

2642nd Council Meeting

Justice and Home Affairs

Brussels, 24 February 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

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6228/05 (Presse 28)

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Main Results of the Council

In view of the importance and added value of the Framework Decision on combating racism and xenophobia, the Council decided to resume examination of it as a matter of urgency and to return to it at its next meeting.

The Council adopted conclusions concerning commemoration of the terrorist attack in Madrid on 11 March 2004.

Taking an approach identical to that adopted for the European arrest warrant, the Council agreed on a European evidence warrant covering a list of 32 offences.

It decided unanimously to appoint Mr Max Peter RATZEL Director of Europol and adopted Framework Decisions concerning:

- attacks against information systems,*
- confiscation of crime-related proceeds, instrumentalities and property,*
- application of the principle of mutual recognition to financial penalties.*

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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.

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PARTICIPANTS

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

Belgium:

Mr Patrick DEWAELE
Ms Laurette ONKELINX

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

Czech Republic:

Mr František BUBLAN
Mr Roman POLAŠEK

Minister for the Interior
Deputy Minister for Justice

Denmark:

Ms Lene ESPERSEN

Minister for Justice

Germany:

Mr Otto SCHILY
Ms Brigitte ZYPRIES
Mr Klaus BUSS

Federal Minister for the Interior
Federal Minister for Justice
Minister for the Interior, Schleswig-Holstein

Estonia:

Mr Väino REINART

Permanent Representative

Greece:

Mr Anastasis PAPALIGOURAS

Minister for Justice

Spain:

Mr José Antonio ALONSO SUAREZ
Ms Ana María de MIGUEL LANGA
Mr Jesús CALDERA SÁNCHEZ-CAPITÁN

Minister for the Interior
Under Secretary of State, Ministry of Justice
Minister for Labour and Social Affairs

France:

Mr Dominique PERBEN
Ms Marie-José ROIG

Keeper of the Seals, Minister for Justice
Minister with responsibility for the Interior, attached to the
Minister for the Interior, Internal Security and Local
Freedoms

Ireland:

Mr Michael McDOWELL

Minister for Justice, Equality and Law Reform

Italy:

Mr Giuseppe PISANU
Mr Roberto CASTELLI

Minister for the Interior
Minister for Justice

Cyprus:

Mr Doros THEODOROU
Mr Lazaros SAVVIDES

Minister for Justice and Public Order
Permanent Secretary, Ministry of the Interior

Latvia:

Mr Ēriks JĒKABSONS
Ms Solvita ĀBOLTIŅA

Minister for the Interior
Minister for Justice

Lithuania:

Mr Gintaras Jonas FURMANAVIČIUS
Mr Gintautas BUŽINSKAS

Minister for the Interior
Minister for Justice

Luxembourg:

Mr Luc FRIEDEN

Mr Nicolas SCHMIT

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

Hungary:

Mr József PETRÉTEI
Mr Gábor JUHÁSZ

Minister for Justice
Political State Secretary, Ministry of the Interior

Malta:

Mr Tonio BORG

Deputy Prime Minister, Minister for Justice and
Home Affairs

Netherlands:

Mr Piet Hein DONNER
Ms Rita VERDONK

Minister for Justice
Minister for Immigration and Integration

Austria:

Ms Liese PROKOP
Ms Karin MIKLAUTSCH

Federal Minister for the Interior
Federal Minister for Justice

Poland:

Mr Ryszard KALISZ
Mr Tadeusz WOŁEK

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

Portugal:

Mr Daniel SANCHES
Mr Paulo RANGEL

Minister for the Interior
State Secretary attached to the Minister for Justice

Slovenia:

Mr Dragotin MATE
Mr Robert MAROLT

Minister for the Interior
State Secretary at the Ministry of Justice

Slovakia:

Mr Daniel LIPŠIČ

Deputy Prime Minister and Minister for Justice

Finland:

Mr Kari RAJAMÄKI
Mr Johannes KOSKINEN

Minister for the Interior
Minister for Justice

Sweden:

Ms Barbro HOLMBERG

Minister at the Ministry of Foreign Affairs with
responsibility for Migration Policy

United Kingdom:

Mr Charles CLARKE

Secretary of State for the Home Department;
Home Secretary

Ms Caroline FLINT
Ms Cathy JAMIESON

Parliamentary Under-Secretary of State, Home Office
Minister for Justice (Scottish Executive)

Commission:

Mr Franco FRATTINI

Vice-President

ITEMS DEBATED**MEMBER STATES' TRANSPOSITION OF FRAMEWORK DECISIONS**

The Council held a policy debate on Member States' transposition of Framework Decisions adopted on the basis of Title VI of the EU Treaty (provisions on police and judicial cooperation in criminal matters) in the context of the Hague Programme (13993/04).

According to the Hague Programme (under 3.2), "in order to facilitate full implementation of the principle of mutual recognition, a system providing for objective and impartial evaluation of the implementation of EU policies in the field of justice, while fully respecting the independence of the judiciary and consistent with all the existing European mechanisms, must be established".

The Council agreed to introduce a flexible evaluation mechanism taking account both of the transposition of Framework Decisions and of their practical application in the Member States.

Member States will have to consult and have an adversarial debate with the Commission during preparation of the evaluation reports and thereafter. To that end, they will designate contact points to facilitate dialogue between the Commission and the Member States.

The Council will also hold a policy debate on certain important evaluation reports, on the basis of the work of the Article 36 Committee in particular.

EUROPEAN EVIDENCE WARRANT

The Council agreed on a general approach to certain aspects of the proposal for a Framework Decision on the European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters.

The purpose of the Framework Decision is to implement the principle of mutual recognition for certain offences, thereby removing the possibility of invoking double criminality in the case of offences punishable in the State of issue of the evidence warrant.

The Council agreed to a list of 32 offences with regard to which it will not be possible to invoke double criminality (the list is the same as that in the Framework Decision on the European arrest warrant). Other offences may be added later by unanimous agreement. The offences concerned must be punishable in the State of issue of the warrant by a term of imprisonment of more than three years.

It was also decided that the Framework Decision should include the principle of a "territoriality clause" enabling a Member State to refuse a European evidence warrant where the offences were committed wholly or partly on its territory. The scope of the clause will be reviewed at technical level.

The Council will review the Framework Decision five years after its adoption, in the light of practical experience.

Substantial development has taken place regarding double criminality in the process of the implementation of the principle of mutual recognition in criminal matters pursuant to the October 1999 Tampere conclusions of the European Council and the November 2000 programme of measures to implement the principle of mutual recognition of decisions in criminal matters.

The 2002 Framework Decision on the European arrest warrant, which is the first mutual recognition instrument adopted by the Council, provides for a limitation of the possibility of invoking double criminality. The limitation concerns offences punishable in the State issuing the arrest warrant with at least up to 3 years of imprisonment and, as defined in the law of the issuing State, falling within the scope of a list of 32 offences. The approach of a list of offences for which double criminality may not be invoked has also been followed in the 2003 Framework Decision on enforcement in the EU of orders freezing property or evidence.

The Council also adopted, without debate, two texts in which the same approach has been applied, namely the draft Framework Decision on the application of the principle of mutual recognition to financial penalties and the draft Framework Decision on the application of the principle of mutual recognition to confiscation orders.

The texts on double criminality in these instruments are not entirely identical and differ regarding the minimum level for the maximum penalty for the offences for which double criminality may not be applied and the number of offences on the list.

RACISM AND XENOPHOBIA

In view of the importance and the added value of the instrument, the Council decided to resume examination of the Framework Decision on combating racism and xenophobia as a matter of urgency.

To give the new Member States time to examine the text, the Council requested its preparatory bodies to examine the draft Framework Decision on the basis of the text put before the JHA Council at its meeting on 27 and 28 February 2003. The JHA Council will return to this Framework Decision at its next meeting.

In July 1996 the Council adopted Joint Action 96/443/JHA concerning action to combat racism and xenophobia. This instrument contains provisions to harmonise the criminal law of Member States and to improve mutual assistance in combating racism and xenophobia.

Given the nature of this instrument and because it had not been fully transposed in all Member States, the Commission submitted on 29 November 2001 a proposal for a Framework Decision on combating racism and xenophobia.

The proposal for a Framework Decision submitted by the Commission strengthens the Joint Action, both in terms of substance and as regards the nature of the obligations it imposes on Member States.

The Council has not, to date, been in a position to adopt the text. However, at its meeting on 27 and 28 February 2003, the JHA Council was close to reaching agreement. Only a few difficulties remained, relating mainly to the limits set on refusing mutual assistance on the basis of the principle of double criminality (Article 8(3)), and a general scrutiny reservation by one delegation.

Given the positions expressed by delegations and the failure to achieve the unanimity required to adopt this legal instrument, it was deemed preferable in 2003 to suspend the examination of the proposal for a Framework Decision.

However, in the light of the importance of this topic and the genuine added value that adopting the proposal for a Framework Decision would contribute to the 1996 Joint Action, the Presidency decided to ask the Council to resume examination of the proposal for a Framework Decision.

EUROPOL

The Council decided to appoint Mr Max Peter RATZEL Director of Europol for a period of four years from the date of formal adoption of the Decision.

The Council also approved the reappointment of the Deputy Director of Europol, Mr Mariano SIMANCAS, until the end of 2009 (5475/05).

CEPOL (European Police College)

The Council decided to apply the EU Staff Regulations to CEPOL and to finance the College from the Community budget.

GREEN PAPER ON ECONOMIC MIGRATION

The Council held an initial exchange of views on the Green Paper on an EU approach to managing economic migration. It will return to this item at its meeting in April 2005.

In addition, the Council welcomed the Presidency's proposal on the introduction of a mutual information and early warning system to apprise those responsible for migration and asylum policy in the Member States of important decisions to be taken by one or more Member States. In this connection, the Presidency (Minister Schmit) and the Commission (Commissioner Frattini) recently sent the members of the JHA Council an open letter which may be consulted on the Presidency's website (www.eu2005.lu).

The Commission's aim with its Green Paper, published in January, is to launch a debate on a central migration issue, that of the admission of third country nationals for economic reasons. It is a discussion paper, covering a wide range of issues and putting forward a series of possible approaches for Community action.

The discussion process triggered by the Green Paper will be the subject of a public hearing in June 2005 to which all those involved in immigration (Member States' administrations, Community institutions, non-governmental associations, etc.) will be invited, and the basis for an action programme on legal immigration which the Commission will draw up at the end of 2005.

COMMEMORATION OF THE TERRORIST ATTACK IN MADRID ON 11 MARCH 2004 – Council Conclusions

The Council adopted the following conclusions:

"11 March 2004 will henceforth be an unbearable date and event which all Spaniards will remember and be inwardly marked by. It will also henceforth be a terrible date for the European Union, which all Europeans will remember and be inwardly marked by.

The victims of 11 March 2004 were mostly on their way to work. That evening they were going to return to their parents, partners and children, their plans and their hopes as well. Their lives were unique. They were robbed of them and Spanish society is bereft of those lives taken away.

All of the European Union's citizens today once again pay tribute to the victims and their loved ones, because all felt affected that day.

The European Union, too, pays tribute to the victims of 11 March 2004.

It does so wielding its own competences and in staunch support of Member States' efforts to protect their citizens, wherever they may be, and prevent other "elevenths of March".

The measures taken are manifold, covering a range of areas and extending beyond the Union's borders. They form part of a rational overall plan.

The European Union also pays tribute to the victims of 11 March 2004 by reaffirming, more than ever, values shared by all Europeans and constituting their common heritage: freedom and democracy, centred upon citizens, values of tolerance and dialogue, of solidarity, of rejecting any inflicted violence, of mutual understanding and of respect for rule of law and human rights.

Those values require the Union to foster dialogue with all communities, without distinction, wherever there is an openness to dialogue. In order to uphold those values and all that they represent or entail, the Union's fight against terrorism must be determined, while observing fundamental rights. Terrorist acts are, by definition, diametrically opposed to, and the very negation of, our values of freedom and democracy.

Terrorism does not just strike at the lives of the men, women and children who are the victims of it. It also sets out to instil a feeling of fear into our societies and into us all, thereby seriously detracting from our individual freedoms: freedom of thought, freedom to come and go, and freedom to play a democratic part in political life.

The European Union is resolved to keep our society free, open and democratic. Because its founding values respect individual rights and point the way forward, it means to protect them stalwartly from all forms of extremism. Not only is terrorism intolerable, it is also unjustifiable.

Over and above the specific measures already decided on and continuing to be taken, the European Union will display its unflinching political resolve to that end.

More so than in other areas, the European Union has to set an example in the fight against terrorism. Such is its undertaking."

RECIPROCITY MECHANISM

Pending the opinion of the European Parliament, the Council reached a common approach on the text amending Regulation No 539/2001 as regards the reciprocity mechanism.

The mechanism provides for a joint EU response to situations of non-reciprocity, where a third country whose nationals are exempt from the visa requirement maintains or introduces a visa obligation for nationals of one or more Member States.

BIOMETRIC DATA – Council conclusions

Subject to a parliamentary scrutiny reservation by the Polish delegation, the Council adopted the following conclusions:

"Having regard to the technical problems related to the storage of biometric identifiers in visas,

Having regard to the need to modify the Commission proposals relating to the amendment of Council Regulations Nos 1683/95 and 1030/2002 incorporating biometric identifiers into the uniform formats for visas and residence permits in order to take account of these problems,

Having regard to the very short deadline (1 March 2005) set by the Council in December 2004 for finding an appropriate solution to these problems,

The Council:

- invites the Commission to make every effort, including with respect to budgetary programming, to bring the activation of biometric identifiers in the development of the central part of the VIS forward to 2006;
- acknowledges that as regards the incorporation of biometric identifiers into the uniform format for visas, whether in the form of a chip in the visa sticker or in the form of a separate card, a further period of consideration is required to enable the ongoing technical studies to be completed;
- will meet in April 2005 to assess, on the basis of the ongoing studies, whether a further solution complementing the introduction of biometric identifiers in the VIS is useful/necessary for practical reasons relating to more efficient implementation of the Schengen acquis and/or for reasons relating to the forgery-proofing of visas;
- notes that the VIS implementation phase, including its biometric aspects, requires a significant budgetary and technical finalisation effort at Member State level, in particular so that the phase of equipping consular posts and border posts can be launched as soon as possible;
- invites the Commission to amend its proposal for a Council Regulation amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals to take account of the consensus reached by the Council on incorporating biometric identifiers into residence permits in the form of a separate card within a period of 24 months, and to take account of the Council's desire to discontinue the use of residence permits in the form of stickers".

VISA INFORMATION SYSTEM (VIS)

The Presidency noted that there was broad agreement on the following points of a set of draft conclusions on access to the VIS by the Member States' authorities responsible for internal security:

"The Council,

- thanks the Commission for submitting to it, and to the European Parliament, within the time-limit set by the European Council, a proposal for a Regulation on the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas¹,
- notes that the proposal for a Regulation, while having support for the development of a common visa policy as its main objective, will facilitate the fight against fraud and the identification of persons and will consequently contribute to improving internal security and to combating terrorism, as desired by the Council in its conclusions of 19 February 2004,
- considers that in order to achieve fully the aim of improving internal security and combating terrorism which the Council assigned to the VIS in its conclusions of 19 February 2004, access, for the purpose of consultation, should be guaranteed to Member State authorities responsible for internal security in the course of their duties in relation to the prevention, detection and investigation of criminal offences, including terrorist acts and threats,
- reiterates that any access to the VIS must be subject to strict compliance with the rules governing the protection of personal data,
- invites the Commission to present as soon as possible, and by the end of 2005 at the latest, its proposal on the protection of personal data within the framework of Title VI of the TEU,
- requests the Commission to present, at that time, a proposal based on Title VI of the TEU aimed at guaranteeing Member State authorities responsible for internal security access to the VIS for the purpose of consultation in the course of their duties in relation to the prevention, detection and investigation of criminal offences, including terrorist acts and threats, with a view to its adoption within the same timeframe as the Regulation on the VIS,

¹ 5093/05, VISA 1 COMIX 5 CODEC 77, COM (2004) 835 final.

- requests that, in the meantime, examination of the proposal for a Regulation on the visa information system (VIS) and the exchange of data between Member States on short-stay visas should continue,
- will make every effort, together with the European Parliament, and with full respect for each institution's prerogatives, to adopt the proposal for a Regulation on the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas within a timeframe enabling the VIS to be implemented in accordance with the timetable set by the Council in its conclusions of 19 February 2004."

The Council referred the draft conclusions to Coreper for finalisation of the text.

OTHER BUSINESS

- *Local border traffic*

The Commission briefed the Council on its proposals in this area.

IN PARALLEL WITH THE COUNCIL MEETING: MIXED COMMITTEE

The Mixed Committee at ministerial level (EU+ Norway+ Iceland+ Switzerland) met at 16.00 to discuss the following items:

- reciprocity mechanism,
- biometric data in visas and residence permits, and
- the visa information system (VIS).

The outcome of the Mixed Committee's proceedings was then approved by the Council (see pages 13 to 16 of this press release).

OTHER ITEMS APPROVED

COOPERATION IN CRIMINAL MATTERS

Attacks against information systems *

The Council adopted a Framework Decision on attacks against information systems (15010/04 + 5869/05).

The objective of this Framework Decision is to improve cooperation between judicial and other competent authorities responsible for law enforcement in the Member States, by approximating rules on criminal law in the Member States in the area of attacks against information systems and ensuring that such attacks are punishable by effective, proportional and dissuasive criminal penalties in all Member States.

Member States are required to take the necessary measures to ensure that illegal access to an information system and interference with the integrity of an information system or of its data are punishable as criminal offences.

Given that information systems are the subject of attacks, particularly from organised crime, and the increasing potential for terrorist attacks against information systems which form part of the critical infrastructure of the Member States, a response at the level of the Member States is required to avoid compromising the achievement of a safer Information Society and an Area of Freedom, Security and Justice.

Confiscation of proceeds from crime

The Council adopted a Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (14648/04).

The aim of this Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, particularly in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.

In accordance with this Framework Decision, each Member State will take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.

In relation to tax offences, Member States may use procedures other than criminal procedures to deprive the perpetrator of the proceeds of the offence.

This Framework Decision does not modify the obligation to respect fundamental rights and principles, including the presumption of innocence, set out in Article 6 of the Treaty on European Union.

Mutual recognition of financial penalties *

The Council adopted a Framework Decision on the application of the principle of mutual recognition to financial penalties (*6838/04 and 5871/1/05*).

The objective of this Framework Decision is to apply the principle of mutual recognition to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.

The Framework Decision lists the offences giving rise to recognition and enforcement of decisions without verification of the double criminality of the act. It also covers financial penalties imposed in respect of road traffic offences.

Standing of victims in criminal proceedings

The Council took note of a report on the implementation of the Framework Decision on the standing of victims in criminal proceedings (*14830/2/04*).

The objective of the Framework Decision of 15 March 2001 is to guarantee victims throughout the European Union a high level of protection.

EUROPOL

2003 budget – Audit report and discharge to the Director

The Council gave discharge to the Director of Europol on the budget for 2003 after examining the audit report (16290/04).

Israel – Organised crime

The Council adopted a Decision authorising the Director of Europol to enter into negotiations with Israel concerning agreements relating to the fight against organised crime (6160/05).

SCHENGEN

Schengen Information System *

The Council adopted a Decision concerning the introduction of some new functions for the Schengen Information System (SIS) aimed at facilitating the fight against crime, including terrorism (10667/04 et 6073/05).

This Decision authorises access to SIS for Europol and Eurojust. It also provides for the introduction of new functions, including the following:

- the addition of extra data (concerning, for example, vehicles, means of payment, etc.),
- less cumbersome procedures for exchanging information between competent authorities,
- technical improvements.

The Decision also aims to facilitate more effective control over personal data protection.

The purpose of the Schengen Information System is to maintain public policy and public security, including national security, in the territories of the Member States and to apply the provisions of the 1990 Schengen Convention relating to the movement of persons in those territories. It is one of the instruments used to compensate for the abolition of controls within the internal borders of the Schengen area.

EUROJUST**Personal data**

The Council approved the provisions of Eurojust's rules of procedure on the processing and protection of personal data (14439/04).

Cooperation agreement with Norway

The Council approved an agreement between Eurojust and Norway aimed at improving judicial cooperation and the exchange of information and to facilitate investigations and prosecutions in order to step up the fight against serious forms of crime (11641/04).

EXTERNAL RELATIONS**Recognition of qualifications for supplying architectural services – Third countries**

The Council adopted a Decision authorising the Commission to open negotiations with third countries with a view to concluding mutual recognition agreements on qualifications of natural persons supplying architectural or urban planning and landscape architectural services.
