



Brussels, 28 November 2005

BACKGROUND ¹
JUSTICE AND HOME AFFAIRS COUNCIL
Brussels, 1-2 December 2005

The Council will start its work on 1 December at 10h00 with a debate on the "home affairs" issues: Counter terrorism, a global approach to migration and improving information exchange between law enforcement authorities.

The Mixed Committee (EU+Norway, Iceland and Switzerland) will meet at 15h00 to discuss a technical progress report on the implementation of the Schengen Information System II.

A press conference will be held at the end of the day.

On 2 December the discussion at the Council will focus on the "justice" items: Data retention, European evidence warrant, European order for payment, European small claims procedure and mediation in civil and commercial matters.

A final press conference will be held at the close of business.

*

* *

In the margins of the Council, the Director of Eurojust will sign an agreement on judicial cooperation with the Ministers of Justice of Rumania and Iceland. It will take place on Friday 2 December at 11h30, at the Press room.

*

* *

Please note that some of the items mentioned in this note will be re-examined by Coreper on Wednesday 30 November 2005.

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

THURSDAY 1 DECEMBER 2005

COUNTER-TERRORISM

EU Counter- Terrorism Strategy

The Council is expected to agree on a new EU Counter-terrorism strategy. The Counter Terrorism Strategy will then be forwarded to the General Affairs and External Relations Council and the European Council for endorsement.

The EU strategy will be made up of a series of powerpoint slides followed by anarrative. The strategy will serve two principal functions: (a) To create a clear and coherent framework for the EU's work on Counter Terrorism, and set out concrete objectives for action, and (b) to make Europe's work on Counter Terrorism more comprehensible and transparent for the general public. The visual layout of the slides will help with this second function in particular.

The EU set out a strategic commitment and will cover four strands of work: prevent, protect, pursue and respond:

- **PREVENT:** to prevent people turning to terrorism by tackling the factors or root causes which can lead to radicalisation and recruitment, in Europe and Internationally;
- **PROTECT:** to protect citizens and infrastructure and reduce our vulnerability to attack, including through improved security of borders, transport and critical infrastructure;
- **PURSUE:** to pursue and investigate terrorists across our borders and globally; to impede planning, travel, and communications; to disrupt support networks; to cut off funding and access to attack materials, and bring terrorists to justice; and
- **RESPOND:** to prepare ourselves to manage and minimise the consequences of a terrorist attack, by improving capabilities to deal with: the aftermath; the co-ordination of the response; and the needs of victims.

Across the four areas of work the Strategy will emphasise the importance of work by member States at national level; the need for collective action at European level; and crucially, the role that the EU plays globally.

In addition the Strategy will set out how the EU adds value over and above the work done by Member States domestically, and will set out clear governance arrangements involving the three EU Institutions (Council, Commission, Parliament) working closely together, and the role of the Counter Terrorism Co-ordinator in following up and monitoring progress.

The narrative which fits underneath the slides will set out in more detail the EU's objectives and setting some specific priorities for action across the four areas of work.

Implementation of the Action plan to combat terrorism

The Council will take note of the six-monthly report from the EU Counter-terrorism co-ordinator, Gijs de Vries, on implementation of the Action plan to combat terrorism. The report will then be forwarded to the European Council.

This report responds to the European Council's request for a report every six months on the implementation of the Action Plan to combat terrorism adopted in June 2004 in order for the

European Council to review progress. This is the third report of its kind.

It summarizes good progress made in the last six months and in particular includes an update on all the key dossiers highlighted by the 13 July JHA Council² following the London bombings. The annex to the report shows the state of implementation by Member States of agreed legislation.

EU strategy for combating radicalisation and recruitment to terrorism

The Council is expected to agree on a strategy for combating radicalisation and recruitment. It will be forwarded to the General Affairs and External Relations Council for endorsement.

To enhance the EU policies to prevent new recruits to terrorism, the European Council of 17 December 2004 agreed to elaborate a strategy and action plan to address radicalisation and recruitment to terrorism.

The strategy builds on the considerable work since the 25 March 2004 European Council Declaration on Combating Terrorism, including the Commission Communication on Terrorist Recruitment: addressing the factors contributing to violent radicalisation.

It outlines how the Union and Member States will combat radicalisation and recruitment into terrorism.

While other types of terrorism continue to pose a serious threat to EU citizens, the Union's response to radicalisation and recruitment focuses on this type of extremist terrorism.

Building on an analysis of the issues developed under the Luxembourg Presidency, the Strategy sets out work to combat radicalisation and recruitment under three key headings:

- disrupt the activities of the networks and individuals who draw people into terrorism (addressing 'facilitational' factors which provide for recruitment);
- ensure that voices of mainstream opinion prevail over those of extremism (addressing 'motivational' factors which can lead individuals to become radicalised);
- promote yet more vigorously security, justice, democracy and opportunity for all (addressing 'structural' factors which create the socio-economic environment in which the radical message becomes appealing).

Throughout the EU will ensure that we do not undermine respect for fundamental rights. To ensure the EU responses remain effective and appropriate, it will work to develop the understanding of the problem. In doing this, the EU will engage in dialogue with governments which have faced this problem, academic experts and Muslim communities in Europe and beyond.

Member States will work, individually and together, with the support of the European Commission and other European Union bodies to deliver the strategy.

² Doc. 11158/05.

EMERGENCY AND CRISIS CO-ORDINATION ARRANGEMENTS

The Council is expected to endorse a report by the Presidency and the EU Counter-Terrorism Co-ordinator, Gijs de Vries, on EU emergency and crisis co-ordination arrangements.

The JHA Council Declaration of 13 July 2005 on the EU response to the London bombings called for the development of:

"arrangements to share information, ensure co-ordination and enable collective decision-making in an emergency, particularly for terrorist attacks on more than one Member State".

This remit follows that in the Hague programme (point 2.4), which called for the establishment of an integrated EU arrangement for crisis management with cross-border effects to be implemented at the latest by 1 July 2006.

This paper does not address crisis co-ordination arrangements for emergencies affecting individual Member States. Rather, it addresses the arrangements that might be used to assist Member States during cross-border emergencies, that is emergencies:

- which have a direct effect on a number of Member States or which would engage the entire Union, or
- which affect more than one Member State simultaneously, or
- where the interests of several Member States are engaged together with the responsibilities of EU institutions.

Many of the major risks the EU faces would have the cross-border effects referred to above. These could include:

- multiple, co-ordinated conventional terrorist attacks in several Member States;
- the loss of key trans-EU infrastructure such as telecommunications networks, oil pipelines or air traffic control systems;
- a major health emergency, such as a flu pandemic or a serious accident involving a nuclear reactor in a third country;
- chemical, biological, radiological or nuclear (CBRN) terrorism, whether in the EU or in a third country, some of those scenarios would generate questions about the handling of infected people crossing borders, or flying into the EU.

The emergency and crisis co-ordination arrangements proposed are not specific to counter-terrorism. Rather, they would provide a generic arrangement applicable to and which may be triggered by all types of crises, such as natural disasters, industrial accidents, or a flu pandemic, as well as terrorist attacks. They are also designed to provide co-ordination capability across all areas of EU activity to be used in response to emergencies both inside and outside the Union.

GLOBAL APPROACH TO MIGRATION

As a follow up to the Hampton Court informal summit held on 27 October, the Council will have an exchange of views on a Commission Communication which is expected to be adopted this week. The Council will look at priority actions in the area of migration.

The European Council will consider this issue at its next meeting on 15-16 December.

EXTERNAL DIMENSION OF THE AREA OF FREEDOM, SECURITY AND JUSTICE

The Council will agree on a Strategy for the External Dimension of the area of Global Freedom, Security and Justice.

The strategy identifies the key thematic priorities as the threat of terrorism, organised crime and the challenge of managing migration flows. The EU's efforts to create an area of freedom, security and justice can only be successful if they are underpinned by a strategic and co-ordinated approach. This work has to be done in partnership with third countries and with an aim to strengthen the rule of law and promote human rights and the respect for international obligations.

The draft strategy also describes underlying principles for the EU's engagement with third countries on JHA issues, and sets out the mechanisms which the EU can use to deliver an effective response to the challenge it is confronted. Finally, the Strategy will set out some specific priority issues for action in 2006, including counter-terrorism co-operation with North Africa; drugs work with Afghanistan and countries on the trafficking route to Europe; migration work with Africa; and work with the Western Balkans on organised crime and corruption, and with Russia on security and migration issues.

EU ASSISTANCE TO COMBATING DRUGS IN AFGHANISTAN

As an example of the EU's engagement on a JHA issue outside the EU, the Council will agree Council Conclusions welcoming an increase of over 250m euro in the EU's assistance to Afghanistan in the fight against drugs. The assistance will be set out in a detailed matrix which sets out all contributions from Member States and the Commission.

Despite successfully reducing by 21% the cultivation of opium in Afghanistan this year, the drug problem in Afghanistan remains huge. Over 90% of the heroin consumed in the EU originates from Afghanistan. The EU's Drugs Action Plan 2005-12 agreed that the EU would aim to 'increase its assistance to Afghanistan and her neighbours' and this objective has been a key Presidency priority as a result.

The campaign to increase the EU's assistance included an appearance by the Counter-Narcotics Minister of Afghanistan (Mr Qaderi) at the Informal meeting of Justice and Home Affairs Ministers in Newcastle in September, as well as holding of the first ever EU-Afghanistan Drugs Troika meeting which Mr Qaderi himself attended.

Financial commitments (including the European Commission's 15m euro commitment to the Afghanistan Counter-Narcotics Trust Fund), as well as the provision of mentors, trainers and other personnel, will be set out in a detailed matrix to be presented alongside the Council Conclusions.

MIXED COMMITTEE (At 15h00)

SIS II Progress

The Mixed Committee will hear an oral update from the Commission, supplemented by the Presidency, concerning the technical development of SIS II.

This update will be followed by the opportunity for all Member States to give their view on the state of play concerning SIS II and the key risks and milestones involved in delivering the project to schedule.

Improving information exchange between law enforcement across the EU

The Mixed Committee is expected to agree on the text of a Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities, in particular as regards serious offences including terrorist acts.

The Framework Decision will ensure that certain information vital for law enforcement authorities is exchanged in a rapid manner within the EU.

Therefore, information and intelligence shall be provided at the request of a competent law enforcement authority, acting within the limits conferred upon it by national law, conducting a crime investigation or a criminal intelligence operation.

Member States should respond within at most 8 hours to urgent requests for information and intelligence regarding offences referred to in Article 2(2) of the Framework Decision of 13 June 2002 on the European arrest warrant³. For non-urgent cases, requests for information and intelligence should be responded to within one week.

In all other cases, Member States shall ensure that the information sought is communicated to the requesting competent law enforcement authority within 14 days.

So far, there is no common legal framework for the effective and expeditious exchange of information and intelligence between the law enforcement authorities of the Member States. This instrument will remedy this deficiency.

In the declaration on combating terrorism as adopted by the European Council at its meeting on 25 March 2004, the European Council instructed the Council to examine measures regarding simplifying the exchange of information and intelligence between law enforcement authorities of the Member States. This is the aim of the Framework Decision.

³ Participation in a criminal organisation, terrorism, trafficking in human beings... A total of 32 offences are listed in Article 2(2) of the European Arrest Warrant (OJ L 190, 18.7.2002).

FRIDAY 2 DECEMBER 2005

DATA RETENTION

The Council will take stock of the negotiations with the European Parliament on this file and will decide the elements for further negotiations with it.

The EP's Civil Liberties Committee approved on 24 November 2005 a report on this draft directive in view of the EP's plenary meeting on 13-14 December. There is still significant divergence of views between the Council and Parliament.

The draft directive aims to facilitate judicial co-operation in criminal matters by approximating Member States' legislation on the retention of data processed by providers of telecommunications services. The text covers traffic and location data generated by telephony, SMS and internet, but not the content of the information communicated.

EUROPEAN EVIDENCE WARRANT

The Council is expected to reach a general approach on a Framework Decision on the European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters.

The aim of the proposal 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 Warrant is an order that would be issued by a judicial authority in one Member State and which would be 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 the most appropriate manner to obtain the evidence in accordance with its domestic law.

EUROPEAN ORDER FOR PAYMENT PROCEDURE

The Council will try to reach a general approach on the text of this draft Regulation, on the basis of a Presidency compromise package.

The purpose of this proposal is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims and to permit the free circulation of European orders for payment throughout all Member States.

The speedy 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. Most Member States have set up a special procedures to deal with the great number of uncontested money claims in a speedy and efficient manner.

Adoption of a Regulation creating a European order for payment procedure is listed as a priority for 2006 in the Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union.

The Presidency has been negotiating with the European Parliament and the Commission with a view to finding an agreement on the draft Regulation during the first reading of the Parliament.

SMALL CLAIMS PROCEDURE

The Council will try to reach agreement on a number of specific issues on the draft Regulation establishing a 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 Council will try to agree a way forward in relation to certain outstanding issues, such as:

- the written nature of the procedure, with the possibility of an oral hearing when necessary,
- the possibility of applying time limits to specific stages of the procedure in order to ensure an accelerated and efficient procedure,
- the use of modern communications technology in the conduct of hearings and taking of evidence,
- legal representation, and
- regarding the costs of the proceedings, the application of the principle "loser pays".

At the informal JHA Council in Newcastle in September 2005 Ministers unanimously re-affirmed their support for creating a simplified and accelerated European procedure for resolving small claims, based on the principle of proportionality. There was overwhelming support for the view that the proposal should be restricted to cross-border matters and should not cover cases which are purely internal to a Member State.

MEDIATION IN CIVIL AND COMMERCIAL MATTERS

The Council will try to reach broad agreement on the text of the draft Directive on mediation in civil and commercial matters.

The purpose of this proposal is to facilitate access to dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings. The Council should recognise a common understanding on the text of the Directive, subject to the outstanding questions of scope and subsidiarity.

The Commission submitted this proposal on 22 October 2004 and is subject to the codecision

procedure. The European Parliament has not yet delivered its opinion at first reading.

FIGHT AGAINST ORGANISED CRIME

The Council will focus its debate on Articles 1 and 2 of this Framework Decision: definitions and offences relating to participation in a criminal organisation.

The draft Framework Decision aims to:

- harmonise effectively the definition of offences and penalties as regards individuals and legal persons;
- where necessary, determine specific aggravating circumstances (commission of an offence in association with a criminal organisation) and mitigating circumstances (reduced penalties available for those who assist the police with their inquiries);
- include provisions to facilitate cooperation between judicial authorities and coordinate their activities.

PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS THROUGHOUT THE EU

The Council will take note of progress made with the negotiation of this Framework Decision.

The proposal was submitted by the Commission on 3 May 2004. It aims to set common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the EU.

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

- access to legal advice,
 - access to free interpretation and translation
 - ensuring that persons who are not capable of undertaking of following the proceedings receive appropriate attention,
 - the right to communicate, inter alia, with consular authorities in the case of foreign suspects, and
 - notifying suspected persons of their rights.
-