



Brussels, 28 September 2006

**DRAFT**

**BACKGROUND <sup>1</sup>**

***JUSTICE and HOME AFFAIRS COUNCIL***

**Luxembourg, 5-6 October 2006**

*The Council will start its work on Thursday 5 October 2006 at 10h00 with a debate on the "home affairs" issues: the Hague Programme Review, civil protection financial instrument, Schengen information system (SIS II) and reinforcing the southern external maritime borders.*

*On Friday 6 October the discussion at the Council will focus on the "justice" items: application of the principle of mutual recognition to judgements in criminal matters, criminal measures aimed at ensuring the enforcement of intellectual property rights and convictions in the Member States in the course of new criminal proceedings.*

*In the margins of the Council, the Mixed Committee (EU+ Norway, Iceland and Switzerland) will meet on 5 October at 15h00 with a view to discussing the implementation of SIS II and the integrated border management strategy.*

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

**4 October**

*17.30 - EU-Ukraine Ministerial Troika meeting*

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Please note that some of the items mentioned in this note could be re-examined by Coreper on 4 October 2006.

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<sup>1</sup> This note has been drawn up under the sole responsibility of the Press Service.

## **THURSDAY 5 OCTOBER 2006**

### **HAGUE PROGRAMME REVIEW - Public debate**

The Hague Programme "Strengthening Freedom, Security and Justice in the European Union" was adopted by the European Council in November 2004. It reaffirmed the importance that the European Union attaches since the Tampere European Council in 1999 to the area of Freedom, Security and Justice, placing it high among the Union's priorities – not only because it is one of the Union's fundamental objectives, but also, and above all, because it is at the heart of EU citizens' interests.

Since the end of 2004, the Member States and the EU Institutions have worked to ensure the implementation of the Programme in accordance with the Council and Commission Action Plan adopted in June 2005.

The European Council stated in December 2004 that "since the Programme will run for a period during which the Constitutional Treaty will enter into force, a review of its implementation is considered to be useful. To that end, it invited the Commission to report in 2006 "to the European Council on the progress made and to propose the necessary additions to the Programme".

In the absence of the entry into force of the Constitutional Treaty, it is still necessary to draw up a first political assessment of progress made in implementing The Hague Programme and to propose the necessary adjustments.

The Council will take stock of the progress made, assess the level of implementation at EU and national level and propose an evaluation of results.

### **CIVIL PROTECTION FINANCIAL INSTRUMENT - Public debate**

The Council is expected to reach a political agreement on the proposal for a Council regulation establishing a Rapid Response and Preparedness Instrument for major emergencies.

The main outstanding problem is the financing of transport and equipment.

The aim of the proposal is to establish, during the period of validity of the financial perspectives 2007-2013, the financial basis for Community action in the field of civil protection. It would finance: the response and preparedness actions covered by the Civil Protection Mechanism; actions presently covered by the Civil Protection Action Programme 1999-2006, such as contributing to prevention (study of causes of disasters, forecasting, public information) and preparedness (detection, training, networking, exercises, mobilisation of expertise) inside the EU; and new areas such as financing additional equipment and transport in response actions under the civil protection mechanism.

The indicative amounts made available under the Financial Framework 2007-2013 are annually EUR 17 mio for actions inside the EU and EUR 8 mio for actions in third countries.

The main outstanding question relates to the additional Community support to the Member States in the areas of transport of civil protection assistance and of the provision of equipment.

## **SCHENGEN INFORMATION SYSTEM (SIS II)**

The Council will discuss a new planning and possible alternatives to the SIS II, taking into account the recent announcement of delays in its implementation.

The Council is making every effort to ensure that the Schengen area would be enlarged to include new EU Member States as soon as possible. However, a recent report prepared by technical experts indicates that the preparations of the SIS II have been delayed for a number of reasons. These reasons include delays in the tendering procedures for the procurement of the information systems related to the project, in the preparations of the location of the central system and in the preparation of the legal instruments to be adopted in co-decision with the European Parliament. According to the report, it seems highly probable that the SIS II will not become operational by April 2007 as originally planned.

Joining the Schengen Information System is a necessary requirement for abolishing internal border controls between the new and old Member States. For this reason, it is necessary to explore technical ways of making it possible for the new Member States to join the Schengen Information System as soon as possible.

The Council will examine carefully what can be done to accelerate the preparation of the SIS II.

The SIS II project is crucial for the security of the European Union and for the lifting of internal border controls with Member States who joined the European Union on 1 May 2004, allowing these countries to fully participate in the Schengen acquis.

The SIS II should constitute a compensatory measure contributing to maintaining a high level of security within an area without internal border controls between Member States by supporting operational cooperation between police authorities and judicial authorities in criminal matters.

The legal instruments specify the objectives of the SIS II and lay down rules concerning its operation, use and responsibilities including its technical architecture and financing, categories of data to be entered into the system, the purposes for which they are to be entered, the criteria for their entry, the authorities authorised to access it, the interlinking of alerts and further rules on data processing and the protection of personal data.

## **REINFORCING THE SOUTHERN EXTERNAL MARITIME BORDERS**

The Council is expected to adopt conclusions on the Development of the management of maritime borders, taking into account the situation in the Mediterranean region and the Canary Islands.

The draft conclusions have been prepared taking account of discussions in the Council in July and at the informal Ministerial Meeting in Tampere, on 21 September. They draw on work underway in the Council and the Commission as a result, in particular, of the Global Approach to Migration and are intended to give impetus to that work, especially by reference to those elements which have a direct bearing on our ability to respond to the type of pressures we have witnessed over the Summer.

They will take into account the particularities of the Southern external maritime border, including cooperation with third countries and must be based on the principles of tangible European solidarity sharing of responsibilities.

## **FRIDAY 6 OCTOBER 2006**

### **MUTUAL RECOGNITION TO JUDGEMENTS IN CRIMINAL MATTERS - Public deliberation**

The objective of this proposal is to allow the transfer of sentenced persons to another Member State for the purpose of enforcement of the sentence imposed, taking into account the possibility of social rehabilitation of the sentenced person.

All Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to the Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.

Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where EU nationals or other persons legally residing in one Member State have been subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State.

Enforcement of the sentence in the executing Member State enhances the possibility of social rehabilitation of the sentenced person, given the opportunity for him or her to maintain family, linguistic, cultural and other links.

The Council will be invited to examine certain outstanding questions of this legal instrument such as the ground for refusal in relation to social rehabilitation or the inclusion of non-EU nationals in the scope of the instrument.

### **CRIMINAL MEASURES AIMED AT ENSURING THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS - Public deliberation**

The Council will discuss a Commission proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights.

The Presidency proposes the following positions as the basis for discussion at the Council:

- 1) The protection of intellectual property rights is of utmost importance. Bearing in mind the principles of subsidiarity and the fact that the use of criminal law is considered as a means of last resort, further scrutiny is needed regarding the need for criminal measures on the EU level in order to protect intellectual property rights.
- 2) These substantive provisions of the proposed instrument should be discussed on the basis of a limitation of its scope to intellectual property rights harmonised in Community legislation, in line with the principles stated in the conclusions of the informal JHA meeting in Vienna of 13 and 14 January 2006.

By judgment of 13 September 2005, the European Court of Justice annulled Framework Decision 2003/80/JHA on the protection of the environment through criminal law (C-176/03 Commission v. Council). The European Court was of the view that Article 175 TEC, which refers to Community measures intended to protect the environment, gave the Community competence to adopt measures relating to the criminal law of the Member States. On this basis, the European Court ruled that the framework decision encroached on Community competence, and did not respect Article 47 TEU.

The Commission submitted a Communication to the Council and the Parliament on the consequences of the Court's judgment (COM(2005) 583 final). The proposal which will be examined by the Council was issued in line with this Communication.

### **CONVICTIONS IN THE COURSE OF NEW CRIMINAL PROCEEDINGS - Public deliberation**

The Council is expected to reach a political agreement on a draft framework decision on taking account of convictions in the Member States of the EU in the course of new criminal

The purpose of this Framework Decision is to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.

In accordance with this instrument, each Member State will ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account and equivalent legal effects are attached to them as to previous national convictions.

### **MIXED COMMITTEE (Thursday, 5 October at 15h00)**

The Mixed Committee will discuss the following issues:

- The implementation of SIS II,
- Reinforcing the Southern External Maritime Borders