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THE EUROPEAN UNION**



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Justice and Home Affairs

Luxembourg, 5-6 October 2006

Presidents **Ms Leena LUHTANEN,**
Minister of Justice
Mr Kari RAJAMÄKI,
Minister of the Interior

of Finland

P R E S S

Main Results of the Council

The Council adopted conclusions on Schengen Information System II (SIS II) and SIS 1+ and confirmed its position on a legislative package regarding the SIS II. It mandated the Presidency to continue negotiations with the European Parliament with a view to reaching an agreement in first reading.

The Council adopted conclusions on reinforcing the southern external maritime borders and a Decision on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration.

The Council also adopted a regulation establishing a local border traffic regime at the external land borders of the Member States and introducing for that purpose a local border traffic permit. This regulation will ensure that the borders with neighbours of the European Union are not a barrier to trade, social and cultural interchange or regional cooperation.

Furthermore, it adopted a regulation imposing a definitive anti-dumping duty on imports into the EU of footwear with uppers of leather originating in China and Vietnam. The regulation is aimed at protecting EU footwear market by imposing duties of 16,5% and 10% on leather footwear imports from China and Vietnam, respectively.

The EU and the United States completed negotiations today on an interim Agreement on the processing and transfer of passenger name record (PNR) data by air carriers to the US Administration.

Finally, the Council appointed Mr Pierre Morel as the new EU special representative (EUSR) for Central Asia until 28 February 2007.

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- The documents whose references are given in the text are available on the Council's Internet site <http://www.consilium.europa.eu>.
- 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 Jan DE BOCK

Permanent Representative

Czech Republic:

Mr Ivan LANGER

Minister for the Interior

Mr Jiří POSPIŠIL

Minister for Justice

Denmark:

Ms Lene ESPERSEN

Minister for Justice

Mr Søren GADE

Minister of Defence

Ms Rikke HVILSHØJ

Minister for Refugee, Immigration and Integration Affairs

Germany:

Mr Wolfgang SCHÄUBLE

Federal Minister for the Interior

Ms Brigitte ZYPRIES

Federal Minister for Justice

Estonia:

Mr Kalle LAANET

Minister for the Interior

Mr Rein LANG

Minister for Justice

Greece:

Mr Anastasis PAPALIGOURAS

Minister for Justice

Mr Byron POLYDORAS

Minister for Public Order

Spain:

Mr Alfredo PÉREZ RUBALCABA

Minister for Interior

Mr Luis LÓPEZ GUERRA

State Secretary for Justice

Ms Maria Consuelo RUMÍ IBÁÑEZ

State Secretary for Immigration and Emigration

France:

Mr Pierre SELLAL

Permanent Representative

Ireland:

Mr Bobby McDONAGH

Permanent Representative

Italy:

Mr Giuliano AMATO

Minister for the Interior

Mr Clemente MASTELLA

Minister for Justice

Cyprus:

Mr Neokles SYLIKIOTES

Minister of Interior

Mr Sofoklis SOFOKLEOUS

Minister for Justice and Public Order

Latvia:

Mr Dzintars JAUNDŽEIKARS

Minister for the Interior

Lithuania:

Mr Raimondas SUKYS

Minister for the Interior

Mr Petras BAGUŠKA

Minister for Justice

Luxembourg:

Mr Luc FRIEDEN

Minister for Justice, Minister for the Treasury and the Budget

Mr Nicolas SCHMIT

Minister with responsibility for Foreign Affairs and Immigration

Hungary:

Mr Ferenc KONDOROSI

State Secretary, Ministry of Justice

Malta:

Mr Tonio BORG

Deputy Prime Minister, Minister for Justice and Home Affairs

Netherlands:

Mr E.M.H. HIRSCH BALLIN

Minister for Justice

Austria:

Ms Karin GASTINGER

Federal Minister for Justice

Poland:

Mr Ludwik DORN

Deputy Prime Minister, Minister for the Interior and Administration

Portugal:

Mr José MAGALHÃES

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

Mr João Tiago SILVEIRA

State Secretary for Justice

Slovenia:

Mr Dragutin MATE

Minister for the Interior

Mr Lovro ŠTURM

Minister for Justice

Slovakia:

Mr Stefan HARABIN

Minister for Justice

Finland:

Mr Kari RAJAMÄKI

Minister for the Interior

Ms Leena LUHTANEN

Minister for Justice

Sweden:

Mr Sven-Olof PETERSSON

Permanent Representative

United Kingdom:

Mr John REID

Secretary of State for the Home Department; Home Secretary

Baroness SCOTLAND OF ASTHAL

Minister of State for the Criminal Justice System and Offender Management

Baroness ASHTON OF UPHOLLAND

Parliamentary Under-Secretary of State, Department for Constitutional Affairs

.....

Commission:

Mr Franco FRATTINI

Vice-President

Mr Stavros DIMAS

Commissioner

.....

The Governments of the Acceding States were represented as follows:

Bulgaria:

Mr Boyko KOTZEV

Deputy Minister for the Interior

Mr Margarit Nikolov GANEV

Deputy Minister of Justice

Romania:

Mr Vasile BLAGA

Minister for Administration and the Interior

Mr Ion CODESCU

Secretary of State, Ministry of Justice

ITEMS DEBATED

HAGUE PROGRAMME REVIEW

The Council took stock of the progress made and assessed the level of implementation at EU and national level of the Hague Programme "Strengthening Freedom, Security and Justice in the European Union".

The Hague Programme was adopted by the European Council in November 2004. It reaffirms 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.

CIVIL PROTECTION FINANCIAL INSTRUMENT

The Council examined a proposal establishing a civil protection financial instrument, in particular its main outstanding question: whether a part of the Community budget foreseen for the EU civil protection activities could, under certain conditions, be used for hiring of transport and equipment.

The Council, while confirming its willingness to conclude an agreement by December 2006, instructed the Permanent Representatives Committee (Coreper) to prepare a compromise on all outstanding questions. In particular, Coreper is tasked to conclude the discussion on transport and equipment financing on the basis of the ideas expressed in the Council:

- (a) Article 4, para 2, litera b) of the draft decision [supporting Member States in obtaining access to equipment and transport resources] will remain in the text without amendments,
- (b) Financial assistance from the Community budget for major civil protection emergencies as foreseen in Article 4, para 2; literas c) and d) [financing additional resources for transport and equipment] will be available for interventions in third countries,
- (c) Financial assistance for major emergencies within the European Union will, as a rule, be reimbursed by the accepting Member State. The reimbursement may be waived, taking account the nature of the emergency and the extent of the damage,
- (d) The Commission will submit a first evaluation (Article 14) of the implementation of the relevant provisions in Article 4, paragraph 2, literas c) and d) already by mid-2008,
- (e) The first evaluation report to be submitted by the Commission in accordance with Article 14 as mentioned above, shall take into account the results of an analysis conducted jointly by the Commission and the Member States, by 31 December 2007, on the transport and equipment needs experienced in major civil protection interventions and the measures taken under this decision to address these needs,
- (f) Depending on the results of this evaluation, the Council may request the Commission to present a proposal for an amended decision to be agreed before the end of 2008.

For the purpose of establishing the analysis in e), the Commission undertakes to establish a group composed of experts appointed by the Commission and the Member States before the end of 2006.

Background

The aim of the proposal is to establish, during the period of validity of the Financial Framework 2007-2013, the financial basis for Community action in the field of civil protection. The proposed instrument would finance:

- the response and preparedness actions covered by the Civil Protection Mechanism¹, which is currently being revised under the Commission proposal for a Council Decision establishing a Community civil protection mechanism.
- actions presently covered by the Civil Protection Action Programme 1999-2006², 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.
- 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.

Since the current Civil Protection Action Programme will expire on 31 December 2006, and since the present proposal includes the financing for the Civil Protection Mechanism, a failure to formally adopt the present financial instrument before January 2007 would lead to difficulties in financing after that date civil protection activities currently covered by that programme, as well as the operation of the Mechanism.

Many events may lead to the occurrence of major emergencies with actual or potential catastrophic consequences for people, property and the environment at large. Such major emergencies may be caused by a wide range of factors and actors since they can result from the action of man, including through the operation of industrial facilities and terrorist attacks, or natural phenomena, such as earthquakes, floods, storms, etc.

¹ Council Decision 2001/792, EC, Euratom, of 23.10.2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, OJ L 297, 15.11.2001, p. 7.

² Council Decision 1999/847/EC, of 9.12.1999 establishing a Community action programme in the field of civil protection, OJ L 327, 21.12.1999, p. 53, prolonged by Decision 2005/12/EC, OJ L 6, 8.1.2005, p. 7.

In such crisis situations, civil protection actors have proved to fulfil an essential role in responding on very short notice to the occurrence of major emergencies and in contributing to manage and mitigate their consequences, thereby helping to reduce the loss of human life injuries, and environmental, economic and material damage.

The effectiveness of rapid response interventions depends to a very large extent on what has been achieved in advance in order to prepare for the adequate means and equipment to be dispatched on-site and to intervene there;

The effectiveness and efficiency of civil protection actors within the Member States may clearly benefit from a pooling of their resources and mutual assistance; such concerted action would also benefit the people and local communities affected by major emergencies.

The Community has a legitimate role to fulfil in that context. To that effect, a mechanism to facilitate reinforced cooperation in civil protection assistance interventions has been established in 2001. This mechanism facilitates making support available in the event of major emergencies through the mobilisation of intervention teams, experts and other resources, as required, and through a reinforced Community civil protection structure consisting of a monitoring and information centre and a common emergency communication and information system. The mechanism also provides an opportunity for collecting validated emergency information, for disseminating that information to the Member States and for sharing lessons learnt from interventions.

SCHENGEN INFORMATION SYSTEM (SIS II)

– *Legal basis*

The Presidency informed the Council of the vote that took place at the LIBE Committee of the European Parliament on 5 October 2006 regarding the legislative package on SIS II.

This package is composed of

- the proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the second generation Schengen Information System (SIS II), as set out in document *5709/10/06 REV10 + ADD1*,
- the proposal for a draft Council Decision on the establishment, operation and use of the second generation Schengen Information System (SIS II), as set out in document *5710/7/06 REV7 + ADD1*, and
- the proposal for a Regulation of the European Parliament and of the Council regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates, as set out in document *8082/1/06 REV1*.

The LIBE Committee adopted these texts with the exception of the addition of the words «or the entry of data in the SIS II» at the end of Article 17(1)(b) of the Regulation (*5709/10/06 REV10*) and of Article 37(1)(b) of the Decision (*5710/7/06 REV10*).

The texts as adopted by the LIBE Committee would be submitted to the second Plenary session of the European Parliament in October 2006.

The Council confirmed its position on this legislative package as agreed by Coreper (*13361/1/06*), and gave a mandate to the Presidency in order to continue negotiations with the European Parliament with a view to reaching an agreement in the first reading.

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.

– ***SIS II and SIS 1+ - Council conclusions***

The Council adopted the following conclusions:

"The Council

with respect to the SIS II :

1. *considers* that the revised implementation schedule for the SIS II, which is contained in Commission staff working document 12379/06 SIRIS 158, seems to be feasible and realistic. According to the revised schedule, the SIS II would be operational for the Member States currently participating in the SIS 1+ by June 2008, allowing the integration of the Member States not yet participating in the SIS 1+.
2. *confirms* the revised schedule, and at the same time instructs the relevant Council working groups and Commission bodies to do their utmost to have the SIS II operational at the earliest possible opportunity. The Council reaffirms that the development of the SIS II remains the absolute priority.
3. *agrees* to prolong the Commission mandate to develop the SIS II beyond 31 December 2006 and also to clarify the mandate so as to make it clear that the technical integration of the new Member States into the SIS II is included in the mandate.
4. *agrees* to set up an informal Task Force, consisting of experts seconded by interested Member States, to assist the work of the Council, in co-operation with the Commission, on the management and coordination of the SIS II project, including the state of preparedness of all Member States. The Council invites all the stakeholders in the SIS II project to co-operate fully with the Task Force. The Council invites the Presidency and the Commission to agree on the practical arrangements for the Task Force as soon as possible.

with respect to the SIS 1+:

5. *welcomes* the Portuguese proposal which could make it possible to integrate the new Member States in the SIS1+ and agrees *with* the elements contained in document 12583/06 SIS-TECH 93 COMIX 724.
6. *invites* the relevant working groups to work out all the outstanding technical, financial, legal, organisational and management aspects of the proposal forwarded by Portugal, so as to be in a position to take a final decision at its meeting in December on whether or not to proceed with the integration of the new Schengen States into the SIS 1+.

with respect to the lifting of internal border controls:

7. *invites*, on the basis of the outcome of discussions on having an operational Schengen Information System in place in all Member States as soon as possible, the competent working groups to prepare a feasible and realistic global planning for the lifting of the controls at the internal land, sea and air borders, taking into account also the results of the Schengen evaluations required for permitting the putting into effect of the entire Schengen acquis for the Member States concerned. On the basis of this work, the Council intends to decide in December 2006 on the date or dates for the lifting of those controls and to inform the European Council."

REINFORCING THE SOUTHERN EXTERNAL MARITIME BORDERS - Council conclusions

The Council adopted the following conclusions:

"The Council:

1. *recognising* the need for an adequate European response to the growing humanitarian crisis in the Mediterranean and the Atlantic coast as caused by the dramatic increase over recent months in the number of immigrants arriving to the Canary Islands, Lampedusa, Malta and the Greek Islands in particular. This response must 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 with equitable sharing of responsibilities between Member States and between Member States and countries of origin or transit. Furthermore, the European actions in the Mediterranean and Atlantic coast should be seen as part of the wider European approach to manage migration and combat illegal migration to the European Union and therefore should be coherent with other policies and actions taken in this area like those along the EU's external borders of Eastern Europe and the Balkans;
2. *recalling* the importance which it attaches to the implementation of the Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean agreed in December 2005 as part of a balanced, global and coherent approach to the issue of migration in the Union and welcoming the progress that has been made in this respect and looking forward to the Commission report to the European Council on progress made by December 2006;
3. *taking into account* the causes of illegal immigration, thereby focusing on potential push and pull factors;
4. *recognising* that while the development of a sustainable political framework with the countries of origin and transit is more pressing than ever, such a development requires a long-term perspective, and must be coupled with an integrated approach including the launch of further operational measures to reinforce control and surveillance of the external maritime border and to ensure the protection of persons in need of international protection, measures which can be efficiently implemented among Member States in the short and medium term, building on the experience gained from the operations carried out by Frontex this year and paying special attention to cooperation with third countries of origin and transit;
5. *recognising* the important role of Frontex has played in coordinating the response to these developments and reaffirming the pivotal role to be played by Frontex in the context of the EU integrated border management system in implementing operational cooperation and coordination between the Member States;

6. *noting* the Commission's competence to examine the scope for adjusting other existing and planned financial instruments for the purpose of augmenting the capacity of those instruments to respond to crisis or emergency situations;
7. *taking* into account the Conclusions of the European Council in Seville on 21 and 22 June 2002, paragraphs 35 and 36, and the Council Conclusions of November 2004, which underline the necessity to carry out a systematic assessment of relations with third countries which do not cooperate in combating illegal immigration;

The Council:

1. *requests* work to be taken forward on the development of the EU integrated management system for external borders/border management strategy, taking into account the particularities of each border, which will make for a long-term adaptable strategy to meet the objectives of the Community in the field, with a view to the adoption of the necessary strategic guidelines no later than December 2006;
2. *commits* itself to work, in close cooperation with the European Parliament as co-legislator, towards a speedy adoption of the Commission's proposal for a Regulation on Rapid Border Intervention Teams (RABIT);
3. *recalls* its intention to analyse in-depth the role of Frontex on the basis of the Commission's evaluation report that will be presented in 2007;
4. *will seek* early agreement on the General Programme – Solidarity and Management of Migration Flows 2007-13 in order to ensure the availability of funds for new actions in this area based on a spirit of solidarity;
5. *invites* the Commission, with the cooperation of Frontex and taking into account the responsibilities of Member States, the feasibility study on the establishment of a Mediterranean Coastal Patrol Network (MEDSEA) and experience gained in joint operations, to present a Communication to the Council before the end of 2006 identifying those further operational measures that can be taken in the short-term to equip the Union with the necessary capacity to help assist in preventing and managing migration crisis situations. In this context, the Commission should:
 - examine urgently the needs and possibilities for reinforcing Frontex by way of additional personnel and increasing its budget allocation in order to allow its further development and increase its capacity to respond immediately to crisis situations, in particular through speedy coordination procedures with Member States participating in Frontex operations within the existing financial framework of the European Union;

- follow up its examination of international instruments on the law of the sea, in conjunction with relevant aspects of refugee law, with a view to helping in the development of guidelines on the legal scope for action to be taken by the Community and its Member States to counter migration flows on the high seas without prejudice to the principles laid down in the international legal framework on the law of the sea and the protection of refugees;
- assess the needs and examine means for ensuring appropriate reception and support conditions in cases where large numbers of third country nationals including minors are trying to illegally enter into the territory of a Member State and to coordinate adequate targeted support from the Community and other Member States, making use of relevant financial instruments, in particular the General Programme – Solidarity and Management of Migration Flows 2007-13, within the existing financial framework of the European Union;
- examine the ways and means for improved identification and return of the irregular (undocumented) migrants through the establishment and more effective use of existing and agreed European databases.

6. invites Frontex

- to take forward work on the feasibility study on the establishment of a European Surveillance System capable of initially covering the whole of the southern maritime border of the Community and the Mediterranean Sea (BORTEC) and invites the Commission to identify the appropriate follow-up to be given to the outcome of the study and to report to the Council by March 2007;
- to continue preparations to urgently activate Article 7 of the Council Regulation EC 2007/2004 in order to establish a centralized record of technical equipment belonging to Member States which could be put at the disposal of another Member State following a needs and risk analysis carried out by the Agency;
- to reflect on the creation of interconnected regional centres at the disposition of Frontex for operational matters in the different maritime zones or sub-zones.

7. *invites* Member States to actively contribute to the centralised record of technical equipment, in order to have an extensive central pool of assets and equipment available in particular for the maritime border for operational needs by summer 2007;

8. *intends*, in the context of the follow up to be given to the Rabat conference and in view of the EU-Africa Conference to be held in Tripoli, together with the Commission, to work in close cooperation with the third countries of origin and transit concerned in developing relevant operational activities, further developing their capacities to cooperate and respond to illegal migration flows including by way of implementation of Article 13 of the Cotonou Agreement, the further conclusion of readmission arrangements, in particular with African countries from which the most relevant migration flows to Europe originate, and stable mechanisms of identification as well as by cooperation with European Agencies such as Frontex and Europol. The cooperation with countries of origin and transit should be based on a mutual responsibility and commitment to manage migration flows. Therefore all third countries involved along the migration routes are called upon to take all the necessary actions to combat illegal migration."

Background

The Global Approach to Migration sets out a number of priority actions focusing on Africa and the Mediterranean. The Commission and Frontex were invited to implement a number of measures to increase the operational cooperation between Member States.

On 17 July 2006 the Council (General Affairs and External Relations) adopted conclusions on migration underlining the need to address all aspects affecting the serious situation in the Mediterranean and the Atlantic, particularly on the sea borders, through short-, medium-, and long-term concrete measures, including maritime operational cooperation with a view to developing adequate surveillance capacities at the sea borders.

The item was also discussed at the Council (Justice and Home Affairs) on 24 July, where the Commission and the Executive Director of FRONTEX informed the Council on the current state of play of the implementation of the Global Approach to Migration. On that occasion, the Council discussed the situation in the Mediterranean Region and Africa with regard to illegal immigration. It welcomed the measures already undertaken by the Commission and FRONTEX and stressed the need to continue to develop operational cooperation. It asked its preparatory bodies to keep the developing situation in the Mediterranean area and Africa under review with a view to assessing action to be taken and responding as appropriate.

The continuing arrival of illegal migrants in large number to the Spanish, Italian and Maltese coasts this summer has ensured the issue has been kept under review at the highest Community level and will in other fora, including the informal Council in Tampere and the regional meeting of Ministers in Madrid in September 2006.

VISA WAIVER RECIPROCITY WITH CERTAIN THIRD COUNTRIES

Commission Vice-President Franco Frattini presented the Commission's second report on visa waiver reciprocity with certain third countries.

The Council held a first exchange of views on it and the Presidency concluded that the Community should continue working towards full visa waiver reciprocity with those third countries in respect of which it has yet to be achieved.

Council Regulation (EC) No 539/2001, as amended by Council Regulation (EC) 851/2005, provides for a new reporting mechanism in regard to the visa reciprocity mechanism which resulted in the Commission presenting a first report on the issue in January 2006.

The Council subsequently adopted Conclusions arising from the report welcoming the progress made towards achieving full visa waiver reciprocity with certain third countries but noting the lack of progress in respect of certain others (the United States, Canada and Australia). The Conclusions invited the Commission to strengthen its efforts in relation to those countries as well as monitoring progress in regard to other relevant third countries. The Council Conclusions also invited the Commission to report on the progress made when submitting its second report in the second half of 2006.

MUTUAL RECOGNITION TO JUDGEMENTS IN CRIMINAL MATTERS

The Council examined certain outstanding questions of this legal instrument, in particular the ground for refusal in relation to social rehabilitation and the inclusion of third country nationals in the scope of the instrument.

Regarding social rehabilitation, a large majority of delegations favoured the approach by the Presidency which consisted of providing for an obligation for the issuing State to only forward a judgement if this will facilitate the social rehabilitation of the sentenced person, rather than to provide for a ground for refusal for the executing State.

Concerning third country nationals, it was generally agreed that those should be included in the scope of the instrument. However, it was recognised that the proposal involved a differentiation between Union citizens and third country nationals. The Presidency proposed to introduce a recital on the issue of third country nationals.

The Council mandated its preparatory bodies to further work on this draft Framework Decision with a view to reaching an agreement in December 2006.

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.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

The Council had an exchange of views on the state of play regarding the establishment and effective functioning of the Agency.

The debate focused on the main outstanding question, which is the extension of the scope of the Agency to questions relating to police and judicial penal cooperation (Title VI of the Treaty of the European Union, the so called "Third Pillar").

A majority of delegations and the Commission favoured such an extension.

The Presidency called on Member States, in a constructive spirit, to help in finding a compromise solution to this question, with a view of the establishment of the Agency before the end of the year, in accordance with the timeframe set by the European Council in June 2006.

In this respect, the Presidency indicated that it would submit a compromise solution to delegations in the near future.

On 5 July 2005, the Commission submitted to the Council a proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and a proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on the European Union¹.

In accordance with the Commission proposal, the Agency will provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.

The Agency shall deal mainly with fundamental rights issues in the European Union and in its Member States when implementing Community law.

¹ 10774/06; COM(2005) 280 final

CRIMINAL MEASURES AIMED AT ENSURING THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

The Council discussed specific questions relating to a proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights.

The Council focused its debate on the need for criminal measures in the field of intellectual property rights, on whether and to what extent the Community has competences to adopt criminal law measures in the field of intellectual property rights on the basis of Article 95 of the Treaty of the European Communities, and on the scope of the Directive (the list of rights which should be included in the Directive: only those harmonised at Community level and also national rights).

The Council broadly agreed with the following:

- 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) Noting further that the current evaluation of Directive 2004/48/EC should provide information on the efficacy of EU provisions on civil and administrative measures to protect intellectual property rights, and that fundamental questions concerning Community competence in adopting criminal law measures can better be addressed after the Court of Justice has given its judgment in case C-440/05, discussions should nonetheless be continued at the Working Party level on the substantive provisions of the proposed instrument.
- 3) 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 was examined by the Council was issued in line with this Communication.

CONVICTIONS IN THE COURSE OF NEW CRIMINAL PROCEEDINGS

The Council discussed a framework decision on taking account of convictions in the Member States of the EU in the course of new criminal proceedings and instructed its preparatory bodies to further examining this proposal.

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.

In the margins of the Council

– ***Mixed Committee***

The Mixed Committee (UE + Norway, Iceland and Switzerland), chaired by the Norwegian Minister of Justice Knut Storberget, agreed on the legal basis of SIS II and on conclusions regarding the SIS II and SIS 1+.

It also agreed on conclusions concerning the reinforcement of the Southern External Maritime Borders.

– ***Agreement with the United States on the continued use of passenger name record (PNR) data***

The EU and the United States completed negotiations today on an interim Agreement on the processing and transfer of passenger name record (PNR) data by air carriers to the US Administration.

The interim Agreement, which will be submitted for approval by the EU Council as soon as possible, provides legal certainty by replacing the Agreement of May 2004 between the European Community and the US, following the Court of Justice of the European Communities judgment of 30 May 2006 (see below).

The EU welcomes the new Agreement which will help to prevent and combat terrorism and serious transnational crime, whilst ensuring an equivalent level of protection of passengers' personal data in line with European standards on fundamental rights and privacy.

The interim agreement enables PNR data in the reservation systems of air carriers to continue to be transferred to the US in the same way as under the previous Agreement. The US Administration may access electronically PNR data from air carriers' reservation/departure control systems located within the territory of the EU Member States, in accordance with specific undertakings. This system will be replaced in due course by one under which airlines in the EU will send the required data to the US.

Under the interim Agreement, the EU will ensure that air carriers operating passenger flights in foreign air transportation to or from the US process PNR data contained in their automated reservation systems as required by the US Administration.

The US Administration will continue to process PNR data received and treat data subjects concerned by such processing in accordance with undertakings given in 2004.

The Agreement will apply provisionally as of the date of signature. It will expire upon the date of application of any superseding agreement and in any event, no later than 31 July 2007, unless extended by mutual written agreement.

Background

In its judgment of 30 May 2006, the Court of Justice annulled Council Decision 2004/496/EC of 17 May 2004 on the approval by the European Community of the previous Agreement (on the processing and transfer of PNR data by air carriers to the US Administration), as well as Commission Decision 2004/535/EC of 14 May 2004 (the so-called Adequacy Decision), which was closely linked to it.

The Court annulled these Decisions on the grounds that they did not fall within the competence of the European Community; however, it did not rule that the Decisions infringed fundamental rights with regard to data protection.

In annulling the Decisions, the Court preserved the effects of the two Decisions, but only until 30 September 2006.

In consequence, the EU denounced the Agreement and negotiated the new one with the US, which falls within the competence of the European Union, and not the European Community.

OTHER BUSINESS

– *Participation of Ethnic Minority Youth in Society*

The Council was briefed about a European Conference on the Active Participation of Ethnic Minority Youth in Society which was held in Copenhagen on 7 and 8 September 2006. The Conference was jointly organised by the Netherlands and Denmark. The three major topics of the conference were - Education and Employment, Equal Opportunities, and Cohesion and Preventing Radicalisation.

Prior to the conference a Youth Event focusing on the same topics took place in Denmark on 1 and 3 September 2006. 53 young persons from almost all Member States shared thoughts and experiences and even more importantly created concrete proposal on how to promote active participation and further integration.

The movie from the Youth Event, speeches from the Conference on 7 and 8 September 2006, the proposals from the Youth Event, and the booklet "Catalogue of Ideas", which describes inspiring European projects on integration, can be found at www.newtodenmark.dk.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Asylum and immigration

The Council adopted a Decision on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration. This mechanism is complemented by the possibility of exchanging views and debates on such measures (12758/06).

On the basis of this Decision, Member States will communicate, as soon as possible, to the Commission and the other Member States information on the measures which they intend to take, or have recently taken, in the areas of asylum and immigration. National measures concerned by this Decision are those likely to have a significant impact on several Member States or on the European Union as a whole. It will belong to each Member State to evaluate whether its national measures are likely to have a significant impact or not.

The national measures may comprise policy intentions, long-term programming, draft and adopted legislation, final decisions of the highest courts or tribunals which apply or interpret measures of national law and administrative decisions affecting a significant number of persons.

For reasons of efficiency and accessibility, the network for the exchange of information will be web-based. The Commission will be responsible for its development and management.

The Decision provides for the Commission to prepare, once a year, a general report summarizing the most relevant information transmitted by Member States. The general report will constitute the basis for a debate on national asylum and immigration policies at ministerial level.

This Decision will be applied in all Member States with the exception of Denmark.

Local border traffic regime

The Council adopted a regulation establishing a local border traffic regime at the external land borders of the Member States and introducing for that purpose a local border traffic permit (*PE-CONS 3607/06*).

The regulation authorises Member States to conclude or maintain bilateral agreements with neighbouring third countries in order to implement the regime.

The local border traffic regime will ensure that the borders with neighbours of the European Union are not a barrier to trade, social and cultural interchange or regional cooperation. It constitutes a derogation from the general rules governing the border control of persons crossing the external borders of the EU set out in regulation (EC) No 562/2006 establishing Schengen Borders Code.

The local border traffic permit will be valid for a minimum of one year and a maximum of five years. It must bear the photograph of the holder of the permit and contain additional information (e.g. forename, surname, date of birth, nationality and place of residence, etc.). It must clearly state that its holder is not authorised to move outside the border area, and that any abuse shall be subject to penalties as provided for in the legislation.

Judicial Cooperation in Civil Matters - Small Claims Procedure

Following its agreement on 1 and 2 June 2006 and after completion of the work on recitals and standard forms, the Council confirmed its general agreement on the whole of a draft regulation establishing a European small claims procedure. The European Parliament has not yet delivered its opinion in first reading.

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.

This draft Regulation will apply, in cross-border cases, in civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2000 at the time the procedure is commenced, excluding all interest, expenses and outlays. Litigation on revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of state authority is excluded from the scope of application.

The draft Regulation also specifies that the European small claims procedure could not be applied to the following matters:

- the status or legal capacity of natural persons and maintenance obligations,
- rights in property arising out of a matrimonial relationship, wills and succession,

- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings,
- social security,
- arbitration,
- employment law,
- tenancies of immovable property, except actions on monetary claims,
- violations of privacy and rights relating to personality, including defamation.

A claimant will commence the European Small Claims Procedure by completing a claim form set out in the Annex to the text and lodging it at the competent court or tribunal directly, by post or by any other means of communication such as fax or e-mail acceptable to the Member State in which the procedure is commenced. The claim form will include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.

Once the Regulation will be adopted, it will be applied in all Member States with the exception of Denmark.

Mutual recognition of confiscation orders

The Council adopted by unanimity a Framework Decision on the application of the principle of mutual recognition to confiscation orders (14622/06).

This Framework Decision aims at facilitating cooperation between Member States as regards the mutual recognition and execution of orders to confiscate property. It will oblige a Member State to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters of another Member State.

The general principle is that the competent authorities in the executing State will without further formality recognise a confiscation order which has been transmitted in accordance with rules laid down in the Framework Decision and will take all the necessary measures for its execution.

The Framework Decision contains a list of offences that if they give rise to a confiscation order, and are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, execution of the confiscation order will take place without verification of the double criminality of the acts in the executing Member State.

The restitution of property to its rightful owner is not dealt with in this legal text nor this one prejudices the end to which the Member States apply the amounts obtained as a consequence of its application.

The proper practical operation of this Framework Decision presupposes close liaison between the competent national authorities involved, in particular in cases of simultaneous execution of a confiscation order in more than one Member State.

Member States will take the necessary measures to comply with this Framework Decision by two years after its entry into force.

Eurojust - 2005 activity report

The Council took note of the 2005 activity report of the Joint Supervisory Body of Eurojust. The Presidency will forward it to the European Parliament for information (11875/06).

Accession to the Hague Conference on private international law

The Council adopted a decision on the accession of the European Community to the Hague Conference on private international law (HCCH) (7591/06).

At present, the Community enjoys only observer status in the HCCH. Full membership is necessary for two reasons. It would grant the Community a status consistent with its new role as a major international player in the field of civil judicial cooperation. It would also enable the Community to fully participate in the negotiation of conventions in areas of its competence by expressing its views and positions and ensuring consistency and coherence between its own rules and envisaged international instruments. Moreover, the Community as such rather than its Member States would be the subject of the rights and obligations stemming from Hague Conventions in areas of its competence.

The Hague Conference on private international law is a long-established international organisation with the objective of ensuring the progressive unification of the rules of private international law, mainly by negotiating and drafting international conventions (www.hcch.net).

Visa requirements for holders of Indonesian diplomatic and service passports

The Council adopted a decision which will exempt holders of Indonesian diplomatic and service passports from visa requirements (12853/06).

The decision will apply from 1 November 2006.

EXTERNAL RELATIONS

Central Asia - Appointment of EU special representative

The Council adopted a decision appointing Mr Pierre Morel as the new EU special representative (EUSR) for Central Asia until 28 February 2007, following the departure of EUSR Ján Kubiš (12532/06) who was appointed foreign minister of Slovakia.

Mr Morel's mandate, as set out in joint action 2005/588/CFSP, includes furthering the following EU policy objectives in Central Asia:

- promoting good and close relations with Central Asia countries on the basis of common values and interests as set out in relevant agreements;
- contributing to strengthening stability and cooperation between the countries in the region;
- contributing to strengthening democracy, the rule of law, good governance and respect for human rights and fundamental freedoms in Central Asia;
- addressing key threats, especially specific problems with direct implications for Europe;
- enhancing the EU's effectiveness and visibility in the region, including through closer coordination with other relevant partners and international organizations, such as the OSCE.

See also: Statement by HR Solana welcoming the appointment of P. Morel (S276/06).

Euro-Mediterranean Conference on Women in Society

The Council approved the EU common position with a view to the declaration to be adopted at the First Euro-Mediterranean Conference of Ministers on "Strengthening the role of Women in Society" to be held in Istanbul on 14 and 15 November 2006.

Cooperation with the International Criminal Tribunal for the Former Yugoslavia

The Council adopted a Decision extending for a period of 12 months the Common Position 2004/694/CFSP¹ on further measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the Former Yugoslavia (ICTY).

In particular, those measures concern the freezing of all funds and economic resources belonging to all persons publicly indicted by the ICTY for war crimes who are not in custody of the Tribunal.

TRADE POLICY

Anti-dumping - China and Vietnam - Leather footwear

The Council adopted a regulation imposing a definitive anti-dumping duty on imports into the EU of footwear with uppers of leather originating in China and Vietnam (12516/1/06).

The regulation is aimed at protecting EU footwear market by imposing duties of 16,5% and 10% on leather footwear imports from China and Vietnam, respectively.

The anti-dumping measures will be applicable for a period of two years.

Adoption of the measures follows a Commission investigation, initiated in July 2005, confirming the existence of dumping and injury to Community producers. As a result of the investigation, the Commission imposed last April a provisional anti-dumping duty on imports into the EU of certain footwear with leather uppers from China and Vietnam.

The new measures will enter into force on 7 October, date of expiry of the provisional duty.

¹ OJ L 315, 14.10.2004, p. 52.

Exemption from taxes of imports

The Council adopted a directive on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (codified version) (8447/06).

The directive codifies and repeals Directive 78/1035/EEC of 19 December 1978, substituting the various acts incorporated in it by bringing them together with only such amendments as are required by the codification exercise itself.

ENLARGEMENT

Association with Turkey - trade regime for agricultural products

The Council approved a draft EU position on the amendment of Protocols 1 and 2 to Decision No 1/98 of the EU/Turkey Association Council on the trade regime for agricultural products. The decision will be adopted by the EU/Turkey Association Council.

The proposal adapts a preferential trade regime for trade in agricultural products between the EU and Turkey to take account of the enlargement of the EU to 25 Member States. It also contains technical amendments such as the updating of tariff codes and product descriptions.

EUROPEAN ECONOMIC AREA

Amendments to the EEA agreement

The Council approved draft decisions, to be forwarded to the European Economic Area (EEA) joint committee for adoption, aimed at amending the EEA agreement with a view to:

- enabling Norway to maintain its own safety management system for companies operating passenger ships, as provided by its stricter national legislation (12086/06);

- extending cooperation in the field of social policy with the EEA-EFTA states through the participation in the EU action "European Year of equal opportunities for all (2007)" (12463/06);
- extending cooperation in the field of employment, through the inclusion of Liechtenstein in the European Employment Services network (Eures), as from 1 January 2007 (12466/06).

The EEA joint committee must integrate all Community legislation relevant to the EEA agreement in order to ensure the necessary legal certainty and homogeneity of the internal market.

DEVELOPMENT COOPERATION

Centre for the development of enterprise and technical centre for agriculture - 2007 budget

The Council approved draft decisions, to be forwarded to the ACP-EU committee of ambassadors for adoption, with a view to adopting the 2007 budgets of the centre for the development of enterprise (CDE) and of the technical centre for agriculture and rural cooperation (CTA) (2127/06 and 2128/06).

The draft overall budget for 2007 amounts to: EUR 20.3 million for the CDE and 14.2 for the CTA.

BUDGET

Draft amending budget for 2006 *

The Council approved the establishment of a draft amending budget for 2006 with a view to:

- mobilising new funds for an amount of EUR 120 million for the support of the economic development of the Turkish Cypriot community;
- increasing by EUR 4 million the support to the "European Year of Equal Opportunities for All (2007)"; and
- creating three new budget lines following the modernisation of the EU accounting system.

The Council requested the Presidency to prepare the budget documents to be forwarded to the European Parliament (12702/06).

AGRICULTURE

Silkworm rearing

The Council adopted a regulation laying down special measures to encourage silkworm rearing (codified version) (8448/06).

FISHERIES

EU - Comoros Fishing Agreement

The Council adopted a regulation approving the fisheries partnership agreement (FPA) between the European Community and Comoros (12506/06).

The FPA provides for improved economic, financial, technical and scientific cooperation in the fisheries sector with a view to guaranteeing the conservation and sustainable exploitation of resources, as well as partnerships between undertakings aimed at developing economic activities in the fisheries sector and related activities in the common interest.

The protocol fixing the fishing opportunities and financial contribution for the period from 1 January 2005 to 31 December 2010 remains into force and becomes integral part of this agreement. The fishing opportunities set out in the protocol are allocated for tuna seiners (40 vessels from Spain, France and Italy) and surface longliners (17 vessels from Spain and Portugal). The agreement will cover an annual catch of 6 000 tonnes of tuna in Comorian waters.

The EU will pay a financial contribution of EUR 2 340 000 for the whole six year period.

The FPA will apply for seven years from the date of its entry into force and will be renewable for additional periods of seven years. It replaces Regulation (EEC) No 1494/88, which is repealed.

EU - Seychelles Fishing Agreement

The Council adopted a regulation approving the fisheries partnership agreement (FPA) between the European Community and Seychelles (12505/1/06).

The FPA provides for improved economic, financial, technical and scientific cooperation in the fisheries sector with a view to guaranteeing the conservation and sustainable exploitation of resources, as well as partnerships between undertakings aimed at developing economic activities in the fisheries sector and related activities in the common interest.

The protocol setting out the fishing opportunities and the financial contribution for the period from 18 January 2005 to 17 January 2011 remains into force and becomes integral part of this agreement. The fishing opportunities provided for in the protocol are expressed in vessel numbers (40 tuna seiners and 12 surface longliners) and concern Spain, France, Italy and Portugal. The financial contribution is set at EUR 24 750 000 (EUR 4 125 000 to be paid annually over six years).

The FPA will apply for six years after its entry into force and will be renewable for additional periods of six years. It replaces Council Regulation (EEC) No 1708/87 on fishing off Seychelles, which is repealed.
