



Brussels, 17 April 2007

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

### ***JUSTICE and HOME AFFAIRS COUNCIL***

**Luxembourg, 19 and 20 April 2007**

*The Council will start its work on Thursday 19 April 2007 at 10.00 with the discussion of the "Justice" issues. It will discuss three draft Regulations relating to cooperation in civil matters:*

- law applicable to contractual obligations (Rome I),*
- jurisdiction and applicable law in matrimonial matters (Rome III), and*
- jurisdiction, applicable law, recognition and enforcement of judgements and cooperation regarding maintenance obligations.*

*The Council will also discuss further proceedings of the works on a common frame of reference for European contract law and will examine two Framework Decisions: on combating racism and xenophobia and on certain procedural rights in criminal proceedings.*

*The "Interior" issues will be discussed on Friday 20 April 2007. At 10.00 the Mixed Committee<sup>2</sup> will examine the state of play of the creation of Rapid Border Intervention Teams and a report on a centralised register of technical equipment ("toolbox"), the European Patrols Network and the European Surveillance system. With regard to the Visa Information System (VIS) the Presidency will report on the outcome of the Trialogue held with the European Parliament and the Commission. The Mixed Committee will discuss certain outstanding issues.*

*The Council will continue with a debate on the implementation of the Europol-Protocols and the future of Europol, and on a report by the Commission on measures against illegal employment, with a view to combating illegal migration.*

*Over lunch, Ministers of Interior will discuss the state of play concerning the framework decision on Data Protection in the third pillar, and a report by the Commission on the State of play of the Communications announced for May 2007 relating to the Global approach on Migration and the refugee situation in Iraq and neighbouring countries.*

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*A press conference will be held at the end of the first working session (Ministers of Justice +- 17.00) and at the end of the second working session (Ministers of Interior (+- 15.00)).*

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

<sup>2</sup> EU + Norway, Iceland and Switzerland.

**Thursday, 19 April 2007**

## **JURISDICTION AND APPLICABLE LAW IN MATRIMONIAL MATTERS ("ROME III")**

The aim of this proposal is to introduce a possibility for the spouses to agree on a choice of court for divorce and legal separation and to introduce conflict-of-laws rules on divorce and legal separation.

At the informal meeting in January 2007 in Dresden, ministers underlined the importance of family law issues for the creation of a true area of justice, as there are more and more families where the spouses come from different countries.

Some progress has been achieved since then on this proposal in the sense that a common understanding on a number of important questions is emerging among a majority of Member States. Some delegations have doubts about the added value of this proposal, but the Presidency believes that it is important to continue the discussions in order to find a solution acceptable to all delegations.

The Council will discuss a number of issues with a view to clarifying certain elements of this file and to finding a solution acceptable to all delegations. In particular, the Council will discuss the question of the choice of court by the parties and the choice of applicable law.

## **JURISDICTION, APPLICABLE LAW, RECOGNITION AND ENFORCEMENT OF DECISIONS AND COOPERATION IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS**

The Council is expected to agree on some political guidelines on issues of particular importance for the continuation of the work on this draft regulation.

This proposal on maintenance obligations comes in response to a political call first made at the Tampere European Council meeting in 1999 and reiterated in the Hague programme, approved by the European Council on 5 November 2004, in which the Commission was asked to submit "a draft instrument on the recognition and enforcement of decisions on maintenance, including precautionary measures and provisional enforcement". Most recently, the shared will to move forward in such an important area as maintenance obligations was highlighted at the informal meeting of Justice and Home Affairs Ministers in Dresden on 15 and 16 January 2007.

The Council should focus its discussion on:

- the abolition of the exequatur procedure for all maintenance obligation decisions covered by the Regulation, which would reduce the costs involved in enforcement of maintenance decisions and improve the position of creditors by speeding up enforcement of decisions and making them more easily portable within the European Union,
- the introduction of a system of cooperation between central authorities in order to facilitate application of the Regulation,
- making it clear in a recital that the Regulation applies only in situations having cross-border implications and hence an international aspect, and
- the conditions on which Member State may retain or conclude agreements with third countries in this particular area.

## **LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (ROME I)**

The draft Rome I Regulation transforms the 1980 Rome Convention into a Community instrument. The aim is to harmonise the conflict-of-laws rules concerning contractual obligations within the Community. This harmonisation should make sure that even though the substantive law of the Member States is different, all courts of a Member State would always apply the same substantive law - be it their own or that of another country - to the contract in question. E. g., if the contract is governed by French law according to the Regulation, an Italian court would apply French law in a litigation on this contract, as would a French court or a Slovenian court. This improves legal certainty for the parties.

The proposal is an important step forward in order to complete an area of justice and to enhance the principle of mutual recognition of judgments. It is to be seen in the context of the Brussels I-Regulation (jurisdiction, recognition and enforcement of decisions in civil law matters) and of the draft Rome II-Regulation (law applicable to non-contractual obligations, currently in conciliation).

Although most of the text is agreed by all delegations, there are some elements on which there is still not yet unanimity. With this aim, the Council is expected to examine a compromise package submitted by the Presidency.

The following questions will be particularly examined: the principle of choice of law by the parties to the contract, the law applicable in the absence of choice and individual employment contracts.

## **COUNCIL FRAMEWORK DECISION ON COMBATING RACISM AND XENOPHOBIA**

The Council is expected to reach a general approach on this Framework Decision.

Recent discussions on this file in all preparatory bodies of the Council have shown the political will of the delegations to achieve consensus on the text of the Framework Decision. The technical questions have nearly all been solved. However it remains unsolved the issue of the addition of the possibility to prosecute people publicly condoning, denying or grossly trivialising crimes against humanity under the Stalin regime.

This FD has been discussed since 2001. Despite extensive examination the Council has not been able to reach agreement.

The draft text establishes that the following intentional conduct will be punishable in all EU Member States:

- Publicly inciting to violence or hatred , even by dissemination or distribution of tracts, pictures or other material, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.
- Publicly condoning, denying or grossly trivialising
  - crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, and

- crimes defined by the Tribunal of Nuremberg (Article 6 of the Charter of the International Military Tribunal, London Agreement of 1945) directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.

Member States will ensure that these conducts are punishable by criminal penalties of a maximum of at least between 1 and 3 years of imprisonment.

The Framework Decision will not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty of the EU.

Member States will not have to modify their constitutional rules and fundamental principles relating to freedom of association, freedom of the press and the freedom of expression.

After its adoption, Member States will have 2 years to comply with the Framework Decision.

## **PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS THROUGHOUT THE EUROPEAN UNION**

On 1 and 2 June 2006 the Council agreed on the principles for further work on this proposal. It was concluded that the scope of the proposed Council Framework Decision would be limited to the right to information, the right to legal assistance, the right to legal assistance free of charge, the right to interpretation and the right to translation of documents of the procedure. The Council also instructed its preparatory bodies to examine practical measures.

At its meeting on 15/16 June 2006, the European Council urged the finalisation of negotiations on the procedural rights in criminal proceedings.

However the question of the binding or non binding nature of the instrument remains unsolved by the Council.

The Presidency will suggest the Council to examine the following two options:

Option A, preferred by a large majority of delegations, which would imply a binding Framework Decision and, in addition, a non-binding Resolution on practical measures, and

Option B, which would involve adopting the binding Framework Decision but with its scope limited to cross-border cases, in particular European Arrest Warrant cases, plus a non-binding Resolution.

## **EUROPEAN CONTRACT LAW**

The Council is invited to decide that a Council position on a common frame of reference for European contract law, in particular as regards its purpose, content and scope, is developed and defined.

The Commission Communication on European contract law of July 2001 launched a process of consultation and discussion about the way in which problems resulting from divergences between national contract laws in the EU should be dealt with at the European level. This Action Plan

maintains the consultative character of this process and presents the Commission's conclusions. It also summarises the problems identified during the consultation process, which concern the need for uniform application of EC contract law as well as the smooth functioning of the internal market.

The Council adopted a resolution in 2003 on "A More Coherent European Contract Law". In particular, the Council considered useful, in order to achieve greater transparency, coherence and simplification of contract law, to further improve, consolidate and codify, the existing EC legislation in the area of contract law for example as regards consumer law and the legislative framework for financial services.

The Council was also of the view that the elaboration of EU-wide general contract terms can be useful; however, such general terms should be developed by the contractual parties themselves and respect mandatory Community law and national provisions, including the provisions regarding the protection and information of consumers.

It was also felt that further reflection was necessary on the need for non-sector specific measures, for example an optional instrument in the area of European contract law: the Commission should pursue this reflection, in close collaboration with Member States and taking due account of the principle of contractual freedom.

The Hague Programme, adopted in November 2004, specified that "in matters of contract law, the quality of existing and future Community law should be improved by measures of consolidation, codification and rationalisation of legal instruments in force and by developing a common frame of reference. A framework should be set up to explore the possibilities to develop EU-wide standard terms and conditions of contract law which could be used by companies and trade associations in the Union. Measures should be taken to enable the Council to effect a more systematic scrutiny of the quality and coherence of all Community law instruments relating to cooperation on civil law matters".

In 2006 the European Parliament expressed its views in two Resolutions. The Commission has announced that it will submit a second Progress Report on European Contract Law and the Acquis Review. The Research Network will produce a draft by the end of 2007.

In view of the importance of the project the Presidency considers that it would be appropriate for the Council to develop and define its own position. In this context, the Presidency suggests that the Council identifies the issues that require careful examination and proposes a method of work within the Council preparatory bodies.

**Friday, 20 April 2007**

## **MIXED COMMITTEE (10.00)**

### **FRONTEX**

#### **(a) Creation of rapid Border Intervention Teams**

The Presidency will update the Mixed Committee about the state of play regarding this Regulation.

The Council is expected to agree on a text on 20 April 2007, with a view to facilitating a vote in the EP plenary session and final adoption of the proposal by June 2007.

- (b) - Centralised register of technical equipment ("toolbox")**
- **European Patrols Network**
- **European Surveillance System**

The Presidency will invite the Commission and the Executive Director of FRONTEX to update the Mixed Committee on progress in relation to the "toolbox" as well as developments regarding the European Patrols Network and the European Surveillance System.

## **VISA INFORMATION SYSTEM (VIS)**

The Presidency will underline the main results of the Trialogue held with the European Parliament and the Commission on 28 March 2007, regarding a Draft Regulation concerning the Visa Information System (VIS) and the exchange of data member States on short stay visas.

The outcome of the Trialogue was encouraging and the Presidency believes that a first reading agreement with Parliament on the VIS Regulation is now a realistic possibility.

The Presidency will also inform about the state of play concerning a draft Council Decision concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.

The Mixed Committee will discuss certain outstanding issues with regard to the Draft Regulation and the Draft Council Decision.

## **EUROPOL**

The Council will take note of the state of play concerning the future of Europol. The objective of all Member States is that all operational capacities of Europol should be reinforced, therefore the common fight against cross-border criminality would be more successful.

## **REFUGEE SITUATION IN IRAQ AND NEIGHBOURING COUNTRIES**

The refugee situation in Iraq and neighbouring countries will be discussed by the Council on the basis of an oral report by the Commission.

It should be noted that at the Council in February 2007, the Swedish Minister informed colleagues about the increasing number of asylum applications introduced in his country by Iraqi nationals.

## **GLOBAL APPROACH ON MIGRATION**

Commission Vice President Franco Frattini will brief the Council about the current state of play on the preparation of the Communications on this issue.

At its meeting on 15 February 2007, the Council had an exchange of views on the implementation of the European Council Conclusions of 14-15 December 2006 relating to a Comprehensive European Migration Policy against the background of the outcome of an earlier discussion at the Informal JHA Ministerial meeting in Dresden in January.

The European Council, in their Conclusions, had agreed that consideration would be given as to how legal migration opportunities can be incorporated into the EU external relations policy, in order to achieve a balanced partnership with third countries. The European Council invited the Commission to make proposals, by June 2007, on how to better organise and inform about the various forms of legal movement between the EU and third countries. Commission Vice President Franco Frattini undertook to update Ministers on the preparation of this Communication at the April Council meeting.

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