COUNCIL OF
THE EUROPEAN UNION

EN

6796/08 (Presse 48)

PRESS RELEASE

2853rd Council meeting

Justice and Home Affairs

Brussels, 28 February 2008

President **Mr Dragutin Mate**
Minister of the Interior of Slovenia
Dr Lovro Šturm
Minister of Justice of Slovenia

P R E S S

Rue de la Loi 175 B – 1048 BRUSSELS Tel.: +32 (0)2 281 9548 / 6319 Fax: +32 (0)2 281 8026
press.office@consilium.europa.eu http://www.consilium.europa.eu/Newsroom

Main results of the Council

The Council reached an agreement on two issues regarding a proposal for a Council Decision establishing the European Police Office (Europol): the lifting of immunity for Europol officials when participating in operational activities, especially Joint Investigation Teams (JITs), and the principle of staff rotation and the possibility for Europol staff participating in a JIT to receive instructions from the team leader. The Presidency announced its intention of reaching a political agreement on this text in April 2008.

The Council also adopted conclusions regarding the development of the second generation of the Schengen Information System (SIS II) and decided to approve the signature of protocols on the accession of Liechtenstein to Schengen.

Member states agreed to adopt a common approach for the purpose of discussing with the US the implementation of the US Visa Waiver Programme legislation .

Finally, the Council adopted a common position on mediation in civil and commercial matters.

CONTENTS[1]

PARTICIPANTS **4**

ITEMS DEBATED

EUROPOL 6

RETURNING ILLEGALLY STAYING NON-EU NATIONALS 7

SCHENGEN DEVELOPMENTS - *Council conclusions* 8

RATIFICATION OF EU-US AGREEMENTS ON EXTRADITION AND MUTUAL LEGAL ASSISTANCE 13

FRAMEWORK DECISION ON COMBATING TERRORISM 14

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

– EU Agency for Fundamental Rights 16

– Europol - 2006 budget – Audit report and discharge to the Director 17

– Mediation in civil and commercial matters 18

EXTERNAL RELATIONS

– Euro-Mediterranean Agreements with Egypt and Israel - Enlargement 19

[1]
- Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
- Documents for which 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 Council's Internet site or may be obtained from the Press Office.

PARTICIPANTS

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

Belgium:	
Mr Jo VANDEURZEN	Minister for Justice
Mr Patrick DEWAEL	Minister for the Interior
Bulgaria:	
Ms Miglena Ianakieva TACHEVA	Minister for Justice
Mr Rumen Yordanov PETKOV	Minister for the Interior
Czech Republic:	
Mr Ivan LANGER	Minister for the Interior
Mr Martin MOULIS	Deputy Minister for Justice
Denmark:	
Mr Claes NILAS	State Secretary, Ministry of Refugee, Immigration and Integration Affairs
Germany:	
Mr Wolfgang SCHÄUBLE	Federal Minister for the Interior
Estonia:	
Mr Rein LANG	Minister for Justice
Mr Jüri PIHL	Minister for Internal Affairs
Ireland:	
Mr Brian LENIHAN	Minister for Justice, Equality and Law Reform
Greece:	
Mr Sotirios HADJIGAKIS	Minister for Justice
Mr Vassilis KASKARELIS	Permanent Representative
Spain:	
Mr Julio PÉREZ HERNÁNDEZ	State Secretary for Justice
Mr Antonio CAMACHO VIZCAÍNO	State Secretary for Security
France:	
Mr Pierre SELLAL	Permanent Representative
Italy:	
Mr Rocco Antonio CANGELOSI	Permanent Representative
Cyprus:	
Mr Nicholas EMILIOU	Permanent Representative
Latvia:	
Mr Gaidis BĒRZIŅŠ	Minister for Justice
Mr Mareks SEGLIŅŠ	Minister for the Interior
Lithuania:	
Mr Petras BAGUŠKA	Minister for Justice
Mr Regimantas ČIUPAILA	Minister for the Interior
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 Tibor DRASKOVICS	Minister for Justice and Law Enforcement
Malta:	
Mr Richard CACHIA CARUANA	Permanent Representative
Netherlands:	
Mr Ernst HIRSCH BALLIN	Minister for Justice

Austria:	
Mr Günther PLATTER	Federal Minister for the Interior
Poland:	
Mr Zbigniew ĆWIĄKALSKI	Minister for Justice
Mr Piotr STACHAŃCZYK	Deputy State Secretary, Ministry of the Interior and Administration
Portugal:	
Mr Alberto COSTA	Minister for Justice
Mr Rui PEREIRA	Minister for the Interior
Romania:	
Mr Cristian DAVID	Minister for the Interior and for Administrative Reform
Mr Gheorghe MOCUTA	Secretary of State, Ministry of Justice
Slovenia:	
Mr Lovro ŠTURM	Minister for Justice
Mr Dragutin MATE	Minister for the Interior
Slovakia:	
Mr Robert KALIŇÁK	Deputy Prime Minister and Minister for the Interior
Finland:	
Ms Tuija BRAX	Minister for Justice
Ms Anne HOLMLUND	Minister for the Interior
Ms Astrid THORS	Minister for Migration and European Affairs
Sweden:	
Mr Tobias BILLSTRÖM	Minister for Migration
United Kingdom:	
Ms Jacqui SMITH	Secretary of State for the Home Department; Home Secretary
Ms Meg HILLIER	Parliamentary Under Secretary of State, Home Office

.....

Commission:	
Mr Franco FRATTINI	Vice-President

.....

ITEMS DEBATED

EUROPOL

The Council reached an agreement on two of the three outstanding issues regarding a proposal for a Council Decision establishing the European Police Office (Europol):

– the lifting of immunity for Europol officials when participating in operational activities, especially Joint Investigation Teams (JITs), and

– the principle of staff rotation and the possibility for Europol staff participating in a JIT to receive instructions from the team leader.

Regarding the third outstanding issue (the budget neutrality of the proposal), the Commission announced that it will submit supplementary information to the Council. This issue will be discussed by Coreper in March 2008 with a view to lifting the outstanding reservations.

The Presidency announced that it would aim at reaching a political agreement on the draft Council Decision at the JHA Council to be held in April 2008.

It should be noted that the Commission submitted its proposal in December 2006. Since then, the Council has examined it chapter by chapter, with a view to reaching an agreement under the Slovenian Presidency.

Once adopted, this decision will replace the Europol Convention. Europol will then become a Community agency, financed by the Community budget. The JHA Council considers that this change of status will constitute a clear improvement in the operational and administrative functioning of Europol.

RETURNING ILLEGALLY STAYING NON-EU NATIONALS

The Council took note of the state of play on a draft proposal on common standards and procedures in member states for returning illegally staying non-EU nationals and Ministers had a full exchange of views on outstanding issues. Since the last report in December 2007, significant progress has been made both in the discussions with Parliament and within the competent Council bodies.

A series of intensive informal and political contacts with the European Parliament on all the important issues has helped both sides to understand each other's concerns. Those contacts have also involved the Commission. Discussions have also been taken forward within the Council.

The European Council has instructed the Council and the Parliament to continue their efforts to find a basis for agreement on this directive. The European Council has also pointed to the need for effective readmission and return policies. The Presidency, in taking forward work on the directive, will continue to emphasise the need for an effective and efficient return policy.

The Presidency is counting on the full support of the member states in taking this work forward.

Background

The proposal was submitted by the Commission in 2005 and has been examined at length, under successive Presidencies. It is to be adopted in co-decision with the European Parliament. It sets out common standards and procedures to be applied in member states for returning illegally-staying third-country nationals, in accordance with all the relevant rights enshrined in Community law as well as international law.

The LIBE Committee of the European Parliament adopted its report on 20 September 2007.

The Portuguese and Slovenian Presidencies held a series of informal technical and high-level political tripartite negotiations with the European Parliament and the Commission which focused on all the main outstanding issues.

SCHENGEN DEVELOPMENTS - *Council conclusions*

The Council adopted the following conclusions regarding the development of the second generation of the Schengen Information System (SIS II):

"The Council of the European Union:

1. Recalling the Conclusions of the Council on 12 and 13 June 2007 especially on SIS II

2. Reaffirms the absolute priority to be given to the SIS II which will introduce new technologies and provide added functionalities and takes note of the SIS II provisional schedule presented by the Commission. This schedule will allow that by the end of 2008 the central elements of SIS II, its communication infrastructure and the interface with national systems will function and will have been tested by the Commission and the Member States

3. Calls upon the Member States concerned and the Commission to work with a view to the setting-up of SIS II including the central system, the communication infrastructure, all testing activities and the migration from SIS 1+ to SIS II by September 2009 at the latest. Provided that all Member States have migrated from SIS 1+ to SIS II, the Council will decide on the start of operations of SIS II and therefore the termination of SIS 1+, in accordance with the relevant provisions of the instruments on the establishment, operation and use of the SIS II .

4. Confirms the need to implement a migration approach from SIS 1+ to SIS II that provides a fall-back possibility with a gradual migration to remedy unexpected problems and to this end invites the Commission to provide a converter, to be used for a very limited period of time, linking SIS 1+ and SIS II to ensure that the SIS can continue functioning in any scenario. The Commission is invited to take full account of the needs of the SIS II integrating States.

5. Invites the Commission to present without delay the legal proposals to allow for the inclusion in the budget of the European Union all activities in 2009 for the SIS II, including, if necessary, also further development activities and to govern the SIS II activities foreseen up to the start of its operations.

6. Takes note that France has a specific responsibility, which requires a particular effort in order to allow, on the one hand, the effective functioning of SIS 1+ and on the other, to provide the logistical management for SIS II while guaranteeing the activities necessary for the Visa Information System. In this context, the completion of the detailed schedule further depends, in particular, on the capacity to operate the Central SIS II during the final SIS II tests and the migration from SIS 1+ to SIS II.

7. Encourages solidarity and partnership mechanisms among Member States, in view of the timely completion of the SIS II project, and invites them to present a solution for sharing the costs of the SIS II Task Force back office by the Council in April 2008.

8. Welcomes in this respect the Presidency's proposal to implement an additional mechanism, supporting the SIS II development in the Member States until the start of operations, based on the following elements:

– The "Friends of SIS II", a group of ministers, will follow the implementation of SIS II in the Member States. The group will be chaired by the Presidency and composed of ministers from Germany, Portugal, Slovenia, France, Czech Republic, Sweden, Italy, Austria, the Netherlands, Finland, Spain, Poland as well as from Norway. The Commission will participate in the work of the group.

– Each minister participating in the "Friends of SIS II" and the Commission will nominate one representative to the Friends of SIS II group at senior officials' level; this group is mandated to follow the preparation of Member States for the final migration and to maintain relations with all project stakeholders as a link between expert and ministerial levels.

– The "Friends of SIS II" look forward to getting information on the state of the project from the SIS II Task Force. The role and tasks of the SIS II Task Force remain the same. The rapporteur of the SIS II Task Force is invited, when necessary, to participate in the meetings of the "Friends of SIS II" group at senior officials' level.

– Mutual information exchange between all stakeholders on the status of development of the system at central as well as at national levels must be ensured.

– The Commission shall continue to closely cooperate with Member States, in particular in the testing phase, in order to facilitate transparent communication and the intensive collaboration needed for a smooth migration and a successful completion of all preparations necessary for the start of operations of the SIS II.

9. At each Council/Mixed Committee at ministerial level and CATS/Mixed Committee, comprehensive reports will be given by the Presidency and the Commission on the development of the SIS II project.

10. Invites the Presidency to report to the Council in April 2008 on open questions related to the detailed SIS II schedule, on the basis of a report prepared by the "Friends of SIS II".

11. Calls upon the European Commission to present an updated, complete and detailed SIS II schedule to the Council in June 2008."

SIS II provisional schedule

The Council also took note of a SIS II provisional schedule.

The development and testing of Central SIS II, its communication infrastructure and the interactions of the national systems of countries participating in SIS 1+ with Central SIS II should be completed before the end of 2008.

This should make it possible to conduct the final SIS II tests, bring the Central SIS II into operation and migrate all national systems from SIS 1+ to SIS II in 2009. However, some questions related to the detailed SIS II schedule are still open and it will not be possible to finalise this schedule without the appropriate input. The "Friends of SIS II" will prepare a report on these questions allowing the Presidency, in turn, to provide information on open issues to the JHA Council in April. Thus there are currently still some gaps in the planning for 2009 that can only be filled once the report of the Presidency is available.

At this stage, it is expected that the final SIS II tests, comprising the comprehensive test of SIS II and the SIRENE test, will be carried out between January and June 2009. These tests allow countries participating in SIS 1+ to test fully their national applications and test SIS II in its entirety in conditions that are very close to real operational conditions, in order to have full confidence that SIS II is effective and reliable at all levels of operation. During this period, in order to guarantee the successful execution of the comprehensive test and of the migration, it is essential to maintain and, where necessary, further develop SIS II , including in particular the correction of errors.

From the beginning of 2009, France (C.SIS) will start its involvement in the operations and testing of Central SIS II. The complete handover of the operational management of the Central SIS II to France and Austria should be finalised in July 2009, before the start of the migration from SIS 1+ to SIS II.

A migration approach from SIS 1+ to SIS II that provides a fall-back possibility with a gradual migration will be implemented. This should allow unexpected problems to be resolved. The Commission should provide a converter, to be used for a very limited period of time, linking SIS 1+ and SIS II to ensure that the SIS can continue functioning, during the migration period.

Migration preparations should be completed in early July 2009. The migration execution should start in August 2009 with the progressive transfer of SIS data from SIS 1+ to SIS II, to be followed by the one-shot switch-over of all national systems from SIS 1+ to SIS II in September 2009.

Once all countries in SIS 1+ are successfully switched over to SIS II, SIS II could go live with full functionalities and SIS 1+ could be switched off on the date to be decided by the Council.

Agreements between the EU, Switzerland and Liechtenstein

The Council adopted decisions approving the signature and the provisional application of certain provisions of a protocol between the EU, Switzerland and Liechtenstein on the accession of Liechtenstein to the EU/Switzerland agreement on the Swiss Confederation's association with the implementation of the Schengen acquis (*16459/06 + 16461/06*).

It also adopted a decision approving the signature of a protocol between the EU, Switzerland and Liechtenstein on the accession of Liechtenstein to the EU/Switzerland agreement concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in the EU or in Switzerland (Dublin/Eurodac acquis) (*16470/06*).

Furthermore, it adopted a decision approving the signature of a Protocol between the EU, Switzerland and Liechtenstein to the EU/Switzerland agreement concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in the EU or in Switzerland (Denmark's participation in the Dublin/Eurodac acquis agreement) (*16468/06*).

The signatures took place today in the margins of the Council.

Finally, the EU/Switzerland Mixed Committee, established by the EU/Switzerland agreement, concerning the latter's association in the implementation of the Schengen Acquis, amended its Rules of Procedure accordingly (5756/08).

RATIFICATION OF EU-US AGREEMENTS ON EXTRADITION AND MUTUAL LEGAL ASSISTANCE

The Council took note of the state of play regarding the ratification by the member states of these agreements.

The two EU-US agreements were signed by the EU Presidency and the US Attorney-General on 25 June 2003 in Washington DC.

However before their entry into force, two further requirements have to be met:

1° All member states need to exchange "written instruments" with the United States in order to acknowledge the way in which the provisions of the EU-US agreements are to be implemented at the bilateral level. All these bilateral instruments have been signed, but eight Member States still need to have these ratified by their national parliaments.

2° Both the US and the EU have to go through the ratification process:

a) for the US this means having the two EU-US agreements plus 2 bilateral instruments per member state (ie. 56 in total) ratified by the US Senate.

b) for the EU this means that those member states that have made a constitutional declaration have to follow their respective constitutional procedures.

Only after that has been done can the Council can authorise the Presidency to conclude (=ratify) the EU-US agreements. This will require a second Council Decision authorising the presidency to conclude these agreements.

FRAMEWORK DECISION ON COMBATING TERRORISM

The objective of this proposal is to update Framework Decision 2002/475 on combating terrorism and align it with the Council of Europe Convention on prevention of terrorism, by including public provocation to commit terrorist offences, recruitment for terrorism and training for terrorism.

The Presidency considered that this proposal was very important and also stressed that it was very delicate since it was situated on the borderline of fundamental rights and freedoms such as freedom of expression, assembly or association and the right to respect for family life. It was therefore essential that the right balance was struck in the instrument.

The Council focused its debate on the safeguards relating to respect for human rights and the principle of proportionality. The Presidency concluded that a majority of member states could agree to add to the recitals of the text a clause on proportionality based on Article 12.2 of the Convention. A majority of member states could also support the addition to the framework decision of a new article based on the framework decision on combating certain forms of expressions of racism and xenophobia by means of criminal law.

The Presidency announced its intention of reaching a general approach on this proposal at the next JHA Council in April 2008.

*

* *

Over lunch, Ministers for Justice discussed:

– the creation of a forum on justice issues,

– the financing of e-justice projects,

– a list of several legal instruments that are awaiting adoption due to parliamentary reservations entered by some member states and

– a motion for a resolution of the European Parliament concerning the annual debate on the progress achieved in 2007 in the Area of Freedom, Security and Justice.

The Minister for the Interior discussed:

– the state of play on an EU-US high-level contact group on data protection, and

– the US visa waiver program legislation (VWP). On this item, member states agreed to adopt a common approach for the purpose of discussing it with the US. To this end, they instructed the Permanent Representatives Committee/Mixed Committee to agree on the main elements that this common approach should contain in advance of the next EU-US JHA Ministerial Troika meeting, which will take place on 13 March 2008.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

EU Agency for Fundamental Rights

– *Agreement with the Council of Europe*

The Council adopted a decision approving the conclusion of an agreement between the European Community and the Council of Europe on cooperation between the EU Agency for Fundamental Rights and the Council of Europe (*16623/07*).

The Agency for Fundamental Rights was established in March 2007 in Vienna (Austria). It provides the relevant institutions and member states with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action to fully respect fundamental rights. The agency has three key functions: to collect information and data; provide advice to the EU and its member states and promote dialogue with civil society to raise public awareness of fundamental rights.

The agreement abrogates and replaces the agreement of 10 February 1999 between the European Community and the Council of Europe establishing close cooperation between the European Monitoring Centre on Racism and Xenophobia and the Council of Europe.

– *Multi-annual framework for 2007-2012*

The Council adopted a decision establishing a multi-annual framework for the period 2007-2012 for the Agency for Fundamental Rights, which defines the precise thematic areas of the work of the Agency (*16773/07*).

The Agency will carry out its tasks in particular within the following thematic areas:

- racism, xenophobia and related intolerance;
- discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination);
- compensation of victims;
- the rights of the child, including the protection of children;
- asylum, immigration and integration of migrants;
- visa and border control.

– *Director of the Agency*

The Council gave its opinion recommending the appointment of Mr. Morten Kjaerum as Director of the EU Agency for Fundamental Rights.

The opinion will now be forwarded to the Agency's management board, which is the appointing authority.

Europol - 2006 budget – Audit report and discharge to the Director

The Council gave a discharge to the director of Europol in respect of the budget for 2006 after examining the audit report of the joint audit committee of Europol (*16459/07+ADD1)*.

Mediation in civil and commercial matters

The Council adopted a common position on a draft directive on mediation in civil and commercial matters (*15003/07*).

The purpose of the directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the further use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

The directive will apply to processes where two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator. It should apply in civil and commercial matters. However, it should not apply to rights and obligations which the parties are not free to decide on themselves under the relevant applicable law (e.g. family law and labour law).

The proposal provides that a court before which an action is brought may invite the parties to use mediation in order to settle the dispute. The court may in any event require the parties to attend an information session on the use of mediation. This is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions.

Member States should ensure that the parties to a written agreement resulting from a mediation can have the content of their agreement made enforceable. It should only be possible for a Member State to refuse to render an agreement enforceable if the content is contrary to its law, including its private international law, or if its law does not provide for the enforceability of the content of the specific agreement.

The directive shall not apply to Denmark.

The Commission submitted this proposal on 22 October 2004 and it is subject to the co-decision procedure. The new common position reflects the amendments agreed with the European Parliament.

EXTERNAL RELATIONS

Euro-Mediterranean Agreements with Egypt and Israel - Enlargement

The Council adopted two decisions approving the conclusion of a protocol to the Euro-Mediterranean agreement with Egypt (*13199/07)* and a protocol to the Euro-Mediterranean agreement with Israel (*15061/07*), to take account of the accession of Bulgaria and Romania to the EU in January 2007.