



**COUNCIL OF
THE EUROPEAN UNION**



8364/07 (Presse 77)

PRESS RELEASE

2794th Council meeting

Justice and Home Affairs

Luxembourg, 19-20 April 2007

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Main results of the Council

The Council reached a general approach on a Framework Decision on Racism and Xenophobia. The text will be adopted once some parliamentary scrutiny reservations have been lifted and the text has been revised by the legal linguistic group.

It also discussed certain important issues concerning a proposal on the jurisdiction and applicable law in matrimonial matters ("Rome III"), in particular the rules regarding the choice of court by the parties, the choice of applicable law, the rules applicable in the absence of choice of law, the respect for the laws and traditions in the area of family law and the question of multiple nationality.

Finally, the Council adopted a resolution on information exchange on the expulsion of third country nationals due to behaviour related to terrorist activity or inciting violence and racial hatred.

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- 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.

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PARTICIPANTS

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

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Deputy Prime Minister and Minister for the Interior

Bulgaria:

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Mr Margarit GANEV

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Mr Ivan LANGER

Minister for the Interior

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Spain:

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Mr Magnus GRANERMinister for Migration and Asylum Policy
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Borders of the Member States of the EU (Frontex)

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

The Council discussed certain important issues concerning this proposal, in particular the rules regarding the choice of court by the parties, the choice of applicable law, the rules applicable in the absence of choice of law, the respect for the laws and traditions in the area of family law and the question of multiple nationality.

A very large majority of delegations agreed on the guidelines proposed by the Presidency according to which the Regulation should contain a rule on a limited choice of court for divorce and legal separation by the spouses and on conflict-of-law rules. In this regard, the Regulation should contain, firstly, a rule giving spouses a limited possibility of choice of law for divorce and legal separation and, secondly, a rule applicable in the absence of choice.

The Council took note of the position of two delegations that recalled that, in the absence of choice of law by the parties, the court seized should apply *lex fori*. However, such delegations underlined that they are prepared to continue the negotiations on this instrument.

The Council recognised that the draft Regulation should not imply modifications of the substantive family law of the Member States with respect to divorce or legal separation. One delegation underlined however that the respect of the national legal order should not jeopardise the coherent application of Community law.

The Council gave a mandate to continue work on the draft Regulation on the basis of the following guidelines:

"a) Choice of court by the parties (Article 3a)

Regulation No 2201/2003 ("Brussels IIa-Regulation") provides for a number of alternative grounds for jurisdiction, but does not give spouses the possibility to conclude a choice of court agreement.

According to the Commission proposal, such choice of court agreement should be possible for divorce and legal separation. However, spouses may only choose a court of a Member State with which they have a close connection.

Most delegations supported in principle the possibility for such limited choice of court by the spouses. In this context, the Presidency suggests that the spouses should be able to choose any court which has jurisdiction already under the general rules of the Brussels IIa Regulation as well as the courts of a Member State of which one of them is a national, or where the spouses had their last habitual residence within a certain time period before the court is seised. Questions such as the moment in time when these conditions must be satisfied need further discussion.

The Presidency believes that the rule on choice of court by the parties has also to take into account the interests of a weaker spouse. How this can be achieved through special formal requirements needs further discussion.

The Presidency suggests that these questions be discussed further by the Committee on Civil Law Matters (Rome III) and that negotiations continue on the basis of these guidelines.

b) *Choice of the applicable law by the parties (Article 20a)*

Regulation No. 2201/2003 ("Brussels IIa Regulation") does not provide for rules on the choice of applicable law by the spouses.

According to the Commission proposal, spouses may, to a limited extent, designate the law applicable to divorce or legal separation by agreement. During the negotiations, most delegations could in principle support the idea of giving the spouses a limited possibility to choose the applicable law to their divorce or legal separation. However, spouses may only choose a law of a State with which they have a close connection.

In this context, the Presidency suggests that the spouses should be able to choose the law of the State where they have their habitual residence, or where they had their last habitual residence insofar as one of them still resides there, or the law of the State of which one of the spouses is a national or the law of the forum. Questions such as until what moment in time the choice can be made need further discussion.

Such a rule on the choice of the applicable law should take into account the interests of both spouses and ensure the protection of a weaker spouse. How this could be achieved through special formal requirements needs further discussion.

The Presidency suggests that these issues be discussed further in the Committee on Civil Law Matters (Rome III) and that negotiations continue.

c) Rules applicable in the absence of choice of law (Article 20b)

The Brussels IIa Regulation provides for several alternative grounds of jurisdiction for divorce and legal separation, but does not contain rules on applicable law. In the absence of a choice by the parties, the applicable law is therefore currently determined on the basis of the national conflict-of-laws rules of the Member States which are different. Some States apply their own substantive law (*lex fori*), others apply the law of the nationality or the habitual residence of the spouses. This means that different substantive law rules may apply, depending on the Member State where the applicant or the applicants lodge the request for divorce. Since the national laws on divorce are different, the decision where to lodge the request may have considerable effects.

During the negotiations, many delegations supported the idea of harmonising the conflict-of-law rules in the absence of a choice of law. However, some delegations expressed doubts or opposition to this idea.

The Presidency considers that, with a view to reaching the proposed objective as set out in paragraph 1, it is necessary to provide for a conflict-of-laws rule applicable in the absence of a choice of law by the parties. Several proposals are on the table on this issue none of which is yet acceptable to all delegations. The Presidency believes that it is necessary to find a balanced overall solution on this issue.

Future work will examine whether it would not be necessary to expressly indicate that *lex fori* shall apply where the foreign divorce law would discriminate against one of the spouses or where the foreign law does not provide for divorce. The same applies for Article 20a.

The Presidency suggests that these issues be discussed further in the Committee on Civil Law Matters (ROME III) and that negotiations continue.

d) Respect for the laws and traditions of the Member State in the area of family law

Member States' laws are different with respect to family law as a consequence of different traditions and cultures. All Member States agree that the proposal does not deal with questions of substantive family law and does not trigger any modification of national substantive law rules.

Consequently, the proposal does not establish the legal institution of divorce in a Member State which does not have such an institution nor does it oblige a Member State to introduce divorce in its national law. Moreover, nothing in the proposal obliges the courts of a Member State whose law does not provide for divorce to pronounce a divorce by the application of the conflict-of- laws rules of the proposal.

Therefore, the Presidency suggests that this should be clearly stated in the text of this instrument.

Furthermore, the proposal does not determine the law applicable to a marriage. The definition of marriage and the conditions of the validity of a marriage are matters of substantive law and are therefore left to national law. Consequently, the court of a Member State which has jurisdiction as regards divorce or legal separation may assess the existence of a marriage according to its own law.

The Presidency suggests that this should be clearly stated in the text of this instrument.

The Presidency is aware of the fact that Member States have taken different approaches to the application of foreign law in family matters, depending on their national systems. This may have an impact on their assessment under what circumstances and to what extent national courts should apply foreign law in a given case.

Some Member States consider that divorce is a right to be guaranteed in their legal order.

The Presidency believes that these issues have to be discussed further in the Committee on Civil Law Matters (Rome III) in order to find an appropriate and balanced solution in the instrument.

e) Multiple nationality

One of the connecting factors used in the proposal is the nationality of the spouses. However, the proposal does not take any position as to the question how to deal with the fact that a spouse may have more than one nationality.

The Presidency considers that this question should be addressed and suggests that work be continued to draft an appropriate recital on cases of multiple nationality."

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. However, it does not cover the consequences of a divorce or legal separation relating to property, maintenance and other issues.

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.

RULES IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS

The Council discussed a number of issues of this proposal and agreed on the following political guidelines for further work:

"(a) Shared political will

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 confirmed Member States' shared will to successfully complete work on this important instrument.

(b) Abolition of exequatur

The Commission is proposing the abolition of the exequatur procedure for all maintenance obligation decisions covered by the Regulation, on the basis of the introduction of certain common procedural rules, accompanied by harmonisation of conflict-of-laws rules.

Discussions within the Committee on Civil Law Matters (Maintenance Obligations) show broad agreement on the principle of such abolition, which will 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.

There is still a need to decide what maintenance obligations are to be covered by such abolition and to clearly establish the necessary safeguards for defendants.

The Council confirmed the principle of abolition of exequatur under the proposed Regulation.

(c) Cooperation between central authorities

The Commission is proposing the introduction of a system of cooperation between central authorities in order to facilitate application of the Regulation. Such authorities would have the general task of supplying information on national laws and procedures, as necessary, and the specific task of providing assistance in particular cases in which there was a need to obtain details of a debtor in order to have a maintenance decision enforced.

Discussions within the Committee on Civil Law (Maintenance Obligations) show broad agreement on the introduction of such a system, which has proved effective in the past for other instruments. However, the precise arrangements have still to be decided.

The Presidency would point out that similar rules are being drawn up internationally at the Hague Conference and that those negotiations should be borne in mind here. However, the aim should be for the system to be introduced by the Community to go further, where necessary, than the one currently taking shape for the future Hague convention.

The Council agreed to the principle of introducing a system for effective practical cooperation between central authorities in maintenance obligation matters, the details of which will still have to be worked out.

(d) Cross-border implications

In its explanatory memorandum the Commission points to the cross-border nature of the measures in its proposal, emphasising that they are in line with those set out in Article 65 of the Treaty. The Commission also notes that the proposal contains some measures for minimum procedural harmonisation, which the Commission sees as ancillary to the other measures.

Some delegations consider that the proposed Regulation should, in a separate article, explicitly define cross-border cases, as in other instruments concerning judicial cooperation in civil and commercial matters. Some delegations have also voiced concern regarding the link between the scope of the proposed Regulation and relations with third countries (see (e) below).

The Presidency would point out that the Commission has based its proposal on Articles 61(c) and 67(2) of the Treaty. Article 61(c) refers to Article 65, which limits the Community's powers to civil matters having cross-border implications. Moreover, as the proposal is chiefly concerned with rules on conflicts of jurisdiction, recognition and enforcement of decisions and conflicts of laws, the Presidency thinks it is clear that the proposed instrument can only apply to cross-border matters. The Presidency therefore takes the view, in the light of other civil-law instruments adopted as well, that an explicit definition of the cross-border nature of the instrument is not essential.

The Presidency accordingly suggests making it clear in a recital that the Regulation applies only in situations having cross-border implications and hence an international aspect. That recital would refer to the requirement in Article 65 of the Treaty and give examples of situations in which maintenance obligations have cross-border implications.

Such a recital, the content of which would still have to be discussed, could state that the Regulation applied, for instance, in situations in which the creditor and the debtor were habitually resident in different States, or where a decision on maintenance obligations concerned a debtor and a creditor habitually resident in the same Member State but subsequently needed to be enforced in another Member State after the debtor had moved there.

The Council agreed to this approach.

(e) Agreements with third countries

The Commission's proposal deals only with conventions and treaties concluded between Member States (Article 49). It does not address the question of conventions and treaties concluded between Member States and third countries.

Given the special nature of maintenance obligations, a number of Member States consider it important, if not essential, for them to be able to retain or conclude bilateral agreements with some third countries, in this particular area, after adoption of the proposed Regulation. Clearly, any such bilateral agreements on maintenance obligations should not call into question Member States' obligations under Community law, as interpreted by the Court of Justice. In the light of the solution proposed in (d) above, the Presidency therefore suggests the following solution for such agreements.

For existing bilateral agreements, the Presidency suggests that Member States may retain such agreements in line with the system set out in Article 307 of the Treaty and following the precedent in this area of Regulation (EC) No 44/2001 (Brussels I). It is therefore clear that such agreements should not compromise the system established by the proposed Regulation.

For future bilateral agreements and any amendment of existing bilateral agreements with particular third countries, the Presidency suggests introducing a procedure for the negotiation and conclusion of such agreements, inspired by existing precedents in Community law, *inter alia*, the procedure for air services. That procedure should establish criteria and conditions for assessing whether the conclusion of such an agreement is in the Community's interest. Where that is not the case, the procedure should establish criteria and conditions for the negotiation and conclusion of such agreements by Member States, particularly if the prospective agreement's provisions differ in content from Community rules, so as to ensure that agreements do not compromise the system established by the proposed Regulation.

The Council approved the principle of allowing Member States to retain or conclude bilateral agreements with third countries on maintenance obligations, without prejudice to the exclusive external competence of the Community. The criteria and conditions would have to be discussed at a later stage."

The Council called on the Committee of Civil Law Matters to further continue the discussions on this proposal with a view to arriving at a solution acceptable to all Member States.

It should be noted that there have been rules on jurisdiction in matters relating to maintenance in a Community context since the conclusion in 1968 of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. These rules were taken over when the Brussels Convention was converted into a Community Regulation in 2000: Regulation (EC) No 44/2001 (the so-called "Brussels I").

The proposal currently under discussion does however go a lot further than Brussels I, insofar as it does not only deal with jurisdiction, but also with applicable law, with recognition and enforcement of decisions and with cooperation.

LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (ROME I)

The Council agreed on a number of issues of this proposal, among which the following should be highlighted:

"(a) Principle of choice of law by the parties to the contract (Article 3)

As in the Rome Convention, the basic rule for the law applicable to a contract is the choice of the law of a country by the parties. This rule respects party autonomy and is particularly appropriate in the area of contractual obligations which are created and governed by the parties to the contract (Article 3). However, where all other elements relevant to the situation are located in a country other than the country whose law has been chosen, the choice of law does not allow parties to avoid the application of provisions of the law of that country which cannot be derogated from by agreement (Article 3(4)).

Concerning rules of Community law which cannot be derogated from by agreement, the Commission proposed that those rules should prevail wherever they would be applicable to the case. However, since the majority of delegations took the view that it would be appropriate to treat rules of national law and of Community law which cannot be derogated from by agreement on an equal footing, as in the Council Common position on the Rome II-Regulation, the Council agreed to follow this approach .

(b) Law applicable in the absence of choice (Article 4)

In the absence of a choice of law by the parties, Article 4 provides essentially for two connecting factors: the habitual residence of the party who is required to effect the characteristic performance, if such performance can be determined (Article 4(1) and (2)), or otherwise the closest connection of the contract with a specific country (Article 4(4)).

Delegations agreed that in order to achieve more legal certainty, some of the most typical contracts should be explicitly mentioned in Article 4(1). Where the contract does not fall under Article 4(1), in particular if it does not fall within the scope of one of the typical contracts listed in that paragraph, the court has to apply Article 4(2). Member States also recognised the need for an "escape clause" allowing for flexibility where the connecting factors in Article 4(1) or (2) would exceptionally lead to an unsatisfactory result because it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country (see Article 4(3)).

The Council confirmed the structure and the content of Article 4 as set out in the Addendum, with the exception of Article 4(1)(j1), which still needs to be further discussed by the Committee on Civil Law Matters (Rome I).

(c) Individual employment contracts (Article 6)

Delegations agreed that, as in the Rome Convention, a special rule should provide for the appropriate connecting factors concerning individual contracts of employment in the absence of a choice of law. However, where a choice of law is made by the parties, the employee should not lose the protection given to him by the rules of the law of the country whose law would have been applicable in the absence of the choice and which cannot be derogated from by agreement.

The Council agreed on a provision on individual employment contracts which aims at balancing the interests of employees and those of employers.

(d) Other issues

The Council also agreed on the text of a number of other provisions (Articles 1 and 2, deletion of Article 7, Articles 9, 10, 14, 15, 16, 17, 19, 20 and 21)."

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 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 with the European Parliament).

EUROPEAN CONTRACT LAW

The Council agreed to define its position on the fundamental aspects of a future common frame of reference for European contract law.

It instructed the Committee on Civil Law Matters to examine this matter on the basis of a document which will be submitted by the Presidency.

It is recalled that 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 it 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 could 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.

COUNCIL FRAMEWORK DECISION ON COMBATING RACISM AND XENOPHOBIA

Pending the lifting of some Parliamentary reservations, the Council reached a general approach on this Framework Decision.

The 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 may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.

The reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, 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.

Statement to be inserted in the minutes of the
Council at the time of the adoption of the Framework Decision

"On (date) the Council of Ministers has adopted a Framework Decision on Combating certain forms and expressions of Racism and Xenophobia by means of criminal law. The aim of this Framework Decision is to approximate criminal law provisions and to combat racist and xenophobic offences more effectively by promoting a full and effective judicial cooperation between Member States.

The Framework Decision deals with such crimes as incitement to hatred and violence and publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes. The Framework Decision is limited to crimes committed on the grounds of race, colour, religion, descent or national or ethnic origin. It does not cover crimes committed on other grounds, e.g. by totalitarian regimes. However, the Council deplures all of these crimes.

The Council invites the Commission to examine and to report to the Council within two years after the entry into force of the Framework Decision, whether an additional instrument is needed, to cover publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin such as social status or political convictions.

The Berlin declaration adopted on 25 March 2007 stated that "European integration shows that we have learnt the painful lessons of a history marked by bloody conflict". In that light the Commission will organise a public European hearing on crimes of genocide, crimes against humanity and war crimes committed by totalitarian regimes as well as those who publicly condone, deny, grossly distort or trivialise them, and emphasises the need for appropriate redress of injustice and - if appropriate - submit a proposal for a framework decision on these crimes."

PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS THROUGHOUT THE EUROPEAN UNION

The Council decided to further its work on this proposal with a view to reaching an agreement in June 2007.

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.

MIXED COMMITTEE**SCHENGEN INFORMATION SYSTEM (SIS)**

The Mixed Committee took note of the state of play concerning the three SIS related projects which are being implemented: SISone4all, the network, and SIS II.

Regarding SISone4all, Portugal informed that this project is running as scheduled, therefore the abolition of border checks is envisaged by the end of 2007. The Council Secretariat is working on the procedures with a view to the adjudication of the network. Finally, the Commission confirmed that the SIS II project should be ready by December 2008.

FRONTEX

– *Creation of rapid Border Intervention Teams*

The Mixed Committee was briefed about the state of play regarding this proposal. In particular, it was informed that the Council and the European Parliament have reached a common understanding on this draft Regulation. Once the European Parliament had voted its opinion, the Regulation would be adopted as soon as possible with a view to having the teams operational by summer 2007.

When operational, the Rapid Border Intervention Teams will be sent to Member States to provide rapid operational assistance, for a limited period of time, to a requesting Member State facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third country nationals trying to enter illegally into the territory of a Member State. The Regulation will also set out the powers and tasks which can be performed by Member States' border guards participating in joint operations and pilot projects.

– *Centralised register of technical equipment ("toolbox"), European Patrols Network, European Surveillance System*

Commission Vice-President Franco Frattini and the Executive Director of FRONTEX, Mr Ilkka Laitanen, updated 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 Mixed Committee took note of the main results of the Trialogue held between the Council, 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 between Member States on short stay visas.

The outcome of the Trialogue was encouraging and the Council Presidency informed that a first reading agreement with Parliament on the VIS Regulation would be a realistic possibility.

The Presidency also informed the Council 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 agreed on a compromise package for further negotiations with the European Parliament with a view to reaching an agreement with this institution on the two instruments as soon as possible.

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Over lunch, the Mixed Committee was briefed about the state of play regarding a proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. The Presidency emphasized the importance of this file and the need for quick progress on it.

EUROPOL

The Council took note of the state of play concerning the improvements in Europol's operational capabilities and the state of play concerning the future of Europol.

The last of the three Protocols amending the tasks of Europol entered into force recently. This will substantially improve Europol's work as, for example, the Protocol of 28 November 2002 gives Europol officers the option of participating, in future, in Member States' joint investigation teams. By taking part in joint investigation teams, Europol will be able to support Member States more effectively than hitherto in, for instance, combating terrorism or drugs.

The Protocol also established the possibility of Europol requesting individual Member States to initiate investigations.

In addition to the amending protocols, the short-term options approved by the Council in December 2006 will contribute to significant improvements in Europol's operational work.

Member States are also pursuing the objective of achieving decisive improvements in Europol's day-to-day work by converting the Europol Convention into a Council Decision.

The Council is expected to take a decision on Europol's future financing and staff regulations when the Europol Convention is replaced by a Council Decision in June 2007.

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Over lunch, Ministers of Interior discussed a report by the Commission on the State of play of the Communications announced for May 2007 relating to the Global approach on Migration, an oral report by the Commission on illegal employment and the refugee situation in Iraq and neighbouring countries.

- As regards the global approach on Migration, the European Council, in its Conclusions of 14 and 15 2006, 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 on how to better organise and inform about the various forms of legal movement between the EU and third countries. The Commission is also due to adopt a Communication on the Global approach on migration to the countries of eastern and south eastern Europe.
- Ministers took note of an oral report by Commission Vice-President Franco Frattini about "fighting the pull factors of illegal immigration: illegal employment".

Ministers concluded that illegal employment, including that of third country nationals not entitled to engage in a remunerated economic activity, is a key factor for illegal immigration. That pull factor should be tackled by EU wide measures against employers of illegally resident third-country nationals. Pending adoption and transposition of EU legislation, Member States should now step-up their enforcement of existing national measures.

The European Council, in its conclusions of 14 and 15 December 2006, stated that measures against illegal employment will be intensified at Member States and EU levels. It also invited the Commission to present proposals in this regard by April 2007. The Council looked forward to the tabling of these proposals.

- Regarding the refugee situation in Iraq and neighbouring countries and according to UNHCR, an estimated 1.9 million people are displaced internally within Iraq and another 2 million have sought refuge in nearby countries, primarily in Syria (1.2 million) and Jordan (750.000). In February 2007 the "Justice and Home Affairs" Council raised for the first time the issue of the increasing number of asylum applications introduced in Europe. Since then, this question, as well as the refugee situation in Syria and Jordan, has been discussed in different Council preparatory bodies. The "General Affairs and External Relations" Council is expected to adopt on Monday 23 April 2007 Conclusions on the overall situation in Iraq and the neighbouring region, including the humanitarian needs of refugees and internally displaced persons.

OTHER ITEMS APPROVED**JUSTICE AND HOME AFFAIRS****EU/Russia - Visa facilitation and readmission agreements**

The Council adopted decisions approving the conclusion of an agreement between the EU and Russia on facilitating the issue of visas to citizens of the EU and Russia, as well as an agreement on readmission (6971/07, 6972/07).

Both agreements were signed in Sochi (Russia) on 25 May 2006.

The purpose of the visa agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days per period of 180 days to citizens of the EU and Russia. The agreement will not apply to the territory of Denmark, Ireland and the United Kingdom.

The readmission agreement establishes, on the basis of reciprocity, rapid and effective procedures for the identification and return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of Russia or one of the Member States of the EU, and to facilitate the transit of such persons in a spirit of cooperation. The agreement will not apply to the territory of Denmark.

The European Judicial Network - *Council conclusions*

The Council adopted conclusions on guidelines for further work concerning the European Judicial Network, as follows:

"a) *Resources and organisation of the contact points*

The contact points are an essential element in the judicial cooperation between the Member States and all Member States should ensure that they are organised in an efficient way and are given the resources necessary for carrying out their tasks. It should however be left to the individual Member States to decide how best to organise their contact point(s).

b) *Links between contact points and judges*

Communication between contact points and judges is necessary for the smooth operation of procedures having a cross-border impact, but the Member States should be free to provide for such communication in their own way. They should not be put under the obligation to designate a judge as contact point.

c) *Communications between contact points and courts*

It seems important to provide for channels of communication between the contact point(s) of a Member State and the local courts, but how this is to be organised on the practical level would depend on the internal structure of each Member State and is therefore a matter incumbent on each Member State.

d) *Domestic organisation of the Network*

The Network should be organised within each Member State in such a way that it is able to serve the purposes defined in Article 3(2) of Decision 2001/470/EC, but the organisational details should be left to the individual Member States.

e) *Completion of the website*

The Network's website is an extremely useful tool, and efforts should be made to make it complete in all languages as soon as possible so that all EU citizens can access it on an equal footing. It is already being used widely by professionals, but further information to the public on the existence of the website could be provided by the individual Member States.

f) *Information campaigns in the Member States*

To optimise the use of the Network on the practical level the national courts should be informed about the activities of the Network through information campaigns. Information campaigns about the publicly available services could also be directed at legal practitioners.

g) *Support for Community law-making*

The Network can play a role in detecting difficulties with the application of adopted acts and can thus provide the Commission with useful feedback when adopted acts are up for revision.

It is however important to ensure that the Network does not intervene in the decision-making process established by the Treaty. The activities of the Network should not go beyond the purposes referred to in Article 3(2)(b) of Decision 2001/470/EC. The practical guides which are elaborated should remain descriptive. They should contain examples of specific cases, but should not in any way attempt an interpretation.

h) *On-line discussion groups*

Note is taken that the Commission's recommendation nr. 8 on the creation of on-line discussion groups goes no further than to suggesting that the contact points in addition to the physical meetings may also discuss on-line.

i) Direct public access to contact points

The main task of the contact points designated by the Member States is to secure smooth judicial cooperation. They are not assigned to providing legal advice to citizens. The resources of the contact points are not unlimited, and it would be difficult for them to cope with the increase in the number of requests public access would entail.

In addition, requests from ordinary citizens would in most cases be of a national nature and therefore better dealt with by the competent authority in the Member State concerned.

The public should therefore not be given direct access to the contact points. Efforts should however be made to make the general public aware of the information to be found on the website (see point e)).

j) Direct access for legal practitioners to contact points

For the reasons invoked above in point i) there should not, at this stage, be direct access either to contact points for legal practitioners. What could be reflected on, though, is the possibility of giving certain legal practitioners some degree of access to the Network in the future. This access would however have to be determined by the Council.

k) Cooperation between the Network and ECC-Net

The Network should cooperate as much as possible with ECC-Net so as to optimise the use of the available resources.

l) *Institutional differentiation between contact points and central authorities*

It should be left to the Member States to decide whether it is necessary to differentiate institutionally between contact points and central authorities. Experiences so far have not revealed any problems in those Member States where the tasks of the two have been combined. The Member States are conscious of the need to provide the resources required for the tasks to be carried out efficiently.

m) *Regular meetings between central authorities and contact points*

There should be an optimal flow of information between central authorities and contact points where the two are not combined. Meetings should be organised in a flexible way so as to be able to react to concrete needs.

n) *Relations between the Network and other European networks of judicial institutions and judges*

The Network should establish close relations with other European networks of judicial institutions and judges whenever this serves the aim of creating mutual confidence and exploiting synergies.

o) *Organisation and proceedings of meetings of the Network*

In order to optimise the work of the Network it is important that relevant bodies such as the Committee on Civil Law Matters are kept informed of its activities at all times. More regular contacts between the representatives of the Network and the Committee on Civil Law Matters should be ensured, but there is no need for formalised joint meetings."

EU Specific programme "Fundamental rights and citizenship" 2007-2013

The Council adopted the decision establishing for the period from 1 January 2007 to 31 December 2013 the specific programme "Fundamental rights and citizenship" as part of the general programme "Fundamental Rights and Justice".(16505/06)

The main objectives of the programme will be to promote the development of a European society based on respect for fundamental rights, to strengthen civil society and to encourage an open transparent and regular dialogue with it in respect of fundamental rights, to fight against racism, xenophobia and anti-Semitism and to promote a better interfaith and intercultural understanding and improved tolerance throughout the European Union.

The programme will be implemented within the scope of application of Community law.

The general objectives of the programme will contribute to the development and implementation of Community policies in full compliance with fundamental rights and they are complementary to the objectives pursued by the European Union Agency for Fundamental Rights.

EU programme drugs prevention and information 2007-2013

The Council reached a political agreement on the amended proposal for a decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Drugs prevention and information" under the EU's general programme on fundamental rights and justice, in order to contribute to ensuring a high level of human health protection and to reducing drug-related health damage.

The Council will adopt its Common Position at one of its forthcoming meetings and will submit it to the European Parliament for a second reading in the framework of the codecision procedure.

The programme is aimed at implementing the targets identified by the EU Drugs Strategy 2005-2012 and EU Drugs Action Plan 2005-2008 and 2009-2012 by supporting projects aiming at prevention of drug use, including by addressing reduction of drug related harm and treatment methods considering the latest scientific knowledge.

The financial envelope allocated to the programme amounts to EUR 21,35 million for the 2007-2013 period.

EU Civil Justice Programme 2007-2013

The Council reached a political agreement on a draft Decision establishing for the period 2007-2013 the specific programme "Civil Justice" as part of the general programme "Fundamental Rights and Justice". (8021/07)

The Council will adopt its Common Position at one of its forthcoming meetings and it will submit it to the European Parliament for a second reading in the framework of the codecision procedure.

The Civil Justice Programme is aimed at improving mutual understanding of the legal and judicial systems of the Member States, lowering the barriers to judicial cooperation in civil matters whereby improving the functioning of the internal market.

The financial envelope allocated to the programme amounts to EUR 109,3 million for the 2007-2013 period.

Sixth EU-Russia Permanent Partnership Council

The Council adopted the annotated agenda of the forthcoming meeting of the sixth EU-Russia Permanent Partnership Council (Justice and Home Affairs) to take place in Moscow on 23-24 April 2007.

Frontex Agency work programme for 2007

The Council took note of the work programme of the European Agency for the management of operational cooperation at the external borders of the Member States of the EU (Frontex) for 2007.

The Frontex Agency coordinates operational cooperation between Member States in the management of the EU's external borders; assists Member States in the training of national border guards, including the establishment of common training standards; carries out risk analyses; follows up the development of research relevant for the control and surveillance of external borders; assists Member States in circumstances requiring increased technical and operational assistance at external borders; and provides Member States with the necessary support in organising joint return operations.

Preliminary ruling concerning the area of freedom, security and justice

The Council approved the sending of a letter to the EU Court of Justice containing comments on the treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice (7646/07).

Service of judicial and extrajudicial documents

The Council confirmed its agreement reached at its meeting on 1-2 June 2006 on amended proposal for a regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, repealing Council Regulation (EC) No 1348/2000.

The common position will be adopted once the text has been revised by the legal linguists.

The proposal is aimed at further improving and expediting the transmission and service of this kind of document between the Member States, simplifying the application of certain provisions of the regulation and improving legal certainty for the applicant and for the addressee.

"ROME II" Regulation

In the framework of the codecision procedure, the Council decided not to approve all the European Parliament's amendments adopted in second reading¹ concerning a draft Regulation on the law applicable to non-contractual obligations ("ROME II"). Consequently, in accordance with the EC Treaty and in agreement with the European Parliament, the Council decided to convene the Conciliation Committee.

COUNTER-TERRORISM

Information exchange on the expulsion of third-country nationals.

The Council adopted the following resolution:

¹ 5516/07

"THE COUNCIL OF THE EUROPEAN UNION,**CONSIDERING:**

- (1) The European Union action plan on combating terrorism, as amended and approved by the Committee of Permanent Representatives on 16 February 2006 and in particular point 3.1.12 thereof calling upon the Council to develop "a common approach to the exchange of information on deportations and expulsions related to terrorism".
- (2) The European Union action plan for combating radicalisation and recruitment to terrorism, in particular the task contained in measure 42,

HAS ADOPTED THIS RESOLUTION:

1. Where the competent (administrative or judicial) authorities of a Member State have decided to expel a third-country national from its territory on the grounds of behaviour linked to terrorist activities or constituting acts of explicit and deliberate provocation of discrimination, hatred or violence against a specific individual or group of individuals, they will, in accordance with their national legislation, inform the competent departments of the other Member States as soon as possible. The information exchange will serve as a warning system. It is up to the other Member States to decide how to use the information provided, based on the relevant national law and procedures.
2. For this purpose, the competent departments of the Member States will use the bureau de liaison secure network channel.

3. This will be the procedure when the competent authority has decided that any third-country national referred to in paragraph 1 is to be expelled from the territory. Under this Resolution, a six-monthly summary will also be sent.
4. This Resolution does not create any requirement to harmonise the criteria governing the expulsion of individuals on the territory of an EU Member State.

It does not interfere with the discretionary power of the competent authorities of each Member State to authorise or refuse a foreign national residence, temporary or otherwise, on its territory.

The transmission of information referred to in paragraph 1 is without prejudice to the application of the provisions of Article 96 (3) of the Convention Implementing the Schengen Agreement of 14 June 1985.

5. The results achieved in the implementation of this Resolution will be assessed by the Council one year after its adoption. The assessment will focus exclusively on the quantitative aspect of the exchanges and will have no access to nominative individual information, in accordance with legislation on data protection."

Council's recommendations to Member States

The Council approved the Executive Summary of the follow-up report on the implementation of EU Council's recommendations on counter-terrorism measures in the Member States. (5356/2/07)

The follow-up report on the implementation of recommendations by the Council on the counter-terrorism measures in the Member States :

- describes the origin bases and the method of the implementation procedure,
- presents the main findings and conclusions of the implementation exercise,
- forwards some suggestions on the follow-up of the evaluations independent of any orientation on the second round.

European Programme for Critical Infrastructure Protection - *Council conclusions*

The Council adopted the following conclusions:

"THE COUNCIL OF THE EUROPEAN UNION

- RECALLING the European Council Conclusions of 17-18 June 2004 asking the Commission to prepare an overall strategy to enhance the protection of critical infrastructures;
- RECALLING the Commission Communication of 22 October 2004 on "Critical Infrastructure Protection in the Fight against Terrorism";
- RECALLING the European Council Conclusions of 16-17 December 2004 accepting the Commission's intention to propose a European Programme for Critical Infrastructure Protection;
- RECALLING the emergency JHA Council Declaration of 13 July 2005 on the EU response to the London bombings reaffirming the intention to agree a European Programme on Critical Infrastructure Protection by the end of 2005;
- RECALLING the European Parliament recommendation of 7 June 2005 on the protection of critical infrastructure in the framework of the fight against terrorism;

- RECALLING the Commission Green Paper of 17 November 2005 and subsequent consultations on a European Programme for Critical Infrastructure Protection;
 - RECALLING the Council Conclusions of 1-2 December 2005 on the principles for a European Programme on Critical Infrastructure Protection;
 - RECALLING the Communication from the Commission on the European Programme for Critical Infrastructure Protection and the Commission Proposal for a Directive of the Council on the identification and designation of European Critical Infrastructure and the assessment of the need to improve their protection.
1. Emphasises the ultimate responsibility of the Member States for managing arrangements for the protection of critical infrastructures within their national borders. At the same time, the Council reiterates that action at European Community (EC) level will add value by supporting and complementing Member States' activities, while respecting the principle of subsidiarity and taking due account of available budgetary resources as defined in the Financial Framework 2007 - 2013. Member States' responsibility includes, with due regard for existing Community competences, risk analysis and threat assessment in relation to European critical infrastructure situated in their territory, interfacing with its owners / operators, and exchanging information with the Commission on a summary basis.
 2. Welcomes the efforts of the Commission to develop a European procedure for the identification and designation of European Critical Infrastructure and the assessment of the need to improve its protection. This procedure should be based on adequate definitions and take into account cross-cutting as well as sectoral criteria, with a view to focusing its actions on those infrastructures damage to or destruction of which would have critical consequences. The Council considers in particular that such a procedure, established with due regard for the competences of the Member States and of the Community, could be of added value.

3. Owners/operators of European Critical Infrastructure, including the private sector, must be actively involved. They should - by a variety of means and arrangements including voluntary measures - take proper measures to protect their infrastructures. Such measures could be security plans and security liaison officers. The costs to owners and operators of taking these measures should be proportionate and reasonable.
4. Stresses that the greatest possible use should be made of recommendations, information sharing and exchange of best practice at EC level in order to promote voluntary protection measures by the owners/operators of European Critical Infrastructures. The Council will examine the added value of further measures with a view to ensuring security standards in the European Union and comparable competition conditions throughout the European Union. The Council stresses the need for any framework to be clear and consistent; duplications of or contradictions between different measures, acts or provisions must be avoided.
5. Supports the setting up of an Action Plan for the implementation of a European Programme for Critical Infrastructure Protection. Member States shall be fully involved in this process. Cooperation between the European Commission and the Member States should be transparent, especially during the preparatory phase.
6. States that cooperation at EC level between the Member States' points of contact for Critical Infrastructure Protection (CIP), as endorsed by the Council conclusions of 1-2 December 2005, has proven to be useful. This cooperation should be strengthened by creating a CIP Contact Group in order to facilitate the coordination and exchange of information and best practice with due regard for the competences of EC institutions as set out in the Treaties.

7. Expert groups at EU level may be set up by the Commission together with the CIP Contact Group and may be used in order to benefit from practical professional expertise. The mandate of such groups should be clearly defined in terms of time and substance. They will have an advisory role and will not interfere with the competences and decision-making powers of the Member States or the Council of the European Union.
8. Where the exchange of sensitive or classified information in any group or body is indispensable for the implementation of a European Programme for Critical Infrastructure Protection, the provisions set up in the appropriate security procedures and regulations must be strictly observed.
9. Encourages Member States to launch any appropriate action for the protection of critical infrastructures. The Council recognises that existing actions by Member States are conducted through a variety of means and will pay particular attention to the question of how future measures for protecting European Critical Infrastructures can enable this approach to continue under a common framework. Member States may decide to take up the Commission's offer to provide critical infrastructure protection relevant support and research results generated at EC level or by Member States.
10. Recognises the external dimension of critical infrastructure protection. EC cooperation with third countries must respect the competences of the Council and of the Commission as set out in the Treaties.
11. Will continue its discussion about the Commission communication including the Action plan and the Commission proposal for a Directive in the spirit of the abovementioned conclusions."

EXTERNAL RELATIONS

Iran - implementation of restrictive measures

The Council adopted a regulation with a view to implementing its common position (2007/140/CFSP)¹ adopted last February in accordance with United Nations Security Council resolution (UNSCR) 1737(2006) aimed at persuading Iran to suspend some proliferation-sensitive nuclear activities without further delay (7642/1/07).

The restrictive measures included:

- a ban on the supply of goods, technology or technical or financial assistance which could contribute to enrichment-related, reprocessing or heavy water-related activities or to the development of nuclear weapon delivery systems;
- a freeze of assets on persons and entities listed in UNSCR 1737(2006) and designated by the UN Security Council or by the sanctions committee, and other persons or entities directly associated with or providing support for Iran's proliferation-sensitive nuclear activities or for the development of nuclear weapon delivery systems.

The regulation is aimed at implementing these restrictive measures falling within the scope of the EC Treaty, notably with a view to ensuring their uniform application in all Member States.

European Union Special Representative for Sudan

The Council adopted a Decision appointing Mr Torben BRYLLE (Denmark) as European Union Special Representative for Sudan as from 1 May 2007. The mandate of the EUSR for Sudan is set out in Joint Action 2007/108/CFSP².

See statement by HR Solana S125/07 and press release 8623/07.

¹ OJ L 61, 28.2.2007, p. 49.

² OJ L 46 16.2.2007, p. 63

EU-Algeria Euro-Mediterranean Agreement - Enlargement

The Council adopted a decision on the signing and provisional application of a Protocol to the Euro-Mediterranean Agreement with Algeria to take account of the accession of ten new Member States to the EU in May 2004 (7335/07, 7812/1/07).

GENERAL AFFAIRS**EU Civil Service Tribunal - Rules of procedure**

The Council approved, by qualified majority, the Rules of Procedure of the Civil Service Tribunal of the European Union, which was established by Council Decision 2004/752/EC, Euratom of 2 November 2004¹. (7844/07)

ECONOMIC AND FINANCIAL AFFAIRS**European Investment Fund - Community participation in capital increase**

The Council adopted a decision allocating EUR 100 million from the EU's general budget for participation in a European Investment Fund (EIF) capital increase (7537/07).

The Community will subscribe for new shares in the EIF for EUR 25 million annually during the four-year period 2007-2010, in support of implementation of the EU's Lisbon strategy for the creation of growth and jobs.

The founder members of the EIF, which was created in 1994, include the European Community (represented by the Commission), the European Investment Bank and a number of financial institutions.

¹ OJ L 333, 9.11.2004, p. 7.

TRADE POLICY**Anti-dumping - Ukraine - Ammonium nitrate**

The Council adopted a regulation imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine following an expiry review pursuant to regulation 384/96 (7984/07).

INTERNAL MARKET**Measuring devices with mercury**

The Council adopted its common position on a draft Directive amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury. (5665/07).

The aim of this draft Directive is to restrict the placing on the market of measuring devices containing mercury by amending Directive 76/769/EEC. According to the Commission's proposal, metallic mercury will not be placed on the market in any fever thermometers (for consumer, professional and other uses) nor in all other measuring devices intended for sale to the general public (e.g. barometers, sphygmomanometers and other thermometers than fever thermometers).

The Council's common position introduces two main changes in the Commission's original proposal. The first one is a two-year transition period for barometers instead of a permanent derogation preferred by the European Parliament. Secondly, the Council believes that banning also sphygmomanometers for healthcare use may be premature, because of the current lack of information on reliable safer mercury-free alternatives. The Common Position states therefore that the Commission should carry out a review of the available alternatives.
