



Brussels, 2 June 2009

BACKGROUND¹
JUSTICE AND HOME AFFAIRS COUNCIL
Luxembourg, 4 and 5 June 2009

*The Justice and Home Affairs Council will hold a two-day meeting on 4 June (under the chair of **Martin PECINA, Minister of Interior**) and 5 June (under the chair of **Daniela KOVÁŘOVÁ, Minister of Justice**) in the Conference Centre - FIL, 5, rue Carlo Hemmer, Luxembourg.*

*The Council session will be preceded by a meeting of the Mixed Committee (EU + Norway, Iceland, Liechtenstein and Switzerland), starting on Thursday 4 at 10.00, which will examine the state of play of the **Schengen Information System (SIS II)**.*

*The Mixed Committee will also examine the closure of the **Guantanamo** detention centre.*

*During a public deliberation the Council will examine afterwards progress on five proposals configuring the "**first asylum package**".*

*Ministers will also hear information from the Commission regarding the elaboration of guidelines concerning the **free movement of workers** inside the Community. They will also look into recent developments on **illegal immigration in the Mediterranean**.*

*The EU's Counter-terrorism coordinator, Gilles de Kerchove, will present his report on the implementation of the **strategy to combat terrorism**.*

*The presidency will finally brief on the outcome of the ministerial **troika EU/Ukraine** to take place on 3 June in Luxembourg.*

*On Friday 5, the Council will focus its discussion on the justice issues. It will deal, in a public deliberation, with the establishment a procedure for concluding bilateral agreements with non EU countries concerning sectoral matters covering applicable **law in contractual and non-contractual obligations**. A similar procedure is due to cover jurisdiction, recognition and enforcement of judgments and decisions in **matrimonial matters, parental responsibility and maintenance obligations**.*

¹ This note has been drawn up under the responsibility of the press office.

*The Council is expected to approve conclusions on a common frame of reference for **European contract law**. It will also take stock of the implementation of the **e-Justice action plan** and the preparations for the launching of **e-Justice portal** by 2009.*

*The working lunch will be devoted to consider better ways and solutions in the fight against **children abduction**.*

*The Council will also discuss the fight against **trafficking in human beings** and **sexual exploitation of children**.*

*The Council will discuss and approve the final report on the forth round mutual evaluations regarding the practical application of the **European Arrest Warrant** and of information regarding the **training of judges and judicial staff***

Press conferences will be organised at 15.00 both days.

***On 3 June** a press conference is scheduled after the Ministerial **troika EU/Ukraine**, at +/- 18.00. The Press Centre in Luxembourg will be open as from 13.00.*

Press conferences and public events can be followed by video streaming:
<http://video.consilium.europa.eu/>

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HOME AFFAIRS (4 June)

Schengen Information System: SIS II

The Council will hold a debate on the further steps for the future of the Schengen Information System « SIS II ».

The issue will be previously submitted to the Mixed Committee (the EU countries and Norway, Iceland, Liechtenstein and Switzerland) for examination.

In the light of the Council conclusions of February the Council will discuss the following aspects of the system:

- the calendar for entry into operation of SIS II,
- the calendar for integrating Ireland, the United Kingdom, Cyprus, Bulgaria, Romania and Liechtenstein into the SIS, assuming that all requirements are fulfilled,
- budgetary impacts and technical soundness,
- possible legal implications,
- to assess the progress made on SIS II development,
- to examine in case of the alternative scenario, the ability to realise the objectives of SIS II set out in the legal framework governing the establishment, operation and use of SIS II, on the technical basis of SIS 1 + evolution,
- to set out a technical solution which would allow the participation in the SIS of additional countries in accordance with their declared calendar and to decide on the further direction of this project.

The Council is expected to adopt conclusions.

The second generation of the SIS II database is intended to facilitate the integration of a greater number of member states enabling them to fully participate into the Schengen cooperation space. Pending the SIS II development, 9 new member states were integrated into the current SIS 1+ application (named “SISone4all”) in 2007, plus Switzerland in 2008.

The conclusions will take note of the current status of the SIS II, including a number of technical difficulties that will put off the date for migration from the SIS 1+ to the new SIS II application. The entry into operation of SIS II was originally planned for September 2009.

Guantanamo

The Council will hold a debate on the closure of the Guantanamo Bay detention centre.

Within a large perspective to foster a closer cooperation with the United States of America in the area of freedom, security and justice, based on shared values and on common interests and reciprocity, the debate will focus on ways for exchange of information among EU member states and Schengen associated countries concerning Guantanamo former detainees.

The Council is expected to adopt conclusions.

At the EU/US summit in Prague on 5 April, President Obama asked for EU assistance to the closure of Guantanamo in the form of a EU supportive framework for resettling former detainees.

On 6 April, at its meeting in Luxembourg, ministers for the interior agreed to work towards a EU response to the closure of Guantanamo. They also agreed on a number of essential principles, including the following:

- decisions to accept detainees will be taken on a case by case basis and within the exclusive competence of the hosting member state;
- the member states will assess independently of the US the risk of receiving a particular detainee based *inter alia* on comprehensive information and intelligence received from the US;
- consultation and information sharing between member states is needed as a result of Schengen rules, and Iceland, Norway and Switzerland should be associated.

At that occasion ministers tasked the Council preparatory bodies to present a proposal on an EU framework under which member states could accept detainees.

Asylum package

In public deliberation, the Council will hold a policy debate on the state of negotiations regarding five legislative acts configuring the "first asylum package".

This package of measures stems from the commitments undertaken in the European Pact on Immigration and Asylum adopted by the European Council in October 2008, with the purpose to complete the Common European Asylum System provided for in the Hague Programme.

Under the Czech presidency, the Council preparatory bodies have achieved substantial progress on the five proposals. A first reading of the text has been completed in all cases and fruitful discussions have taken place with a view to accommodating concerns raised by EU delegations.

On 7 May, the European Parliament adopted legislative resolutions setting out amendments to the Commission proposals under the Council-Parliament codecision procedure. The examination of these amendments has already started within the Council preparatory bodies or will start soon.

The five proposals relate to: the Dublin regulation, the EURODAC regulation, the reception conditions directive, the European asylum support office and the amendment of the European refugee fund.

Free movement of EU citizens within the Community

The Council will hear a progress report from the Commission regarding the elaboration of guidelines for the implementation of directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

At its meeting in February, the Council welcomed the Commission's intention to offer information and assistance to member states by issuing guidelines on a number of issues, such as expulsions and the fight against abuse, in order to facilitate effective application of the directive.

At that occasion, the Council took note of a report ([5553/09](#)) presenting an overview of how directive 2004/38/EC² is transposed into national law and how it is applied in everyday life. The report also encourages member states to launch awareness-raising campaigns to inform EU citizens of their rights under the directive.

Article 39 of Directive 2004/38/EC requires the Commission to monitor application of the provisions of the Directive and to report to the European Parliament and the Council.

Illegal immigration in the Mediterranean

The Council will have an exchange of views on illegal immigration in the Mediterranean.

In this context the Commission sent a letter to the Ministers of Interior announcing several initiatives to tackle the problem, regarding in particular asylum and humanitarian protection, border control and maritime operations, and the external front.

² Published in the Official Journal of the EU, OJ L 158, 30.4.2004, p. 77.

EU Strategy and Action Plan to Combat Terrorism: Implementation Report

The EU Counter-Terrorism Coordinator, Gilles de Kerchove, will present to the Council his latest implementation report on the EU Strategy and Action Plan to Combat Terrorism. In response to the European Council's request, he submits such a report every six months.

The report summarises progress made since December 2008 and the state of play regarding ratification of the Conventions and implementation of the priority legislative acts in this area.

The strategic commitment of the EU is to combat terrorism globally while respecting human rights, and to make Europe safer, allowing its citizens to live in an area of freedom, security and justice.

The EU Counter-Terrorism Strategy ([14469/4/05](#)) which was adopted in December 2005 and provides the framework for EU activity in this field groups all actions under four objectives:

- to prevent people from turning to terrorism,
- to protect citizens and infrastructure and reduce our vulnerability to attack, *inter alia* through improved security of borders, transport and critical infrastructure,
- to pursue and investigate terrorists across our borders as well as globally,
- to prepare ourselves, in a spirit of solidarity, to manage and minimize the consequences of a terrorist attack.

External relations: Ukraine – Russia –USA – Migration partnerships

- Ministerial troika EU – Ukraine : 3 June, Luxembourg

The Council will take note of the outcome of the ministerial troika EU – Ukraine, which will take place on 3 June in Luxembourg.

The parties will assess the state of play of cooperation in the field of justice and home affairs and will discuss ways to further strengthening this cooperation. The meeting is organised on a yearly basis.

The Czech ministers of the Interior and Justice will represent the EU side. There will be also representatives from Sweden, as incoming Presidency, the Commission and the EU agencies Europol, Eurojust and Frontex.

Ukrainian minister of Justice and minister of the Interior will lead the Ukrainian delegation.

The agenda of the meeting will contain key topics of common interest, including migration, asylum and border issues; organised crime; judicial and rule of law matters and the implementation of the visa facilitation and readmission agreements.

The Council will also take note of the outcome of the following meetings:

- Conference: *Building Migration Partnerships*, held on 27 and 28 April in Prague.
- Ministerial troika *EU – USA*, held on 28 April in Prague.
- *EU – Russia* justice and home affairs Permanent Partnership Council, held on 14 and 15 May in Kaliningrad.

JUSTICE (5 June)

Bilateral agreements with third countries in areas of civil law

The Council is expected to agree on procedures for the negotiation and conclusion of bilateral agreements between member states and third countries concerning:

- jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance; and
- applicable law in contractual and non-contractual obligations.

The aim of the proposed regulations is to authorise a member state to amend an existing agreement or to negotiate and conclude a new agreement with a third country in certain areas of civil justice through a functional and simplified arrangement, while ensuring that the "acquis communautaire" will be safeguarded.

Common frame of reference for European contract law

The Council is expected to adopt conclusions on a common frame of reference (CFR) for European contract law.

Since contracts constitute the legal instrument most commonly used in everyday life both by individuals and by companies, it has become necessary to reflect at community level to identify ways to reduce the differences between contract laws of member states.

The CFR aims at developing and clarifying the guidelines adopted by the Council in April 2008 concerning five key points:

- the basic principles that should be retained (for example, the principle of contractual freedom),
 - the definitions of the key concepts of contract law,
 - the "Model Rules" based on the basic principles and using the chosen definitions,
 - the relationship between the CFR and the proposal for a directive on consumer rights ([14183/08](#))
- and
- the form that the CFR should take.

The CFR could be used at community level by legislators when drafting new laws or revising existing legislation. It would ensure greater consistency in Community legislation and could improve its quality by suggesting a common reference for all future instruments to deal with contract law.

e-Justice action plan

The Council will take note of the progress made regarding the implementation of the European e-Justice action plan ([15315/08](#)) adopted in November 2008 and which provides in particular for the setting up of a European "e-Justice" portal.

The portal is to be launched in December 2009. One of its main purposes will be to promote and facilitate cross-border videoconferencing in civil, commercial, administrative and criminal matters. A manual for practitioners will cover legal, technical and practical aspects. A user-friendly booklet will illustrate the possibilities of videoconferencing and give good practice examples from member states. Its purpose is to inform the general public about the benefits of videoconferencing and encourage judges, prosecutors, lawyers and other legal practitioners to use this tool.

European Arrest Warrant – Report on the practical application

The Council is expected to adopt a report on mutual assistance concerning the practical application of the European Arrest Warrant and corresponding surrender procedures between member states.

The report, drawn at the end of the fourth round of mutual evaluations, addresses the application in practice of the European Arrest Warrant and cooperation between member states in this regard. In particular, the exercise's objectives were to evaluate the practical processes operated and encountered by member states when acting both as issuing member state and as executing member state and to assess relevant training provisions and provision for defence.

The report intends to reflect the main questions identified in the course of the evaluation exercise from a general perspective and to propose recommendations either to the European Union as a whole or to its individual member states.

The Council framework decision of 13 June 2002 defines "European arrest warrant" as any judicial decision issued by a member state with a view to the arrest or surrender by another Member State of a requested person, for the purposes of:

- conducting a criminal prosecution;
- executing a custodial sentence;
- executing a detention order.

Sexual exploitation of children / trafficking in human beings

The Council will examine the state of play regarding two proposals aimed at:

- a) improving the fight against sexual abuse and exploitation of children ([8150/09](#)) and
- b) strengthening the fight against trafficking in human beings ([8151/09](#)).

A number of outstanding issues have been identified concerning both proposals, including:

- the question of the legal basis;
- the penalties' system, in particular the severity of the penalties and the level of differentiation according to the types and gravity of the offences;
- the question of jurisdiction, in particular the extra territorial one in order to combat such phenomenon as sex tourism;
- the question of protection and assistance to victims.

Training of judges, prosecutors and judicial staff

The Council will take stock on the follow-up of a resolution on the training of judges, prosecutors and judicial staff in the EU, adopted in October 2008³.

³ Official Journal C 299 of 22.11.2008.