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PRESS RELEASE

2908th meeting of the Council

Justice and Home Affairs

Brussels, 27 and 28 November 2008

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Minister for the Interior**,** Overseas Territories and Local and Regional Authorities of France
Mr Brice HORTEFEUX, Minister for Immigration, Integration, National Identity and Development Solidarity of France
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Main results of the Council

*The Council took stock of the **attacks perpetrated in Mumbai/Bombay**. European coordination measures were immediately launched, in Brussels, in Mumbai and at the initiative of the Presidency, in order to give effect to European solidarity. Medical care, consular support and assistance with evacuation is being channelled to Mumbai. In this context, the Council stresses that EU citizens from countries without consular representation in Mumbai may use the consular services of any other EU Member State on the spot.*

*On the basis of the report by the EU Counter-Terrorism Coordinator, Mr de Kerchove, the Council also set its priorities for **combating terrorism**. It also reviewed the work done on a proposal concerning the transfer and processing of airline passenger data (**PNR - passenger name records**) within the EU.*

*The Council also examined the implementation of the **global approach** to the question of migration and partnership with the countries of origin and of transit and stressed the importance of protecting the free movement of persons within the EU against misuse, generated inter alia by illegal immigration.*

*In addition, the Council invited the Member States to take in **Iraqi refugees**. This should be done on a voluntary basis and in the light of the reception capacities of the Member States and the overall efforts they have already made to accommodate refugees. The objective could be to accept up to around 10 000 refugees.*

*The Council also reached agreement on a framework decision on legal supervision of **pre-trial procedures** between the Member States of the EU, as well as reaching agreement on the modernisation of the legal cooperation network in civil and commercial matters. It adopted a report on the introduction of a common frame of reference for **European contract law**, an action plan on **European e-Justice**, and conclusions concerning **child abduction alerts**.*

*Moreover, the Council decided to abolish checks at the land borders between **Switzerland** and its EU neighbours on 12 December 2008. The abolition of air borders will be adopted on 29 March 2009, the date on which summer time begins.*

It also definitively adopted, five legislative instruments which are important for the European judicial system as they provide the EU with an extended legislative basis of high symbolic significance. They are:

- a Framework Decision on combating ***racism and xenophobia****;*

- a Framework Decision on ***the protection of personal data*** *processed in the framework of police and judicial cooperation in criminal matters;*

- a Framework Decision on mutual recognition in ***probation*** *matters;*

- a Framework Decision amending the ***definition of terrorism;*** *and*

- a Framework Decision on mutual recognition of ***judgments in criminal matters.***

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

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M Jo VANDEURZEN	Deputy Prime Minister and Minister for Justice and Institutional Reforms
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Ms Miglena Ianakieva TACHEVA	Minister for Justice
Mr Mihail MIKOV	Minister for the Interior
Czech Republic:	
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Mr Ivan LANGER	Minister for the Interior
Denmark:	
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Ms Brigitte ZYPRIES	Federal Minister for Justice
Mr Wolfgang SCHÄUBLE	Federal Minister for the Interior
Estonia:	
Mr Rein LANG	Minister for Justice
Mr Jüri PIHL	Minister for Internal Affairs
Ireland:	
Mr Dermot AHERN	Minister for Justice, Equality and Law Reform
Greece:	
Mr Sotirios HADJIGAKIS	Minister for Justice
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Mr Mariano FERNÁNDEZ BERMEJO	Minister for Justice
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Italy:	
Mr Nito Francesco PALMA	State Secretary for the Interior
Cyprus:	
Mr Kypros CHRYSOSTOMIDES	Minister for Justice and Public Order
Mr Neoklis SYLIKIOTIS	Minister for the Interior
Latvia:	
Mr Gaidis BĒRZIŅŠ	Minister for Justice
Mr Mareks SEGLIŅŠ	Minister for the Interior
Lithuania:	
Mr Paulius GRICIŪNAS	State Secretary at the Ministry of Justice
Mr Evaldas GUSTAS	State Secretary at the Ministry of 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 Carmelo MIFSUD BONNICI	Minister for Justice and Home Affairs

Netherlands:

Mr Ernst HIRSCH BALLIN	Minister for Justice
Ms Guusje ter HORST	Minister for the Interior and Kingdom Relations
Ms Nebahat ALBAYRAK	State Secretary for Justice

Austria:

Ms Maria FETKER	Federal Minister for the Interior
Ms Maria BERGER	Federal Minister for Justice

Poland:

Mr Zbigniew ĆWIĄKALSKI	Minister for Justice

Portugal:

Mr Rui PEREIRA	Minister for the Interior
Mr Alberto COSTA	Minister for Justice

Romania:

Mr Gabriel TANASESCU	State Secretary, Ministry of Justice
Mr Vasile-Gabriel NITA	State Secretary, Head of the Schengen Department

Slovenia:

Mr Igor SENČAR	Permanent Representative

Slovakia:

Mr Daniel HUDÁK	State Secretary at the Ministry of Justice

Finland:

Ms Tuija BRAX	Minister for Justice
Ms Anne HOLMLUND	Minister for the Interior
Ms Astrid THORS	Minister for Migration and European Affairs

Sweden:

Ms Minna LJUNGGREN	State Secretary to the Minister for Migration
Mr Magnus GRANER	State Secretary to the Minister for Justice

United Kingdom:

Ms Jacqui SMITH	Home Secretary
Lord BACH	Parliamentary Under Secretary of State, Ministry of Justice

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Commission:

Mr Jacques BARROT	Vice-President

ITEMS DEBATED

MUMBAI/BOMBAY ATTACKS

On the basis of reports from the Presidency and from the Situation Centre (SITCEN), the Council reviewed the attacks perpetrated in Mumbai.

The EU's crisis management warning mechanisms were activated. The European consulates on the spot were meeting shortly to establish the needs of and respond to demands from European citizens.

In this context, the Council adopted the following declaration:

"At the meeting of the Justice and Home Affairs Council in Brussels on 27 November 2008, the EU Home Affairs Ministers reviewed the situation in Mumbai following the wave of terrorist attacks on 26 November.

The Ministers strongly condemned the attacks, offered their condolences to the families and relatives of the victims and their sympathy to those injured, and expressed their solidarity, in these tragic circumstances, with the Indian authorities and the authorities of Maharashtra.

They were briefed on the latest developments, on the basis of a report from the competent Council and Commission services, and examined the situation of EU citizens present in Mumbai, who are among the victims. At this stage, it is not possible to establish the number of victims accurately. The Ministers welcomed the fact that members of the European Parliament delegation in Mumbai were unharmed.

The Ministers also discussed the measures put in place by Member States to provide assistance to all the victims and, in particular, to the European citizens affected. European coordination measures were immediately launched, in Brussels, in Mumbai and at the initiative of the Presidency, in order to give effect to European solidarity. Medical care, consular support and assistance with evacuation is being channelled to Mumbai. In this context, the Council stresses that EU citizens from countries without consular representation in Mumbai may use the consular services of any other EU Member State.

These tragic events underline the persistence of the terrorist threat. The Council continues to call for determined and coordinated action by the European Union in order to prevent and combat such acts. Cooperation with all the Union's external partners must also be reinforced."

COMBATING TERRORISM - *Council conclusions*

On the basis of work carried out during the French Presidency and proposals made by the EU counter-terrorism Coordinator, Mr Gilles de Kerchove, the Council has adopted conclusions (*15684/08*) on further action to combat terrorism.

These conclusions invite Member States to pursue their ongoing work in the field of radicalisation, on the basis of the revised and updated Strategy and Action Plan, in particular through the "check the web" project led by Germany, countering misuse of the internet, and five other anti-radicalisation work streams led by other Member States. They also encourage those concerned to make full use of the handbook developed to counter radicalisation in prisons.

The conclusions refer to new work to be done to look at the possible early detection of terrorists in the visa application process. They also stress the importance of implementing the necessary legal instruments to counter terrorism, work being done on the security of explosives, and the need to make full use of the potential of Europol and Eurojust in this field.

The Commission is invited to continue to play its part, in particular by encouraging the exchange of best practice, new research work against financing of terrorism, and developing its package of CBRN measures due in June 2009.

Europol is similarly invited to continue its work, in particular on explosives, including CBRN and mine clearance, and the information portal of the "check the web" project.

The EU CTC's report *15912/08*, is a response to the European Council's request for a report every six months. It summarises progress since June 2008 and the state of play regarding ratification of the conventions and legislative acts regarded as having priority.

The CTC's priorities for further action in the field of EU counter-terrorism are set out in *15983/08* and relate, in particular to information sharing, the problems of radicalisation and communication, and the international dimension of counter terrorism.

CIVIL PROTECTION

The Presidency welcomed the considerable progress made in cooperation on civil protection, particularly in the framework of European mutual assistance which is based on a modular approach, and in this context thanked the Member States for their constructive contributions. On this subject, the Presidency briefed the Council on the "VAR 2008" exercise (Canjuers, France, 4 to 6 November 2008), which provided an opportunity to test the effectiveness of the civil protection modules deployed in the framework of European mutual assistance, established in part to help deal with the consequences of multiple terrorist attacks. The exercise tested, amongst other things, the organisational arrangements and chain of command that would apply in the event of a major terrorist attack with nuclear, radiological, bacteriological or chemical components (NRBC).

The Presidency stressed that European mutual assistance would be supported by stepping up the training system to ensure that the modules had a high level of interoperability. An improvement in cooperation with the UN was also planned, to improve interoperability with the United Nations mechanism in the event of major disasters in third countries.

The Council took note of the Presidency's general report on the EU's ability to prevent and respond to disasters (*15933/08*), together with a roadmap for future action, further to the Presidency's note of 22 July 2008 (*11753/08*). The report covers not only response capability in the field of civil protection, but also disaster prevention, humanitarian aid, crisis coordination arrangements (CCA), special arrangements in the NRBC area and the protection of critical European infrastructure. The Council also adopted three sets of conclusions, on mutual assistance, training, and cooperation between the European Union and the United Nations.

The Council adopted conclusions calling for civil protection capabilities to be enhanced by a European mutual assistance system building on the civil protection modular approach (*15653/08*). These conclusions stress the importance of speeding up the deployment of assessment and coordination experts at the disaster site during major emergencies and reinforcing the Monitoring and Information Centre (MIC) with national experts. The conclusions also note the progress achieved on the modular approach and call on Member States to register more modules in categories which are not yet covered, or only partially, if need be by setting up multinational modules.

In addition, conclusions were adopted on European disaster management training (*15520/08*). These conclusions note the excellent results produced by training already organised within the framework of the Community Civil Protection Mechanism and call on the Commission to set up European training arrangements with a twofold purpose: reinforcing and diversifying Community training and setting up a network of training centres to promote convergence amongst national training programmes. The Commission was requested to submit proposals by the end of 2009.

Lastly, in its conclusions on strengthening relations between the European Union and the United Nations as regards disaster response capacity (*14795/08*), the Council welcomed the progress made in cooperation between the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the Commission, while instructing the Commission to work to enhance that cooperation further.

EUROPEAN PNR

On the basis of a Presidency report on the thematic work carried out on a European Passenger Name Record (PNR) system, the Council concluded that:

1) The working method followed had resulted in an increasingly clear vision of the practical scope and essential features of a possible European PNR system reconciling operational effectiveness with respect for citizens' fundamental rights in general and personal data protection rights in particular;

2) Council preparatory bodies were instructed to examine all the outstanding issues, whether legal or operational, in the light of the above report and all the work already done, with a view to possible decisions at a later date;

3) At the same time, the dialogue with the European Parliament and, in the Member States, with national parliaments and the economic operators concerned would be continued[1];

4) Council preparatory bodies would regularly report to Coreper or the Council, as appropriate, on the progress of discussions and consultations.

As instructed by the Council on 25 July 2008, the purpose of the Presidency's report is to outline the essential characteristics which a future European PNR system might have, on the basis of discussions to date. The report describes the progress made in responding to the key questions raised by the initiative.

PNR data is commercial information already collected by airlines when passengers book international flights serving the territory of a Member State. Such data would be forwarded prior to boarding to supplement the terrorist and criminal threat analysis, and could be used in the context of specific investigations.

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[1] The German delegation entered a scrutiny reservation on the collection and processing of data when there was no particular suspicion.

PNR data relate to movements, usually by air, and include passport details, name, address, telephone number, travel agency, credit card number, any changes to the flight schedule, seating preferences and other information. As a rule not all fields are filled in, only PNR data supplied by a passenger on a voluntary basis when making a booking or on check-in.

The Commission proposal was submitted in November 2007.

GLOBAL APPROACH TO THE MIGRATION ISSUE - *Council conclusions*

The Council adopted conclusions (*16041/08*) assessing the implementation of the global approach to the migration issue and the partnership with countries of origin and transit. These conclusions, which follow up a Commission communication on strengthening the global approach to migration, seek to take stock of action carried out to date and formulate a strategy for the future.

These conclusions will be submitted for adoption by the General Affairs and External Relations Council on 8 and 9 December 2008.

The Presidency also presented the results of the second Euro-African ministerial conference on migration and development, held in Paris on 25 November 2008.

The Council welcomed the final declaration of that conference, which provides for a three-year cooperation programme setting precise areas for action and operational measures for the period 2009-2011, centring on the three aspects of the action plan adopted at the first conference, in Rabat in July 2006: legal migration, combating illegal immigration, and migration and development (*16149/08)*.

INTEGRATION

On the basis of the final declaration approved by the third conference on integration held in Vichy on 3 and 4 November 2008, the Council adopted conclusions (*15251/08*) emphasising the importance the Union attaches to the development of a coherent integration policy.

The conclusions identify a series of priority areas for future action:

– the promotion of European values,

– the integration process,

– access to employment,

– the integration of women and the education of children,

– intercultural dialogue, and

– integration policy governance.

The first conference on integration was held in Groningen in November 2004, where ministers adopted basic common principles on integration. Building on that achievement, the Potsdam conference of May 2007 introduced a new dimension, by launching debate on intercultural dialogue as a means of boosting integration. The next conference will be held in Spain in 2010.

SINGLE RESIDENCE AND WORK PERMIT FOR NON-EUROPEAN CITIZENS.

The Council took stock of progress on a proposal establishing a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

It found that significant progress had been made on the proposal, enabling broad agreement to be reached on a text. The next presidency was instructed to continue discussions, with a view to adoption of the proposal as soon as possible.

The proposal was submitted by the Commission in October 2007. Its aim is to establish a "one-stop shop" for third-country nationals wishing to reside in a Member State to work. It provides for a single application procedure which is simpler, shorter and quicker for both employers and migrants.

The proposal does not lay down admission conditions for third-country nationals, which remain a matter for Member States to decide. However, certain guarantees are laid down for processing of applications for qualified work, in particular access to information on the documents to be enclosed with the application, the duty to take a decision rejecting an application and the duty to decide on an application by a given deadline.

If granted, the residence and work permit will have to be issued in the form of a single document. The "single permit" will follow the uniform European format for residence permits. In practice, this means that the authority responsible will merely need to add information on access to the labour market to the existing residence permit.

Under the proposal, Member States must also indicate on all existing residence permits issued for other purposes (e.g. family reunification, asylum, study) whether the third-country national is authorised to work. The authorities responsible will thus simply need to examine a third-country national's residence permit in order to determine whether he is working legally in the European Union.

Acknowledging that legally employed third-country nationals contribute to the European economy in the same way as EU citizens, the proposal would give non-EU workers basic social and economic rights comparable to those enjoyed by EU citizens. In principle, this equal treatment would cover all third-country workers who are legally resident but have not yet acquired long-term resident status. It would cover working conditions (including pay and dismissal), health and safety at the workplace, education, vocational training, the recognition of qualifications, social security (including healthcare), the payment of pensions abroad, access to goods and services (including access to housing) and tax benefits.

EXTENSION OF LONG-TERM RESIDENT STATUS TO BENEFICIARIES OF INTERNATIONAL PROTECTION

The Council held a debate on this proposal amending Directive 2003/109/EC to extend the possibility of obtaining long-term resident status to beneficiaries of international protection.

The Presidency noted that all the delegations but one agreed on the text of the Directive. It thus concluded that, given that the unanimity required to adopt the Directive could not be reached on that day, the negotiations on this file should continue.

Council Directive 2003/109/EC determines the status of third-country nationals who are long-term residents (residing for more than five years in a Member State). At the time of the adoption of this Directive, the Council welcomed the Commission's commitment to follow it up with a proposal extending long-term resident status to refugees and persons benefiting from subsidiary protection. The Commission proposal, which was presented in June 2007, follows that commitment.

RECEPTION OF IRAQI REFUGEES - *Council conclusions*

Against the background of the Council conclusions of 24 July and 25 September 2008 concerning the reception of Iraqi refugees, the Commission carried out a mission in Syria and Jordan from 1 to 6 November 2009 to examine the possibilities for the resettlement of Iraqi refugees in Member States willing to receive them.

The Council adopted the following conclusions based on the Commission report on that mission:

1. "The Council recalls its conclusions of 24 July and 25 September 2008, in which:

   – it considered it necessary to continue contacts in order to agree on the most appropriate forms of solidarity with all Iraqis, and agreed to return to the question;

   – it noted, in this context, the Commission's intention to conduct a mission to Syria and Jordan, accompanied by the Member States concerned, in order to assess, together with the Office of the United Nations High Commissioner for Refugees (UNHCR), the situation of the most vulnerable Iraqi refugees in those countries, and to examine the possibilities for resettlement in Member States willing to receive them;

   – it noted also that the United Nations High Commissioner for Refugees had expressed the hope that eventually most Iraqi refugees would be able to return to their country of origin in conditions of security, although, for some, resettlement would continue to be necessary.

2. That mission took place from 1 to 6 November in Syria and Jordan and the Council welcomes the report submitted by the Commission as a follow-up to it[1].

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[1] 16112/08 ASILE 21 COMEM 217.

The Council notes in particular:

– the analysis of the difficult situation faced by many refugees from Iraq and their increasing need for assistance;

– the fact that return to Iraq is thought to be the only eventual solution for the great majority of Iraqi refugees;

– that return from Syria and Jordan is not, however, significant today;

– that local integration in Syria and Jordan can be a solution only for a very small number of refugees;

– the need for resettlement of a certain number of refugees who have no prospect of any other lasting solution, even in the long term; these are people in a vulnerable situation who are easily identifiable, especially those with medical needs, trauma or torture victims, members of religious minorities, or women on their own with family responsibilities;

– the fact that a greater effort towards resettlement in the countries of the European Union would send a positive signal of solidarity to all Iraqis and of cooperation with Syria and Jordan for the maintenance of their area of protection.

The Council also notes the particular situation of the Palestinians who have left Iraq for Syria, for whom no solution other than resettlement appears to be feasible.

3. The Council emphasises, as it did in its conclusions of 25 July 2008, that the main objective is to create the conditions in which displaced persons inside Iraq and refugees in neighbouring countries can return safely to their homes, while ensuring that the human rights of all Iraqis are protected and defended.

The Council also reaffirms its conclusions of 23 April 2007 on Iraq, which called for a comprehensive approach on Iraq.

In this context, it notes that the Netherlands has convened a high-level meeting in The Hague on 1 and 2 December 2008 aimed at contributing to a coordinated response by the European Union to migratory flows from or to Iraq.

4. The Council recalls the humanitarian and financial aid provided by the European Union and Member States to Iraqi refugees, as well as the contribution of Member States which receive Iraqis who have submitted an asylum application on their territory.

However, given the current situation in Iraq and in neighbouring countries as well as the results of the mission conducted by the Commission, the Council considers it necessary to go further.

In this respect, it welcomes the fact that some Member States are already taking in Iraqi refugees, particularly under their national resettlement programmes.

5. In this context, as a signal of solidarity, the Council invites Member States to take in Iraqi refugees in a particularly vulnerable situation such as those with particular medical needs, trauma or torture victims, members of religious minorities or women on their own with family responsibilities.

This has to be done on a voluntary basis and in the light of the reception capacities of Member States and the overall effort they have already made as regards reception of refugees.

In the light of the resettlement objective established by UNHCR and taking into account the number of persons already taken in or planned to be taken in by Member States, in particular under their national resettlement programmes, the objective could be to receive up to approximately 10 000 refugees, on a voluntary basis.

In taking this approach, Member States should cooperate closely with UNHCR and the other competent organisations present in the region. They should bear in mind the importance of promoting reconciliation between Iraqi communities in Iraq.

6. It may be noted that the European Refugee Fund provides financial support for resettlement projects and that Member States have until 19 December 2008 to indicate on their intentions with a view to calculating the allocation of the funding for 2009.

The Commission is invited to report to the Council at the beginning of 2009 on the information gathered from Member States on the basis of these conclusions."

ABUSES AND MISUSES OF THE RIGHT TO FREE MOVEMENT OF PERSONS - *Council conclusions*

Following an exchange of views on this subject, the Council adopted the conclusions below underlining the importance which Member States attach to protecting the right to free movement from the abuses created *inter alia* by illegal immigration.

The Council will undertake a more extensive examination of the issue after the Commission has submitted its report on the application of Directive 2004/38/EC on the free movement of persons and in the light of the work which the Commission will institute to identify the difficulties with the Directive's implementation and the guidelines it will put forward for the Directive's operation.

Council conclusions:

"The Council recalls the discussion it held at its meeting on 25 September 2008 concerning the action to be taken following the judgment of the Court of Justice in the Metock case (C-127/08) and on the question of the residence of third-country nationals married to EU citizens in the context of tackling illegal immigration.

The Council recalls that the right of free movement within the European Union is one of the main principles on which the Union is based, for the benefit of European citizens, Member States and the competitiveness of the European economy. That right constitutes a fundamental freedom for citizens and, for those who exercise it, entails responsibilities, including respect for the rule of law in the State where they are staying or residing.

The Council also emphasises its commitment to developing the Union as an area of freedom, security and justice, of which the fight against crime constitutes an essential aspect.

The Council considers that, in compliance with and in the interests of the right of free movement, every effort must be made to prevent and combat any misuses and abuses, as well as actions of a criminal nature, with forceful and proportionate measures with due regard to the applicable law, against citizens who break the law in a sufficiently serious manner by committing serious or repeated offences which cause serious prejudice.

In this connection the Council notes the relevant provisions of Directive 2004/38/EC of the European Parliament and of the Council[1], in particular those set out in Chapter VI concerning restrictions on the right of entry and the right of residence of Community nationals and their family members on grounds *inter alia* of public policy and public security and the provisions of Article 35 concerning abuse of rights and fraud, such as marriages of convenience and the presentation of forged documents.

The Council welcomes the Commission's intention to submit between now and mid-December an assessment report on the operation of Directive 2004/38/EC and the work which the Commission is organising in close liaison with representatives of the Member States meeting in an expert group to identify problems in the implementation of the Directive and good practice at national level.

Concerned that the provisions of Directive 2004/38/EC should be fully and correctly implemented in order to improve the prevention and combating of misuses and abuses, while adhering to the principle of proportionality, the Council requests the Commission to publish guidelines for the interpretation of that Directive early in 2009 and to consider all other appropriate and necessary proposals and measures.

The Council will make a more extensive examination of the issue after the report has been submitted and in the light of the other discussions that will continue at the same time."

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[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS

In the context of a first-reading agreement with the European Parliament, the Council reached agreement on a Decision amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters (*15803/08* and *15774/08*).

This network, which has been in operation since 2002, consists of contact points, central authorities, judicial authorities and liaison magistrates, and is intended to facilitate direct contacts between the judiciary.

It is the only operational tool for cooperation in the civil judicial area.

The Decision, on which the Member States have reached agreement with the European Parliament within a very short time-frame, is intended to modernise the network and to increase the resources available to the contact points. Under certain conditions, it opens up the network to the judicial professions and adjusts the tasks of the network to developments in Community law, so as to facilitate its application.

FRAME OF REFERENCE FOR EUROPEAN CONTRACT LAW

The Council adopted a report on the setting up of a Common Frame of Reference for European contract law, which will be a non-binding instrument at the service of lawmakers (*15306/08*).

The report defines the broad outline which should guide the Commission's work on the future Common Frame of Reference. It seeks to specify its structure and its scope and calls for respect for legal diversity. Finally, it confirms the Council's desire to be associated with the European Parliament in the drawing up of the future Common Frame of Reference.

EUROPEAN E-JUSTICE ACTION PLAN

The Council adopted a European e-Justice action plan which aims to lend structure to work in this area, by entrusting the Commission with the task of setting up a European "e-Justice" portal and managing horizontal issues (technical standards, security, etc), and by setting priorities for its implementation (*15315/08*).

The aim of e-Justice is to develop the use of new information technologies in the field of justice. About 10 million Europeans are currently involved in cross-border civil proceedings. That figure is likely to rise, both because of the increase in the movement of persons within the EU and because of the development of European procedural instruments.

A European portal will be created to facilitate access to European information and procedures. Several practical initiatives will also be implemented in the medium term, to establish electronic communications between jurisdictions, to rationalise certain European procedures, and to promote the use of video-conferencing.

E-Justice will help to promote access to justice and to improve cross-border judicial procedures, by reducing procedural deadlines and operating costs to the benefit of citizens, undertakings, legal practitioners and the administration of justice.

Against that background, the Estonian and Portuguese delegations submitted to the Council a draft on the online founding of companies by Portuguese citizens in Estonia and by Estonian citizens in Portugal, using digital signatures usable in both countries.

NETWORK FOR LEGISLATIVE COOPERATION BETWEEN THE MINISTRIES OF JUSTICE OF THE EU

The Council adopted a Resolution on the establishment of a network for legislative cooperation between the Ministries of Justice of the Member States of the European Union (*16533/08*).

This network will enable Ministries of Justice to exchange information on their legislation, judicial and legal systems and ongoing reforms rapidly, reliably and flexibly by means of correspondents and the creation of a common database.

This tool will make a practical contribution to the construction of a Europe of justice. By increasing understanding of the legislation of the other Member States, it will improve mutual trust and promote mutual recognition.

JUDICIAL SUPERVISION OF PRE-TRIAL PROCEDURES

The Council agreed to a general approach on a proposal for a Framework Decision on the European supervision order in pre-trial procedures between EU Member States . (*16382/08*).

This draft text is the counterpart to the framework decision on post-trial probation measures, on which the Council reached agreement in December 2007.

The draft lays down rules according to which one Member State recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of those measures.

CHILD ABDUCTION ALERT

The Council adopted conclusions (*14612/2/08*) on this subject.

The text follows on from the simulation exercises organised by France with other Member States. The subject was on the agenda of the informal meetings of Justice Ministers in Lisbon in October 2007 and in Cannes in July 2008.

The conclusions call on Member States to attain the following objectives:

– to introduce and develop national mechanisms for alerting the general public to the criminal abduction of children;

– to define the national implementing arrangements ensuring cross-border alerts are triggered;

– in introducing and developing such arrangements, to take as a basis the good practices established by the European Commission.

MIXED COMMITTEE

The EU/Norway, Iceland, Liechtenstein and Switzerland Mixed Committee met on Thursday 27 November in the margins of the Council meeting to discuss the abolition of checks at the internal borders with the Swiss Confederation and the second generation Schengen Information System (SIS II).

– **Switzerland's admission to the Schengen area**

Following an evaluation process, the Mixed Committee concluded that the Swiss Confederation was applying the Schengen acquis correctly and that it therefore fulfilled the necessary conditions for the country's admission to the Schengen area.

The Council accordingly decided that controls at the land borders between Switzerland and its EU neighbours should be lifted as of 12 December 2008 (*15698/08*).

Air border controls will be lifted as of 29 March 2009, a date which corresponds to the switch to summer time and which will leave Swiss airports the few extra weeks needed to complete the remaining physical adjustments and allow for their verification by experts from the Schengen Evaluation Working Party.

– **SIS II**

The Mixed Committee noted progress on SIS II, which is currently at the testing stage.

OTHER BUSINESS

Europol-Eurojust cooperation agreement

The Council welcomed the revised draft cooperation agreement between Europol and Eurojust.

The agreement will be formally submitted to the Council following consultation of the supervisory authorities and approval by the Management Board of Europol and the Eurojust College.

(a) Increase Eurojust's ability to ask Europol to open analysis work files, in accordance with Europol's legal framework.

(b) Formalise the conditions under which:

  (i) Europol provides Eurojust with the outcome of analysis work files. This information should include a strategic analysis and the results which might require judicial follow-up;

  (ii) Eurojust participates in establishing work files.

(c) Formalise the conditions under which Eurojust provides Europol with information for its work files, as well as other information and advice needed for Europol to carry out its tasks.

Bilateral agreement with third States

The Commission briefed the Council about progress on the forthcoming proposal for bilateral agreements in the field of judicial cooperation in civil and commercial matters.

This request follows on from the wish expressed by many delegations when several Community instruments were being drawn up (such as Rome I and Rome II) to allow the Member States, under certain well-defined conditions, to conclude international agreements in areas which fall within the exclusive competence of the European Community.

OTHER ITEMS APPROVED

JUSTICE AND HOME AFFAIRS

Combating racism and xenophobia

The Council adopted a Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (*16771/07, 16771/07 COR 4,* and *16351/1/08*).

The text lays down that the following intentional acts will be punishable in all the EU Member States:

- publicly inciting violence or hatred 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, even by the dissemination or distribution of tracts, pictures or other material;

- publicly condoning, denying or grossly trivialising

  - crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, 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;

  - crimes defined by the Nuremberg Tribunal (Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 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.

The Member States will make these acts punishable by a maximum sentence of at least one to three years' imprisonment.

Following its adoption, the Member States will have two years to comply with the Framework Decision.

European definition of terrorism

The Council adopted a Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism *(15139/08* and *8807/08)*.

The purpose of the Framework Decision is to include three new offences in EU legislation, namely:

– public provocation to commit a terrorist offence;

– recruitment for terrorism;

– training for terrorism.

Consequently, Framework Decision 2002/475/JHA which is currently in force will be updated to include these offences, and will be aligned on the Council of Europe Convention on the Prevention of Terrorism.

Including these offences will provide a more integrated institutional framework at European Union level. Thus there will be rules on the type and level of criminal penalties, and on the mandatory rules on jurisdiction which will be applicable to these offences.

EU cooperation mechanisms (see for instance the 2005 decision on the communication of terrorist-related information to Europol and Eurojust) will be triggered, since the Framework Decisions falls within their scope.

Personal data protection

The Council adopted a Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters *(9260/08)*.

The purpose of this act is to ensure a high level of protection for the basic rights and freedoms, and in particular the privacy, of individuals, while guaranteeing a high level of public safety when exchanging personal data.

By setting data protection standards for the first time in the framework of police and judicial cooperation in criminal matters, the Council highlights the importance it attaches to safeguarding the most fundamental of citizens' rights at the same time as fostering confidence between Member States.

Under the framework decision the exchange of personal data in the context of police and judicial cooperation in criminal matters will be underpinned by clear binding rules enhancing mutual trust between the competent authorities. The relevant information will be protected so as to prevent any obstruction to Member States' cooperation, while fully respecting the fundamental rights of individuals, in particular their right to privacy and to the protection of their personal data. Common standards on the confidentiality and security of the processing, on liability and on the obligation to lay down penalties for unlawful use will contribute to achieving both those aims.

The framework decision defines, among other things, the right of access to data, the right to rectification, erasure or blocking, the right to compensation and the right to seek judicial remedies. It does not preclude Member States from providing higher-level safeguards for protecting personal data than those established in the framework decision.

Member States will have two years from the date of adoption in which to comply with the framework decision's provisions.

Action on road safety - *Council conclusions*

The Council adopted conclusions on the above subject (*15676/08*).

Measures against cybercrime - *Council conclusions*

The Council adopted conclusions on the above subject (*15569/08*).

Creation of an NRBC database - *Council conclusions*

The Council adopted conclusions on the above subject (*15294/08*).

Early warning of threats linked to terrorism and organised crime - *Council conclusions*

The Council adopted the following conclusions:

" The Council of the European Union**:**

A. 1. Recalling that terrorism and organised crime constitute two of the most serious violations of the universal values on which the European Union is founded: human dignity, liberty, equality, solidarity and respect for human rights and fundamental freedoms. They represent one of the most serious attacks on democracy, the rule of law and the area of freedom and security, whose development and reinforcement are essential EU objectives.

2. Noting that, in recent years, the terrorist threat and organised crime have been on the increase and have evolved rapidly. Given the persistence and high level of the threat from these two kinds of crime, and in order to respond to the needs of Member States' law security and enforcement services, it is necessary to set up alert mechanisms suited to the fight against terrorism and organised crime.

3. Recalling that, in order to prevent and combat terrorism and organised crime effectively with due regard for fundamental rights, Member States cannot confine their activities to maintaining their own security, but must also base their activities on the security of the European Union as a whole. This objective of solidarity is even more crucial in an area where the free movement of persons is the rule, now that controls at internal borders have been discontinued.

4. Recalling that the Council and Commission Action Plan implementing the Hague programme stresses that the fight against terrorism calls for a comprehensive approach and that the expectations of citizens and residents with regard to the European Union should not be left without due response. It states, in addition, that it is right to focus on different aspects of prevention, preparedness and response in order to enhance and complement Member States' capabilities to fight terrorism, concentrating in particular on recruitment, financing, risk analysis, critical infrastructure protection and consequence management.

5. Considering that one of the ways of increasing prevention is to improve the use of existing mechanisms in accordance with the EU counter-terrorism strategy and to make available to Member States' law-enforcement and security services tools which are suited to operational needs. Among the existing tools, the Schengen Information System illustrates the mutual solidarity, trust and complementarity developed through this form of cooperation in the Schengen area.

6. Noting that the results of use of the mechanism in Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)) by the law-enforcement and security services of European Union Member States facing these threats demonstrate the relevance of this mechanism.

7. Bearing in mind that in its report SCHAC 2501/08 dated 18 January 2008 the Schengen Joint Supervisory Authority notes that the Article is under-used, while stressing the relevance of the data contained therein.

8. Noting that on this basis, to enable persons subject to an alert for activities linked to terrorism or organised crime to be detected early and also to help locate them, this mechanism should be used systematically.

9. Recalling that a Member State that issues an alert under Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)) needs to know if the individual in question has applied for a visa at a diplomatic mission or consular post of another Member State.

In this context, automated cross-checking of the information available under the visa-delivery procedure against alerts under Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)) will reinforce the common security mechanism. Once the Visa Information System is fully operational the Council should reconsider an automated consultation of the Schengen Information System for visa applications.

10. Recalling that the United Kingdom and Ireland, which do not participate in the Schengen acquis on visas and borders, have been authorised by the Council to participate in Article 99 of the Convention applying the Schengen Agreement (and in Article 36 of the Council Decision 2007/533/JHA), and that they should be included, once it has been decided to put those provisions into effect for those Member States, in full compliance with the Schengen protocol, in any mechanism put in place to facilitate the early detection of persons covered by alerts issued under that Article.

B. Concludes that there is a need:

(a) for Member States to consider putting in place an early-warning mechanism for suspects linked to terrorism and organised crime, in order to:

– facilitate the early detection of persons subject to an alert in the Schengen Information System (SIS) for activities linked to terrorism or organised crime by consulting the SIS via the national authorities at central level empowered to access these data for every visa application in order to check whether there is any alert pursuant to Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)),

– in the event of a hit, inform the SIRENE bureau of the Member State which issued that alert, as the services which originated the alert are responsible for deciding what action to take. This mechanism for sharing information between Member States must not affect how the Member State which noticed the abovementioned alert processes the visa application. In order to protect the data contained in Article 99 of the Convention implementing the Schengen Agreement (Article 36 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)), consular posts will not be kept informed of the results;

(b) to assess whether amendments to existing legal instruments are necessary in order to make the application of this mechanism legally binding. This evaluation, taking as a base the principle of proportionality and the need for the protection of fundamental rights, should cover the legal, technical as well as financial impact of the mechanism."

Disaster response capacity - *Council conclusions*

The Council adopted conclusions on the above subject (*14795/08, 14795/08 COR2*).

European disaster management training - *Council conclusions*

The Council adopted conclusions on the above subject (*15520/08*).

The Fight against drug trafficking in West Africa - *Council conclusions*

The Council adopted conclusions on the above subject (*15936/08*).

Cooperation between civilian ESDP missions and EUROPOL as regards the exchange of information - *Council conclusions*

The Council adopted conclusions on the above subject (*15771/08, 15771/08 COR 1*).

Radicalisation and recruitment to terrorism

The Council adopted an updated version of the European Union strategy for combating radicalisation and recruitment to terrorism and the associated action plan.

Recognition of judgments and probation decisions

The Council adopted a Framework Decision on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (*6836/08*).

The Council reached a general approach on this Framework Decision on 7 December 2007. Since then, the Council preparatory bodies have finalised the recitals, as well as the certificate and the form.

Based on the principle of mutual recognition, the Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and fostering the application of suitable probation measures and alternative sanctions in the case of offenders who do not live in the State of conviction.

The Decision sets rules under which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment**,** and takes- unless otherwise provided in the Framework Decision - all other decisions relating to that judgment.

Member States will have three years after the entry into force of this framework Decision to take the necessary measures to comply with its provisions. It will enter into force on the day of its publication in the Official Journal of the European Union.

Mutual recognition of judgments in criminal matters*

The Council adopted a Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty (*5602/08* + *15100/08* + *15413/08*). This new legislative act will enable sentenced persons to be transferred to another Member State for enforcement of their sentences, bearing in mind the possibility of their social rehabilitation.

Eurojust – Cooperation agreement with the former Yugoslav Republic of Macedonia

The Council approved an Agreement on cooperation between Eurojust and the former Yugoslav Republic of Macedonia (*15152/08*) designed to reinforce the fight against serious international crime including terrorism.

Cooperation on maintenance obligations

The Council reached political agreement on the recitals and annexes of a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. The purpose of this Regulation is to ensure that a maintenance creditor is able easily to obtain in one Member State a decision which will be automatically enforceable in another Member State with no further formalities. To that end, a Community instrument in matters relating to maintenance obligations is to be created which will bring together provisions on jurisdiction, conflict of laws, recognition and enforceability, enforcement, legal aid and cooperation between central authorities.

Recognition and enforcement of judgments in civil and commercial matters

The Council adopted a Decision approving the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which will replace the Lugano Convention of 16 September 1988 (*9196/08*).

EU/Georgia - Agreement on the facilitation of issuance of visas and readmission agreement

The Council adopted a Decision authorising the Commission to open negotiations for the conclusion of an agreement between the European Community and Georgia on the facilitation of issuance of short-stay visas.

The Council also adopted a Decision authorising the Commission to negotiate with Georgia a readmission agreement between the European Community and Georgia.

Schengen - amendment of the technical specifications

The Council adopted a Decision amending Parts 1 and 2 of the Schengen consultation network (technical specifications) to avoid overburdening the Schengen Consultation Network and to improve and simplify the consultation procedure (*10611/08*).

Schengen - use of the Visa Information System

The Council adopted a Regulation amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code.

The objective of the Regulation is to introduce the required amendments to the Schengen Borders Code in order to ensure efficient use of the Visa Information System at external borders, with a view, *inter alia*, to further developing integrated management of borders in the European Union.

Common Consular Instructions

The Council adopted a Decision amending Annex 13 to the Common Consular Instructions on filling in visa stickers in order to reflect the full application of the provisions of the Schengen *acquis* in Switzerland (*15259/08*).

Guidelines on simplifying the exchange of information between law-enforcement authorities

The Council approved Guidelines for the implementation of Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

The Guidelines will be adapted in the light of experience acquired over time.

The Framework Decision aims to enhance the effective and expeditious exchange of information and intelligence between law enforcement authorities.

E-Justice

The Council took note of a report on the progress made during the French Presidency in the area of e-Justice in the light of the Council's June 2008 conclusions.

The report describes the work achieved and sets out future priorities, i.e.:

– provide input and follow up the work of the Commission in determining the navigation structure and the content of the European e-Justice portal on the basis of the priorities and timetable defined in the action plan;

– adding content relating to mediation to the European e-Justice portal;

– adding content relating to legal aid to the European e-Justice portal;

– adding content relating to translation and interpretation to the European e-Justice portal, in particular as regards the interconnection of databases of translators and interpreters and interpretation via videoconferencing;

– continuing work in the area of networking of insolvency registers, commercial and business registers, land registers and wills' registers;

– extend and develop further the system for the use of IT for the European payment order procedure, in full compliance with Regulation (EC) No 1896/2006 as quickly as possible;

– promoting and facilitating the use of video-conferencing technology for communication in cross-border proceedings, in particular for the taking of evidence and interpretation;

– completing technical work in the first half of 2009 on the concept of authentication and securisation in the context of the portal and continuing technical work on interoperability and standardisation, taking into account the work achieved.

Procedures for the election of the Presidents of the EU's Courts and the Civil Service Tribunal

The Council approved amendments to the procedures for the election of the Presidents of the Court of Justice and of the Court of First Instance of the European Communities, and of the European Union Civil Service Tribunal (*14423/08* + *14427/08* + *14430/08*). The new rules of procedure require that the person elected must obtain an absolute majority in all cases.

CEPOL-Interpol Cooperation Agreement

The Council approved a Cooperation Agreement between the European Police College (CEPOL) and Interpol (*13756/08*). The purpose of the Agreement is to enhance the training of senior police officers, in particular through cooperation in the organisation of courses, seminars and conferences and in the development and implementation of common curricula and course material.

CEPOL work programme - *Council conclusions*

The Council approved the work programme of the European Police College (CEPOL) (*13676/08*).

Combating the criminal misuse and anonymous use of electronic communications - *Council conclusions*

The Council adopted conclusions on this subject (*12694/4/08*).

Combating illicit trafficking in cultural goods - *Council conclusions*

The Council adopted conclusions on this subject (*14224/2/08*).

EXTERNAL RELATIONS

EU Police Mission in Bosnia and Herzegovina

The Council adopted a Decision implementing Joint Action 2007/749/CFSP on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (*15165/08*).

The Decision establishes the EUPM budget for 2009 and sets the financial reference amount at EUR12 400 000.

In November 2007 the Council adopted Joint Action 2007/749/CFSP establishing that the EUPM is to be continued until 31 December 2009 and that the budgets for 2008 and 2009 are to be decided on an annual basis.

The EUPM aims to establish in Bosnia and Herzegovina a sustainable, professional and multiethnic police service operating in accordance with international standards. It operates in coordination with and under the local political guidance of the European Union Special Representative in Bosnia and Herzegovina, and as part of the broader rule-of-law approach in Bosnia and Herzegovina and in the region.

TRADE POLICY

Anti-dumping measures: monosodium glutamate from China - antibiotics from India

The Council adopted two Regulations:

– imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of monosodium glutamate originating in China (*15232/08*);

and

– amending Regulation No 713/2005 imposing a definitive countervailing duty on imports of certain broad-spectrum antibiotics originating in India (*14975/08*).

BUDGET

EU budget for 2009 - Council agreement at second reading

The Council confirmed the outcome of the conciliation meeting with the European Parliament of 21 November 2008 and formally adopted its second reading of the draft general budget of the EU for the financial year 2009 (*16229/08* + *COR 1*).

(*see also press release 16076/08*).

TRANSPORT

Third maritime safety package

The Council decided not to accept all the second-reading amendments submitted by the European Parliament on the following Commission proposals within the third maritime safety package:

– a draft Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (*15435/08*);

– a draft Regulation on common rules and standards for ship inspection and survey organisations (.*15436/08*);

– a draft Directive on port State control (*15437/08*);

– a draft Directive relating to the establishment of a Community vessel traffic monitoring and information system (*15438/08*);

– a draft Directive establishing the fundamental principles governing the investigation of accidents in the maritime transport sector (*15439/08*);

– a draft Regulation on the liability of carriers of passengers by sea and inland waterway in the event of accidents (*15440/08*).

The Council therefore decided to convene the European Parliament/Council Conciliation Committee with a view to negotiating a joint text.