



Brussels, 18 November 2004

BACKGROUND ¹
JUSTICE AND HOME AFFAIRS COUNCIL
Brussels, 19 November 2004

The JHA Council will start its work at 10h00. The main items on the agenda are: strengthening of operational police cooperation (Police Chiefs Task Force), terrorism (state of play), criminal law framework for the enforcement of the law against ship source pollution, EU drugs strategy for the period 2005-2015, Directive on a specific procedure for admitting third-country nationals for purposes of scientific research and basic principles for the immigrant integration policy in the European Union.

Furthermore and provided that the European Parliament approves the new Commission as a body, the Council will adopt a Decision appointing the President and Members of the European Commission, without discussion.

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A press conference will be held at the end of the morning session of the Council (± 13h00).

¹ This note has been drawn up under the sole responsibility of the Press Service.

STRENGTHENING OF OPERATIONAL POLICE COOPERATION (POLICE CHIEFS TASK FORCE)

The Council is expected to adopt Conclusions with a view to strengthening the EU operational police cooperation.

Based on and subsequent to the 1999 Tampere conclusions and the Declaration on combating Terrorism of 25 March 2004 of the European Council, Council preparatory bodies have discussed several times the role and positioning of the Police Chiefs Task Force in the framework of strengthening the EU operational police co-operation.

There is general agreement on the fact that there is a twofold need for enhancing the operational police co-operation in the EU by

- setting up concrete joint investigations/operations to tackle specific problems and
- providing input from the operational police point of view into the policy-making of the EU.

This corresponds to the twofold task of the Police Chiefs Task Force, which has an operational/operative and a strategic aspect.

The Council will be invited to confirm that the Task Force shall meet at Europol for its operational tasks, and that the Police Chiefs will regularly meet within the Council structures.

TERRORISM

The Council will take note of the state of play concerning the preparation of several documents regarding the fight against terrorism.

The EU Counter-terrorism Coordinator, Mr Gijs de Vries, will take part in the debate.

It should be noted that, in June 2004, the European Council requested that the following documents should be submitted to it at its meeting on 17 December 2004:

- an update of the Action Plan/Roadmap
- a progress report on the integration in the Council Secretariat of an intelligence capacity
- a coherent overall approach for further strengthening of the fight against terrorist financing
- an overall strategy to enhance the protection of critical infrastructures
- measures aimed at enhancing civil protection
- concrete proposals aimed at ensuring full integration of the fight against terrorism into EU external relations policy
- an assessment of EU Counter-terrorism clauses, and
- a conceptual framework on the ESDP dimension in the fight against terrorism.

STRENGTHENING THE CRIMINAL LAW FRAMEWORK FOR THE ENFORCEMENT OF THE LAW AGAINST SHIP SOURCE POLLUTION

The Council will debate the draft Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution.

It should be noted that the JHA Council of 25 and 26 October 2004 discussed the text of this Framework Decision and that the Presidency noted that three Member States could not agree to the text proposed.

The issues still pending are the following: the relation between the Framework Decision and the MARPOL (Convention for the prevention of pollution from ships) and UNCLOS (UN Convention on the Law of the Sea), the possibility of introducing a ceiling for the maximum fines to be imposed to legal persons, and the question of jurisdiction for offences committed outside the territory of a Member State.

It should be noted that the fight against intentional or negligent ship-source pollution is among the European Union's priorities. The conclusions of the Copenhagen European Council of 12 and 13 December 2002 (points 32 to 34) and the statement of the JHA Council of 19 December 2002 following the shipwreck of the tanker Prestige, in particular, express the Union's determination to adopt all the measures needed to avoid recurrences of such damage.

To this end, the Council reached a common position in June on a Directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences with the aim of approximating national legislation with regard to the definition of the relevant offences and commission, participation and incitement, on the one hand, and the nature, possibly criminal, of the penalties that can be imposed. It also contains technical and operational supporting measures.

With a view to supplement these provisions, there should be an approximation of, among other things, the level of penalties corresponding to the seriousness of offences in relation to the natural or legal persons who commit them or are liable for them.

The purpose of the Framework Decision that will be discussed by the JHA Council is therefore to supplement the Directive agreed by the Council in June with detailed rules in criminal matters.

In doing so, provisions will be laid down to facilitate criminal investigations. Member States will be able to set up joint investigation teams with which Europol could be associated.

Furthermore, rules on cooperation will be laid down to ensure that the offences will be effectively prosecuted. To this end, the European Union will supplement the results obtained in regional or international organisations. The United Nations Convention on the Law of the Sea of 1982, signed by all the Member States of the Union and with the European Community as a party, is particularly important in this context

Each Member State shall take the necessary measures to ensure that the offences referred to in the Framework Decision are punishable by effective, proportionate and dissuasive criminal penalties.

The criminal penalties may be accompanied by other penalties or measures, in particular fines, or the disqualification for a natural person from engaging in an activity requiring official authorisation or approval, or founding, managing or directing a company or a foundation, where the facts having led to his or her conviction show an obvious risk that the same kind of criminal activity may be pursued again.

As regards sanctions against legal persons, each Member State shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive sanctions as criminal or non-criminal fines, or exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from engaging in commercial activities; placing under judicial supervision; a judicial winding-up order; or the obligation to adopt specific measures in order to eliminate the consequences of the offence which led to the liability of the legal person.

EU DRUGS STRATEGY 2005-2012

The Council is expected to agree on a new EU Drugs Strategy for the period 2005-2012 with a view to forwarding it to the European Council on 17 December 2004, for adoption. The framework and priorities established by the new Strategy are to serve as the basis for two consecutive four-year EU Action Plans on Drugs.

This new Drugs Strategy is based first and foremost on the fundamental principles of EU law and, in every regard, upholds the founding values of the Union: respect for human dignity, liberty, democracy, equality, solidarity, the rule of law and human rights. It aims to protect and improve the well-being of society and of the individual, to protect public health, to offer a high level of security for the general public and to take a balanced, integrated approach to the drugs problem.

The Strategy is also based on the relevant UN conventions (the UN Single Convention on Narcotic Drugs of 1954 as amended by the 1972 protocol, the Convention on Psychotropic Substances (1971) and the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)), which are major legal instruments for addressing the drugs problem. Furthermore, the UN General Assembly Special Session on Drugs of 1998 confirmed the importance of the integrated and balanced approach, in which supply reduction and demand reduction are mutually reinforcing elements in drugs policy.

The Strategy was drafted within the current legal framework of the EU and EC treaties and based on the respective competences of the Union, Community and individual Member States, with due regard to subsidiarity and proportionality. The Strategy also takes into account the future Constitution of the EU.

The drugs problem is experienced primarily at local and national level, but it is a global issue that needs to be addressed in a transnational context. In this regard, action carried out at EU level plays an important role. At an overall level, EU efforts are geared towards a coordination of all the actors involved. In the field of public health, the Community complements Member States' action in reducing drugs-related health damage, including information and prevention.

As for chemical precursors, which can be diverted into the manufacturing of illicit drugs, the EC legislation provides a framework for control of trade in precursors both within the Community and with third countries. With regard to money laundering, Community legislation sets out a number of measures to also prevent the laundering of drugs proceeds. Concerning justice and home affairs, cooperation between police, customs and judicial authorities is an essential element in preventing and combating drug trafficking. In this context, the adoption of the framework decision on drugs trafficking is a major step laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking. Finally, in the area of external relations the EU takes international action with a combination of political initiatives, like the action plans and dialogue on drugs with various regions of the world, as well as assistance through development programmes.

The aim of this European Union Strategy is to add value to national strategies while respecting the principles of subsidiarity and proportionality set out in the Treaties. This Strategy stresses that Member States should consider the impact of their national strategies on other Member States, the ways national strategies of different Member States can be mutually supportive, and the contributions such strategies can make towards achieving the objectives of this European Union Strategy. It is also intended to allow scope for local, regional, national and transnational dynamics and potentialities and to make optimal use of the resources available. Account is also taken of the organisational and financial constraints of Member States and EU institutions.

Finally, this Strategy builds on the EU Drugs Strategy 2000-2004 and Action Plan on Drugs 2000-2004 and has taken into consideration these texts as well as the Mid-Term Evaluation of the Action Plan, the Council's response to this Mid-Term Evaluation and the results of the Final Evaluation.

SPECIFIC PROCEDURE FOR ADMITTING THIRD-COUNTRY NATIONALS FOR PURPOSES OF SCIENTIFIC RESEARCH

The Council is expected to reach a general approach on the Directive on a specific procedure for admitting third-country nationals for purposes of scientific research.

The draft Directive lays down the conditions for the admission of third-country researchers to the Member States for more than three months for the purposes of carrying out a research project under a hosting agreement with a research organisation.

According to the draft text, a researcher holding a residence permit shall be entitled to equal treatment with nationals as regards:

- (a) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
- (b) working conditions, including pay and dismissal;
- (c) branches of social security as defined in Regulation EEC Regulation (EEC) No 1408/71 of the Council of 14 June 1971 (on the application of social security schemes to employed persons and their families moving within the Community);
- (d) tax benefits;
- (e) access to goods and services and the supply of goods and services made available to the public.

A third-country national who has been admitted as a researcher under the Directive will also be allowed to carry out part of his/her research in another Member State.

In order to attain the keystone objective of rendering European Union the most competitive and dynamic knowledge economy in the world, the Lisbon European Council in March 2000 has asked the Council and the Commission, together with the Member States where appropriate to take the necessary “steps to remove obstacles to the mobility of researchers in Europe by 2002 and to attract and retain high-quality research talent in Europe.” This desire was reiterated in the Council conclusions of 26 November 2002, which called on “the Member States, in collaboration with the Commission, to strengthen the actions being undertaken to develop the European research area, in particular by: facilitating or continuing to facilitate entry and residence for researchers from third countries.” This concern was also shared by the European Parliament, notably in its Report of 9 May 2000 and a Resolution of 18 May 2000.

It has been found that the European Union will need 700 000 additional researchers by 2010 if it is to achieve the objective set by the Barcelona European Council to devote 3% of the Member States’ GDP to research and technological development by the end of the decade. As it is unlikely that the European Union will be able to produce this considerable number of researchers itself, it will also be necessary to take measures to attract researchers from outside the Union.

In order to meet the aforementioned challenges the Commission has opted for an initiative composed by a proposal for a Directive and two proposals for Recommendations.

IMMIGRANT INTEGRATION POLICY IN THE EUROPEAN UNION

The Council is expected to adopt conclusions on the establishment of common basic principles for immigrant integration policy in the European Union.

It should be noted that integration has been included by the Dutch Presidency among the top priorities of its work programme in the area of immigration.

In order to achieve results in the specific field of integration, on which there is no Community competence, the Presidency submitted in September 2004 draft Conclusions, which have been extensively considered by COREPER.

It should be noted that the June 2003 Thessaloniki European Council requested to establish the definition of common basic principles, which form the basis of a common European framework on immigrant integration, taking into account the legal, political, economic, social and cultural diversity of Member States (conclusion 31). The Hague Programme, attached to the Conclusions of the European Council of Brussels of 4-5 November 2004, added to this importance aspects of integration which need to be included in the common basic principles

The Commission established in 2003 a net of National Contact Points on integration. The activities of these Contacts Points, which hold regular meetings and specific seminars on various issues relating to integration, has enabled the Commission to draft a Handbook on Best Practices on Integration, which is almost finalised. This Handbook was considered by the Ministerial Conference on Integration which took place in the Netherlands (Groeningen) on 9-11 November.

PASSAGE TO QUALIFIED MAJORITY VOTING AND CO-DECISION FOR CERTAIN AREAS OF TITLE IV OF THE TREATY

The Council is expected to adopt a Decision regarding the passage to qualified majority voting and co-decision as foreseen in chapter III paragraph 1.1.2 of the Hague programme adopted by the European Council on 5 November 2004.

Accordingly, the measures in the field of visas, asylum, immigration and other policies relating to the free movement of persons, as laid down in the provisions of Title IV of part three of the Treaty establishing the European Community, will be adopted by qualified majority at the Council and in co-decision with the European Parliament.

However, the European Council of 5 November decided that, pending the entry into force of the Treaty establishing a Constitution for Europe, the Council should continue to act unanimously after consulting the European Parliament for the adoption of measures in the field of legal migration of third-country nationals to and between Member States.
