

12894/02 (Presse 308)

PROVISIONAL VERSION

2455th Council meeting

- JUSTICE, HOME AFFAIRS AND CIVIL PROTECTION -

Luxembourg, 14/15 October 2002

Presidents : **Ms Lene ESPERSEN**, Minister for Justice,

Mr Bertel HAARDER, Minister for Refugees,
Immigration and Integration and Minister without
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12894/02 (Presse 308)

CONTENTS ¹

PARTICIPANTS.....5

ITEMS DEBATED

LEGAL AID.....8

COMBATING CORRUPTION IN THE PRIVATE SECTOR.....9

CONFISCATION OF CRIME-RELATED PROCEEDS, INSTRUMENTALITIES AND
PROPERTY.....10

SEXUAL EXPLOITATION OF CHILDREN AND CHILD PORNOGRAPHY11

MINIMUM PROVISIONS ON THE CONSTITUENT ELEMENTS OF CRIMINAL ACTS
AND PENALTIES IN THE FIELD OF DRUG TRAFFICKING.....12

MUTUAL RECOGNITION TO FINANCIAL PENALTIES13

INVESTIGATION AND PROSECUTION OF WAR CRIMES, GENOCIDE AND CRIMES
AGAINST HUMANITY.....14

EVALUATION OF THE LEGAL SYSTEMS AND THEIR IMPLEMENTATION AT
NATIONAL LEVEL IN THE FIGHT AGAINST TERRORISM15

PROCEDURE FOR SELECTING THE DIRECTORATE OF EUROPOL.....16

PLAN FOR THE MANAGEMENT OF THE EXTERNAL BORDERS AND PLAN FOR
THE FIGHT AGAINST ILLEGAL IMMIGRATION AND TRAFFICKING IN HUMAN
BEINGS.....17

MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING
AND WITHDRAWING REFUGEE STATUS - CONDITIONS OF ENTRY AND
RESIDENCE OF THIRD-COUNTRY NATIONALS FOR THE PURPOSES OF STUDIES
OR OTHER PURPOSES - OPEN DEBATE.....19

READMISSION AGREEMENTS.....20

¹

- *Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.*
- *The documents whose references are given in the text are available on the Council's Internet site <http://ue.eu.int>.*
- *Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the above mentioned Council Internet site or may be obtained from the Press Office.*

MEMBER STATES RESPONSIBLE FOR EXAMINING AN ASYLUM APPLICATION LODGED IN ONE OF THE MEMBER STATES BY A THIRD-COUNTRY NATIONAL	21
MINIMUM STANDARDS FOR THE QUALIFICATION AND STATUS OF THIRD- COUNTRY NATIONALS AND STATELESS PERSONS AS REFUGEES OR AS PERSONS WHO OTHERWISE NEED INTERNATIONAL PROTECTION	22
MINIMUM STANDARDS FOR THE RECEPTION OF ASYLUM SEEKERS IN MEMBER STATES	23
EU RETURN PROGRAMME ON AFGHANISTAN.....	23
STATUS OF THIRD-COUNTRY NATIONALS WHO ARE LONG-TERM RESIDENTS	24
INTEGRATION OF THIRD COUNTRY NATIONALS	25
STRENGTHENING OF THE PROCEDURES FOR PASSPORT CONTROL AT THE SCHENGEN AREA ENTRY POINTS	27
LIST OF SAFE THIRD COUNTRIES	27
<u>IN THE MARGINS OF THE COUNCIL</u>	28
CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES WITHIN THE COUNCIL.....	28
– DECLARATION BY THE MINISTERS OF JUSTICE AND HOME AFFAIRS OF THE MEMBER STATES OF THE EU ON ASYLUM.....	28
MEETING WITH THE CANDIDATE COUNTRIES	29
– SCHENGEN AND THE ENLARGEMENT.....	29
– MUTUAL RECOGNITION OF JUDICIAL DECISIONS IN CRIMINAL MATTERS	30
– PROTECTION OF COMMERCIAL DRIVERS AGAINST VIOLENT ASSAULTS - JOINT DECLARATION	31

ITEMS APPROVED WITHOUT DEBATE

JUSTICE, HOME AFFAIRS AND CIVIL PROTECTION

– Electronic exchange of information between Member States - Council Conclusions	I
– Inclusion of candidate countries in projects of the Plan for the Management of external borders	II
– Presentation of the 2001 accounts of Sirene Phase II/Helpdesk and SISNET	II
– Data protection reports: Canada, Slovak Republic, Bulgaria and Lithuania.....	II
– Declassifying certain parts of the SIRENE Manual.....	II

EXTERNAL RELATIONS

– EUPM - Participation of Third States	III
--	-----

- European Economic Area - Participation in the Community eco-management and audit schemeIII
- European Economic Area - Orphan medicinal products.....III
- European Economic Area - Statistics.....IV

ECOFIN

- Financial regulation applicable to the general budget.....IV

TRADE

- Textiles - Negotiations on the renewal of agreements with Cambodia and Nepal.....IV
- Anti-dumping - Imports of urea and ammonium nitrate solutions originating in PolandIV

PARTICIPANTS

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

Belgium:

Mr Antoine DUQUESNE

Minister for the Interior

Denmark:

Ms Lene ESPERSEN

Minister for Justice

Mr Bertel HAARDER

Minister for Refugees, Immigration and Integration and Minister without portfolio with responsibility for European Affairs

Germany:

Mr Otto SCHILY

Federal Minister for the Interior

Mr Hansjörg GEIGER

State Secretary, Federal Ministry of Justice

Greece:

Mr Michalis CHRISOCHOÏDIS

Minister for Public Order

Spain:

Mr Ángel ACEBES PANIAGUA

Minister for the Interior

Mr José Maria MICHAVILA NÚÑEZ

Minister for Justice

France:

Mr Nicolas SARKOZY

Minister for the Interior, Internal Security and Local Freedoms
Keeper of the Seals, Minister for Justice

Mr Dominique PERBEN

Ireland:

Mr Michael McDOWELL

Minister for Justice

Italy:

Mr Roberto CASTELLI

Minister for Justice

Mr Giuseppe PISANU

Minister for the Interior

Luxembourg:

Mr Luc FRIEDEN

Minister for Justice, Minister for the Treasury and the Budget

Netherlands:

Mr Jan Piet Hein DONNER

Minister for Justice

Mr Rob HESSING

State Secretary for the Interior and Overseas Territories (Law and Order and Security)

Austria:

Mr Ernst STRASSER

Federal Minister for the Interior

Portugal:

Mr Antonio FIGUEIREDO LOPES

Minister for the Interior

Mr João MOTA DE CAMPOS

State Secretary to the Minister for Justice

Finland:

Mr Johannes KOSKINEN

Minister for Justice

Sweden:

Mr Thomas BODSTRÖM

Minister for Justice

United Kingdom:

Lord FILKIN

Parliamentary Under-Secretary of State, Home Office

Mr David BLUNKETT

Home Secretary

Baroness SCOTLAND of ASHTAL

Parliamentary Secretary, Lord Chancellor's Department

* * *

Commission :

Mr António VITORINO

Member

* * *

Participants of the Candidate Countries :

Bulgaria :

Mr Anton STANKOV
Mr Georgi PETKANOV

Minister of Justice
Minister of the Interior

Cyprus :

Mr Lazaros SAVIDES
Mr Kyriakos TRIANDAFILIDES

Permanent Secretary, Ministry of Justice and Public Order
Permanent Secretary, Ministry of the Interior

Czech Republic :

Mr Jaroslav BURES

Minister of Justice

Estonia :

Mr Ain SEPPIK

Minister of Internal Affairs

Hungary :

Mr László FELKAI

State Secretary for the Interior

Latvia :

Mrs Ingrida LABUCKA
Mr Mareks SEGLINŠ

Minister of Justice
Minister of the Interior

Lithuania :

Mr Vytautas MARKEVICIUS
Mr Juozas BERNATONIS

Minister of Justice
Minister of the Interior

Malta :

Mr Austin GATT
Mr Tonio BORG

Minister of Justice
Minister for Home Affairs

Poland :

Mr Sylwester M. KRÓLAK
Mr Zenon KOSINIAK-KAMYŚ

Under-Secretary of State, Ministry of Justice
Under-Secretary of State at the Ministry of the Interior and
Administration

Romania :

Ms Rodica STANOIU
Mr Alexandru FARCAS

Minister of Justice
State Secretary for the Interior

Slovak Republic :

Mr Ján ČARNOGURSKÝ

Minister of Justice

Slovenia :

Mr Ivo BIZJAK
Mr Rado BOHINC

Minister of Justice
Minister of the Interior

Turkey :

Mr Rüstü Kazim YÜCELEN

Minister of the Interior

* * *

Other participants:

Mrs Carla DEL PONTE

Chief Prosecutor of the International Criminal Tribunal for the
Former Yugoslavia

At the beginning of the Council session, the Presidency expressed its deepest concern over the terrible attack in Bali which has caused the death of innocent people.

The Presidency also expressed its deep concern over the bomb attack in Finland.

The Presidency expressed its profound sympathy with the Governments of Finland and Indonesia and with the people who have suffered from these horrible attacks.

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At lunch, Ministers met the Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia, (ICTY), Mrs Carla DEL PONTE.

Mrs Carla DEL PONTE updated Ministers on the work of the Prosecutor's Office in the two international Tribunals, the ICTY and the ICTR (International Criminal Tribunal for Rwanda).

The Ministers appreciated the good work that has been done so far by the Prosecutor's Office, and considered that it was of the utmost importance to strengthen co-operation between the Tribunal and Member States of the European Union.

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ITEMS DEBATED

LEGAL AID

The Council reached a political agreement on a Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

The Council mandated the appropriate fora of the Council to resolve the remaining technical issues of the Directive, with a view to adopt it at a forthcoming meeting of the Council.

The Directive shall apply, in cross-border disputes, to civil and commercial matters whatever the nature of the court of tribunal. It shall not extend, in particular, to revenue, customs or administrative matters. Legal aid is considered to be appropriate when it guarantees :

- a) pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings;
- b) legal assistance and representation in court, and exemption from, or assistance with, the cost of proceedings of the recipient, including the costs referred to in Article 5 and the fees to persons mandated by the court to perform acts during the proceedings.

Member States shall grant legal aid to persons who are unable to meet the costs of proceedings as a result of their economic situation, in order to ensure their effective access to justice.

Member States may provide that legal aid applications for actions which appear to be manifestly unfounded may be rejected by the competent authorities. If pre-litigation is offered, the benefit of further legal aid may be refused or cancelled on grounds related to the merits of the case insofar as access to justice is guaranteed.

The United Kingdom and Ireland have given notice of their wish to take part in the adoption and the application of the Directive. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of the Directive and is not bound by it or subject to its application.

COMBATING CORRUPTION IN THE PRIVATE SECTOR

The Council had a deep discussion on a draft Framework Decision on combatting corruption in the private sector.

Following the debate, the Council decided to instruct the Permanent Representatives Committee to further examining the draft Framework Decision.

It is recalled that the aim of this Framework Decision is in particular to ensure that both active and passive corruption in the private sector is a criminal offence in all Member States, that legal persons may also be held responsible for such offences, and that the offences incur effective, proportionate and dissuasive penalties.

According to the draft text, Member States should take the necessary measures to ensure that the following intentional conduct constitutes a criminal offence, when it is carried out in the course of business activities:

- (a) promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity, an undue advantage of any kind, for that person or for a third party, in order that the person should perform or refrain from performing any act, in breach of that person's duties;
- (b) directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties.

Member States will take the necessary measures to ensure that the conduct referred above is punishable by a penalty of a maximum of at least between 1 and 3 years of imprisonment.

CONFISCATION OF CRIME-RELATED PROCEEDS, INSTRUMENTALITIES AND PROPERTY

The Council held a discussion on some key questions identified by the Presidency relating to the proposal for a Council Framework Decision on confiscation of crime-related proceeds, instrumentalities and property.

Ministers focused particularly the debate on the question whether powers of confiscation should be extended to the offender's property which does not result from the crime for which the offender was convicted.

Following the debate, the Council concluded that the extension of the powers of confiscation should be limited to certain specific limited infractions and only in cases where a court had based on the facts established finds that the property has been acquired illegitimately or by illegitimate means.

The Council confirmed that, as a matter of principle, the extension of powers of confiscation has to respect the fundamental rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Council instructed its competent bodies to continue discussions on the basis of the Council's discussion.

SEXUAL EXPLOITATION OF CHILDREN AND CHILD PORNOGRAPHY

The Council, pending to some parliamentary scrutiny reservations, reached a political agreement on a Framework Decision on combating the sexual exploitation of children and child pornography.

According to the Framework Decision, each Member State will take the necessary Each Member State shall take the necessary measures to ensure that the following intentional conduct is punishable:

- (a) coercing a child into prostitution or into participating in pornographic performances, or profiting from or otherwise exploiting a child for such purposes;
- (b) recruiting a child into prostitution or into participating in pornographic performances;
- (c) engaging in sexual activities with a child, where
 - (i) use is made of coercion, force or threats,
 - (ii) money or other forms of remuneration or consideration is given as payment in exchange for the child engaging in sexual activities, or
 - (iii) abuse is made of a recognised position of trust, authority or influence over the child.

In respect of offences concerning child pornography, each Member State shall take the necessary measures to ensure that the following intentional conduct, whether undertaken by means of a computer system or not, when committed without right is punishable:

- (a) production of child pornography;
- (b) distribution, dissemination or transmission of child pornography;
- (c) supplying or making available child pornography;
- (d) acquisition or possession of child pornography.

The Council will formally adopt the text of the Framework Decision in a forthcoming session once the parliamentary reservations have been lifted and the text would be edited by the legal linguists Working Party.

MINIMUM PROVISIONS ON THE CONSTITUENT ELEMENTS OF CRIMINAL ACTS AND PENALTIES IN THE FIELD OF DRUG TRAFFICKING

The Council examined a proposal for a Framework Decision on the minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking.

The Council focused its examination on the issue of penalties (Article 4 of the proposal) and noted that, subject to a number of scrutiny reservations, the compromise text tabled by the Presidency has been welcomed as a basis for reaching an agreement at a forthcoming session of the Council.

It is recalled that this proposal is aimed at punishing non legitimate production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery, brokerage, dispatch, importation or exportation of drugs with maximum penalties of at least between 1 and 3 years of imprisonment. A maximum of at least between 5 and 10 years of imprisonment is foreseen for cultivating drugs for drug production, possessing or purchasing drugs for conducting any of the activities described above or and the manufacture, transport or distribution of precursors in circumstances where the offence involves large quantities of drugs or either involves those drugs which cause the most harm to health or has resulted in significant damage to the health of a number of persons.

MUTUAL RECOGNITION TO FINANCIAL PENALTIES

The Council held an orientation debate on certain key questions identified by the Presidency concerning the draft Council Framework Decision on the application of the principle of mutual recognition to financial penalties.

The debate focused on definitions, fundamental rights, the principle of double criminality and time limitation, as well as the level of the financial penalty.

Following the debate, the Council agreed on the definitions of the proposal (Article 1): "decision", "financial penalty", "issuing State" and "executing State".

The Council also confirmed that the Framework Decision would not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Concerning the principle of double criminality, the Council was of the view that, while expressing support to the Presidency's text, further clarification was needed before reaching an agreement on this issue.

Finally, the Council instructed its relevant bodies/instances of the Council to continue the work on the draft Framework Decision, with a view to reaching political agreement in a forthcoming session of the Council.

INVESTIGATION AND PROSECUTION OF WAR CRIMES, GENOCIDE AND CRIMES AGAINST HUMANITY

The Council, pending the lifting of some parliamentary scrutiny reservations and the opinion of the European Parliament, agreed on a general approach on a Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes.

The aim of this Decision is to increase co-operation between national units in order to maximise the ability of law enforcement authorities in different Member States to co-operate effectively in the field of investigation and prosecution of persons who have committed or participated in the commission of genocide, crimes against humanity or war crimes.

According to the Decision, the competent authorities of the Member States must ensure that, once they receive information that a person who has applied for a residence permit is suspected of having committed or participated in the commission of genocide, crimes against humanity or war crimes, the relevant acts may be investigated, and, where justified, prosecuted in accordance with national law.

EVALUATION OF THE LEGAL SYSTEMS AND THEIR IMPLEMENTATION AT NATIONAL LEVEL IN THE FIGHT AGAINST TERRORISM

The Council, subject to some parliamentary reservations, reached a political agreement on a Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism.

The Decision establishes a mechanism for peer evaluation of the national arrangements in the fight against terrorism within the framework of international cooperation between Member States.

Each Member State shall undertake to ensure that its national authorities cooperate closely with the evaluation teams set up under this Decision with a view to its implementation, with due regard for the rules of law and ethics applicable at national level.

Once the parliamentary reservations have been lifted, the Council will formally adopt the Decision at a forthcoming session.

PROCEDURE FOR SELECTING THE DIRECTORATE OF EUROPOL

The Council agreed on a procedure for selecting members of the directorate of Europol.

The selection procedure consists in a completely open system of recruitment for the post of both the Director and the Deputy Directors of Europol. The selection procedure shall fully respect the principles enshrined in Article 24(1) of the Staff Regulations.

This means in practice, that the Management Board will draw up a profile for the position and have it published in all the Member States via the Official Journal of the European Community, in national newspapers and specialised periodicals, inviting candidates to put forward their applications.

Europol will inform the National Units of the Member States of a vacancy for the post of Director or Deputy Director, as well as of the candidates that have put in an application. Member States may, through the National Units or otherwise, forward an advice regarding the applicants to the Management Board. As part of the admissibility procedure evidence shall have to be provided through documentation issued by the Member States concerned, that candidates comply with the appropriate character references as to the suitability for the performance of the vacant function.

After that, the Management Board shall set up a Committee that, on basis of professional qualifications and experience makes an initial assessment. The Committee shall interview the candidates and shall draw up a report for the Management Board.

On basis of the report of the Committee, the Management Board transmits to the Council the full list of the candidates, indicating among them a short-list of suitable candidates together with the full file of each of those candidates.

The Council takes the decision by unanimity, on the basis of all relevant information.

PLAN FOR THE MANAGEMENT OF THE EXTERNAL BORDERS AND PLAN FOR THE FIGHT AGAINST ILLEGAL IMMIGRATION AND TRAFFICKING IN HUMAN BEINGS

The Council took note of a Presidency's status report on the follow-up on the Plan for the management of the external borders and the comprehensive plan to combat illegal immigration (doc.12931/02).

The Council particularly welcomed the projects which had been adopted or discussed by the Strategic Committee on Immigration, Frontiers and Asylum, with the participation of the Heads of border control services (SCIFA +) in the Framework of the Plan for the Management of the external borders.

The Council also held a deep debate on the implementation of the Seville European Council concerning the prevention and combating illegal immigration and trafficking in human beings and agreed that concrete measures should be taken in this area.

Following the debate, the Council adopted these conclusions :

"The European Council in Seville placed the question of preventing and combating illegal migration and trafficking in human beings among the top priorities of the European Union. The human tragedies which have happened in Dover, in Porto Empedocle and most recently in Scoglitti (Sicily) and on the coasts of Andalusia and the Canary Islands, only reinforce the need for urgent action. The rapid implementation of concrete measures that strengthen control at land, sea and air borders is of crucial importance.

The Council welcomes the actions started in accordance with the Seville conclusions, notes with satisfaction the status report of the Presidency regarding the follow-up to the plan for the management of the external borders and the comprehensive plan to combat illegal immigration, and calls for a efficient and urgent implementation of the Seville conclusions and the above-mentioned action plans, leading to concrete and operational results.

The Council asks Coreper and SCIFA + to ensure overview and monitoring of the projects launched and to consider targeted initiatives presented by Member States to enhance operational capabilities in all situations where urgent action is required. The Council also invites the Commission to continue to highly prioritise the combating of illegal migration in an integrated, comprehensive and balanced way.

Addressing illegal migration effectively requires adequate financial resources to be allocated within the Community budget and within national budgets of Member States. In this respect the Council underlines the importance of the invitation to the Commission to submit by late October 2002 a report on the effectiveness of the financial resources available at Community level

- for repatriation of illegal immigrants and rejected asylum seekers,
- for management of the external borders and
- for asylum and migration projects in third countries, including technical and financial assistance to enhance their operational capabilities in particular in order to conclude readmission agreements.

After assessing this report the Council will decide on the necessary steps to be taken. A combined action of the European Community and of Member States in the fight against illegal immigration will be much more cost-effective than providing support to a growing number of illegal immigrants.

The Council highlights in accordance with the Seville conclusions the importance of co-operation with third countries for the prevention and combating of illegal migration and trafficking in human beings, and invites the Commission to carry forward the negotiations for readmission agreements.

The Council will return to this matter at its next meeting with a view to implementing specific action in accordance with the Seville conclusions.

In the beginning of December 2002, the Presidency will report on the status of the implementation of the Seville conclusions."

MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS - CONDITIONS OF ENTRY AND RESIDENCE OF THIRD-COUNTRY NATIONALS FOR THE PURPOSES OF STUDIES OR OTHER PURPOSES - OPEN DEBATE

The Council held an open debate concerning, on the one hand the amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, and on the other hand, a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of studies or other purposes.

Following the debate, the Council instructed its relevant bodies to start the examination of these two proposals in order to allow an early adoption.

It is recalled that, on 24 October 2000, the Commission lodged a proposal on asylum procedure. The objective was to introduce a minimum level of harmonisation concerning procedural rules in the Member States. On 6 December 2001, the Council adopted conclusions inviting the Commission to draft an amended proposal. This invitation was reiterated by the Laeken European Council. The amended proposal sets out a different structure for asylum procedures and introduces a number of amendments concerning guarantees, classification of procedures, inadmissibility and appeals.

Concerning the second item discussed, the very recent Commission proposal for a Council Directive is the last legal instrument, as outlined in its Scoreboard, that the Commission intends to present with a view to implementing the Conclusions of the Tampere European Council.

With regard to already submitted proposals in this context aiming at creating a general legal framework for conditions for entry and residence of third-country nationals in the territory of the Member States of the EU, the objective of this new proposal is more limited, insofar as it will regulate some specific cases - studies, vocational training and voluntary sector - which are not covered by the above-mentioned proposals.

READMISSION AGREEMENTS

The Council had an exchange of views on the basis of the information provided by the Commission concerning the state of play of the readmission agreements which are currently being negotiated, as well as the mandates for new such agreements that it is drafting and should submit, in the near future, to the Council for adoption.

Given that readmission agreements have proven to be an extremely useful and efficient instrument in the fight against illegal immigration and in the perspective of developing a common strategy and approach at EU level against this phenomenon, the Council will rediscuss this item at the next JHA Council meeting in November.

**MEMBER STATES RESPONSIBLE FOR EXAMINING AN ASYLUM APPLICATION
LODGED IN ONE OF THE MEMBER STATES BY A THIRD-COUNTRY NATIONAL**

The Council held a discussion on the proposal for a Regulation establishing the criteria and mechanisms for determining the Member States responsible for examining an asylum application lodged in one of the Member States by a third-country national.

The debate focused on the hierarchy of criteria obliging a Member State the responsibility to examine the application of an asylum seeker who has irregularly crossed the border into a Member State, the cases where this asylum seeker has been previously living for a certain period in another Member State, and the difficulties linked to different time-limits set out by the Regulation with regard to determine the competent Member State or the transfer of an asylum seeker to this Member State.

Following the discussion, the Council charged the Permanent Representatives Committee to pursue work in order to allow an agreement at the next JHA Council on 28/29 November.

It is recalled that the proposal aims to bring within the community framework the Dublin Convention of 15 June 1990. The proposed Regulation takes up the fundamental principles which assure asylum seekers that there will always be a competent Member State to examine their application, whilst avoiding multiple asylum applications. The responsibility generally lies with a Member State which played the greatest part in the applicant's entry into or residence on the territories of the Member States.

The proposal put forward by the Commission defines new criteria which emphasize the obligation of the Member States to fight effectively against the development of illegal immigration and new provisions which give family unity an autonomous and compulsory value. As regards mechanisms implemented, the procedure deadlines envisaged are much shorter and appeals against transfer to the responsible Member States will no longer suspend such a transfer.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the treaty on European Union and to the treaty establishing the European Community, Denmark is not participating in the adoption of this proposal and is therefore not bound by it nor subject to its application.

MINIMUM STANDARDS FOR THE QUALIFICATION AND STATUS OF THIRD-COUNTRY NATIONALS AND STATELESS PERSONS AS REFUGEES OR AS PERSONS WHO OTHERWISE NEED INTERNATIONAL PROTECTION

The Council discussed a number of still outstanding questions concerning the proposal for a Council Directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection.

Discussions focused in particular on the provisions of subsidiary protection.

The Council charged its competent bodies to pursue work in order to allow an adoption of the proposal on its JHA meeting in November.

It is recalled that the purpose of this Directive is to provide a framework for an international protection regime, based on existing international and Community obligations and current Member States practice, and separated into the two complementary categories of refugee and subsidiary protection in order to maintain the primacy of the Geneva Convention in such a regime. It lays down minimum standards for the qualification and subsequent status of third country nationals and stateless persons who fall into these categories but does not legislate for persons whom Member States chose to grant a status on strictly humanitarian or compassionate grounds.

MINIMUM STANDARDS FOR THE RECEPTION OF ASYLUM SEEKERS IN MEMBER STATES

The Council examined the proposal for a Council Directive laying down minimum standards for the reception of asylum seekers in Member States.

The discussion focused on the question of the access of asylum seekers to the labour market. The Council agreed to come back to this item at its next meeting in November with a view to adopting the Directive.

EU RETURN PROGRAMME ON AFGHANISTAN

The Council took note of the Presidency's amended EU return programme for Afghanistan and instructed the Permanent Representatives Committee to further examine it with a view to adopting the programme at the next JHA Council in November.

STATUS OF THIRD-COUNTRY NATIONALS WHO ARE LONG-TERM RESIDENTS

The Council held a debate on some outstanding questions concerning the Directive on the status of third-country nationals who are long-term residents.

The questions examined referred to the inclusion of refugees in the scope of the Directive, the duration of residence in a Member State that is required with a view to acquiring status as long-term resident, the integration of third-country nationals and the mobility of long-term residents.

Following the debate, a large majority of delegations was of the view that refugees should be covered by the Directive, but in a separate chapter. Broad agreement was expressed by all delegations except one, in the time-period of 5 years for acquiring permanent resident status. As regards the question of integration, a large majority of delegations favoured that Member States could set as a condition for acquiring long-term resident status that the third-country national comply with integration measures in accordance with national law. Finally, delegations agreed that the Directive should regulate and facilitate, subject to certain conditions, the mobility of the persons who have acquired the long-term resident status from the Member State which has granted it to another Member State.

The Council instructed its relevant bodies to further examine the proposal of Directive and agreed to consider it at one of its next sessions.

INTEGRATION OF THIRD COUNTRY NATIONALS

The Council approved the following Conclusions:

- "1. The Council takes note that the European Council at several occasions has drawn the attention to the importance of EU co-operation regarding integration of third country nationals with a legal stay in the Member States.
1. The Council notes that it is stated in the conclusions from the European Council meeting in Tampere, October 1999, that a more vigorous integration policy should aim at granting third country nationals rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.
 2. Furthermore, the Council notes that the European Council in Nice, December 2000, endorsed the European Social Agenda where it is stated that a policy to fight poverty and social exclusion must be accompanied too by action to ensure equal treatment for all third country nationals residing lawfully on Union territory. It was further stated in the Social Agenda that the EU should develop exchanges of experience on national integration policies.
 3. Finally, the Council takes note that the European Council in Seville, June 2002, underlined that the joint management of migration flows must strike a fair balance between, on the one hand, an integration policy for lawfully resident immigrants and an asylum policy complying with international conventions, and, on the other hand, resolute action to combat illegal immigration and trafficking in human beings.
 4. The Council considers integration of third country nationals legally staying in the Member States as an important element in the establishment of a European asylum and immigration policy, which could include integration requirements. In this regard the Commission has put forward several proposals regarding rights and obligations for third country nationals with a legal stay.
 5. The Council finds it important that national integration policies should seek to approximate rights and obligations of the person involved, in particular long-term residents, to those of EU Member States own citizens in order to ensure the possibility of an actual participation in all aspects of the economic, social, cultural and civil life in the host country.
 6. The Council underlines the importance of the continued effort against discrimination and xenophobia.
 7. The Council stresses that newly arrived immigrants should have quick and appropriate access to information on their host society and language courses should be established in accordance with national law.

8. The Council also finds it important that national systems encourage an active participation of third country nationals in community life and on the labour market in accordance with national law. Integration policies of Member States imply concerted action by governments, regional and local authorities, migrant and non-governmental organisations, the social partners and civil society.
9. The Council attaches great importance to the promotion of the exchange of information between Member States concerning valuable experiences and national policies on integration. This exchange of information could lead to the gradual drafting of best practices regarding integration of third country nationals legally staying in Member States.
10. In this context the Council encourages the establishment of national contact points in the Member States in order to facilitate an efficient contact between a network of authorities responsible for integration issues in the Member States.
11. The Council also emphasises the importance of the initiation of bilateral integration projects within the EU. In this respect it must be examined whether such projects and initiatives can take place on the basis of Community financing.
12. The Council notes with interest that the Commission is intending to issue a communication on the integration of third country nationals legally staying in Member States. Such a communication could form the basis of further Council deliberations on this topic."

STRENGTHENING OF THE PROCEDURES FOR PASSPORT CONTROL AT THE SCHENGEN AREA ENTRY POINTS

The Council had an exchange of views on the procedures for passport control at the Schengen area entry points and invited the competent bodies of the Council to pursue its examination. In this context, they will also discuss questions about a modification of the Schengen handbook and harmonisation of national procedures.

LIST OF SAFE THIRD COUNTRIES

The Council took note of the request of the Austrian delegation to establish a common European list of safe third countries for asylum purposes. Asylum claims from nationals of these countries would automatically be rejected.

The Council invited the Commission to consider this item and to report back to the Council as soon as possible.

IN THE MARGINS OF THE COUNCIL

CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES WITHIN THE COUNCIL

– ***DECLARATION BY THE MINISTERS OF JUSTICE AND HOME AFFAIRS OF THE MEMBER STATES OF THE EU ON ASYLUM***

"We, the Ministers of Justice and Home Affairs of the Member States of the European Union, having met in Luxembourg on 15 October 2002,

Whereas:

The negotiations with the Candidate States with which negotiations on accession to the European Union have been initiated have made considerable progress, in particular in the field of justice and home affairs;

Upon accession, those Candidate States will become bound by the Protocol on asylum for nationals of Member States of the European Union, annexed by the Treaty of Amsterdam to the Treaty establishing the European Community;

In the meantime, the Member States are resolved, as from the day of signature of accession treaties, to deal with applications for asylum lodged by nationals of those Candidate States, on the basis of the presumption that they are manifestly unfounded;

The exercise of any decision-making power of each individual Member State in asylum matters will take place with due respect of obligations under international law, and in particular obligations under the Geneva Convention relating to the status of refugees and the European Convention for the Protection of Human Rights and Fundamental Freedoms;

Declare the following:

Given the level of protection of fundamental rights and freedoms by the Candidate States, Member States agree to the presumption that Candidate States with which an accession treaty is being negotiated are safe countries of origin for all legal and practical purposes in relation to asylum matters, as from the date of signature of such accession treaty.

Accordingly, any application for asylum of a national of any such Candidate State shall be dealt with on the basis of the presumption that it is manifestly unfounded, without affecting in any way, whatever the cases may be, the decision-making power of the Member State concerned."

MEETING WITH THE CANDIDATE COUNTRIES

Justice and Home Affairs Ministers from the EU Member States and from the Candidate Countries met on 14 October 2002 with a view to address subjects of high importance for the establishment of a European area of freedom, security and justice.

The subjects for discussion were the following :

- Schengen and the Enlargement
- Mutual recognition of judicial decisions in criminal matters
- Joint Action on the protection of commercial drivers against violent assaults.

– ***SCHENGEN AND THE ENLARGEMENT***

The Member States of the European Union and the Candidate Countries exchanged views on the introduction of guidelines for the process leading to the implementation and application of the full Schengen acquis in the new member states. In this respect, the Candidate Countries addressed the state-of-play as to the preparation for the implementation of the Schengen Action Plans as well as for specific aspects to be taken into account in the guidelines.

It is recalled that the Presidency has proposed at the informal JHA Ministerial Meeting on 13-14 September 2002 to draw up guidelines for the process leading to the implementation and application of the full Schengen acquis in the new Member States following the enlargement of the European Union. The guidelines should include a general description of the evaluation procedure for new member states including information on the order of events of the Schengen evaluations as well as practical and procedural aspects of the evaluation.

There was general support to the initiative and it was agreed to approve the guidelines in the JHA Council on 28-29 November 2002 and subsequently handed over to the Candidate Countries.

– ***MUTUAL RECOGNITION OF JUDICIAL DECISIONS IN CRIMINAL MATTERS***

The Ministers of the European Union and the Candidate Countries held a discussion on how to facilitate the implementation and application of the EU acquis on Justice and Home Affairs against the background of necessary and on-going efforts to make the judicial systems of the Candidate Countries functioning more smoothly. In particular, the debate focused on how the Candidate Countries would implement and apply the principle of mutual recognition of decisions in criminal matters.

It is recalled that, as regards the chapter on Justice and Home Affairs (chapter 24), the accession negotiations have been provisionally closed with a large number of Candidate Countries. It is nevertheless of the highest importance to keep focusing on the implementation of the EU acquis on Justice and Home Affairs by all Candidate Countries.

The Candidate Countries should continue the reforming of their legal systems and their judicial systems in order to implement and apply not only the EU acquis on Justice and Home Affairs as already adopted but also the new legislation on Justice and Home Affairs, which is to be adopted in the period from now until the accession date.

– ***PROTECTION OF COMMERCIAL DRIVERS AGAINST VIOLENT ASSAULTS - JOINT DECLARATION***

Following an exchange of views, the EU Ministers of Justice and Home Affairs and their colleagues from the Candidate Countries, in association with the Commission, adopted the following joint declaration :

"We, the Ministers of Justice and Home Affairs of the Member States of the European Union in association with the European Commission, and we, the Ministers of Justice and Home Affairs of Bulgaria, Cyprus, the Czech Republic, Slovakia, Slovenia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania and Turkey, the former hereinafter referred to as Member States of the European Union and the latter referred to as the Candidate Countries, having met in Luxembourg on 14 October 2001,

WHEREAS

- (1) Providing our citizens with a high level of safety by developing common action to prevent and to combat crime, organised or otherwise, is a shared objective of our countries.
- (2) One of the most important tasks of actors in this area, including law enforcement authorities and crime prevention units in all European countries is to protect and safeguard all exposed groups in society and the position of such groups should be paid special heed by the authorities.
- (3) Vehicles engaged in export trade are an easy target for property crime in the eyes of many criminal organisations owing to the high-value goods which they often carry and the low level of manning and protection which they usually enjoy.
- (4) Commercial drivers engaged in export trade do in terms of the risk of falling victim to serious crime form an exposed group whose security requires special precautions.
- (5) Trade and transportation between the countries of Europe is of the highest importance in securing the economic and political development in the region.
- (6) The security of commercial drivers engaged in export trade is a shared concern of Member States and Candidate Countries and an adequate level of security for drivers requires that the problems be uniformly addressed by Member States and Candidate Countries owing to the transnational nature of the export trade.

EXPRESS OUR DETERMINATION TO:

1. Ensure that appropriate measures are taken so that commercial drivers engaged in export trade do not fall victims of organised crime;
2. Ensure that the necessary protection against organised property crime and violent assaults is provided to this group;

3. Raise awareness of the development in these types of crimes and as appropriate conduct national or international surveys in order to map the incidents of crime directed at commercial drivers engaged in export trade and investigate the nature and scale of the problem and the background to it in their respective countries;
4. Initiate the appropriate measures to fight these types of crimes and – based on the estimated nature and scale of the problem and the outcome of conducted surveys – particularly consider the need to
 - a. improve security on sections of road and parking sites generally and especially in the problem areas identified, including by stepping up the presence and visibility of law enforcement officials on the relevant roads and sites;
 - b. undertake specific crime prevention initiatives in this area, as appropriate, but in particular by increasing the involvement of the relevant law enforcement authorities in the location and design of safe sites, in conjunction with increasing the number of supervised parking sites manned around the clock;
 - c. keep central statistics on reports, charges and convictions with regard to violent attacks on drivers in order to continuously make actions in this field more targeted and effective;
 - d. take further steps to ensure that law enforcement authorities are alert to any links between attacks in several countries and in that connection, in accordance with national law, and existing international agreements exchange information as widely as possible with the relevant authorities in other countries and generally step up cross-border cooperation to prevent and tackle the problem."

ITEMS APPROVED WITHOUT DEBATE

JUSTICE, HOME AFFAIRS AND CIVIL PROTECTION

Electronic exchange of information between Member States - Council Conclusions

The Council adopted the following conclusions on electronic exchange of information between law enforcement authorities of the Member States :

- "In order to facilitate the operational police co-operation, the Council recognises the need to consider the adoption of a legally binding instrument on electronic exchange of information between law enforcement authorities of the Member States.
- When relevant within the framework of a criminal investigation, a Member State in accordance with national law and relevant international instruments should be able to ask other Member States by electronic means if relevant information is available.
- An examination should be conducted with a view to clarify legal, operational, financial and technical aspects of electronic exchange of information between law enforcement authorities of the Member States.
- Denmark will carry out and finance the examination.
 - The examination could, inter alia, include the following elements:
 - The technical aspects of setting up a hit/no-hit system whereby Member States can inquire whether relevant information is available or not.
 - The need for the electronic query to concern types of information already being exchanged within the framework of police co-operation.
 - The need for appointing or designating already existing contact points responsible for communication of information between law enforcement authorities of Member States.
 - The need for the requested Member State to reply within a certain time limit.
 - The designation of an already existing system of electronic exchange of information between law enforcement authorities of Member States, e.g. within the framework of the Schengen co-operation, Europol and Interpol.
 - The need to limit it to serious crimes."

Inclusion of candidate countries in projects of the Plan for the Management of external borders

(Doc 12765/02)

The Council approved that Candidate Countries should be considered for participation in all relevant programmes concerning the Plan for the Management of the external borders of Member States of the European Union.

Recognition and enforcement of judgments in civil and commercial matters

The Council adopted a Recommendation for a Council Decision authorising the Commission to open negotiations for the adoption of a Convention between the Community and Denmark, of the one part, and Iceland, Norway, Switzerland and Poland, of the other, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to replace the Lugano Convention of 16 September 1998.

At present all Community Member States, as well as Iceland, Norway, Poland and Switzerland, are bound by the Lugano Convention. The purpose of the new Convention would be to establish rules which are to a substantial degree identical to those ensuing from Regulation No 44/2001, which contains internal rules governing the jurisdiction of courts in civil and commercial matters and rules on the recognition and enforcement of judgments.

Presentation of the 2001 accounts of Sirene Phase II/Helpdesk and SISNET

The Member States meeting within the Council discharged, respectively, the Secretary-General and the Deputy Secretary-General in respect of execution of the 2001 budgets for Sirene Phase II/Helpdesk and SISNET.

Data protection reports: Canada, Slovak Republic, Bulgaria and Lithuania

The Council decided that, on the basis of the data protection reports submitted by the EUROPOL management board, the Director of Europol may enter into negotiations with Canada, the Slovak Republic, Bulgaria and Lithuania on agreements including the transmission of personal data by EUROPOL.

Declassifying certain parts of the SIRENE Manual

The Council adopted a Decision on declassifying parts of the SIRENE Manual. Those parts shall be published in the Official Journal of the European Community.

EXTERNAL RELATIONS

EUPM - Participation of Third States

The Council authorised the Presidency to open negotiations with Third States contributing seconded personnel to the European Police Mission (EUPM) in Bosnia and Herzegovina and to conclude agreements with these Third States on the basis of a draft standard Agreement. The opening up of the EUPM follows from Joint Action 2002/210/CFSP of 11 March 2002 on the EUPM.

The Joint Action provides that non-EU European NATO members, States which are candidates for accession to the European Union and non-EU OSCE Member States, which are currently providing staff to the United Nations International Police Task Force in Bosnia and Herzegovina, are invited to contribute to the EUPM on the basis that they bear the cost of sending the police officers and civilian staff seconded by them (covering salaries, allowances and travel expenses) and contribute where appropriate to the running costs.

The Agreements to be concluded should provide for the detailed arrangements regarding the participation of these Third States in the EUPM, which will start on 1 January 2003.

European Economic Area - Participation in the Community eco-management and audit scheme

(Doc. 11833/02)

The Council approved a draft decision of the EEA Joint Committee amending Annex XX to the EEA Agreement to take account of recently adopted *acquis* in the field of the environment and to allow for the voluntary participation by organisations in the Community eco-management and audit scheme (EMAS). The draft decision incorporates the following acts into the EEA Agreement:

- Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114, 24.4.2001, p. 1),
- Commission Decision 2001/681/EC of 7 September 2001 on guidance for the implementation of Regulation (EC) No 761/2001 (OJ L 247, 17.9.2001, p. 24) and
- Commission Recommendation 2001/680/EC of 7 September 2001 on guidance for the implementation of Regulation (EC) No 761/2001 (OJ L 247, 17.9.2001, p. 1).

European Economic Area - Orphan medicinal products

(Doc. 11828/02)

The Council approved a draft Decision for adoption by the EEA Joint Committee which aims at amending Protocol 37 and Annex II to the EEA Agreement by incorporating Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products. The purpose is to permit full EFTA/EEA association in the work of the Committee for Orphan Medicinal Products.

European Economic Area - Statistics

The Council approved revised versions of two texts approved on 12 July 2002 at the ECOFIN Council:

- a draft decision of the EEA Joint Committee amending Annex XXI (Statistics) to the EEA Agreement, by incorporating Commission Decision 2000/363/EC of 28 April 2000 on rules for implementing Council Directive 95/64/EC on statistical returns in respect of carriage of goods and passengers by sea (doc. 10186/1/02), and
- a draft decision of the EEA Joint Committee amending Annex XXI (Statistics) to the EEA Agreement, by incorporating Commission Decision 98/377/EC of 18 May 1998 adapting Annex I to Council Regulation (EEC) No 571/88 in view of the organisation of the Community surveys on the structure of agricultural holdings (doc. 10175/1/02).

ECOFIN

Financial regulation applicable to the general budget

(Doc. 12425/02)

The Council adopted its opinion on the Commission regulation on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) and instructed the Presidency to forward this opinion to the Commission.

TRADE

Textiles - Negotiations on the renewal of agreements with Cambodia and Nepal

The Council adopted recommendations authorising the Commission to open negotiations on the renewal of the Agreement on Trade in Textile Products between the EC and respectively Cambodia and Nepal.

Anti-dumping - Imports of urea and ammonium nitrate solutions originating in Poland

(Doc. 12310/02)

The Council adopted a regulation amending Regulation (EC) No 900/2001 imposing definitive anti-dumping duties on imports of urea and ammonium nitrate solutions originating in Poland. The amended regulation replaces the specific anti-dumping duty imposed by Council Regulation (EC) No 900/2001 on exports of one company by a EUR 0 duty amount. All other producers in Poland remain subject to the existing residual rate of duty of EUR 22.