



**COUNCIL OF  
THE EUROPEAN UNION**



## **Conclusions of the Council and of the representatives of the Governments of the Member States on the closure of the Guantanamo Bay Detention Centre**

*2946th JUSTICE and HOME AFFAIRS Council meeting  
Luxembourg, 4 June 2009*

The Council adopted the following conclusions:

"The Council of the European Union and the representatives of the Governments of the Member States

Wishing to foster closer transatlantic cooperation with the United States of America in the area of Freedom, Security and Justice based on shared values, in particular on respect for the rights of individuals and for the rule of law, principles resulting from the constitutional traditions of the United States and the EU Member States, and on mutual respect, common interests and reciprocity,

Considering that the European Union and the United States of America share the common objectives of fighting terrorism while upholding the rule of law and observing and promoting respect for international law, human rights and fundamental freedoms,

Welcoming the decision of the President of the United States of America to close the Guantanamo Bay Detention Centre and to order a review of detention, trial, transfer and interrogation policies in the fight against terrorism,

Taking note of the request made by the Government of the United States to assist it in finding residence for those persons "cleared for release", who for compelling reasons cannot return to their countries of origin, but have expressed the wish to be received by one or other EU Member State or Schengen associated country,

# **P R E S S**

Reaffirming that the primary responsibility for closing Guantanamo and finding residence for the former detainees rests with the United States,

Taking note that the United States recognises its responsibility in accepting certain former detainees who indicate a desire to be admitted to the United States.

Wishing to lend its support to this process against the background of a thorough review of US counter-terrorism policies consistent with the rule of law and international law in the expectation that the underlying policy issues would be addressed,

Recognising that decisions on the reception of former detainees and the determination of their legal status fall within the sole responsibility and competence of a receiving Member State or Schengen associated country,

Considering that as a rule third country nationals legally residing within one Member State or Schengen associated country have the right to move freely within the territories of the other Member States or Schengen associated countries, under conditions set by the provisions of Schengen acquis,

Recognising that as a result of the abolition of controls at internal borders within the Schengen area, a decision to accept a former detainee by one Member State would be relevant for other Member States and Schengen associated countries including in regard to internal security, and that therefore consultation and thorough information-sharing is important both before and after decisions to receive former detainees are taken including information on a change of residence of former detainees, in order to give all Member States and Schengen associated countries the opportunity to share relevant information and to take appropriate measures including measures that may temporarily affect freedom of movement if necessary, in accordance with the Schengen acquis and national law.

Stressing the importance of involving Schengen associated countries in information-sharing among the Member States as described in the annex to these Conclusions,

Wishing to contribute to creating conditions which may help those Member States that are willing to receive former detainees to cooperate with the United States Government in finding residence for those former detainees who are “cleared for release” and who the US administration does not wish to prosecute, and who for compelling reasons cannot return to their home countries of origin and who want to be transferred to a Member State or Schengen associated country,

Call upon the Member States who are willing to receive former detainees to consider accepting only those former detainees, who fall into the category defined above,

Call upon the receiving Member States to take into account the public order and security concerns including those of other Member States so as to avoid former detainees compromising the public order or internal security of the Member States and Schengen associated countries and also call upon the receiving Member States, without prejudice to possible support from United States, to promote integration of the persons concerned through appropriate measures, while fully respecting their human rights and fundamental freedoms,

Agree that information sharing through existing channels among all Member States and Schengen associated countries is equally important both before and after decisions to receive former detainees are taken,

Agree herewith on the mechanism for the exchange of information concerning former detainees of Guantanamo as described in the annex to these Conclusions,

Take note of the full support for these Conclusions on the part of the Schengen associated countries.

Reaffirm that nothing in these Conclusions should be interpreted as an invitation to those Member States or Schengen associated countries which do not intend to receive former detainees to do so. "

## **Mechanism on the exchange of information concerning Guantanamo former detainees**

**Countries associated with the application of the Schengen acquis will be involved in both phases of the information sharing mechanism**, given the possibility under the rules of that acquis for third country nationals legally residing in one of the Member States or Schengen associated countries concerned to move within the entire Schengen area.

The decision on the reception of former detainees falls within the competence of a receiving Member State or Schengen associated country. As a result of the rule that third country nationals legally residing within one Member State or Schengen associated country have the right to move freely within the territories of the other Member States or Schengen associated countries, under conditions set by the provisions of the Schengen acquis such a decision would be relevant for other Member States or Schengen associated countries. The receiving Member State or Schengen associated country shall therefore take into account the public order and security concerns of other Member States and Schengen associated countries since it is the Member States which are responsible for ensuring security within the EU and the Schengen area. Therefore the information sharing and cooperation are essential and fall within the **responsibility of the Member States and Schengen associated countries**.

Questions relating to the protection of **personal data** contained in information exchanged and the security of the data exchanged are governed by the national laws of the Member States and Schengen associated countries involved and by the EU and Council of Europe legislation and with full respect for human rights and fundamental freedoms.

### **1<sup>st</sup> phase of information-sharing**

Any Member State or Schengen associated country considering the acceptance of a former detainee **will inform** all other Member States and Schengen associated countries before taking a final decision to that effect and provide the other Member States and Schengen associated countries with all information necessary, including the information on their envisaged legal status as soon as it is known, to make their own determination of the possible security risk implied by the reception and to check whether the person concerned is subject to judicial procedure. This is necessary to enable the latter to express any comments they may wish to make and/or to prepare such measures as they deem appropriate for internal security purposes.

To that end, as soon as a Member State or Schengen associated country has been asked by the United States to receive persons and has indicated its willingness to consider such a reception, that Member State or Schengen associated country shall request and obtain from the United States all available (confidential and other) intelligence and information concerning that person, relevant in order to allow it to take an informed decision and to share the necessary information with other Member States and Schengen associated countries.

All Member States as well as Schengen associated countries will be informed about the final decisions taken by the Member States or Schengen associated countries concerned.

**There are existing information-sharing mechanisms among the above-mentioned countries** (such as among the national entities competent in the framework of security intelligence, SIRENE, Europol) which will be used, subject to all legal conditions, as in other similar cases, for information exchange.

The Member States will use these mechanisms in the most efficient way, so as to allow for the widest possible exchange of information among all Member States and Schengen associated countries which is necessary to give a full picture of the possible implications of accepting a former detainee.

**In addition to ensuring awareness among the Member States at the EU level**, any Member State or Schengen associated country considering the acceptance of a former detainee should pass this general information on the request received by the US as well as the information about its decision (accept or not) to the Mixed Committee at the level of senior officials, fully in line with the rules on data protection.

### **2<sup>nd</sup> phase of information-sharing**

Without prejudice to existing channels for the sharing of information and intelligence, the law enforcement and judicial cooperation information channels or to the specific mandates of existing Working Parties of the Council and of such bodies as Europol, there may also be a need to allow for sharing of information/experiences about the good practices for integrating former detainees into the society, media communication, and possible general security aspects related to the persons accepted including information on a change of residence of former detainees, in accordance with national and European legislation, once they have been admitted to reside in the territory of a Member State or Schengen associated country. This may also cover former Guantanamo detainees who have already been received in the past.

This exchange of information and experiences could be conducted through competent existing Working Parties of the Council or informal ad-hoc Groups (e.g. Friends of Presidency Group) under the supervision of Coreper at the request of any delegation if such a need should arise.