

**8266/95**

**LIMITE**

**PV/CONS 37**

**JAI 27**

**DRAFT  
MINUTES  
of the 1859th Council meeting  
(Justice and Home Affairs)**

**held in Luxembourg on Tuesday 20 and Wednesday 21 June 1995**

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## **1. ADOPTION OF THE AGENDA**

(8149/95 OJ/CONS 37 JAI 20)

The agenda was adopted with the inclusion, under "Other Business", of the item "Cooperation regarding crime-preventing measures within the European Union" as requested by the Swedish delegation.

## **2. APPROVAL OF THE LIST OF "A" ITEMS**

(8175/95 PTS A 35)

The Council approved the "A" items listed in 8175/95 PTS A 35 with the exception of items 6, 7 and 8.

With regard to item 11, the Council adopted 8208/95 CORDROGUE 31, on the understanding that the following statement by the Swedish delegation would be entered in the minutes:

*"The fight against drugs is one of the areas to which the Swedish Government gives priority. The fight also needs to be conducted at European level. Sweden therefore welcomes the overall plan to combat drugs as a first step in this work. The plan will be a useful instrument in our joint efforts to combat drugs. It is also a very important policy document, especially since it takes a firm stand against legalization. Sweden considers, however, that the plan would have still greater force if it were to set out that position explicitly. We need to be very clear on this issue and, inter alia with reference to the overall plan to combat drugs, Sweden will continue to vigorously oppose any attempt to legalize narcotics."*

A note on the short-term measures that were adopted will be submitted to the European Council (see 8404/95 CORDROGUE 32).

### **3. EUROPOL – Examination of the draft Convention**

(7037/2/95 EUROPOL 54 REV 2 and 8205/95 JAI 25)

The Council examined the Council act drawing up the Convention based on Article K.3 of the Treaty on European Union on the establishment of a European Police Office.

Its findings are contained in 8341/95 EUROPOL 64.

The Council noted the statements contained in Annex I.

The Presidency announced that, pursuant to Article K.6 of the TEU, the draft Council act had been sent to the European Parliament.

### **4. DRAFT COUNCIL ACT DRAWING UP THE CONVENTION ON THE USE OF INFORMATION TECHNOLOGY FOR CUSTOMS PURPOSES (CIS)**

(8172/95 ENFOCUSTOM 25, 7256/95 ENFOCUSTOM 16, 7273/95 ENFOCUSTOM 17, 7822/95 JUR 143 ENFOCUSTOM 19 and 8205/95 JAI 25)

The Council reached an agreement in principle on the subject of disputes between Member States and between Member States and the Commission.

The Council agreed that the question of referrals for preliminary rulings should be submitted to the European Council.

### **5. DRAFT CONVENTION ON CONTROLS ON PERSONS CROSSING EXTERNAL FRONTIERS**

(8097/1/95 JAI 19 REV 1)

The Council noted the progress of discussions on this subject.

**6. DRAFT COUNCIL RESOLUTION ON BURDEN-SHARING WITH REGARD TO THE  
ADMISSION AND RESIDENCE OF DISPLACED PERSONS ON A TEMPORARY BASIS**

(8163/95 ASIM 192)

The Council approved:

– The Resolution, with the addition of the words underlined in the following recital:

*"Whereas in this regard the Member States express their desire to share as evenly as possible the responsibility regarding the admission and residence of displaced persons on a temporary basis;"*

– the following conclusions:

*"The Council approved this Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis. It considers that this overall agreement requires additional discussion to enable the European Union to react effectively to crisis situations.*

*The Council therefore requests the competent bodies to report to it soon on this subject, and in particular to propose an alert and emergency procedure to give full effect to the principles agreed."*

The Finnish and Swedish delegations maintained their linguistic scrutiny reservations.

The Council agreed to adopt the Resolution formally as an "A" item at a meeting in the near future – after it had been finalized by the Legal/Linguistic Experts and the linguistic reservations had been withdrawn – and to publish it in the Official Journal of the European Communities.

**7. PROPOSAL FOR A COUNCIL REGULATION DETERMINING THE THIRD COUNTRIES WHOSE NATIONALS MUST BE IN POSSESSION OF A VISA WHEN CROSSING THE EXTERNAL BORDERS OF THE MEMBER STATES**

**– Visa requirement for former Yugoslav nationals**

(8165/95 ASIM 193)

All Member States accepted the addition of the following States and entities to the list in the Annex to the Regulation:

Part I. – States:

Thailand  
Maldives, Fiji  
Peru  
Bahrein, United Arab Emirates, Kuwait, Qatar

Part II.– Entities and territorial authorities not recognized as States by all the Member States:

FYROM (Former Yugoslav Republic of Macedonia)

However, the Council did not reach an agreement, mainly because the Italian delegation was unable to accept the inclusion of the Federal Republic of Yugoslavia (Serbia-Montenegro) in Part II of the list, or give any precise indication as to whether it would be able to do so in the future. For many other delegations, especially the German delegation, this question was crucial. The Spanish delegation was unable at this stage to agree to the inclusion of Bolivia and Colombia.

The Council approved the following statements:

- (a) *"Where it proposed to amend part II of the Annex to this Regulation as regards the inclusion of entities and territorial authorities not recognized by all the Member States, the Council will consider the specific foreign policy aspects involved before taking its decision; in any event the recognition of passports and travel documents issued by non-recognized entities and territorial authorities is a matter for the Member States and could be the subject of a decision under Title VI."*

(b) *"The Council states that, in view of the special situation there, the treatment of Chinese nationals with right of abode in Hong Kong and Macao will be determined later."*

The Finnish and Swedish delegations maintained their linguistic scrutiny reservations.

The Presidency decided in conclusion that this dossier should be held over to a future Council meeting. The German delegation wanted the question of the visa requirement for former Yugoslav nationals to be submitted to the European Council meeting in Cannes.

The draft Regulation and the statements as they stand following the present Council meeting will be found in 8459/95 ASIM 201.

## **8. DRAFT CONVENTION ON THE PROTECTION OF THE COMMUNITIES FINANCIAL INTERESTS**

(8200/95 JUSTPEN 90, 7339/95 JUSTPEN 76 + COR 1(en) + COR 2(fi)  
+ COR 3(fi) + COR 4(d), 8198/95 JUR 156 JUSTPEN 89 and 8205/95 JAI 25)

(a) The Council reached agreement on the bulk of the draft Convention. After the discussion the following questions remained unresolved:

- The United Kingdom delegation entered a reservation on Article 10(2), which provided for decisions by a two-thirds majority (Article 10(2) in conjunction with Article K.3(2)(c) of the Treaty on European Union), and asked for such decisions to be taken on a basis of unanimity. Several other delegations would have preferred two-thirds majority decisions in the case of Article 2(3) as well and were unable to agree to this request;
- Regarding Article 8 on the powers of the Court of Justice:
  - = The Danish and United Kingdom delegations entered reservations on paragraph 3;
  - = The Austrian delegation asked for paragraph 2 to include a reference to Article 2 ("...Articles 1, 2 or 10...").

- (b) The Council agreed that Article 8 did not give the Court of Justice any powers over decisions taken by national courts in accordance with national criminal law <sup>(1)</sup>.
- (c) The text as it stands following the Council's discussions is contained in 7339/2/95 JUSTPEN 76 REV 2 <sup>(2)</sup>.

## **9. DRAFT CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF JUDGEMENTS IN MATRIMONIAL MATTERS.**

(7951/95 JUSTCIV 34)

The Council discussed whether ancillary applications concerning the exercise of parental authority could be included in the scope of the Convention.

The Council took note of:

- The United Kingdom delegation's reservation on this possibility;
- the wish expressed by various delegations for further examination of the relevant rules;
- the fact that most delegations agreed to the inclusion of this possibility, some of them going so far as to say that the Convention would be incomplete if it failed to cover the custody of children;
- The German delegation's suggestion on the possibility of looking at ways of devising a parallel legal solution that dealt specifically with the custody of children.

The Council noted that the Commission had had a study carried out on the compatibility of the current discussions with existing international legal instruments.

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(1) See points 7 and 9 of the Council Legal Service's opinion in 8189/95 JUR 156 JUSTPEN 89.  
(2) Article 8(3) on preliminary rulings was contained in a meeting document. It was deleted in accordance with the conclusions of the European Council in Cannes on 26 and 27 June 1995.



After the discussion the Council gave instructions that work was to continue on the draft Convention with ancillary applications concerning the exercise of parental authority over the children of both spouses being included in its scope.

## 10. **DRAFT CONVENTION ON EXTRADITION**

(7968/95 JUSTPEN 86)

The Council held a policy debate on the draft Convention on extradition between the Member States of the European Union, concentrating on the three aspects dealt with in 7968/95 JUSTPEN 86.

The Council emphasized its desire to see progress in these areas but also gave instructions for discussions on the whole issue to be continued, with particular reference to:

- the provisions on the extradition of nationals, bearing in mind that the arrangement in Article 5 of the draft Convention was generally approved by the delegations;
- refusal of extradition based on political offences, allowing for the fact that a favourable view had been taken of the approach followed in Article 3 (paragraph 1 and first alternative in paragraph 2);
- the possibility of regarding conspiracies and associations to commit offences established as offences by the law of the requesting State as extraditable offences.

## 11. **OTHER BUSINESS**

- **Cooperation regarding crime-preventing measures within the European Union** (requested by the Swedish delegation)

The Council instructed the K.4 Committee to examine the note on this subject from the Swedish delegation (see 8447/95 ENFOPOL 61).

**STATEMENTS ON THE DRAFT CONVENTION ON THE ESTABLISHMENT OF  
A EUROPEAN POLICE OFFICE**

– Re Article 4(2): statement by the German delegation

*"With reference to the federal structure of the Federal Republic of Germany, the higher authorities of the Länder acquire on-line access to the information system in accordance with Article 7(1) through the Bundeskriminalamt (Federal Crime Office) as national authority.*

*The possibility for direct communication between liaison officers seconded by the Federal Crime Office and the higher authorities of the Länder is opened in the context of the duties of liaison officers pursuant to Article 5."*

– Re Article 19: statement by the Italian delegation

*"Italy is prepared to withdraw its reservations on Article 19 concerning right of access if these reservations constitute the only obstacle to approval of the Convention on the establishment of Europol.*

*It would point out, however, that the Italian Parliament is still examining the new rules on the protection of personal data. All necessary steps will of course be taken to ensure the greatest possible consistency between the relevant principles laid down in Article 19 of the Convention and the provisions of national law."*

– Re Article 40(4): statement by the Council Legal Service representative

*"Under Article K.3(2)(c) of the Treaty on European Union, the implementing measures contained in Article 40(4) will have to be adopted by a majority of two thirds of the Member States."*