

**13783/98
LIMITE**

**PV/CONS 84
JAI 39**

**DRAFT
MINUTES
of the 2146th Council meeting
(Justice and Home Affairs)**

held in Brussels on 3/4 December 1998

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1. Adoption of the agenda

13480/1/98 OJ/CONS 84 JAI 38 REV 1

The Council adopted the above-mentioned agenda.

2. Approval of the list of "A" Items

13481/98 PTS A 82 + ADD 1

The Council approved the "A" items as listed in document 13481/98 PTS A 82 + ADD 1.

The reference documents for item 19 should read as follows:

"19. Europol involvement in combating the forgery of Euro currency

10708/4/98 EUROPOL 80 REV 4

+ COR 1 (en)

approved by Coreper, Part, on **02.12.98**"

With regard to item 7 ("Proposal for a Joint Action concerning the setting up of a European Image Archiving System (FADO)") and item 16 ("Addition to the definition of "traffic in human beings" in the Annex referred to in Article 2 of the Europol Convention"), the Council entered the following statements in these minutes:

Re. item 7:

"The Council declares that the technical specifications referred to in Article 4 shall be drawn up in accordance with the procedures of a non-public nature as contained in document 10840/1/98 ASIM 194 FAUXDOC 11 REV 1."

"The Council agrees that the determination of the costs of the FADO as administrative expenditure of the Council relates to the specific origin and purpose of this Joint Action, which is to arrange for the electronic archiving and transmission of documents, currently provided in hard copy form and funded from administrative expenditure of the Council."

"The Commission will take the necessary initiatives in respect of developing FADO following the entry into force of the treaty of Amsterdam."

Re. item 16:

"The Council, acting to further the objective laid down in Article 2(1) of the Europol Convention, declares that concerning the production, the sale and the distribution of child pornography, Europol may collect and analyze information obtained from persons possessing such material, where it provides serious indications of existence of an international network, without prejudice to the definition of these offences in national law."

3. Action plan on establishing an Area of Freedom, Security and Justice

a) Public debate

b) Adoption of document 12028/5/98 JAI 31 REV 5

The Council held an open debate on the Action Plan on establishing an Area of Freedom, Security and Justice. The Action Plan had been drawn up by the Council and the Commission and set out how best to implement the provisions of the Amsterdam Treaty aimed at the establishment of an area of freedom, security and justice.

The President underlined the importance of this Action Plan that dealt with matters of direct interest to the European citizen. Its implementation should increase free movement of people and provide for more security and better access to justice for citizens.

Ministers welcomed the Action Plan as a guideline for future work on asylum and immigration, police and customs cooperation and judicial cooperation. The Action Plan provided for a timetable for priorities and as a consequence, it should be ensured that the provisions of the Amsterdam Treaty were supplemented before the enlargement of the European Union. Ministers underlined that the Action Plan provided an important contribution to the preparation of the Special Justice and Home Affairs European Council in Tampere in October 1999.

Following the open debate, the Council approved the Action Plan with a view to transmitting it to the European Council of Vienna.

4. EURODAC

- Convention and Protocol
12942/98 ASIM 236 EURODAC 11
+ COR 1
- 12943/98 ASIM 237 EURODAC 12
+ COR 1
- 13467/98 ASIM 249 EURODAC 15

The Council recorded agreement, subject to parliamentary scrutiny reservations from the Danish, Italian and United Kingdom delegations, on the content of the draft Eurodac Convention which will be "frozen" pending the entry into force of the Treaty of Amsterdam. The Council noted that once that Treaty enters into force, the Commission will put forward a proposal for a Community legal instrument incorporating the content of the draft Convention.

With regard to the draft Protocol to the draft Eurodac Convention the Council, on the one hand, agreed to forward the text as set out in 12943/98 + COR 1 to the European Parliament for opinion and, on the other hand, invited the Permanent Representatives Committee to continue examination of the outstanding questions on the text with a view to enabling the Council, in the light of the European Parliament's opinion, to reach agreement on the draft Protocol at its next session.

5. Joint action concerning temporary protection of displaced persons

Joint action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons

12617/1/98 ASIM 230 ASILE 11 MIGR 24 REV 1

The Council held an extensive exchange of views on the main principles underpinning the proposed joint actions on temporary protection and solidarity and in particular on the linkage between the two proposals.

While several delegations (A, B, D, DK, GR, I, L, NL, S) lent strong support to the principle of linking the two joint actions and to taking both texts forward as a matter of urgency, other delegations (F, P, UK) felt that there should not be an automatic mechanism providing for solidarity in all cases where a temporary protection regime is set in place.

With regard to the proposed joint action on temporary protection, several delegations felt that the decision to be taken by the Council as referred to in Article 3 thereof should be adopted unanimously. The Danish delegation and the Commission representative entered a strong preference for such decisions to be taken by qualified majority. The Netherlands delegation suggested that the decisions on the granting of temporary protection should be taken unanimously, but that the measures to be taken to implement such decisions could be adopted by qualified majority.

6. Draft Convention on mutual assistance in criminal matters

13144/98 JUSTPEN 108

The Council examined the above draft Convention, with particular reference to the outstanding questions concerning the provisions on interception of telecommunications.

One of the most difficult questions concerned the situation where a Member State intercepts or intends to intercept a target present in another member State for the purpose of a criminal investigation and does not need the technical assistance of that other Member State to do so.

- A large majority of delegations thought that there should be no exceptions to the rule that in such cases the intercepting Member State shall inform the visited Member State. However, the United Kingdom delegation maintained its reservation on this point and requested three exceptions to the rule. The first exception would imply that there would be no obligation to inform the other Member State in cases of interception on request by national security or intelligence agencies. The second exception would

imply that there would be no obligation to inform in cases where to do so could prejudice national security interests. The third exception would cover interception via national GSM networks. The Italian delegation could consider the third exception.

- The Council also discussed in which circumstances the informed Member State should be able to require that the interception not to be carried out or to be interrupted. It was agreed that this question needed to be further examined.

The delegations maintained their positions regarding the questions on issues other than interception of telecommunications set out under points II A), B), C) and D) of document 13144/98 JUSTPEN 108.

The Council instructed the relevant instances of the Council to continue the work on the draft Convention with a view to its adoption as soon as possible.

7. Joint action on making it a criminal offence to participate in a criminal organization in a Member State of the European Union

13485/98 CRIMORG 187

7586/98 CRIMORG 52

+ ADD 1

The Council noted that there was political agreement on the draft Joint Action and that the Belgian delegation might be in a position to lift its parliamentary scrutiny reservation before the end of the year.

8. Joint Action on corruption in the private sector

13439/98 JUSTPEN 112

The United Kingdom delegation lifted its parliamentary scrutiny reservation. The Portuguese and Finnish delegations mentioned that they had linguistic reservations.

Following extensive discussions on the concept of "breach of duty" after a proposal by the Netherlands delegation, the Council noted that there was political agreement on the draft Joint Action in its version as amended by the Council which, after legal/linguistic scrutiny, would proceed to formal adoption by the Council.

9. Council resolution on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it

- Adoption
13172/98 CRIMORG 180
+ COR 1 (s)

The Council noted that there was agreement on the text as it stands. The text will be adopted formally at a forthcoming meeting of the Council after legal/linguistic scrutiny.

10. Information on judicial and procedural aspects of the proposal for a European Parliament and Council Directive combating late payment in commercial transactions

13192/98 JAI 34 MI 110 ECO 419 FIN 418 EEE 74 CODEC 636

The President informed the Council of the state of play of the work carried out with respect to the draft directive, drawing Ministers' attention to specific legal questions raised by its provisions.

The Commission underlined the importance of this directive for combating late payment which accounts for a quarter of all insolvencies in the EU.

The draft directive was discussed in the Industry Council on 16 November 1998 and will be on the agenda of the Internal Market Council of 7 December 1998. Ministers generally supported the idea of dealing with the issue in other Council formats since late payment was not only a justice matter but had influence on Internal Market related questions and other issues.

11. State of ratification in the different Member States

- Action Plan to combat organised crime - implementation of recommendations 13 and 14 in the Action Plan
13259/1/98 JAI 35 CRIMORG 183 REV 1

The Council took note of the information contained in the document and of the Presidency's call to speed up any outstanding ratification procedures.

12. Strategy Paper on Migration and Asylum

- Interim Report
13179/1/98 JAI 33 ASIM 239 REV 1

The Council took note of the interim report contained in doc. 13179/1/98 REV 1.

13. Task Force on Asylum and Migration

13344/98 JAI 37 AG 15

The Council held an exchange of views on the ideas put forward by the Netherlands delegation aimed at establishing a cross-pillar task force in order to draw up analyses of a limited number of countries of origin of asylum seekers and illegal immigrants and to make concrete proposals for action to influence or stem migratory flows from those countries.

Delegations lent general support to the idea of such a task force and felt that it should be established as soon as possible so that a report on the work of the task force could be prepared at the latest by the time of the special European Council meeting in Tampere in October 1999.

The Council agreed to invite the General Affairs Council, at its session on 7/8 December 1998, to take the necessary steps to establish the task force.

14. Draft Joint action of the Council concerning a uniform format for forms for affixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents

13294/98 ASIM 243 VISA 32

+ COR 1 (f, nl)

13724/98 ASIM 254 VISA 38

The Greek delegation suggested the addition of the following sentence to Article 1, paragraph 2:

"This Joint Action does not apply to documents issued by authorities which represent entities not recognised under international law."

The Council invited the Permanent Representatives Committee to study the suggestion from the Greek delegation with a view to achieving consensus on a text which could then be adopted by the Council as an "A" item on the agenda of a forthcoming session.

15. Draft Joint Action to combat Child pornography on the Internet

10850/5/98 ENFOPOL 95 JUSTPEN 83 CRIMORG 127 REV 5

All parliamentary scrutiny reservations remaining on the draft Joint Action were lifted.

The Presidency noted that there was political agreement on the text, subject to an opinion of the European

Parliament which would arrive in due course.

16. Report on Organised Crime

12749/98 CRIMORG 175 RESTREINT
12937/98 CRIMORG 176

The Council took note of the report which has been drafted by Europol under the responsibility of the Presidency on the basis of Member States' contributions.

17. Europol

a) Rules of Procedure of the Joint Supervisory Body of Europol

12402/1/98 EUROPOL 112 REV 1
12682/1/98 EUROPOL 116 REV 1

The Council invited the K4 Committee to continue work in this field in order for the Rules of Procedure to enter into force as soon as possible.

b) Directorate of Europol

The President concluded that agreement was reached on the following points:

1. As from the moment of the taking up of activities of Europol, Mr. Jürgen Storbeck is appointed Director of Europol for a period of five years.
2. For the first period of three years, the Europol Directorate will be composed of five Deputy Directors. In order to guarantee continuity, the present four Coordinators of EDU will be appointed Deputy Directors of Europol. Furthermore, a candidate suggested by France will be appointed.
3. The Deputy Directors will - in accordance with the Europol Convention - be appointed for a period of three or four years.
4. Two Deputy Directors will be appointed for a period of three years and three Deputy Directors will be appointed for a period of four years.
5. Consequently the term of office of two Deputy Directors will end after three years. One of those posts will not be filled while the other post will be occupied by a candidate to be proposed by Spain.
6. Future appointments will be made taking into account the principle of rotation.

18. **Report on Drugs and Drug related issues to the Vienna European Council**
12334/1/98 CORDROGUE 65 CODRO 5 SAN 156 PESC 272 ENFOPOL 117 REV 1
13274/98 CORDROGUE 76 JAI 36

The Council took note of the report which will be forwarded to the European Council of Vienna.

19. **Terrorism : internal and external threat that terrorism poses to EU countries**
12680/1/98 ENFOPOL 118 REV 1

The Council took note of a report containing an assessment of the internal and external terrorism threat with respect to the European Union, drawn up by the Presidency with the assistance of the European Drugs Unit in The Hague.

20. **Report to the European Council Vienna on the follow-up of organized crime**
11571/3/98 CRIMORG 141 REV 3

The Presidency noted that there was agreement on the report which would be amended by the Presidency in the light of the results of the Council.

21. **Implementation of the Customs Information System (CIS)**
a) **Protocol to the Convention on the use of information technology for customs purposes** 13267/98
ENFOCUSTOM 69

The Council agreed on the above draft Protocol. The German delegation entered a parliamentary scrutiny reservation.

The final adoption of the text will take place later in December after legal/linguistic editing.

b) CIS : objectives for the technical requirements

12860/98 ENFOCUSTOM 62

12195/98 ENFOCUSTOM 56

The Council

- took note of the opposition of the German declaration to certain data elements for companies to be entered in the CIS database (12860/98 ENFOCUSTOM 62);
- requested the Legal Service to provide a written opinion on the question of whether the objectives for the technical requirements for the CIS database (12195/98 ENFOCUSTOM 56) can be adopted within the Council by a majority of two thirds of the High Contracting Parties of the Convention (Article K.3 (2) (c) of the TEU);
- charged the Permanent Representatives Committee to examine this question as well as the question of costs for the operation of the CIS, raised by the Commission, and to report back to the Council as soon as possible.

22. Any other business

The Council agreed to a proposal by the French delegation to examine a draft Joint Position relating to the ongoing negotiations of a draft UN Convention against organized crime and that the Presidency would submit this question to the JHA Counsellors and the K4 Committee the following week.